

ORDINANCE NO. 0-79-26

AN ORDINANCE AUTHORIZING THE ACQUIRING, CONSTRUCTING AND EQUIPPING BY THE CITY OF CONWAY OF INTERESTS IN CERTAIN ELECTRIC GENERATING PLANTS (IDENTIFIED IN THE ORDINANCE AS THE INDEPENDENCE PROJECT AND THE WHITE BLUFF PROJECT); AUTHORIZING THE EXECUTION AND DELIVERY OF AN OWNERSHIP AGREEMENT AND AN OPERATING AGREEMENT PERTAINING TO THE INDEPENDENCE PROJECT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ADDENDUM TO OWNERSHIP AGREEMENT, AN ADDENDUM TO OPERATING AGREEMENT, AND AN AGREEMENT BY AND BETWEEN ARKANSAS POWER AND LIGHT COMPANY AND THE CITY OF CONWAY, PERTAINING TO THE WHITE BLUFF PROJECT; AUTHORIZING THE EXECUTION AND DELIVERY OF A POWER COORDINATION INTERCHANGE AND TRANSMISSION AGREEMENT; AUTHORIZING THE ISSUANCE OF ELECTRIC REVENUE BONDS UNDER ACT NO. 5 OF THE ACTS OF ARKANSAS OF 1979; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT; AUTHORIZING THE SALE OF THE BONDS AND THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT; AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Conway, Arkansas (the "City") presently owns an electric generation and distribution system serving the City, which system is operated by the Conway Corporation, a non-profit corporation organized and existing under the laws of the State of Arkansas (the "Conway Corporation"), pursuant to an exclusive franchise granted to Conway Corporation by the City; and

WHEREAS, the City and the Conway Corporation have made a study of the needs of the City and its citizens for power and energy for the present and the future and in connection therewith have caused to be prepared and analyzed a feasibility report by R. W. Beck And Associates, a consulting engineering firm with offices in Denver, Colorado and in connection therewith have taken into account the following:

(a) The economies and efficiencies estimated to be achieved in acquiring, constructing and operating the Projects authorized by this ordinance;

(b) The City's estimated requirements for power and energy from the Projects and for reserve capacity and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which it is or is anticipated to become a party; and

(c) The cost of existing or alternative power supply sources; and

WHEREAS, the City has made the necessary arrangements with Arkansas Power & Light Company ("APL"), Arkansas Electric Cooperative Corporation ("AECC"), and City Water and Light Plant of the City of Jonesboro ("CWL"), for the acquiring, constructing and equipping of certain electric generating facilities in Jefferson County, Arkansas near Redfield, Arkansas (known as the White Bluff Steam Electric Station) and in Independence County, Arkansas near Newark, Arkansas (known as the Independence Steam Electric Station), and their operation by APL, for the benefit of APL, AECC, CWL and the City, after completion and for the transmission of electricity therefrom to the City; and

WHEREAS, the City proposes to finance the costs to it of (i) acquiring, constructing and equipping its ownership interests in the White Bluff Steam Electric Station and the Independence Steam Electric Station (the City's Ownership interests shall be hereinafter referred to as the "White Bluff Project" and the "Independence Project", respectively), and (ii) financing costs, the funding of certain reserves, and interest during construction, by the issuance of electric revenue bonds under the Constitution and laws of the State of Arkansas, including particularly Act No. 5 of the Acts of Arkansas for the year 1979; and

WHEREAS, pursuant to and in accordance with the provisions of Act No. 5 of the Acts of Arkansas the City is now pre-

pared to proceed with the financing as above described and to issue and sell not to exceed \$50,000,000 in aggregate principal amount of its Electric Revenue Bonds, 1979 Series A (the "Bonds"), to provide such financing; and

WHEREAS, the City has made arrangements with Stephens Inc. and T. J. Raney & Sons, Inc., both of Little Rock, Arkansas, and Merrill Lynch White Weld Capital Markets Group (Merrill Lynch, Pierce, Fenner & Smith Incorporated), New York, New York (the "Underwriters") for the sale of the Bonds pursuant to the terms and conditions of the Bond Purchase Agreement authorized by this Ordinance; and

WHEREAS, copies of the hereinafter described documents have been presented to and are before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Conway, Arkansas:

Section 1. That on the basis of the study described in the preambles hereto, the City Council hereby finds that the acquiring, constructing and equipping of the Independence Project and the White Bluff Project pursuant to the agreements authorized in Sections 4 through 9 hereof are necessary and desirable and will not result in the City obtaining electric power capacity in excess of the power requirements of the City for the present and a reasonable time in the future.

Section 2. That the acquiring, constructing and equipping of the facilities of the Independence Project is hereby authorized.

Section 3. That the Acquiring, Constructing and equipping of the facilities of the White Bluff Project is hereby authorized.

Section 4. That there is hereby authorized the execution and delivery of an Ownership Agreement among APL, AECC, CWL and the City (the "Independence Ownership Agreement") pertaining to the Independence Project, and the Mayor and City Clerk are hereby authorized to execute, acknowledge and deliver the Ownership Agreement for and on behalf of the City. The Ownership Agreement is hereby approved in substantially the form submitted to this meeting and the Mayor is hereby authorized to confer with APL, AECC and CWL in order to complete the Ownership Agreement in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

Section 5. That there is hereby authorized the execution and delivery of an Operating Agreement among APL, AECC, CWL and the City (the "Independence Operating Agreement") pertaining to the Independence Project, and the Mayor and City Clerk are hereby authorized to execute, acknowledge and deliver the Operating Agreement for and on behalf of the City. The Operating Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with APL, AECC and CWL in order to complete the Operating Agreement in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

Section 6. That there is hereby authorized the execution and delivery of an Addendum to Ownership Agreement among APL, AECC, CWL and the City (the "Addendum to White Bluff Ownership Agreement") pertaining to the White Bluff Project, and the Mayor

and City Clerk are hereby authorized to execute, acknowledge and deliver the Addendum to Ownership Agreement for and on behalf of the City. The Addendum to Ownership Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with APL, AECC and CWL in order to complete the Addendum to Ownership Agreement in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

Section 7. That there is hereby authorized the execution and delivery of an Addendum to Operating Agreement among APL, AECC, CWL and the City (the "Addendum to White Bluff Operating Agreement") pertaining to the White Bluff Project, and the Mayor and City Clerk are hereby authorized to execute, acknowledge and deliver the Addendum to Operating Agreement for and on behalf of the City. The Addendum to Operating Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with APL, AECC and CWL in order to complete the Addendum to Operating Agreement in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

Section 8. That there is hereby authorized the execution and delivery of an Agreement between APL and the City (the "White Bluff Agreement") pertaining to the White Bluff Project, and the Mayor and City Clerk are hereby authorized to execute, acknowledge and deliver the White Bluff Agreement for and on behalf of the City. The White Bluff Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with APL in order to complete the White Bluff Agreement in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

Section 9. That there is hereby authorized the execution and delivery of a Power Coordination Interchange and Transmission Agreement between APL and the City (the "Transmission Agreement") pertaining to both the Independence Project and the White Bluff Project, and the Mayor and City Clerk are hereby authorized to execute, acknowledge and deliver the Transmission Agreement for and on behalf of the City. The Transmission Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with APL in order to complete the Transmission Agreement in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

Section 10. That the issuance of the Bonds is hereby authorized. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall bear interest (at a rate or rates not to exceed ten percent (10%) per annum), shall be subject to redemption prior to maturity, and may contain such other terms, covenants and conditions, all as set forth in the Trust Indenture securing the Bonds (hereinafter authorized).

Section 11. That the Bonds be sold to the Underwriters for the purchase price and upon the terms and conditions set forth in a Contract of Purchase to be entered into between the City, the Conway Corporation and the Underwriters (the "Bond Purchase Agreement"). The Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Underwriters in order to complete the Bond Purchase Agreement, and to execute and deliver the same on behalf of the City in substantially the form presented to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

Section 12. To prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge a Trust Indenture by and among the City, the Conway Corporation, and a bank or trust company which will act as Trustee thereunder, dated as of the date of the Bonds (the "Indenture"), and the City Clerk is hereby authorized and directed to execute and acknowledge the Indenture and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Indenture to be accepted, executed and acknowledged by the Trustee. The Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee and the Underwriters in order to complete the Indenture in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

Section 13. That there be, and there is hereby, authorized the preparation and distribution to various prospective and actual purchasers of the Bonds of an Official Statement (and preliminary Official Statement), in the name of the City, describing the City, the Bonds, the Indenture, and setting forth such other information as may be determined to be necessary or desirable by the Underwriters and the City. The Mayor is authorized to execute such Official Statement on behalf of the City.

Section 14. That the Mayor and the City Clerk, for and on behalf of the City, be, and they are hereby, authorized and directed to do any and all things necessary to effect the execution and delivery of the Independence Ownership Agreement, the Independence Operating Agreement, the Addendum to White Bluff Ownership Agreement, the Addendum to White Bluff Operating Agreement, the White Bluff Agreement, the Transmission Agreement, the

Bonds, the Indenture, the Bond Purchase Agreement, and the Official Statement, and to perform all obligations of the City under and pursuant thereto. That the Mayor and City Clerk be, and they are hereby, further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of the authority conferred by this Ordinance or to evidence the exercise thereof.

Section 15. That the City Clerk is hereby authorized and directed to file in the office of the City Clerk, as a part of the minutes of the meeting at which this Ordinance is adopted, for inspection by any interested person a copy of the Independence Ownership Agreement, Independence Operating Agreement, Addendum to White Bluff Ownership Agreement, Addendum to White Bluff Operating Agreement, White Bluff Agreement, Transmission Agreement, Indenture and Bond Purchase Agreement presented at this meeting and as finally executed, and such documents shall be on file for inspection by any interested person.

Section 16. That prior to the delivery of the Bonds in permanent form in the principal amount herein authorized, there is hereby authorized the execution and delivery of temporary Bonds, in one or more series and in an aggregate principal amount not to exceed the authorized principal amount of permanent Bonds, which may be in typewritten form, in such denominations, payable to bearer or registered as to principal or as to principal and interest and containing such other terms as may be necessary or desirable which are consistent with the provision of this Ordinance and the Indenture. Any such temporary Bonds may mature over a period of not to exceed five years with provision made for the temporary Bonds to bear interest only to maturity and the necessary steps shall be taken to deliver permanent Bonds at such time as will insure the availability of sufficient proceeds to retire the temporary Bonds on or prior to their maturity. The Mayor and Clerk are hereby authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the

carrying out of the authority conferred by this Section or to evidence the exercise thereof.

Section 17. That the law firm of Friday, Eldredge & Clark, Little Rock, Arkansas, be appointed to act as Bond Counsel on behalf of the City in connection with the issuance and sale of the Bonds.

Section 18. That the provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

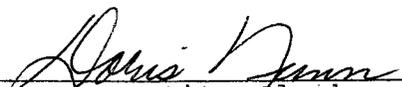
Section 19. That all ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 20. That there is hereby found and declared to be an immediate need for the securing of adequate, reliable and economical supplies of electric power and energy in order to provide electricity and otherwise benefit the public health, safety and welfare of the City and the inhabitants thereof, and the issuance of the Bonds authorized hereby and the taking of the other action authorized hereby are immediately necessary for the accomplishing of these public benefits and purposes. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the immediate preservation of the public peace, health and safety shall be in force and effect immediately upon and after its passage.

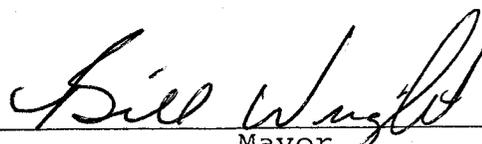
PASSED: May 22, 1979.

APPROVED:

ATTEST:



City Clerk



Mayor

(SEAL)

