



# MEMORANDUM

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**To:** Mayor and City Councilors

**From:** Rich Olson, City Manager

**Date:** May 19, 2015

**Re:** Consideration – Hold a Public Hearing to Adopt an Ordinance Approving Execution of All Documents related to the Sale of the City's Generating Assets to Duke Energy Progress

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***BACKGROUND:***

For many months, the City Council has been working toward the proposed sale of the City's generating assets to Duke Energy Progress. As we have discussed on several occasions, a number of agreements will require the City Council's approval. These documents were received by the City on April 29, 2015 and include: Asset Purchase Agreement, Full Requirements Power Purchase Agreement, Debt Service Support Contract, Full Requirements Power Sales Agreement and the Power Sales Agreement Termination Agreement. You received an in-depth briefing on most of these documents by our outside legal counsel during a Special Meeting held on March 3, 2015. An additional Special Meeting was held on May 14, 2015 during which ElectriCities CEO Graham Edwards and our outside legal counsel discussed again the agreements and answered questions by Councilmembers.

***ANALYSIS:***

In order to approve the various documents outlined above for execution, the City Council must adopt an ordinance (attached). A Public Hearing is required to be held prior to the adoption of the ordinance. The City Council called for the Public Hearing to be held on Tuesday, May 26, 2015 at 7:30 p.m. during the Council meeting held on May 11, 2015 to gather public input regarding this matter. Public notice requirements for the Public Hearing have been met.

***STAFF RECOMMENDATION:***

***AT THE CONCLUSION OF THE PUBLIC HEARING:***

By motion, adopt the attached ordinance, as presented approving all documents related to the sale of the City's generating assets to Duke Energy Progress and authorizing officers and officials of the City to execute such further documents

City Manager's Office

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and to take any and all further action to effectuate the execution and delivery of the Debt Service Support Contract, Full Requirements Power Sales Agreement and Powers Sales Agreement Termination Agreement and the transactions contemplated thereby, and the Asset Purchase Agreement and Full Requirements Power Purchase Agreement; said ordinance to be effective upon adoption.

RCO/vdw

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELIZABETH CITY, NORTH CAROLINA, DETERMINING THAT IT IS IN THE BEST INTERESTS OF THE CITY OF ELIZABETH CITY TO APPROVE THE ASSET PURCHASE AGREEMENT AND THE FULL REQUIREMENTS POWER PURCHASE AGREEMENT BETWEEN NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY AND DUKE ENERGY PROGRESS, INC., TO CONSENT TO THE TRANSACTIONS CONTEMPLATED THEREBY, AND TO APPROVE AND AUTHORIZE THE EXECUTION AND DELIVERY OF THE DEBT SERVICE SUPPORT CONTRACT, THE FULL REQUIREMENTS POWER SALES AGREEMENT AND THE POWER SALES AGREEMENTS TERMINATION AGREEMENT BETWEEN THE CITY OF ELIZABETH CITY AND NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY

**WHEREAS**, the City of Elizabeth City, North Carolina (the “Municipality”) and North Carolina Eastern Municipal Power Agency (“Power Agency”) entered into an Initial Project Power Sales Agreement dated as of July 30, 1981, as amended by an Amendment Agreement dated as of October 31, 1984 (the “Project Power Sales Agreement”), pursuant to which Power Agency sells and the Municipality purchases and pays for the Municipality’s Participant’s Share (as defined in the Project Power Sales Agreement) of Project Output (as defined in the Project Power Sales Agreement); and

**WHEREAS**, the Municipality and Power Agency entered into a Supplemental Power Sales Agreement dated as of July 31, 1981, as amended by an Amendment Agreement dated as of October 31, 1984 (the “Supplemental Power Sales Agreement”), pursuant to which Power Agency sells and the Municipality purchases and pays for All Requirements Bulk Power Supply (as defined in the Supplemental Power Sales Agreement), which consists of Project Output (as defined in the Supplemental Power Sales Agreement) and Supplemental Bulk Power Supply (as defined in the Supplemental Power Sales Agreement); and

**WHEREAS**, Power Agency and Duke Energy Progress, Inc. (“DEP”) have entered into an Asset Purchase Agreement (as supplemented and amended, the “APA”) dated as of September 5, 2014, pursuant to which Power Agency has agreed to sell and transfer to DEP, and DEP has agreed to purchase and pay for, the following undivided ownership interests of Power Agency in the following electric generating facilities: (i) 16.17% in Harris Unit No. 1, (ii) 18.33% in Brunswick Unit No. 1, (iii) 18.33% in Brunswick Unit No. 2, (iv) 16.17% in Mayo Unit No. 1, and (v) 12.94% in Roxboro Unit No. 4 and 3.77% in the common facilities that support Roxboro Unit No. 4 and the three (3) other coal-fired generation facilities located at the site of Roxboro Unit No. 4 (collectively, the “Joint Facilities”); and

**WHEREAS**, in connection with the sale and transfer of the Joint Facilities to DEP, Power Agency is required to redeem, purchase, otherwise retire or defease all of its bonds (the “Outstanding Bonds”) issued pursuant to, and outstanding under, Resolution R-2-82, adopted by Power Agency on April 1, 1982, as amended and supplemented thereafter; and

**WHEREAS**, such redemption, purchase, retirement or defeasance by Power Agency of the Outstanding Bonds will result in Power Agency being obligated to pay certain costs associated therewith (the “Defeasance Costs”); and

**WHEREAS**, portions of the Defeasance Costs will be funded from proceeds of the sale and transfer of the Joint Facilities to DEP and other funds available to Power Agency for such purpose, and Power Agency proposes to finance the balance of the Defeasance Costs by the issuance of revenue bonds (the “Bonds”) pursuant to a bond resolution substantially in the form and content of the proposed form of bond resolution dated April 24, 2015, previously delivered to the Municipality by Power Agency (the “Draft Bond Resolution”); and

**WHEREAS**, Power Agency proposes to enter into a Debt Service Support Contract dated as of April 24, 2015, with each of its members, including the Municipality, in order to support Power Agency's obligation to pay debt service on the Bonds, pursuant to which Debt Service Support Contracts each of its members, including the Municipality, is obligated to pay to Power Agency its Member's Share (as defined in the Debt Service Support Contract) of Monthly Support Costs (as defined in the Debt Service Support Contract) pursuant to the terms of the Debt Service Support Contracts; and

**WHEREAS**, the Bonds will be secured by, among other things, revenues derived by Power Agency pursuant to the Debt Service Support Contracts; and

**WHEREAS**, pursuant to Section 5 of the Debt Service Support Contract, the payment by the Municipality of its Monthly Support Costs is to be made to Power Agency unconditionally and without offset, counterclaim or other reduction, whether or not all or any portion of the electric power and energy contracted for under the member's Full Requirements Power Sales Agreement (described below) is delivered to the member or such Full Requirements Power Sales Agreement expires or is terminated in whole or in part; and

**WHEREAS**, the Municipality's Member's Share (as defined in the Debt Service Support Contract) is as set forth in Exhibit A to the Debt Service Support Contract; and

**WHEREAS**, Power Agency and DEP have entered into a Full Requirements Power Purchase Agreement (as supplemented and amended, the "Full Requirements Power Purchase Agreement") dated as of September 5, 2014, pursuant to which Power Agency will purchase from DEP and DEP will sell to Power Agency firm capacity and energy in the amounts required by Power Agency to reliably serve the current and future electrical loads of each of its members,

including the Municipality, throughout the term of the Full Requirements Power Purchase Agreement; and

**WHEREAS**, Power Agency proposes to enter into a Full Requirements Power Sales Agreement dated as of April 24, 2015, with each of its members, including the Municipality, in order to supply its members, including the Municipality, with its Full Requirements Bulk Power Supply (as defined in the Full Requirements Power Sales Agreement); and

**WHEREAS**, the Asset Purchase Agreement, among other things, requires the consent of the Municipality to, and approval of, the consummation of the transactions contemplated by the Asset Purchase Agreement and the Full Requirements Power Purchase Agreement and each of the Asset Purchase Agreement and the Full Requirements Power Purchase Agreement requires the termination of the Project Power Sales Agreement and the Supplemental Power Sales Agreement; and

**WHEREAS**, Power Agency proposes to enter into a Power Sales Agreements Termination Agreement dated as of April 24, 2015, with each of its members, including the Municipality, to terminate the Project Power Sales Agreement and the Supplemental Power Sales Agreement; and

**WHEREAS**, Power Agency has caused GDS Associates, Inc., Power Agency's Consulting Engineer, to prepare an economic analysis of the projected financial impact of the transaction contemplated by the APA on Power Agency's wholesale power costs and proposed full requirements wholesale rates (the "Economic Analysis"); and

**WHEREAS**, Power Agency has caused to be furnished to this governing body a copy of each of the following: (i) the Asset Purchase Agreement, (ii) the Full Requirements Power

Purchase Agreement, (iii) the Draft Bond Resolution, (iv) the Debt Service Support Contract, (v) the Full Requirements Power Sales Agreement, (vi) the Power Sales Agreements Termination Agreement, and (vi) the Economic Analysis.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Elizabeth City, North Carolina:

1. After due consideration to the contents of each of the preambles set forth above and each of the documents referred to in such preambles, it is hereby found and determined that it is in the best interests of the Municipality to consent to and approve the consummation of the transactions contemplated by the Asset Purchase Agreement and the Full Requirements Power Purchase Agreement, and such other documents as may be necessary to effect or implement either of the foregoing, and the same are hereby consented to and approved, and to enter into the Debt Service Support Contract, the Full Requirements Power Sales Agreement and the Power Sales Agreements Termination Agreement terminating the Project Power Sales Agreement and the Supplemental Power Sales Agreement effective upon APA Closing Date (as defined in the APA), which also is the effective date of the Full Requirements Power Sales Agreement.

2. The Municipality hereby approves the form, terms and provisions of the Debt Service Support Contract, the Full Requirements Power Sales Agreement and the Power Sales Agreements Termination Agreement between Power Agency and the Municipality, and the exhibits attached thereto, in the forms presented to the meeting at which this Ordinance is adopted, with such changes therein as shall be approved by the officials of the Municipality executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all such changes. The Mayor and the Clerk of the Municipality are hereby authorized

and directed to execute, acknowledge and deliver the aforesaid Debt Service Support Contract, Full Requirements Power Sales Agreement and the Power Sales Agreements Termination Agreement in the name of and on behalf of the Municipality and thereupon to cause the aforesaid Debt Service Support Contract, Full Requirements Power Sales Agreement and Power Sales Agreement Termination Agreement to be delivered to Power Agency.

3. The officers and officials of the Municipality are hereby authorized and directed to execute such further documents and to take any and all further action as, upon the advice of the Attorney of the Municipality, shall be deemed necessary or desirable in order to effectuate the execution and delivery of the aforesaid Debt Service Support Contract, Full Requirements Power Sales Agreement and Power Sales Agreements Termination Agreement and the transactions contemplated thereby and by the Asset Purchase Agreement and Full Requirements Power Purchase Agreement.

4. The Clerk of the Municipality is hereby directed to file with the minutes of the meeting at which this Ordinance is adopted each of the documents referred to in the last preamble of this Ordinance.

5. This Ordinance shall become effective from and after its adoption.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk

(Impress SEAL here)