

RESOLUTION NO. R-85-26

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CONWAY,
ARKANSAS:

THAT its Mayor and City Clerk-Treasurer are herewith em-
powered and directed to sign for and in behalf of the City of
Conway a certain Agreement between the City of Conway, Arkansas
and the Arkansas Power & Light Company, a copy of which is attached
to and hereby made a part of this Resolution.

PASSED: This 27th day of August, 1985.

APPROVED: _____

Bill Wright
Mayor

ATTEST:

Martha Hartwick

City Clerk-Treasurer

AGREEMENT

FOR

ELECTRIC PEAKING POWER SERVICE

BETWEEN

ARKANSAS POWER & LIGHT COMPANY

AND

THE CITY OF CONWAY, ARKANSAS

PEAKING POWER AGREEMENT

THIS AGREEMENT made as of this _____ day of _____, 1985, by and between the City of Conway, Arkansas ("City") and the Arkansas Power & Light Company ("AP&L" or "Company"),

WITNESSETH THAT:

WHEREAS, AP&L is now engaged in the business of generating, purchasing, transmitting and distributing electric power (capacity and energy) in, among other places, various parts of the State of Arkansas; and

WHEREAS, City presently owns an electric generation and distribution system serving the City and its inhabitants; and

WHEREAS, City is purchasing a portion of the electric power required for its electric system from the Company under the terms of the Power Coordination, Interchange and Transmission Agreement Between City of Conway, Arkansas and Arkansas Power & Light Company dated March 1, 1982 ("1982 Agreement"); and

WHEREAS, City desires to purchase certain peaking power (capacity and associated energy) and AP&L desires to furnish such peaking power to City;

NOW, THEREFORE, City and AP&L, in consideration of the mutual promises and covenants herein contained, do hereby agree as follows:

1. Effect on Existing Agreement. This Agreement is a supplement to the Power Coordination, Interchange and Transmission Agreement Between City of Conway, Arkansas and Arkansas Power & Light Company, dated March 1, 1982 ("1982 Agreement").

2. Peaking Power. AP&L agrees to furnish Peaking Power to City and City agrees to receive and pay for such Peaking Power. The Peaking Capacity

shall be 20,000 KW. The Peaking Energy furnished shall be 4,800,000 KWH per month for the months of May through September.

3. Points of Delivery. The Peaking Power shall be delivered to the Points of Delivery as defined in the 1982 Agreement.

4. Peaking Power and the 1982 Agreement. Peaking power acquired by City under this Agreement shall constitute Conway's Other Resources with reserves under Section 2, Article IV of Appendix A of the 1982 Agreement.

5. Rates and Charges. In exchange for the Peaking Capacity furnished by AP&L, City agrees to pay to AP&L each of the twelve months of the year an amount equal to \$1.65 per KW for 20,000 KW of Peaking Capacity. City shall pay AP&L 40 mills per KWH for the 4,800,000 KWH of Peaking Energy to be furnished during each of the months of May through September.

Each October 1 beginning October 1, 1986 or on the anniversary date of the effective date of this contract, whichever is later, the then currently effective rates shall be escalated by a factor of 1.03 and City agrees to pay escalated rates.

6. Billing. Billing for service under this Agreement shall be included with the regular billing under the 1982 Agreement and shall be subject to the provisions of Article 6, Section 1 of Appendix A to the 1982 Agreement.

7. Term. Once effective this Agreement shall remain in effect until April 30, 1991, or until the 1982 Agreement (or its successor) terminates, whichever first occurs. To the extent that regulatory approval of termination of this Agreement may be required, City agrees to join with AP&L in seeking such approval.

AP&L and the City agree that rates for service specified herein shall remain in effect for the term specified in this Section 7 and shall not be subject to change through application to the Federal Energy Regulatory

Commission pursuant to the provisions of Section 205 of the Federal Power Act absent the agreement of both parties hereto.

8. Regulatory Approvals. This Agreement and the rates and charges herein are contingent upon approval without modification by any and all State or Federal regulatory bodies having jurisdiction thereof. AP&L and City agree to cooperate to gain timely approval of this Agreement.

9. Effective Date. This Agreement shall become effective October 1, 1985 or when permitted to become effective whether subject to refund or otherwise, by the Federal Energy Regulatory Commission, whichever last occurs. Company agrees to make the necessary filing with the FERC within 10 days after final approval of this agreement by City.

10. Force Majeure. If the delivery of power and energy from Company to City is suspended or interrupted by reason of "force majeure," as hereinafter defined, Company shall not be considered to have defaulted in performance hereunder or in breach of this agreement, and neither shall the Company incur any liability to the City, its customers or inhabitants on account of such suspension or interruption as a result of "force majeure."

The term "force majeure" as used herein shall mean, without limitation, the following; acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, of the State of Arkansas, or any of their departments, agencies, or officials (other than the failure to receive therefrom a proposed rate increase or other rate schedule revision), or any civil or military authority; insurrections; riots; extraordinary delay in transportation; unforeseen soil condition; equipment, material, supplies, labor or machinery shortages; epidemics; landslides; lightning; earthquakes; fire; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; breakage or accident to machinery,

transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractor, laborer or materialman; sabotage; restraints by courts or other governmental authority; blight, famine, blockage; quarantine; or any other similar cause or event not reasonably within the control of the affected party. Each party agrees, however, to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the affected party and such party shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the affected party, unfavorable to it.

If Company is unable to fulfill any obligation by reason of "force majeure," it shall exercise due diligence to remove such inability with all reasonable dispatch.

11 Assignment. Neither party to this Agreement may assign its rights hereunder without the consent of the other, except that either party may, without the consent of the other party, assign, pledge or hypothecate its rights hereunder to its trustee or mortgagee under a mortgage or trust indenture.

12. Waiver. Any waiver at any time by either of the parties hereto of its rights with respect to a default under this agreement or with respect to any other matter arising in connection with this agreement shall not be deemed a waiver with respect to any subsequent default or matter. Any delay short of the statutory period of limitation in exerting or enforcing any right shall not be deemed a waiver of such right.

13. Notices. Any notice or demands required or permitted under any of the provisions of this agreement shall be deemed to have been given on the date such notice, in writing, is deposited in the U. S. Mail, postage prepaid, certified or registered mail, addressed to:

General Manager
Conway Corporation
P. O. Box 99
Conway, Arkansas 72032

or to:

President
Arkansas Power & Light Company
P. O. Box 551
Little Rock, Arkansas 72203

as the case may be; or in such other form or to such other address as either party shall stipulate.

IN WITNESS WHEREOF, this agreement has been executed as of the date first mentioned in this agreement for and on behalf of the City of Conway, Arkansas by its Mayor and his signature witnessed by the City Clerk of Conway, Arkansas and the seal of said City attached hereto, and further this agreement has been executed as of the date first mentioned in this agreement for and on behalf of the Arkansas Power & Light Company by its Executive Vice President and his signature witnessed by an Assistant Secretary of said Company and the seal of said Company attached hereto.

CITY OF CONWAY, ARKANSAS

BY

Bill Wright
Mayor

ATTEST:

Martha Hartwick
City Clerk

ARKANSAS POWER & LIGHT COMPANY

BY

Michael B. Bemis
Executive Vice President

ATTEST:

Assistant Secretary