Special Meeting of the City Council, City of Farmington, New Mexico, held in the Council Chamber at City Hall at 6:00 p.m. on Thursday, August 15, 2019. The open special session was held in full conformity with the laws and ordinances and rules of the Municipality.

Upon roll call, the following were found to be present, constituting a quorum:

MAYOR        Nate Duckett
COUNCILORS   Linda G. Rodgers
             Sean E. Sharer
             Jeannine Bingham-Kelly
             Janis Jakino

constituting all members of said Governing Body.

Also present were:

CITY MANAGER  Rob Mayes
ASSISTANT CITY MANAGER Julie Baird
CITY ATTORNEY Jennifer Breakell
CITY CLERK    Dianne Smylie

The meeting was convened by the Mayor. Thereupon the following proceedings were duly had and taken:

INVOCATION: The invocation was offered by Pastor David Florez of The Journey Church.

Councilor Sharer led the Pledge of Allegiance.

SAN JUAN PROJECT EXTENDER RIGHTS TRANSFER AGREEMENT/ENCHANT ENERGY

Addressing the audience, Mayor Duckett explained the ground rules for tonight's meeting. He reported that City Manager Rob Mayes will provide the opening remarks, followed by a presentation from outside counsel Greg Chaffee. Following the presentations, Mayor Duckett announced that he will poll the audience members for those in favor of the proposed agreement versus those opposed and will open the floor to public comment. He asked that all comments be limited to two minutes.

Reading from a prepared statement, Mr. Mayes reported that in 1981 the City entered into an agreement with a group of nine utility companies to operate San Juan Generating Station ("SJGS") whereby the City retained a proportionate share of five percent of the entire plant. He noted that environmental legislation forced the California-based utility companies to abandon their ownership rights, leaving only four utility companies as owners. In 2017 further legislation forced the closure of two of the four units and SJGS was slated for closure in the year 2022 when the owner agreement expires. He noted that, in November 2018, the remaining owners were required to declare whether they intended to retain their ownership interest beyond the expiration date and stated that the City is the only entity that declared interest. As a result, the City will have 100 percent ownership interest in SJGS after January 2022 because all of the shares will be transferred to the City at no cost. If SJGS is closed, Mr. Mayes stated that it will result in the loss of nearly 1,600 direct and indirect jobs and explained that this is the reason that the City decided to market 95 percent of the shares to a third party for continued operation. He reported that the law firm, Thompson Hine from Washington, DC, was hired for the purpose of assisting in marketing the plant which resulted in the proposed San Juan Project Extender Rights Transfer Agreement between the City and Enchant Energy LLC and Enchant Energy Corporation which will keep SJGS operating as a coal-fired plant utilizing carbon sequestration technology. Mr. Mayes also pointed out that the proposed technology will result in emissions three times less than the proposal submitted by Public Service Company of New Mexico ("PNM") that utilizes wind power backed by natural gas. He stated that PNM has indicated they did not pursue carbon capture technology. However, their decision was based on a different business model. They are a for-profit, regulated utility company and the feasibility study conducted by Sargent and Lundy was ten years old. In closing, Mr. Mayes
stressed that PNM is not an enemy of the City nor vice versa, and explained that the City's sole intent is to continue operating SJGS and San Juan Mine for the purpose of preserving and expanding the job base. He also reiterated that the City will not be investing any funds into the carbon sequestration technology nor will it be assigning any liability beyond those currently associated with its five percent ownership. He also assured the Council that the Farmington Electric Utility System ("FEUS") is being held harmless in any costs associated with power generation utilizing the new technology and restated that if this project is successful, SJGS will more than exceed the most stringent emissions imposed by the State of New Mexico and California and could put the city of Farmington at the epicenter of global environmental stewardship.

Mayor Duckett introduced San Juan County Commissioners John Beckstead and Jim Crowley; San Juan County Assessor Jimmy Voita; San Juan County Manager Mike Stark; San Juan County Assistant Manager Fran Pillerup; Public Utility Commissioners Chris Hunter, Jim Spence, Alex Uhland and Gordon Glass; and Chief Executive Officers for Enchant Energy and Enchant LLC, Jason Selch and Larry Heller who were all present in the audience.

Addressing the Council at the request of the Mayor, Mr. Heller stated that their enthusiasm for this project continues to increase as the weeks pass and milestones are reached and noted that they have signed a confidentiality agreement with a large oil company for the purpose of acquiring and piping the carbon dioxide to the Cortex pipeline.

Utilizing a PowerPoint presentation, Mr. Chaffee of Thompson Hine explained in detail the provisions of the proposed agreement. He noted that the four other owners in SJGS are PNM, Tucson Electric Power Company, Los Alamos County, New Mexico and Utah Associated Municipal Power Systems who collectively have 95 percent ownership and are referred to as the Non-Extender Participants. He explained that the City has the right, under Section 408 of the Participation Agreement, to acquire the rights, title and interests of the Non-Extender Participants for zero dollars which means that the City will be the sole owner of SJGS since the other parties have elected not extend. As a result, Mr. Chaffee reported that the proposed agreement allows the City to transfer the non-extender rights to Enchant Energy Corporation (a New Mexico corporation) and Enchant Energy LLC (a Delaware corporation) for $1 on a "As Is, Where Is" basis for the purpose of allowing them to negotiate directly with the four Non-Extender Participants to acquire their ownership interests. He noted that the transfer date is scheduled for June 30, 2022 and stated that it is the intent of the City to retain its five percent ownership interest in SJGS. He explained that the public purpose benefits of continued operation are the preservation of jobs and tax revenues and the continued use by the City of having access to replacement power sources which benefits the FEUS ratepayers. He also pointed out that there are public purpose benefits to the carbon sequestration technology since SJGS will continue to operate and the carbon will be shipped by pipeline for injection into Permian Basin natural gas wells. Furthermore, he noted that the technology will reduce carbon emissions at SJGS to below the limits set by the recently enacted Energy Transition Act. Mr. Chaffee stressed that the City will not be assuming any additional responsibility or liability associated with SJGS and stated that Enchant will be responsible for their pro rata percentage portion of all costs and expenses for permits and regulatory approvals required for continued operation; all costs and expenses associated with the installation, operation, maintenance, repairs and performance of the carbon capture equipment; and all costs, expenses, claims and liability related to the installation of an interconnection pipeline between SJGS and the carbon transmission pipeline for shipment from SJGS to end-user customers. Furthermore, he reported that the City will not share in any revenues or be responsible for any liabilities related to the carbon capture equipment or the generation and distribution and use of the carbon; however, he pointed out that the City will have the option to acquire an interest under the same terms as other tax equity investors if it so chooses. He stated that the agreement requires Enchant to use commercially-reasonable efforts to maintain jobs and wages with prudent utility practices. Continuing with his presentation, he noted that when the equipment achieves commercial operation, Enchant is obligated to reimburse the City for its reasonable legal fees and other transaction-related costs and expenses up to $4 million; stated that Enchant is responsible for its respective percentage ownership share of obligations and liabilities for compliance with environmental laws and
claims after June 30, 2022 and under the Decommissioning and Trust Funds Agreement; noted that Enchant will assume its respective share of obligations under the existing Amended and Restated Mine Reclamation and Trust Funds Agreement; and pointed out that Enchant will use commercially reasonable efforts to enter into a New Coal Supply Agreement and New Coal Combustion Residual Disposal Agreement between Westmoreland Coal Company and PNM. With regard to the City’s rights to electrical power, Mr. Chaffee reported that during the 13-year period that begins on the transfer date, the City will annually receive electrical power generated by SJGS and delivered to FEUS at an amount not to exceed a mutually agreed upon price cap. He noted that the City will automatically receive the extender rights back from Enchant (and any rights transferred to Enchant in connection with the restructuring of SJGS) for no additional cost to the City if 1) Enchant does not obtain financing that is sufficient to undertake the capital projects, changes, improvements and updates required to operate SJGS utilizing the carbon capture technology by June 30, 2021 subject to an extension by mutual agreement based on financial market conditions including performance milestones related to obtaining financing; or 2) all of the Transaction Agreements and other documents and actions required in connection with the Restructured San Juan Project are not negotiated, finalized, executed and/or completed by June 30, 2021. Mr. Chaffee also reviewed the post-closing obligations and stated that Enchant must provide the final Sargent and Lundy Report; prepare the market feasibility estimates and financial projects for the Restructured San Juan Project; complete all required environmental studies; and complete the transfer of all parcels of real property, easements or rights-of-way required for the continued operation of SJGS. In closing, Mr. Chaffee reviewed the indemnification requirements and explained how disputes will be resolved.

In response to inquiries from Mayor Duckett, City Attorney Jennifer Breakell explained that the City’s maximum amount to be paid under the New Mexico Tort Claims Act is $300,000 per occurrence for a claim of liability and confirmed that the carbon capture technology will increase the number of employees at SJGS. FEUS Director Hank Adair also reviewed the conclusions of the Integrated Resource Plan, noting that it is financially beneficial to FEUS for SJGS to remain in operation through the year 2027.

At the request of Mayor Duckett, Mr. Heller reported that if the proposed agreement is approved, they will engage in a myriad of discussions with PNM concerning land, water, access, rights-of-way, etc. and will initiate the tax equity bond process. In response to inquiries from Councilor Rodgers, Mr. Heller reported that if the agreement is not approved, the City will be faced with the closure of SJGS as proposed and he assured her that there is a viable market for the carbon since it is unclear how the carbon in Moñito Dome in Colorado is produced and how much longer it will be available. He also noted that they want to grow and expand the capabilities of SJGS and stated that they are considering making a proposal to PNM to become the battery storage facility for the wind and solar projects.

In response to a question from Councilor Bingham-Kelly, Ms. Breakell reported that the City is responsible for five percent of the decommissioning and reclamation costs if SJGS is closed.

Councilor Jakino asked how many jobs will be preserved and/or added at SJGS. In response, Mr. Heller reported that he is hesitant to provide an exact number but suspects that the plant will directly employ between 200 and 240 individuals. He noted that the carbon capture technology will provide an additional 18 jobs.

There being no further discussion by the Council, the Mayor asked for a show of hands of those in support of the proposed agreement. A large majority of the audience members expressed their support and only a couple of individuals indicated that they were opposed.

Mayor Duckett asked for comments from members of the audience.

Addressing the Council as a San Juan County Commissioner, Jim Crowley stated that he has sat through many meetings regarding this topic and sees this as a win/win for the community. He also suggested that he believes the carbon capture technology will exceed the environmental restrictions on emissions and make San Juan County a premier place to live.
Jimmy Volta addressed the Council as the San Juan County Assessor and he urged the Council to approve the proposed agreement in an effort to retain the current property tax rates. He also stated that he is representing the school children of Central Consolidated School District as well as the students at San Juan College, noting that the coal mines have contributed an estimated $16.8 million in property tax revenue to Central Consolidated School District; $9.2 million to San Juan College; $15.3 million to San Juan County; and $2.4 million to the State of New Mexico over the past five years.

Noting that she is the Director of Operations for Central Consolidated School District, Candice Thompson urged the Council to approve the proposed agreement, contending that this is a "lifeline" for the students since closure of SJGS would have a detrimental financial impact on the school system. She also stated that the closure would have a negative social and emotional impact on the students, staff and families.

Jeff Rogers, 706 W. Arrington, reported that he is a journeyman electrician at SJGS and stated that he enjoys working for PNM and understands that the energy industry is the "heart and soul of Farmington." He expressed his support for the proposed agreement.

Carlos Bueno, 6170 Lakeshore Drive, also expressed his support and urged the Council to support the proposed agreement.

Chris Hunter addressed the Council as a member of the Public Utility Commission and stated that "this is a big deal for our community, state and nation." He commended the vision of former Mayor Tommy Roberts, City Manager Mayes, PUEB Director Bank Adair and Mayor Duckett for their efforts in working to retain the economy. He contended that it has taken vision and passion to get to this point and he stated that he is happy to call Farmington home. He also pointed out that the lost tax revenues will negatively impact San Juan Regional Medical Center and argued that solar and wind generation does not replace lost jobs. He also noted that he serves as a board member for Four Corners Economic Development and stated that he believes that it is important to keep the property taxes as low as possible in order to promote economic development. He urged the Council to vote in favor of the proposed agreement.

Titus Padilla announced that he is a journeyman mechanic at SJGS who has lived in this area his entire life. He pointed out that he is healthy despite breathing the local air and he urged the Council to give Enchant an opportunity to keep SJGS operating.

David Florez, 1105 Rio Brazos, Aztec, expressed his support for the proposed agreement, stating that this community has depended on the financial contributions of SJGS for many years. He contended that this is a great opportunity for the community and stated that he hopes that the naysayers will change their minds and support the proposal.

Eric Hannon, 315 Coy Avenue, announced that his family owns small businesses in Farmington and he urged the Council to support the agreement in an effort to maintain the economy.

Charles Hicks, 5706 Halls Way, stated that he works at SJGS where the employees consider themselves family. He encouraged the Council to support the proposed agreement.

Genevieve Griego expressed her support for the continued operation of SJGS, noting that she is a power production/maintenance planner and on-call forced outage manager and stated that this position has given her opportunities to participate in non-profit fundraising efforts. She urged the Council to support the proposed agreement in an effort to retain local families.

There was no further response to the Mayor's call for public comment.

Mayor Duckett expressed his support for the proposed agreement, pointing out that last year SJGS was slated to close. He contended that this is a great opportunity to welcome Enchant to the community but acknowledged that there are no guarantees. He stated that he appreciates the enthusiasm and motivation of Mr. Keller and Mr. Selch and believes that it is important to understand that the carbon sequestration
technology is being used globally and will offer SJGS an opportunity to be a world-class facility.

Acknowledging that she is not an expert on this topic even though she has read and studied the materials, Councilor Rodgers stated that she believes that her job is to evaluate whether this project is in the best interest of the community. She expressed her support for the proposed agreement since it will preserve jobs, maintain tax revenues and provide resources for continued low electric utility rates. She contended that this decision is about the hearts and souls and lives of the people who live in this community and stated that she believes that this agreement gives us the best chance for success.

Councilor Sharer stated that he cannot imagine the fear being felt by the employees at SJGS who are working in an industry that the State of New Mexico is trying to outlaw. He contended that the City must do everything it can to retain the jobs and the families and he stated that he would like to see New Mexico become the leader in clean energy emissions.

Councilor Jakino pointed out the irony in tonight’s decision, stating that she believes this is the easiest decision the Council has been faced with since it will preserve jobs, families and the tax base. She voiced support for the proposed agreement.

There being no further discussion, a motion was made by Councilor Rodgers, seconded by Councilor Sharer to approve the San Juan Project Extender Rights Transfer Agreement between the City and Enchant Energy LLC and Enchant Energy Corporation concerning the acquisition of all non-extender rights of San Juan Generating Station, and upon voice vote the motion carried unanimously.

There being no further business to come before the Council, a motion was made by Councilor Sharer, seconded by Councilor Rodgers to adjourn the meeting at 7:38 p.m., and upon voice vote the motion carried unanimously.

The City Clerk certified that notice of the foregoing meeting was given by posting pursuant to Resolution No. 2013-1466, et seq.

Approved this 10th day of September, 2019.

Entered in the permanent record book this 11th day of September, 2019.

Sean E. Sharer, Mayor Pro Tem

Dianne Smylie, City Clerk