

# Fayetteville PWC Response to DavenportLawrence (DL) Report



DL: Organizational Authorities and the Charter

“As a component of the DavenportLawrence evaluation, we identified charter violations for required actions between the City of Fayetteville and the Fayetteville Public Works Commission.” (pg. 5)

PWC: There have been no charter violations by the City of Fayetteville or Fayetteville PWC.

- *The relationship between the City and Fayetteville PWC has been reviewed and discussed many times over the years. The most recent Charter Review was completed in 2006 jointly by the City and Fayetteville PWC. The City found no violations of the charter, and our working relationship has not changed significantly since then. Out of that Charter Review process, both the City and Fayetteville PWC determined that the best interpretation of the Charter was to continue to apply “The Local Government Budget and Fiscal Control Act” to Fayetteville PWC the same as it applies to the City, as we had in the past. In response to this process, the City formally adopted an ordinance on January 9, 2007 to clarify the Fayetteville City Code by adding “Sec. 2-33. Public Works Commission; deputy finance officer.” (City Ordinance No. 2007-003) We have been operating in full compliance of that ordinance ever since.*
- *The City and Fayetteville PWC have been audited by the same external auditor (Cherry, Bekaert) for many years. They have never identified any areas where the City or Fayetteville PWC have violated the charter with any requirements associated with the finances of both the City and Fayetteville PWC.*
- *The City’s bond counsels over the years (Hunton Williams; Sidley Austin Brown & Wood; Womble Carlyle Sandridge and Rice) in their review of the sale of revenue bonds for Fayetteville PWC in the name of the City have never identified any violations of the charter.*
- *Numerous attorneys in various law firms have reviewed the working relationship between Fayetteville PWC and the City over the years, and, prior to Mr. Levitas’ memo attached to the DL report, none had ever concluded that there were any violations of the charter.*

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DL: Overview of Organizational Observations: Position Statements (pg. 13-14)

1. "The Fayetteville PWC operates effectively and efficiently in the delivery of electric, water and sewer services with competitive rates to other regional utilities."

*PWC response: Fayetteville PWC agrees with this statement. We are proud of Fayetteville PWC's outstanding track record. We deliver safe and reliable utility services. We serve our customers well. And we are financially stable. We play an integral role in the economic development efforts of the region. Our electric rates are among the lowest in the state, and our water and sewer services have helped support the City's growth.*

2. "The City of Fayetteville provides services to citizens in a fiscally responsible manner."

*PWC response: Fayetteville PWC agrees with this statement.*

3. "Fayetteville PWC autonomy (operational independence) has expanded beyond, what we believe to be, originally granted (or intended) by charter and what is typical for a municipal utility."

*PWC response: Fayetteville PWC's organizational structure, established by the General Assembly and set forth in the Charter, is unique and different from that of other municipal utilities in North Carolina -- a fact the Davenport Lawrence either didn't understand or chose to ignore. While a number of municipalities in North Carolina do provide water/sewer service, most typical utilities in North Carolina do not provide electrical service to its City and surrounding area. Fayetteville PWC operates the largest municipal electric system, by far, in North Carolina and the 36<sup>th</sup> largest municipal electric system in the United States. In April 2010 the American Public Power Association conducted its eighth "Governance Survey". The survey reflects that only 32% of publicly owned electric systems with greater than 50,000 customers are governed by a City Council. The other 68% are governed by an Independent Utility Board with elected (24%) or appointed (44%) members. Our operations are consistent with the Charter and very typical to our peer group of similarly sized public power utilities.*

4. "While possessing the assets of minimal transmission service and a generation plant within the electric utility, the Commission does not operate in a manner that is substantially different than its municipal utility counterparts."

*PWC response: While municipal utilities that operate an electric utility, in general, do not operate substantially different, there are many rules and regulations that apply to larger electric utilities that Fayetteville PWC must comply with (Federal Energy Regulatory Commission, North American Electric Reliability Corporation, Southeastern Electric Reliability Corporation, the North*

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*Carolina Utility Commission, cyber security, etc.) Those requirements associated with operating a generation plant are unique to Fayetteville PWC among North Carolina municipal utilities Fayetteville PWC does not use a third party to handle its regulatory requirements while many smaller municipal electric utilities in North Carolina use the North Carolina Eastern Municipal Power Agency or the North Carolina Municipal Power Agency No. 1 to manage their regulatory requirements and reporting.*

5. "The autonomy of Fayetteville PWC has created an internal control culture and "private company" philosophy that reduces public transparency and support to the City as a Commission of the City."

*PWC Response: As stated in bullet point number 1 by DL, Fayetteville PWC has an internal control culture that leads to efficient and effective operations, not a lack of transparency. Fayetteville PWC complies with all the sunshine laws of North Carolina and welcomes suggestions as to how we can be more responsive and transparent. Fayetteville PWC invites liaisons from the City, the County, and the Town of Hope Mills to attend its public meetings, along with the local news media. Fayetteville PWC staff has regularly scheduled meetings with the City staff and in the past, the Mayor, Commission Chair and executive staff of both the City and Fayetteville PWC have met on a regular monthly basis. This has been discontinued at the Mayor's request. See response to #6 below regarding our support to the City.*

6. "Current governance structure yields cooperation between the City and the Commission only to the level required to operate between the City and the Commission."

*PWC response: The City and Fayetteville PWC have a record of cooperation over the years above what is just required. A few examples include:*

- *Joint support of the Economic Development Alliance of Fayetteville Cumberland County.*
- *Joint support of the first City-owned parking garage in the City.*
- *Support of the City's "Buy Fayetteville First" initiative.*
- *Support of the City's Street Lighting Program and development of enhancements and energy efficiency lighting.*
- *Joint effort on the Rim Road contaminated water issue.*
- *Joint staff involvement in the acquisition of the Texfi Industrial site.*
- *Revitalization of the downtown area including Hay Street, Green Street, Gillespie Street, Person Street, Franklin Street, West Russell Street, etc.*
- *Support of the Airborne and special Operations Museum.*
- *Support of the North Carolina Veterans Park.*
- *Support of the City's policy on annexation requirements for receiving water/sewer utility service.*

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7. “The lack of cooperation between the City and the Commission erodes public trust and sustains an “us and them” culture.”

*PWC response: The management and leadership of Fayetteville PWC does not support an “us and them” distinction in their relationship with the City and is not aware of any “erosion of public trust” in this regard. While there are some minor differences at the staff level, the appearance of the lack of cooperation or the “us and them” culture is mainly a creation of the media in our opinion. The examples listed in response to Item #6 illustrate the cooperation between the City and the Commission. In addition, the City and Fayetteville PWC work cooperatively on issues relating to issuing bonds and external financing, coordinating RFPs for auditors, bond counsel and underwriters, and meeting jointly with bond rating agencies. We also have cooperated in joint efforts for purchasing, fleet maintenance, government-access TV station programming, and radio communications.*

8. “Fayetteville PWC utilizes its current autonomy to invest in external messaging and community relations beyond what is necessary for the purposes of utilities operations and customer service by a public utility”

Fayetteville PWC believes that customer information and external communications are not only necessary, but are essential, components of utilities operations and customer service and consistent with high customer expectations. As technology evolves to provide customers with greater flexibility to manage their electric usage and increase energy efficiency, as well as to manage water consumption in ways to lower operating costs, utilities have an obligation to provide regular, current communications to them. Our community relations efforts also support economic development and growth of utility operations. Improving emergency preparedness and providing emergency and/or service interruption notifications are also part of Fayetteville PWC’s external messaging function.

9. “Fayetteville PWC utilization of complex cost accounting methods are used as a basis for atypical fees and chargebacks to the City, thereby unnecessarily impacting taxpayers.”

*PWC response: Fayetteville PWC’s cost accounting methods are not unusual for utilities the size and complexity of the operations of Fayetteville PWC. Benefits of our cost accounting include the following:*

- *The ability to complete the federal reporting requirements for electric utilities*
- *The ability to perform accurate cost-of-service analysis for ratemaking purposes, to ensure that rates are fair and correspond with the costs required to provide the service – a bedrock principle of sound ratemaking.*
- *The ability to identify the total, all-in costs for performing a function. This has allowed Fayetteville PWC to identify and evaluate areas to outsource, such as: janitorial and*

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*office cleaning, landscaping and lawn care, power line tree trimming, printing and mailing of bills, processing credit card payments, etc.*

- *It also identifies the true all-in cost to perform every task including identifying the cost to perform work for other entities including the City. This gives an accurate accounting to identify cost that should be reflected as a transfer of funds or recovered as a non-utility expense as required by the North Carolina Local Government Commission (LGC). Fayetteville PWC considers its cost accounting methods to be consistent with the requirements of LGC policies and practices.*

10. "The City of Fayetteville maintains a strong cash reserves condition and is considered financially strong with it Aa1/AA+ rating."

*PWC response: Fayetteville PWC agrees with this statement*

11. "Fayetteville PWC routinely brands facilities and vehicles simply as "PWC" thereby further separating itself perceptually from the City."

*The "PWC" is a historic artifact and, to our knowledge, was never intended to "further separate itself perceptually from the City." We have no desire for our branding to separate our identity from the City or our geographic location. We are in the process of modifying the Fayetteville PWC logo to include a tag line, "Fayetteville's Hometown Utility," and would welcome input from the City regarding this effort.*

12. "The City of Fayetteville has a historical lack of political cohesion that negatively influences its position as the "Parent Municipal Corporation" to the Commission."

*Fayetteville PWC has worked consistently and cooperatively with City through agreed-upon operating procedures, ordinances, and understandings, and will continue to work cooperatively with City leadership in changing political environments.*

13. "The City has participated in cost-sharing and "agreements" with the Fayetteville PWC that have directly impacted taxpayers through inequitable terms and conditions."

*PWC response: The terms and conditions of any agreement between the City and Fayetteville PWC have been agreed to by both parties and identified as beneficial to both parties when executed. An in-depth review of each agreement will reflect the benefits determined at the time of the agreement. Examples are:*

- *Fort Bragg Water Supply: Is a loan agreement between Fayetteville PWC and Fort Bragg (not the City) using the principal and agreed to estimated, taxable bond interest at the time the agreement was executed. Added to the agreement was a*

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*clause that if the base was ever annexed, the City would reimburse Fort Bragg 75% of the gross receipts tax to be used to pay on the outstanding loan Fort Bragg had with Fayetteville PWC. (Note: More details under separate cover.)*

- *Phase V Annexation: Prior to Phase V Annexation, Fayetteville PWC advised the City that Fayetteville PWC did not have sufficient revenues to support the installation of water and sewer in that large of an area. City Manager Roger Stancil stated that there would be sufficient tax revenues to pay for the installation of water and sewer. However, after annexation, taxes were not sufficient so the City staff's funding plan changed to 100% assessment to cover the utility installation costs. At the first public hearing, the City Council decided to cap the estimated \$10,000-\$15,000 assessment at \$5,000. Fayetteville PWC offered a plan to help subsidize the City's cost over time that led to the present agreement. The City Council agreed to this arrangement.*
- *Fiber/Broadband: The Fayetteville PWC fiber system was installed mainly to support the utility functions including the anticipated smart grid applications such as smart meters and distribution automation. An intergovernmental loop of fiber was also installed mainly to support the interoperability of the City, County and Fayetteville PWC GIS systems. The scope of intergovernmental services has expanded and Fayetteville PWC is in the process of segregating all the fiber costs into a separate accounting model. However, the primary purpose to have fast high speed access at a cost lower than the market rates has been successful. The City is benefiting from that decision, as stated by DL, "Rates charged by Fayetteville PWC for City locations represent a good value for comparable private sector service..." Future staff discussions are planned to come to an equitable resolution on this issue.*
- *Fleet: While the costs of the Fayetteville PWC fleet operations may be higher than other municipalities, DL stated "the cost was, however, within ranges generally used on a national level for private sector fleets to evaluate fleet performance." This is what Fayetteville PWC found when evaluating the outsourcing of the fleet operations several years ago. Costs are not as high as outsourcing. DL mistakenly identified medical insurance as a prime example of Fayetteville PWC excessive cost. The reality is that both the City and Fayetteville PWC are independently self-insured and employee participation is close to the same. The Fayetteville PWC share of the high employee cost is reflective of high medical expenses incurred due to several catastrophic illnesses of Fayetteville PWC employees and their dependents. It does not reflect a higher level of benefits. Future staff discussions are planned to come to an equitable resolution on fleet maintenance cost allocation.*
- *Purchasing: Future staff discussions are planned to come to an equitable resolution on this issue.*

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14. “The City of Fayetteville per capita revenue is less than that of its peer municipalities and significantly impacts its abilities to meet operational needs.”

*PWC response: Fayetteville PWC does not have information about per capita revenue of other cities.*

15. “The City generally funds operations at a “basic” level, thereby foregoing some efficiency gains, technology leverages, or enhanced customer service.”

*PWC response: Fayetteville PWC is not sufficiently familiar with the City’s operations to comment in detail. While the City may need additional capacity in certain areas, Fayetteville PWC fully utilizes its current staff/personnel and it would be difficult to expand the functional obligations of its personnel at current staffing levels without negatively impacting operations. The efficiency of the utilization of Fayetteville PWC resources can be seen in the following national comparisons:*

Fayetteville PWC Financial Performance Comparison With Municipally Owned Electric Utilities	PWC	Median	SE Region Utilities	Utilities Serving 50,000-100,000
Total Operation & Maintenance Expense per retail customer	\$284	\$407	\$341	\$363
Total Administration & General Expense per retail customer	\$83	\$149	\$127	\$133

*Moreover, the use of Fayetteville PWC resources for non-utility functions is limited under restrictions on the allowed uses of its funds imposed by the LGC, the North Carolina State Treasurer’s office, and Bond Agreement covenants.*

16. “Functional alignment between the City of Fayetteville and the Commission will succeed only after the barrier of cooperation (history and culture) are eliminated and both organizations recognize acting in the best interests of the public transcends independent organizational interests.”

*PWC response: Fayetteville PWC agrees that acting in the best interests of the public should be paramount and should transcend independent organizational interests. The relationship between Fayetteville PWC and the City has been studied many times before — and there’s never been any indication in the past that changing the current structure is necessary or beneficial. We do not believe that there are significant historical or cultural barriers to cooperation, but there are legal parameters – both in the Charter, in LGC regulations, and in bond documents – that govern any alignment of functions.*

*In many respects, we believe Fayetteville PWC is a model of how a successful community utility should be run. We feel like Fayetteville PWC is a strong organization that is well run and serves*

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*our customers well. We don't see the need for drastic changes. But we're more than happy to discuss with the city how we all can continue to improve our service and better serve the community. As a preliminary matter, we agree that evaluating the true costs – both financial and operational -- of combining functions (as we have done for purchasing, fleet maintenance, and radio communications) is worthwhile, but until that is done, no one can conclude what, in fact, is beneficial and in the public interest.*