



# City of Grand Island

Tuesday, March 22, 2016

Council Session

## Item G-17

**#2016-69 - Approving Execution of Prairie Breeze Power Purchase Agreement Estoppel**

Staff Contact: Tim Luchsinger, Jerry Janulewicz

# Council Agenda Memo

**From:** Timothy Luchsinger, Utilities Director  
Jerry Janulewicz, City Attorney

**Meeting:** March 22, 2016

**Subject:** Execution of Prairie Breeze Power Purchase Agreement  
Estoppel

**Presenter(s):** Timothy Luchsinger, Utilities Director

## Background

The Utilities Department has made efforts to be involved in developing technologies regarding renewable energy. Presently, the most cost effective form of renewable energy is wind energy. Since 1998, the City's Utilities Department has participated in a number of Wind Turbine projects. Currently, the Utilities Department is participating in Ainsworth Wind Farm, Elkhorn Ridge Wind Farm, Laredo Ridge Wind Farm, Broken Bow Wind Farm, and the Prairie Breeze 3 Wind Project. The use of fossil fuels for electricity production is coming under increasing scrutiny at the national level and more restrictions and regulations are likely to be placed upon fossil fuels, particularly coal. With the City's primary energy supply being produced from coal, the overall rate impact from environmental regulations could be significant.

On May 8, 2012, City Council directed the Utilities Department to evaluate additional renewable resource energy opportunities as they arise. The Utilities Department has been approached by Invenergy regarding a possible wind farm in North Central Nebraska. On June 9, 2015, Council approved the Power Purchase Agreement with Invenergy for the Prairie Breeze III Wind Energy Project Complex in Nebraska.

## Discussion

Invenergy is currently in the process of transferring a significant portion of its equity position in Prairie Breeze III to another investor. One of the items necessary to complete the transaction is an executed Estoppel Certificate which attests that there are no defaults or unsatisfied contractual issues by Invenergy under the Power Purchase Agreement with the City. This Estoppel has been reviewed by Utilities and Legal staff and its execution is recommended.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

## **Recommendation**

City Administration recommends that the Council approve execution of the Prairie Breeze Power Purchase Agreement Estoppel.

## **Sample Motion**

Move to approve the execution of the Prairie Breeze Power Purchase Agreement Estoppel.

## ESTOPPEL CERTIFICATE

### POWER PURCHASE AGREEMENT

This ESTOPPEL CERTIFICATE (this “*Estoppel Certificate*”), dated as of [\_\_\_\_\_], 201[ ], is executed by The City of Grand Island, Nebraska, doing business as City of Grand Island, a municipal corporation and City of the First Class organized and existing pursuant to Neb. Rev. Stat. §§ 16-101 et. seq., and under the laws of the State of Nebraska (the “*Undersigned*”).

A. BAL Investment & Advisory, Inc. (the “*Investor*”) shall, if certain conditions precedent are satisfied, make certain equity capital contributions to the direct parent of Prairie Breeze Wind Energy III LLC, a Delaware limited liability company (the “*Company*”);

B. The Undersigned and the Company are parties to that certain Power Purchase Agreement, dated as of June 9, 2015, between the Company and the Undersigned, together with the schedules, annexes and exhibits attached thereto, as amended by that certain First Amendment to Power Purchase Agreement, dated as of September 8, 2015, between the Company and the Undersigned (as further amended, restated, supplemented or otherwise modified, the “*Agreement*”); and

C. The Company has advised the Undersigned that Prairie Breeze Expansion Holdings LLC, a Delaware limited liability company and the direct parent of the Company (“*Holdings*”), Prairie Breeze Expansion Class B Holdings LLC, a Delaware limited liability company and the direct parent of Holdings and the Investor have entered into a certain Equity Capital Contribution Agreement, dated as of August 7, 2015 and that this Estoppel Certificate is being delivered in connection therewith.

The Undersigned hereby confirms to the Investor as of the date first written above that:

1. To the actual knowledge of the Undersigned, no defaults exist under the Agreement, and no default, breach, unsatisfied condition or other event has occurred or circumstances exist that constitute or that, with the giving of notice or the passage of time (including the passage of time during which a default has occurred and has not yet been cured during any applicable grace period) or both, would constitute such a default under the Agreement.

2. As of the date hereof, (i) the Agreement represents the entire agreement between the Undersigned and the Company, the Agreement is in full force and effect and has not been amended, supplemented or modified since the date of execution thereof (other than as described above), (ii) to the actual knowledge of the Undersigned, there are no disputes or proceedings between the Undersigned on the one hand and the Company on the other, (iii) the Undersigned is not aware of any event, act, circumstance or condition constituting an event of force majeure (as defined in the Agreement), (iv) each of the Undersigned and the Company does not owe any indemnity payments under the

Agreement and (v) the Undersigned has confirmed in writing to the Company that the Conditions to Commercial Operation have been achieved as contemplated by Section 3.2 of the Agreement.

3. To the actual knowledge of the Undersigned, all payments, costs and expenses required to be made or paid under the Agreement as of the date hereof have been made or paid by or on behalf of the Company. All representations made by the Undersigned under the Agreement are true and correct as of the date hereof.

4. Undersigned hereby agrees to deliver to the Investor, at the address provided on Attachment 1 hereto, a copy of any notice required to be delivered to a "Seller Lender" (as defined in the Agreement) under Section 20.11.4 of the Agreement.

5. Undersigned hereby agrees that the Investor shall have the right, but not the obligation, to pay all sums due under the Agreement by the Company and to perform any other act, duty or obligation required of the Company thereunder at any time, and any such payment or performance shall be effective to prevent any event or condition that would, either immediately or with the passage of time or giving of notice, or both, entitle Undersigned to terminate or suspend its obligations under the Agreement (a "Termination Event").

6. Undersigned therefore agrees that no Termination Event will become effective under the Agreement unless it provided written notice to the Investor, as a "Seller Lender" (as defined in the Agreement), in accordance with the notice requirements set forth in Section 20.11.4 of the Agreement. If the Undersigned becomes entitled to terminate or suspend the Agreement due to an uncured Termination Event by the Company, the Undersigned shall not terminate, or suspend its obligations under, the Agreement unless the Investor has not cured such Termination Event within the applicable cure period afforded to the Company under the Agreement.

7. Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Investor of any covenants, agreements or obligations of the Company under or in respect of the Agreement.

8. The execution, delivery and performance by the Undersigned of the Agreement and this Estoppel Certificate have been duly authorized by all necessary corporate action and do not and will not violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on the Undersigned.

9. To the actual knowledge of the Undersigned, all government approvals necessary for the execution, delivery and performance by the Undersigned of its obligations under the Agreement have been obtained and are in full force and effect.

10. The Undersigned has no present actual knowledge of any facts entitling the Undersigned to any claim, counterclaim, offset or defense against the Company in respect of the Agreement.

11. The Undersigned has not received notice of any assignment of the right, title and interest of the Company in, to and under the Agreement, other than the collateral assignment made to The Bank of New York Mellon, as collateral agent for the financing parties (“Collateral Agent”) pursuant to that certain Consent and Agreement, dated as of October \_\_\_\_, 2015, between Undersigned, the Company and Collateral Agent, nor has the Undersigned assigned any of its right, title and interest or liabilities and obligations in, to and under the Agreement.

12. There are no proceedings pending or, to the Undersigned’s present actual knowledge, threatened against or affecting the Undersigned in any court or by or before any governmental authority or arbitration board or tribunal that could reasonably be expected to have a material adverse effect on the condition (financial or otherwise), business or operations of the Undersigned, or on the ability of the Undersigned to perform its obligations under, or that purport to affect the legality, validity or enforceability of, the Agreement.

12. The Agreement has not been terminated by the Undersigned or the Company pursuant to Section 13.3 thereof.

14. This Estoppel Certificate shall be governed by the laws of the State of Nebraska, without regard to principles of conflicts of law.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2016.

**THE CITY OF GRAND ISLAND,  
NEBRASKA DOING BUSINESS AS CITY  
OF GRAND ISLAND,**  
a municipal corporation and City of the First  
Class

By \_\_\_\_\_  
Name:  
Title:

Attachment 1

BAL Investment & Advisory, Inc.  
555 California Street, 4th Floor,  
CA5-705-04-01  
San Francisco, CA 94104  
Attention: Contracts Administration  
Phone: (415) 765-7391  
Fax: (404) 532-3461  
Email: BALCNotices@baml.com

*with a copy to:*

BAL Investment & Advisory, Inc.  
One Financial Plaza, 2nd Floor  
RI1-537-02-02  
Providence, RI 02903  
Attention: BAL Renewable Energy Finance Portfolio Manager  
Phone: (401) 278-8475  
Fax: (617) 341-5754  
Email: william.h.clement@baml.com



RESOLUTION 2016-69

WHEREAS, the Utilities Department has made efforts to be involved in developing technologies regarding renewable energy; and

WHEREAS, on June 9, 2015 a Power Purchase Agreement for the Prairie Breeze III Wind Energy Project was approved by Council; and

WHEREAS, Invenergy is currently transferring equity positions in the Prairie Breeze III project to another investor; and

WHEREAS, the Estoppel Certificate – Power Purchase Agreement has been reviewed by Utilities and Legal staff for this project and its execution is recommended for approval by Council.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Estoppel Certificate – Power Purchase Agreement for a Wind Generation Project Complex in Nebraska is hereby approved, and the Mayor is hereby authorized to sign the letter on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, March 22, 2016.

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	☐ _____
March 18, 2016	☐ City Attorney