



City of Grand Island

Tuesday, June 9, 2020

Council Session

Item G-6

#2020-131 - Approving Amendment #3 to the Power Purchase Agreement between the City of Grand Island and Prairie Hills Wind, LLC

Staff Contact: Tim Luchsinger, Stacy Nonhof

Council Agenda Memo

From: Timothy Luchsinger, Utilities Director
Stacy Nonhof, Interim City Attorney

Meeting: June 9, 2020

Subject: Amendment #3 to the Power Purchase Agreement
between the City of Grand Island and Prairie Hills Wind,
LLC

Presenter(s): Timothy Luchsinger, Utilities Director

Background

On January 24, 2017, Council approved a Power Purchase Agreement (PPA) with Prairie Hills LLC, for a share of the Prairie Hills Wind Project being developed in Custer County. The PPA includes a twenty-five-year term with annual pricing based on an escalation factor for energy produced by the Project. The cost to the City is for the actual energy produced and does not require any upfront capital cost or on-going operation and maintenance costs. Included in the energy transaction is the transfer to the City for Renewable Energy Credits (REC's) which are used by utilities to apply against any renewable energy requirements and may be bought or sold.

Due to delays in the interconnection agreement process, on July 17, 2018, Amendment #1 was approved to extend the Guaranteed Commercial Operation Date (COD) and Outside Commercial Operation Date from July 1, 2019 and December 31, 2019 to December 1, 2020 and June 30, 2021, respectively. On July 23, 2019, Amendment #2 was approved to extend the dates to December 1, 2021 and June 30, 2022.

Discussion

The interconnection process for the Prairie Hills Wind Project is still experiencing delays by the Southwest Power Pool, the regional grid operator, and AEP Renewables, the parent company of Prairie Hills LLC has requested another extension of the Guaranteed COD and Outside COD to December 1, 2022 and June 30, 2023, respectively. Utilities and Legal staff have reviewed this request and find it reasonable and recommend approval of the date revisions to the PPA.

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 Amendment #3 to the Power Purchase Agreement with Prairie Hills Wind, LLC

Sample Motion

Move to approve Amendment #3 to the Power Purchase Agreement with Prairie Hills Wind, LLC.

**AMENDMENT NO. 3
TO
POWER PURCHASE AGREEMENT**

THIS AMENDMENT NO. 3 TO POWER PURCHASE AGREEMENT (“**Amendment**”), dated as of _____, 2020 (“**Effective Date**”), is entered into by and among 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 (“**GRAND ISLAND**”), and Prairie Hills Wind, LLC, a Delaware limited liability company (“**Seller**”).

WHEREAS, GRAND ISLAND and Seller are parties to that certain Power Purchase Agreement dated as of January 24, 2017 (“**PPA**”);

WHEREAS, GRAND ISLAND and Seller entered into a Letter Agreement for Extension of Guarantee COD and Outside COD dated July 17, 2018 (“**Amendment No. 1**”) and Amendment No. 2 dated July 23, 2019 to make certain modifications to the PPA (“**Amendment No. 2**”)(collectively, the PPA, Amendment No. 1 and Amendment No. 2 are referred to as the “**Agreement**”); and

WHEREAS, GRAND ISLAND and Seller desire to make certain modifications to the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and provisions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby covenant and agree as follows:

1. **Amendment**. As of the Effective Date, GRAND ISLAND and Seller hereby agree to amend the Agreement as follows:
 - a. In Section 4.1.2, reference to “June 30, 2022” is deleted and “June 30, 2023” is inserted in place thereof.
 - b. In Section 4.1.2, reference to “December 1, 2021” is deleted and “December 1, 2022” is inserted in place thereof.
2. **Captions**. The captions of this Amendment are made for convenience only and shall not control or affect the meaning or construction of any provision of this Amendment.
3. **Counterparts; Effectiveness**. This Amendment may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

4. **Entire Agreement.** This Amendment represents the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and may only be amended or modified in a writing signed by all parties evidencing their mutual agreement thereto.

5. **Validity and Consent.** The parties hereto confirm the continuing validity and enforceability of the Agreement.

6. **Separability of Provisions.** Each provision of this Amendment shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Amendment which are valid.

7. **Governing Law.** This Amendment shall be interpreted, and the rights and liabilities of the parties hereto shall for all purposes be governed by and construed and enforced in accordance with, the laws of the State of Nebraska, without regard to the conflict of laws principles thereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized representatives effective as of the date first above written.

ATTEST:

THE CITY OF GRAND ISLAND,
NEBRASKA, DOING BUSINESS AS CITY
OF GRAND ISLAND

By: _____

By: _____

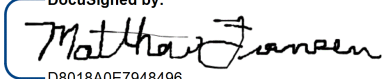
Printed Name: _____

Name: _____

Its: _____

Title: _____

PRAIRIE HILLS WIND, LLC

DocuSigned by:

By: _____
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Name: Matthew Fransen

Title: Vice President



Signature Page to Amendment

RESOLUTION 2020-131

WHEREAS, on January 24, 2017, Council approved a Power Purchase Agreement (PPA) with Prairie Hills, LLC, for a share of the Prairie Hills Wind Project being developed in Custer County; and

WHEREAS, the PPA includes a twenty-five-year term with annual pricing based on an escalation factor for energy produced by the project and the cost to the City is for actual energy produced and does not require any upfront capital cost or on-going operation and maintenance costs; and

WHEREAS, due to delays in the interconnection agreement process, on July 17, 2018, the City agreed to extend the Guaranteed Commercial Operation Date (COD) and Outside Commercial Operation Date from July 1, 2019 and December 31, 2019 to December 1, 2020 and June 30, 2021, respectively with Amendment #1 to the Agreement; and

WHEREAS, the Prairie Hills Wind Project was still experiencing delays by the Southwest Power Pool, and AEP Renewables, the parent company of Prairie Hills LLC, and they requested another extension of the Guaranteed COD and Outside COD to December 1, 2021 and June 30, 2022, respectively with Amendment #2 which was approved by Council on July 23, 2019; and

WHEREAS, the interconnection process for the Prairie Hills Wind Project is still experiencing delays by the Southwest Power Pool, the regional grid operator, and AEP Renewables, the parent company of Prairie Hills LLC, they have requested another extension of the Guaranteed COD and Outside COD to December 1, 2022 and June 30, 2023 respectively.

WHEREAS, the Utilities and Legal staff have reviewed this request and find it reasonable.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that Amendment #3 to the Power Purchase Agreement with Prairie Hills Wind, LLC is hereby approved and the Mayor is authorized to sign the Amendment on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, June 9, 2020.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	▣ _____
June 5, 2020	▣ City Attorney