



City of Grand Island

Tuesday, September 28, 2021

Council Session

Item G-9

**#2021-242 - Approving Amendment No. 1 to Renewable Energy
Credit Purchase and Sale Agreement (City of NE City)**

Staff Contact: Tim Luchsinger, Stacy Nonhof

Council Agenda Memo

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

Meeting: September 28, 2021

Subject: Amendment No. 1 to Renewable Energy Credit Purchase and Agreement – City of Nebraska City

Presenter(s): Timothy Luchsinger, Utilities Director

Background

On June 9, 2015, Council approved execution of a Power Purchase Agreement with Invenergy Inc., for the Prairie Breeze III (PBIII) Wind Energy Project. On September 8, 2015, Council approved an agreement with the City of Nebraska City for the sale of approximately 19.55% of the PBIII output including the Renewable Energy Credits (REC's). Currently, the Grand Island Utilities Department is maintaining Nebraska City's RECs in a subaccount of the Grand Island Utilities Department's REC registry account. Discussions by the Grand Island Utilities Department with Nebraska City Utilities management resulted in the request by Nebraska City to participate in the Grand Island Utilities Department's REC marketing process. A separate item for consideration by Council on tonight's meeting is an agreement with Evergy for the purchase and sale of RECs by the Department's wind facilities, including PBIII.

Discussion

Based on the recommendation of Fraser Stryker, the outside legal counsel used in the original agreement with the PBIII power purchase agreement and the Nebraska city sale agreement, an amendment to the Nebraska City agreement, authorizing Grand Island to include Nebraska City RECs in the Evergy agreement with the revenue realized on transactions to be returned to Nebraska City, was drafted. Grand Island Utilities Department and Legal staff recommend approval of Amendment No. 1 to the Renewable Energy Credit Purchase and Sale Agreement executed with the City of Nebraska City.

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 a future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve Amendment No. 1 to the Renewable Energy Credit Purchase and Sale Agreement executed with the City of Nebraska City.

Sample Motion

Move to approve Amendment No. 1 to the Renewable Energy Credit Purchase and Sale Agreement executed with the City of Nebraska City.

**AMENDMENT NO. 1 TO RENEWABLE ENERGY CREDIT
PURCHASE AND SALE AGREEMENT**

This Amendment No. 1 (“Amendment No. 1”), is made and effective this 20th day of September, 2021 by and between the CITY OF GRAND ISLAND, NEBRASKA, a municipal corporation and city of the first class organized and existing pursuant to Neb. Rev. Stat. §§ 16-101 et seq. (“GRAND ISLAND”), and the CITY OF NEBRASKA CITY, NEBRASKA, a municipal corporation and city of the first class organized and existing pursuant to Neb. Rev. Stat. §§ 16-101 and 19-401 et seq. (“BUYER”). GRAND ISLAND and BUYER may be referred to individually herein as “Party” and collectively as “Parties.”

WHEREAS, effective June 9, 2015, Grand Island entered into a Power Purchase Agreement with Prairie Breeze Wind Energy III, LLC for the output of a 35.8 Megawatt wind energy facility (the "Plant"); and

WHEREAS, on October 15, 2015, Grand Island and Buyer entered into a Renewable Energy Credit Purchase and Sale Agreement ("Agreement") by which Grand Island agreed to sell and Buyer agreed to purchase certain Environmental Attributes related to the Plant (as those capitalized terms are defined in the Agreement); and

WHEREAS, contemporaneously with the execution of this Amendment No. 1, Grand Island intends to enter into a Renewable Energy Certificate Purchase Agreement ("REC Agreement") with Evergy Central, Inc. ("Evergy") by which Evergy will market the sale of Renewable Energy Certificates ("RECs") associated with generation from the Plant; and

WHEREAS, Buyer desires to have Grand Island include Buyer's RECs under the Agreement in the marketing of Grand Island's RECs by Evergy under the REC Agreement, pursuant to the terms of this Amendment No. 1.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. **Capitalized Terms.** For purposes of this Amendment No. 1, unless otherwise stated, capitalized terms shall have the meaning set forth in the Agreement.

2. **Marketing of RECs.** Under the terms of the Agreement, Grand Island agrees to sell and deliver, and Buyer agrees to purchase, approximately 19.55 percent (19.55%) of the RECs associated with generation from the Plant (the "Buyer's RECs"). As Grand Island is entering into a Renewable Energy Certificate Purchase and Sale Agreement with Evergy Kansas Central, Inc. (Evergy), Buyer elects to have Grand Island include Buyer's RECs in the marketing of Grand Island's RECs under the terms of the REC Agreement with Evergy. Grand Island shall include the Buyer's RECs in the RECs to be marketed by Evergy under the REC Agreement, and in all

respects such Buyer's RECs shall be subject to the terms of the REC Agreement. For reference, Exhibit A of the Evergy REC Agreement is attached to this Amendment No. 1 as Exhibit A. Buyer shall cooperate reasonably with Grand Island and, as required, with Evergy, with respect to the marketing and sale of the Buyer's RECs, including the execution of all documents needed in connection therewith. Within a reasonable time of its receipt of payment from Evergy for any sale of the Buyer's RECs, Grand Island shall make payment for such sales to Buyer.

2. **Effect of Amendment No. 1.** Except as expressly modified in this Amendment No. 1, the Agreement shall remain in full force and effect.

This Amendment No. 1 to the Renewable Energy Purchase and Sale Agreement is executed in duplicate originals this _____ day of _____, 2021.

CITY OF GRAND ISLAND, NEBRASKA

By: _____
Name: _____
Title: _____

CITY OF NEBRASKA CITY, NEBRASKA

By: _____
Name: _____
Title: _____

2654056

EXHIBIT A

Renewable Energy Certificate Purchase and Sale Agreement Exhibit A



September 23, 2021
Trade Number:

EXHIBIT A - CONFIRMATION LETTER

This Confirmation Letter (Confirmation) shall confirm the Transaction agreed to on September ____, 2021 between the City of Grand Island, Nebraska, and Evergy Kansas Central, Inc. regarding the Sale/Purchase of the Product under the terms and conditions as follows:

Seller: City of Grand Island, Nebraska
Buyer: Evergy Kansas Central, Inc.

Type of Product: RECS

Facility:	NAR Tracked Wind Facility
Eligible Renewable Resource Type:	Wind
Geography:	NAR Tracked Wind Facility
Vintage(s):	2022, 2023, 2024 US Green E Wind NAR Tracking
Product Quantity (MWh):	329,137 Renewable Energy Certificates (RECs)
Contract Price (\$/MWh):	\$3.25
Total Contract Price (\$):	\$1,069,695.25
Delivery Deadline:	Upon registration

Product Specific Terms:

Applicable Standard:	Green-e and NAR Compliant
Environmental Attributes retained by Seller, if any:	None
Applicable Tracking System:	NAR
Attestation Form [yes, no]	No
Delivery Obligation [Firm, Unit Contingent, Project Contingent]:	Firm

Monthly Fee: \$3,000 owed by Seller to Buyer each month for every month of the Delivery Period term to be paid net 30 days from the date of receipt of the monthly fee invoice.

Fixed Amount: With respect to each semi-annual calculation period which takes place in March and September of each calendar year (each a "Calculation Period"), the "Fixed Amount" owed by Buyer to Seller shall equal the fixed Contract Price multiplied by the quantity of Renewable Energy Certificates (REC) actually generated from the Facility during such Calculation Period, until the full Product Quantity amount is reached.

Float Amount: With respect to each Calculation Period where historical RECs or RECs in excess of maximum Product Quantity amount which are requested by Seller to be sold by Buyer on Seller's behalf, the "Float Amount" owed by Buyer to Seller shall equal the proceeds of the sold RECs after deduction of all documented NAR registration and transfer fees incurred by Buyer in association with the sale of Seller's RECs, and reduction of Buyer's 7.5% fee for the sales of these RECs.

Payment: Monthly Fee and Float Amount for historical REC sales: Buyer will invoice Seller on a monthly basis for the Monthly Fee amount and any Float Amount sales proceeds received by Buyer from the third-party REC purchaser (after reduction of all applicable NAR registration and transfer fees and deduction of Buyer's 7.5% fee) by the tenth (10th) business day of the following month. To the extent that the amount owed by Buyer to Seller exceeds the Seller's Monthly Fee, Buyer shall setoff the Monthly Fee owed by Seller to Buyer against the Monthly settlement amount owed by Buyer to Seller. The monthly invoice

Restricted – Confidential

Internal Use Only

amount shall be due and payable by the relevant party owing such amount no later than 30 days from the monthly invoice issue date.

Semi-Annual Fixed Amount Settlement and Invoice: Buyer shall issue a Calculation Period invoice to Seller no later than the tenth (10th) business day of each April and October (the “Semi-Annual Settlement Amount”). The Semi-Annual Settlement Amount shall be due and payable by the relevant party owing such amount no later than 30 days from the date of receipt of the Calculation Period invoice.

Delivery Period: January 1, 2022 - December 31, 2024 (the “Initial Delivery Period) and then this Confirmation term will evergreen on an annual basis after the Initial Delivery Period until either party provides the other party with at least 90 days written notice prior to expiration of the Initial Delivery Period or the start of the next annual Delivery Period of its desire to terminate this Confirmation at the end of the then-applicable Delivery Period). The parties’ payment obligations will survive the termination of this Confirmation until all amounts owed by one party to the other are paid in full for all purchases and sales executed or entered into prior to the termination of this Confirmation.

Credit Terms: If at any time, and from time to time, during the term of this Confirmation (and notwithstanding whether an Event of Default has occurred), either Party (“X”) calculates that the Termination Payment (as defined in Section 9.3 of the Master Agreement) that would be owed by the other Party (“Y”) exceeds Y’s Threshold Amount (as defined below), then X, on any Business Day, may request that Y provide Performance Assurance in an amount equal to the amount by which the Termination Payment exceeds Y’s Threshold Amount (“Party Y Performance Assurance”). Such Party Y Performance Assurance shall be delivered to X within five (5) Business Days of the date of receipt of such request. On any Business Day (but no more frequently than weekly with respect to letters of credit and daily with respect to cash), Y, at its sole cost, may request that such Party Y Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment. In the event that Y fails to provide Party Y Performance Assurance to X pursuant to the terms of this Confirmation within five (5) Business Days, then an Event of Default under Article 8 shall be deemed to have occurred and X will be entitled to seek any and all applicable remedies set forth in Article 8 of the Master Agreement. “Performance Assurance” means collateral in the form of either cash, an irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody’s, in a form acceptable to X, or other security acceptable to X.

Collateral thresholds applicable to both Parties:
 The lower of: (a) the (i) amount set forth below under the heading “Collateral Threshold” opposite the Credit Rating the relevant date of determination, and if Credit Ratings shall not be equivalent, the lower Credit Rating shall govern and (ii) amount of any dollar limit contained in a guaranty provided, (the “Threshold Amount”), or (b) zero if on the relevant date of determination Party does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default with respect to a Party has occurred and is continuing. If an applicable Credit Rating is associated with a bond issuance, the rating must be the uninsured or underlying rating.

<u>Collateral Threshold</u>	<u>S&P Credit Rating</u>	<u>Moody’s Credit Rating</u>
\$12,500,000	AAA	Aaa
\$10,000,000	AA- to AA+	Aa3 to Aa1
\$7,500,000	A- to A+	A3 to A1
\$5,500,000	BBB+	Baa1
\$3,500,000	BBB	Baa2
\$2,500,000	BBB-	Baa3
\$0	Below BBB-	Below Baa3

Restricted – Confidential

Internal Use Only

This Confirmation is being provided pursuant to and in accordance with Renewable Energy Certificate Purchase and Sale Agreement (the "Master Agreement") between The City of Grand Island, Nebraska and Evergy Kansas Central, Inc. executed on September ___, 2021, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. The specific terms and conditions of this Transaction shall be deemed accepted unless objected to in writing within 2 Business Days of receipt of this Confirmation.

Evergy Kansas Central, Inc.

City of Grand Island, Nebraska

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Confidentiality Notice – The information contained in this facsimile message and the documents accompanying this facsimile message are privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service.

Restricted – Confidential

Internal Use Only

RESOLUTION 2021-242

WHEREAS, at the September 8, 2015 meeting, Council approved an agreement with the City of Nebraska City for the sale of a percentage of the Prairie Breeze III output, including the Renewable Energy Credits; and

WHEREAS, Nebraska City has requested to participate in the Grand Island Utilities Department's Renewable Energy Credits marketing process.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Amendment to the Renewable Energy Credit Purchase and Agreement is hereby approved, and the Mayor is authorized to sign the Amendment on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, September 28, 2021.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☒ _____
September 24, 2021	☒ City Attorney