



# City of Grand Island

Tuesday, April 26, 2022

Council Session

## Item G-14

**#2022-115 - Approving Termination Agreement with Prairie Hills Wind, LLC**

Staff Contact: Tim Luchsinger, Stacy Nonhof

# Council Agenda Memo

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

**Meeting:** April 26, 2022

**Subject:** Approving Termination Agreement with Prairie Hills  
Wind, LLC

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

## Background

On January 24, 2017, the City of Grand Island entered into a Power Purchase Agreement (PPA) with Prairie Hills, LLC, for a share of the Prairie Hills Wind Project being developed in Custer County. The project originally had a Commercial Operation Date (COD) of July 1, 2019, but due to delays in the interconnection agreement process with the Southwest Power Pool, this COD was extended to December 1, 2021 and then to December 1, 2022.

## Discussion

The interconnection agreement with SPP and the Prairie Hills Wind Project is dependent on the final construction of a large transmission project being done by the Nebraska Public Power District. The transmission project has been subject to ongoing litigation and the current timeline of Prairie Hills is for operation in 2026 or 2027, assuming all contingencies and conditions are addressed by SPP. Due to these uncertainties, Prairie Hills has offered to terminate the PPA with the attached agreement which includes a termination payment of \$200,000 to the City. Department management and City administration and legal have reviewed this agreement and concur that it is in the mutual interests of both parties to terminate 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 presented in this motion.

### **Recommendation**

City Administration recommends that the Council authorize the Mayor to execute the termination agreement with Prairie Winds, LLC.

### **Sample Motion**

Move to authorize the Mayor to execute the termination agreement with Prairie Winds, LLC.

## TERMINATION AGREEMENT

THIS TERMINATION AGREEMENT (“Agreement”), is made as of the 27th day of April, 2022, by and among Prairie Hills Wind, LLC (“Prairie Hills” or “Seller”) and 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”).

WITNESSETH:

WHEREAS, Prairie Hills and Grand Island are parties to a Power Purchase Agreement dated January 24, 2017, as amended (collectively, the “PPA”); and

WHEREAS, since June 27, 2018, Prairie Hills provided Grand Island with a Notice of Force Majeure related to delays associated with the Southwest Power Pool (SPP) process for interconnection and SPP’s inability to meet tariff-defined timelines for interconnection of the Project, which has caused considerable delay, a delay which has been further exacerbated by Covid 19 pandemic, and several contingencies or conditions remain at SPP before the wind project could ever become operational, such that a currently projected timeline for operation of the project would be in 2026 or 2027, and that assumes that all such contingencies or conditions are cleared or addressed by SPP.

WHEREAS, given the extensive delays and uncertainty surrounding the development of the project, Prairie Hills desires to make a termination proposal to Grand Island that would include a termination payment from Prairie Hills to Grand Island in the amount of Two Hundred Thousand Dollars (\$200,000.00) in return for a termination of the PPA.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Termination of PPA. Prairie Hills and Grand Island agree to terminate, by mutual agreement, the PPA effective as of April 27, 2022 (the “Termination Date”) in return for a termination payment in the amount of Two Hundred Thousand Dollars (\$200,000.00), such payment to be made within fifteen days of the execution of this Agreement. Grand Island and Prairie Hills are each released and discharged from further obligations to each other with respect to the PPA and their respective rights against each other thereunder are terminated effective as of the Termination Date, and any posted Grand Island Default Security or Seller Default Security will be promptly returned to each party, respectively no later than fifteen days of the execution of this Agreement.

2. Representations and Warranties. Each party hereto represents and warrants to each of the other parties hereto as follows:

(a) Such party is a corporation duly organized and validly existing under the laws of the state of its incorporation and has the full legal right, power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement.

(b) This Agreement constitutes legal, valid and binding obligations of such party and are enforceable against such party in accordance with their terms.

(c) The promises, covenants and agreements of such party expressly set forth in this Agreement constitute the only consideration given by such party for the promises, covenants and agreements of the other parties expressly set forth in this Agreement.

3. Miscellaneous. This Agreement contains the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Capitalized terms used in this Agreement shall have the meaning identified in the PPA. This Agreement may not be amended or modified in any manner whatsoever, except in a writing signed by all of the parties hereto. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska, without regard to conflict of Law principles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ATTEST

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

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

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

PRAIRIE HILLS WIND, LLC

\_\_\_\_\_  
Name: Greg B. Hall  
Title: President

RESOLUTION 2022-115

WHEREAS, on January 24, 2017, the City of Grand Island entered into a Power Purchase Agreement (PPA) with Prairies Hills, LLC for a share of the Prairie Hills Wind Project; and

WHEREAS, the project originally had a Commercial Operation Date (COD) of July 1, 2019, but due to delays in the interconnection agreement process with the Southwest Power Pool (SPP), this COD was extended to December 1, 2021 and then to December 1, 2022; and

WHEREAS, the interconnection agreement is dependent on the final construction of a large transmission project which has been subject to ongoing litigation, the current timeline of Prairie Hills is for operation in 2026 or 2027; and

WHEREAS, due to these uncertainties, Prairie Hills has offered to terminate the PPA, which includes a termination payment of \$200,00 to the City.

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

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Adopted by the City Council of the City of Grand Island, Nebraska, April 26, 2022.

\_\_\_\_\_  
Roger G. Steele, Mayor

Attest:

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

Approved as to Form	☒ _____
April 22, 2022	☒ City Attorney