



# City of Grand Island

Tuesday, September 8, 2015

Council Session

## Item G-7

**#2015-238 - Approving Prairie Breeze III Wind Energy Project  
Power Purchase Agreement Amendment #1**

Staff Contact: Tim Luchsinger, Stacy Nonhof

# Council Agenda Memo

**From:** Timothy Luchsinger, Utilities Director  
Stacy Nonhof, Assistant City Attorney

**Meeting:** September 8, 2015

**Subject:** First Amendment to Prairie Breeze III Power Purchase Agreement

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

## Background

On June 9, 2015 Council approved execution of a Power Purchase Agreement (PPA) with Invenergy Inc., for the Prairie Breeze III Wind Energy Project. This PPA with Invenergy is for the entire capacity of the Project with the intent for subsequent participation agreements between the City and the Nebraska City Utilities and the City of Neligh for minority positions in the Project.

## Discussion

As a result of review by the Federal Energy Regulatory Commission, a recommendation was made regarding the definition of the delivery point as indicated in some of the exhibits of the PPA, and an amendment to revise this delivery point was proposed by Invenergy. This amendment has been reviewed by Department staff, Tenaska Power Services, the Department's energy marketer, and Fraser Stryker, the Department's legal counsel for this project. This amendment is included in the council packet and recommended for execution by the City. The amendment exhibits detailing the project system interconnections have not been included as they fall under Critical Energy Infrastructure Information regulations, but are at the Department's administrative offices.

## 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 the First Amendment to the Prairie Breeze III Power Purchase Agreement.

## **Sample Motion**

Move to approve the First Amendment to the Prairie Breeze III Power Purchase Agreement.

**FIRST AMENDMENT TO  
POWER PURCHASE AGREEMENT**

This **FIRST AMENDMENT TO POWER PURCHASE AGREEMENT** (this “Amendment”) is made as of September 8, 2015, by and between the City of Grand Island, Nebraska doing business as the 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 (hereinafter “**Grand Island**”) and **Prairie Breeze Wind Energy III LLC** a Delaware limited liability company (hereinafter “**Seller**”).

**RECITALS**

**WHEREAS**, on June 9, 2015, Seller and Grand Island (collectively, the “**Parties**”) entered into a Power Purchase Agreement (the “**PPA**”); and

**WHEREAS**, the Parties now mutually desire to modify certain terms and conditions of the PPA, as set forth herein;

**NOW THEREFORE**, in consideration of the foregoing, of the mutual covenants and agreements herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree to the following:

1. Amendments.
  - a. Section 7.1 – Delivery Point. Section 7.1 is hereby deleted in its entirety and replaced with the following:

“The “Delivery Point” shall mean the point where the Transmission Owner’s 230kV transmission line meets the last structure inside the fence of the 230 kV Collector Substation. Grand Island has reviewed all of Seller’s Interconnection Facilities required to connect the Plant with the Delivery Point (as such term is described in Exhibit B).”
  - b. Exhibit A – Seller’s Interconnection Facilities Description. Exhibit A is hereby deleted in its entirety and replaced with the new form of Exhibit A attached hereto.
  - c. Exhibit B –Description of Delivery Point. Exhibit B is hereby deleted in its entirety and replaced with the new form of Exhibit B attached hereto.
2. Representations Regarding this Amendment. By its execution hereof, each Party represents and warrants that it is authorized to enter into this Amendment, that this Amendment does not conflict with any contract, lease, instrument, or other obligation to which it is a party or by which it is bound, which conflict could reasonably be expected to have a material adverse effect on the ability of such

Party to perform its obligations hereunder, and that this Amendment represents its valid and binding obligation, enforceable against it in accordance with its terms.

3. No Other Amendments. Except as specifically provided in this Amendment, no other amendments, revisions, or changes are made or have been made to the PPA. All other terms and conditions of the PPA remain in full force and effect and the Parties hereby ratify and confirm their rights, obligations, and representations under the PPA, as amended hereby.
4. Conforming References. Upon the effectiveness of this Amendment, each reference in the PPA to “this Agreement”, “thereunder”, “hereto”, “herein”, or words of like import, shall mean and be a reference to the PPA as amended hereby.
5. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement.
6. Applicable Law. This Amendment and the rights and duties of the Parties hereunder shall be governed by and construed, enforced, and performed in accordance with the laws of the state of Nebraska, without regard to principles of conflict of laws.
7. Effectiveness of Amendment. The amendments to the PPA contained in this Amendment are effective once this Amendment is executed by both of the Parties.

[Signature page follows]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment to be executed by their duly authorized representatives and their corporate seals affixed hereto effective the day and year first above written.

**ATTEST:**

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

By:  
Printed Name:  
Its:

By:  
Printed:  
Its:

**ATTEST:**

**PRAIRIE BREEZE WIND ENERGY III LLC**

By:  
Printed Name:  
Its:

By:  
Printed:  
Its:

RESOLUTION 2015-238

WHEREAS, on June 9, 2015 Council approved execution of a Power Purchase Agreement (PPA) with Invenergy, Inc., for the Prairie Breeze III Wind Energy Project; and

WHEREAS, as a result of review by the Federal Energy Regulatory Commission, a recommendation was made regarding the definition of the delivery point as indicated in some of the exhibits of the PPA, and an amendment to revise this delivery point was proposed by Invenergy; and

WHEREAS, this amendment has been reviewed by Department staff, Tenaska Power Services, the Department's energy marketer, and Fraser Stryker, the Department's legal counsel for this project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the First Amendment to the Prairie Breeze III Power Purchase is approved, and the Mayor is hereby 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, September 8, 2015.

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Jeremy L. Jensen, Mayor

Attest:

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RaNae Edwards, City Clerk

Approved as to Form	☐ _____
September 4, 2015	☐ City Attorney