

--MEMORANDUM--

TO: City Council

FROM: Gregory E Buckley
City Manager



DATE: January 17, 2025

SUBJECT: Proposed Amendment/Extension to Real Estate Purchase Option
Agreement With Hawk Energy Storage LLC

Hawk Energy Storage LLC currently holds an option to purchase property at the City's Woodland Industrial Park, for a proposed grid-scale battery energy storage system (BESS) facility. That option is for a four-year term, expiring in July of this year.

Acting as agents for Hawk Energy Storage LLC, representatives of Tenaska (an Omaha, NE based energy and engineering company) contacted the City Manager's Office in November 2024, requesting a four-year extension of the option, with an adjustment in the annual amount to be paid as an option fee. That proposed amendment is attached.

As for why this extension to the option is being requested, Tenaska provided the attached memo. The memo cites the reason that the company has withdrawn the proposed Two Rivers project from the queue of projects being considered by the regional electric grid operator (Midcontinent Independent System Operator, or MISO), but plans to submit a new application for MISO consideration, early in 2025.

Under the proposed amendment, the annual option fee would increase from the current amount of \$47,000 to \$55,000 with the payment due in July 2025. The annual option fee would then increase by \$1,500 per year in each of the following years, through July 2028. Other terms for the option would remain unchanged.

Because of the time that has passed since first entering into the original option agreement in 2021, I also asked outside counsel to take a look at the existing option agreement—particularly the language on property taxes or payment-in-lieu of taxes—to see if any revisions were in order. Based on that review, a few minor changes to Paragraph 13 of the original agreement are proposed. These changes are shown on the page that follows the company's proposed amendment.

As of Friday afternoon, we are waiting for final comments from Hawk Energy System's attorneys on the City's proposed amendments to Paragraph 13 of the original agreement; I expect to have them available for Monday night, and hope to have language ironed out that

can be presented for City Council action. If necessary, we can enter into closed session for discussion, as listed on the agenda.

For additional background information, presented below is a brief chronology of the Hawk Energy Storage, LLC project:

- | | |
|-------------------|---|
| July 19, 2021 | City Council approves Real Estate Purchase Option Agreement with Swift Energy Storage LLC, addressing terms for the purchase of a 9.4 acres parcel on the west side of Woodland Drive in the City's Woodland Industrial Park. Agreement provides for annual payments of \$47,000 per year to maintain the purchase option, whose term is four years (to July 2025). Agreement states the company's intent to pursue development of a battery energy storage system (BESS) facility on the property. |
| February 12, 2024 | Plan Commission reviews Conditional Use Permit (CUP) application from Hawk Energy Storage, LLC for a 150MW/600 MWH battery energy storage facility at the site; recommends approval by the City Council. |
| March 4, 2024 | City Council holds public hearing on the proposed CUP, then approves CUP with conditions as recommended by the Plan Commission. Conditions include transfer of the Purchase Option on the project site to Hawk Energy Storage, LLC, such transfer subject to approval by the City Council. Project representatives from Tenaska, developer/agent for the project, indicate that they hope to be able to start project construction in 2025; project continues to be reviewed by MISO, the Midcontinent Independent System Operator responsible for operation of the electric grid in the central United States. |
| June 17, 2024 | City Council authorizes assignment of the Purchase Option by Swift Energy Storage LLC to Hawk Energy Storage LLC |
| July 23, 2024 | Business and Industrial Development Committee and Community Development Authority approve Site and Architectural Plans for the proposed BESS project |
| November 2024 | Representatives of Tenaska, developers for the BESS project, inform the City Manager of their request to amend and extend the option agreement |

MEMORANDUM

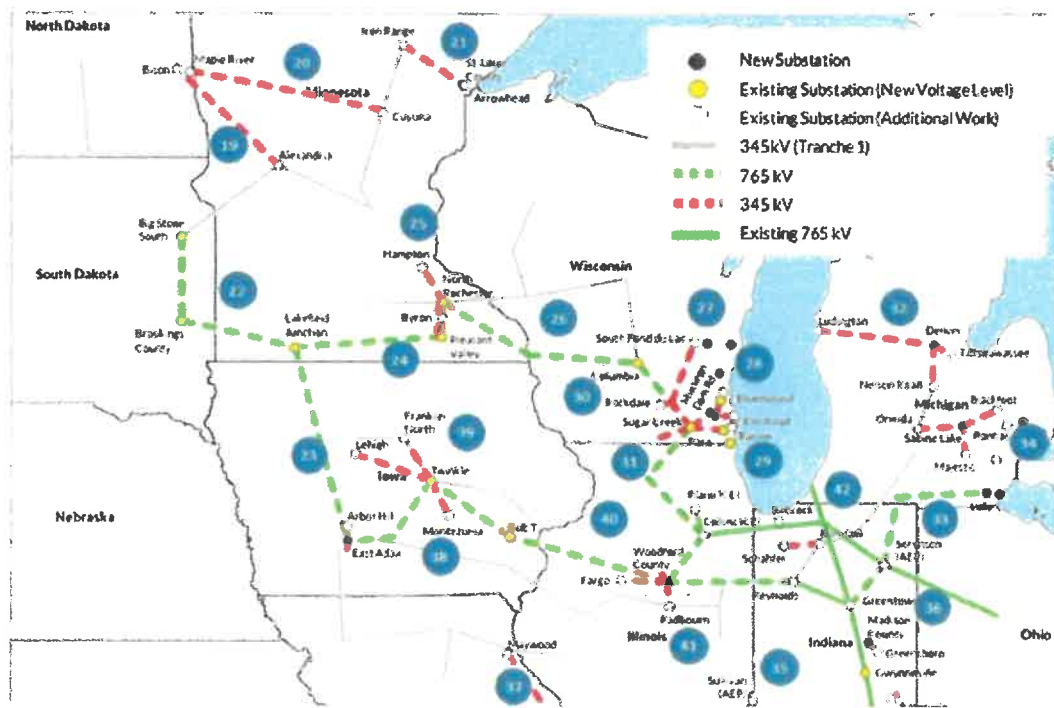
TO: Greg Buckley, City of Two Rivers
FROM: Hawk Energy Storage LLC
DATE: November 1, 2024
RE: Purchase Option Extension

Background

The Hawk Energy Storage LLC (“Project”) experienced an unexpected increase of approximately \$32 million in network upgrade costs from the Midcontinent Independent System Operator, Inc. (MISO) during Phase 2 of the MISO study process. Based on these unexpected increased costs, the project was unfortunately withdrawn from the interconnection queue.

Future MISO Transmission Solutions

MISO recently released, as part of their Long Range Transmission Planning (LRTP), a list of network upgrade projects which are called LRTP Tranche 2.1. These new projects are anticipated to fix the network upgrade costs that recently impacted the Project. A map of these future projects is provided below, which includes several key upgrades in the state of Wisconsin. The Project team is optimistic that by re-filing in the next MISO queue, which will account for these new LRTP upgrades, that future MISO results will be favorable for the project.



Purchase Option Extension Amendment

The Project requests an amendment to our current purchase option with the City of Two Rivers that would extend the option period by 4 years. The Project anticipates it will take up to 4 years to get through the new MISO queue in which we intend to file a new interconnection request. The Project has increased the option payments in our proposed amendment based on inflation since the time our original agreement was signed. We request that the City of Two Rivers work with the Project as soon as possible to sign this amendment, which is required for us to refile our interconnection request with MISO. MISO is in the process of implementing queue caps which requires the Project to file an interconnection prior to MISO meeting their cap, or the Project would be placed in the next queue, which further delays the Project. We look forward to working with the City of Two Rivers on this amendment and bringing this Project and its many economic benefits to the community.



Transmission

MISO board approves 'historic' transmission package – 488 projects spanning 5,000 miles

The portfolio includes local reliability and growth projects, the Long Range Transmission Planning (LRTP) Tranche 2.1 portfolio of projects, and the Joint Targeted Interconnection Queue (JTIQ) projects with Southwest Power Pool.

Sean Wolfe
12.12.2024

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(Credit: Pixabay)

Midcontinent Independent System Operator (MISO) has greenlit another enormous portfolio of transmission projects- this one deemed the largest in U.S. history.

The portfolio, which was unanimously approved by the MISO Board of Directors, includes 488 projects spanning more than 5,000 miles across 15 states in the MISO footprint. It includes local reliability and growth projects, the Long Range Transmission Planning (LRTP) Tranche 2.1 portfolio of projects, and the Joint Targeted Interconnection Queue (JTIQ) projects with Southwest Power Pool.

"This was truly a significant effort that required coordination and collaboration with our stakeholders, our neighboring grid operators and MISO staff," said MISO CEO John Bear. "The energy landscape is quickly transitioning, and we must work with urgency to implement the changes that ensure reliability today and in the future."


The 2024 MISO Transmission Expansion Plan (MTEP) includes the following:

- Local Reliability – 459 projects totaling 932 miles to support reliability in all 15 states across the MISO region. The \$6.7B investment will improve infrastructure and meet load growth needs at the local level.
- LRTP Tranche 2.1 – 24 projects totaling 3,631 miles for regional projects in MISO's Midwest subregion (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, North Dakota, South Dakota and Wisconsin) and includes a 765kV backbone. The \$21.8 billion portfolio has a cost-to-benefit ratio of 1.8-3.5 with benefits potentially exceeding \$72 billion.
- JTIQ – five projects totaling 490 miles to enable generation on the MISO/SPP seam (Iowa, Kansas, Minnesota, Missouri, North Dakota, and South Dakota). The \$1.6 billion investment will enable 28 GW of new generation.


MISO said its "extensive" stakeholder process facilitated more than 300 meetings and captured feedback to arrive at a Tranche 2.1 portfolio that "delivers benefits exceeding costs." LRTP is a key part of [MISO's Reliability Imperative](#) – the shared responsibility of states, utilities, members, and MISO to address challenges to electric reliability in the region, including generation fleet change, increasing extreme weather events, and other factors.

"These critical transmission infrastructure projects will strengthen the backbone of the greater Midwest region's grid by enhancing system reliability and grid resilience to better withstand increasingly frequent and severe weather events, respond to load growth and support the generation fleet transition in the greater Midwest region," ITC Holdings Corp said in a [statement](#). "We applaud the work of MISO and its many stakeholders, who have worked collaboratively and transparently to approve this historic investment, and continue to invest, in our region's critical transmission infrastructure. The benefits of MISO's Tranche 2.1 portfolio will be realized for many generations to come."

In July 2022, the MISO Board of Directors [unanimously approved the Tranche 1 LRTP portfolio](#) of new transmission projects. The \$10.3 billion investment included 18 transmission projects in MISO's Midwest Subregion. The grid operator found a benefit-to-cost ratio of at least 2.6, where benefits well exceed costs. The last time MISO approved projects close to this scale was in 2011, and that effort took four years. The Tranche 1 project portfolio, which was larger in terms of cost and miles, took half that time, said MISO. At the time, MISO said it was studying three additional portfolios (tranches), meant to improve interconnectivity and serve to further boost the reliability of the system.




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The previous month, state regulators told MISO in a letter that it was time to review market signals and reliability requirements and to enhance collaboration between MISO, the states, and other entities responsible for resource adequacy. The letter, [dated June 9](#), came a day before MISO released a [joint report](#) that said the region was projected to have a capacity deficit of 2.6 GW below the 2023 planning reserve margin requirement (PRMR). Similar to 2022, the capacity deficit in 2023 would be restricted to MISO North/Central, partially offset by exports from the South region.

Earlier this year, MISO [shared an initial, draft proposal](#) for a set of Tranche 2 transmission solutions – the second phase of the grid operator's LRTP effort building on the [investment in Tranche 1](#) through defining a set of new projects in its Midwest Subregion.

At the time, the original Tranche 2 plan had an anticipated cost between \$17 – \$23 billion, MISO said. Because of the impact of increasing load growth and the changing resource mix, the potential Tranche 2 portfolio featured 765 kV lines, which MISO said would enable long-term value based on distance, cost, and land use. In addition to reducing right-of-way permitting needs required in regulatory approval processes and helping address environmental concerns. After months of reform, MISO's board voted to approve ' updated Tranche 2.1.

A study from the Energy Department's Lawrence Berkeley National Laboratory in 2022 found that [interconnection costs for projects proposed in the MISO region](#) were rising fast. The lab found that for projects that had completed all required interconnection studies, average costs nearly doubled for more recent projects relative to historical costs from 2000 through 2018. It said that for projects still actively moving through the queue, estimated costs more than tripled just between 2018 and 2022. It said that as of the end of 2021, MISO had more than 160 GW of generation and storage capacity actively seeking grid interconnection. This "active" capacity was dominated by solar (112 GW) and, to a lesser extent, wind (22 GW).

However, the lab said that most projects have historically withdrawn their applications, often in response to high interconnection costs. Roughly 24% of all projects requesting interconnection between 2000 and 2016 achieved commercial operation as of the end of 2021.

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FIRST AMENDMENT TO REAL ESTATE PURCHASE OPTION AGREEMENT

THIS FIRST AMENDMENT TO REAL ESTATE PURCHASE OPTION AGREEMENT (“**First Amendment**”) is made and entered into as of the ___ day of _____, 2024 (“**First Amendment Effective Date**”) by and between City of Two Rivers, Wisconsin (“**Owner**”), and Swift Energy Storage, LLC, a Delaware limited liability company (“**Developer**”). Owner and Developer may hereafter be referred to as, together, the “**Parties**”.

RECITALS:

A. Owner and Developer entered into that certain Real Estate Purchase Option Agreement dated July 20, 2021 (“**Agreement**”).

B. Owner and Developer desire to amend the Agreement as provided below.

AMENDMENT:

NOW THEREFORE, in consideration of the covenants, agreements and for other good and valuable consideration herein contained, Owner and Developer agree as follows:

1. Term and Payment. Section 2 of the Agreement is hereby deleted in its entirety and replaced with the following:

“ 2. **Term and Payment.** The term of the Option shall commence on the Effective Date and automatically expire on the *eighth* anniversary of the Effective Date, unless this Agreement is terminated earlier (“**Term**”); provided, that, notwithstanding anything to the contrary set forth herein, Developer may terminate this Agreement at any time for any reason upon written notice to Owner, subject to the terms of this Agreement.

Prior to the First Amendment Effective Date Developer paid to Owner the following:

- (i) An initial payment of forty-seven thousand dollars (\$47,000.00), which equals approximately \$5,000 per acre of the Premises, within ten business days after the Effective Date; and
- (ii) Annual payments of forty-seven thousand dollars (\$47,000.00) each, on each anniversary date of the Effective Date through the third (3rd) anniversary;

(collectively, the “**Prior Payments**”) Developer shall pay to owner the following:

- (iii) Fifty-five thousand dollars (\$55,000.00) on or before the fourth (4th) anniversary of the Effective Date;
- (iv) Fifty-six thousand five hundred dollars (\$56,500.00) on or before the fifth (5th) anniversary of the Effective Date;

- (v) Fifty-eight thousand dollars (\$58,000.00) on or before the sixth (6th) anniversary of the Effective Date; and
- (vi) Fifty-nine thousand five hundred dollars (\$59,500.00) on or before the seventh (7th) anniversary of the Effective Date

(collectively with the Prior Payments, the “**Option Payments**”) All Option Payments shall be non-refundable to Developer under any circumstances, except that if the Option to Purchase is exercised then the last annual Option Payment prior to the exercise of the Option shall be applied against the Purchase Price (as defined below) at Closing (as defined below).”

2. Capitalized Terms. Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

3. No Modification. Except as specifically set forth in this First Amendment, all terms and conditions of the Agreement shall remain in full force and effect. In the event of any inconsistency between the terms of the Agreement and this First Amendment, the terms of this First Amendment, shall prevail.

4. Counterparts. This First Amendment may be executed in separate counterparts, each of which will be deemed an original, and all of which together will constitute one and the same agreement.

(Signature Pages Follow)

IN WITNESS WHEREOF, each of the Parties hereto has caused this First Amendment to be executed as of the day and year first above written.

OWNER:

City of Two Rivers, Wisconsin

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, each of the Parties hereto has caused this First Amendment to be executed as of the day and year first above written.

DEVELOPER:

Swift Energy Storage, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Drafted by:

Brian Chan
Husch Blackwell LLP
1801 Pennsylvania Ave, Suite 1000
Washington, DC 20006

After recording, return to:

Husch Blackwell LLP
Attn: Tina Chamblee
4801 Main Street, Suite 1000
Kansas City, MO 64112

FIRST AMENDMENT TO MEMORANDUM OF REAL ESTATE PURCHASE OPTION
AGREEMENT

THIS FIRST AMENDMENT TO MEMORANDUM OF REAL ESTATE PURCHASE OPTION AGREEMENT (“**First Amendment to Memorandum**”) is entered into this ___ day of _____, 1/17/2025, by and between City of Two Rivers, Wisconsin (“**Owner**”), and Swift Energy Storage, LLC, a Delaware limited liability company (“**Developer**”). Owner and Developer are referred to individually as “**Party**” and are collectively referred to as “**Parties**”. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Agreement (as defined below).

A. Owner and Developer entered into that certain Real Estate Purchase Option Agreement dated July 20, 2021 (“**Agreement**”), a memorandum of which was recorded in the Register of Deeds of Manitowoc County, Wisconsin on August 10, 2021 as Document No. 1239885 and in Volume 3428, Page 598 (“**Memorandum**”), regarding that real property more particular described in the Memorandum and in Exhibit A attached hereto.

B. Owner and Developer executed that certain First Amendment to Real Estate Purchase Option Agreement (“**First Amendment**”) on even date herewith.

C. Owner and Developer desire to amend the Memorandum as provided below and give record notice of the same.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Term. Section 3 of the Memorandum is hereby deleted in its entirety and replaced with the following:

“ 3. Term: Commencing on the Effective Date and ending on the *eighth* anniversary of the Effective Date.”

2. Capitalized Terms. Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

3. Notice. This First Amended Memorandum is for the purpose of giving record notice of the Agreement and First Amendment and the rights created thereby, all of which are hereby confirmed. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns.

4. No Modification. This First Amended Memorandum is not intended to modify or amend any of the provisions of the Agreement or First Amendment. In the event of any inconsistency between the terms of the Agreement and this First Amended Memorandum, the terms of the Agreement, as amended, shall prevail.

5. Counterparts. This First Amended Memorandum may be executed in separate counterparts, each of which will be deemed an original, and all of which together will constitute one and the same agreement.

[Signatures and acknowledgments follow]

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the date first written above.

OWNER:

City of Two Rivers, Wisconsin

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF WISCONSIN)
) SS:
COUNTY OF _____)

This instrument was acknowledged before me on _____, 1/17/2025 by _____, as _____ of City of Two Rivers, Wisconsin.

(Signature of Notary Public)

Name: _____
Notary Public, State of Wisconsin

STATE OF WISCONSIN)
) SS:
COUNTY OF _____)

This instrument was acknowledged before me on _____, 1/17/2025 by _____, as _____ of City of Two Rivers, Wisconsin.

(Signature of Notary Public)

Name: _____
Notary Public, State of Wisconsin

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the date first written above.

DEVELOPER:

Swift Energy Storage, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____)
)SS:
COUNTY OF _____)

BEFORE ME, the undersigned authority, a Notary Public in and for said state, on this day personally appeared before me _____, known or proved on acceptable evidence to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this ____ day of _____, 1/17/2025.

Name: _____
County of Residence _____
My Commission Expires: _____

Exhibit A

Tract 7 of Certified Survey Map Located in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ and in the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 33, T.20 N., R.24 E., City of Two Rivers, Manitowoc County, Wisconsin, as recorded with the Manitowoc County Register of Deeds on March 10, 1995 in Volume 15 of Certified Survey Maps at Page 151, Document No. 750524.

Tax parcel number 053-233-404.010.01

13. Payment in Lieu of Taxes, Minimum Annual Payment.

a. Owner and Developer anticipate that the Property as planned to be developed shall be subject to property taxes. However, if any portion of the Property, the improvements to the Property, or the personal property to be located on the Property is or becomes exempt from property tax, or is not subject to local tax under Wis. Stat. § 76.28(9)(2023-2024), the Developer for itself, its successors and assigns, agrees to make a payment to the City of Two Rivers equal to the amount which the City would have received if the portion of the Property which becomes exempt or not subject to tax under Wis. Stat. § 76.28(9)(2023-2024) had been ~~would have been~~ subject to property tax (the "PILOT payment"). PILOT payments shall be made to the City no later than December 31st of the first year in which there is no property tax payable due to exemption, and no later than December 31st of each subsequent year in which property tax is not payable.

b. Should the sums payable to the Owner under this Section total less than \$150,000 for any year, Developer shall make a payment to Owner in the amount needed to increase the total amount due for the year to \$150,000 (\$150,000 is hereinafter referred to as the ___ "Minimum Annual Payment"). The Minimum Annual Payment shall be increased or decreased each year during the term of the agreement, and each year following the closing of the sale of the Property based on the CPI-U for the immediate prior year, provided, however, that in no event shall the Minimum Annual Payments be less than \$150,000. Such Minimum Annual Payment shall be required for as long as the Property is used as a grid-scale or commercial battery storage facility and as long as equipment, items or improvements related to the use of the Property as such a facility remain on the Property.

c. This Section of the Agreement shall bind the successors of the Developer and shall be considered a covenant running with the Property until the Property is no longer used ~~as a~~ as a grid scale or commercial battery storage facility and as long as equipment, items or improvements related to the use of Property as such a facility remain on the Property