

June 20, 2016

Mr. Todd Bianco  
Coordinator  
Energy Facility Siting Board  
89 Jefferson Blvd  
Warwick, R.I.

RECEIVED  
2016 JUN 23 AM 9:03  
PUBLIC UTILITIES COMMISSION

Dear Mr. Bianco:

Enclosed is a copy of the Letter of Intent between Invenergy and the Public Utility District regarding the planned Clear River Energy Center.

I have highlighted several sections which directly pertain to Invenergy's determination not to be help liable for any of the problems involved in treating the MTBE contamination in Well 3A.

I do not believe that the Invenergy's application can be approved absent a clear indication from Invenergy that they will be responsible for resolving the contamination treatment question.

Thank you.



Earl McWilliams  
1090 Douglas Pike  
Harrisville, R.I. 02890

# Invenergy

VIA E-MAIL

September 25, 2015

Michael R. Kirkwood  
General Manager/CEO  
Pascoag Utility District  
PO Box 107, 253 Pascoag Main Street  
Pascoag, RI 02859

PUBLIC UTILITIES COMMISSION

2015 JUN 23 AM 9:03

RECEIVED

Re: Clear River Energy Center located in Burrillville, Rhode Island (the "Project")

Dear Mr. Kirkwood:

This letter of intent (this "LOI") expresses the intent of Invenergy Thermal Development, a Delaware limited liability company ("Invenergy"), and the Pascoag Utility District ("PUD") to utilize and treat water emanating from that certain water well located at Well 3A building on Silver Lake Avenue in Pascoag Rhode Island ("Well 3A"), and to construct certain facilities necessary for the distribution of such treated water to Invenergy's proposed Clear River Energy Center (the "Project"), (such utilization and treatment of Well 3A water, and construction of water distribution facilities, being the "Transaction"). Invenergy and PUD are sometimes referred to in this LOI as a "Party" or collectively as the "Parties".

Well 3A has been deactivated -- per a Consent Order dated December 28, 2001 (Exhibit A) -- and can no longer be used as a source of drinking water. PUD owns Well 3A and can reactivate it pending proper permits and approvals. Due to high costs, however, PUD is currently unable to remediate the water emanating from Well 3A to render said water suitable for human consumption according to all applicable regulatory agencies ("Potable"). The Project will require a source of process water for its use in generating electric power, and such water does not need to be Potable. The Parties therefore have agreed to pursue the Transaction, the basic terms of which are as follows:

1. The Consultants.

a. Well and Pipeline Consultants. Invenergy shall engage, at Invenergy's sole cost and expense, Pare Corporation (the "Well and Pipeline Consultant(s)") to assist in obtaining all permits and other regulatory approvals necessary for the Parties to re-open and utilize the water emanating from Well 3A, and for the design of the Pipeline and the Treatment Facility. Within five (5) business days following the date of this LOI, Invenergy and the Well and Pipeline Consultant shall enter into a consulting agreement memorializing this Section 1(a).

b. PUD Consultant. PUD shall engage, at Invenergy's sole cost and expense, Northeast Water Solutions, Inc. (the "PUD Consultant") to assist in obtaining all permits and other regulatory approvals necessary for the Parties to re-open and utilize the water emanating from Well 3A and for the review and approval of the design and construction of the Pipeline and the Treatment Facility. The Well Consultants and the PUD Consultant are sometimes referred to collectively in this LOI as the "Consultants". Within five (5) business days following the date of this LOI, PUD and the PUD Consultant shall enter into a consulting agreement memorializing this Section 1(b).

*PUD consultant responsible for the "re-activate approval"*



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c. Consultant Duties. The estimated budget and scope of the Consultants is included in Exhibit C. The duties of the Consultants (which shall be performed in conjunction with, and at the direction of, the Parties) shall include at a minimum:

- i. Meeting with the Rhode Island Department of Environmental Management ("RIDEM") to obtain plan review comments and any initial approvals;
- ii. Creation of a plan to re-open and utilize the water from Well 3A;
- iii. Obtaining all permits required for the re-opening and operation of Well 3A (defined below) for non-potable use;
- iv. Design of the Pipeline, as recommended by the Well and Pipeline Consultant and approved by the PUD Consultant;
- v. Obtaining all permits required for the construction and operation of the Pipeline (defined below);
- vi. Design of the Treatment facility, as recommended by the Well and Pipeline Consultant and approved by the PUD Consultant;
- vii. Obtaining all permits required for the construction and operation of the Treatment Facility (defined below);
- viii. Otherwise cooperating with the other Consultant in pursuing the successful completion of the Transaction.

2. Exclusivity. Upon execution of the Letter of Intent, PUD shall not, and shall not authorize or permit any representative on PUD's behalf to allow any other party to access or utilize non-potable water from Well 3A. For the avoidance of doubt, this exclusivity provision shall not apply to the access or utilization of Potable water from Well 3A. Promptly following the date of this LOI, Invenergy and PUD shall negotiate in good faith and enter into an agreement memorializing this Section 2.

3. Treatment Facility. The Parties shall work together with the Consultants to design a water treatment facility capable of taking water from Well 3A and making the same potable (the "Treatment Facility"). PUD shall be responsible for the construction and operation of the Treatment Facility; provided, however, that the construction of the Treatment Facility shall be at Invenergy's sole cost and expense. [REDACTED] Invenergy and PUD shall negotiate in good faith and enter into an agreement memorializing this Section 3 (the "Treatment Facility Agreement").

#### 4. Pipeline.

a. Design/Construction. Promptly following the date of this LOI, the Parties shall work together to design a distribution water main capable of carrying water from Well 3A to through the Treatment facility and to the project (the "Pipeline"). Invenergy will permit, design and construct the Pipeline at Invenergy's sole cost and expense, and, upon completion of construction of the Pipeline, sell the Pipeline to PUD for the sum of \$10.00. The design and construction of the Pipeline shall be to standards acceptable to PUD to allow for future use as a distribution system pipeline for Potable water if approved by the appropriate regulatory agencies. PUD will provide the appropriate construction and

# Invenergy

materials standards to Invenergy so that Invenergy's design will be consistent with PUD's requirements for its system and acceptable to Rhode Island Departments of Transportation, Environmental Management and Health.

b. Public Roads. PUD shall (and has the statutory authority to) locate the Pipeline within the public right of way, whenever possible.

c. Pipeline Cost. PUD and Invenergy shall work together to develop a reasonable cost estimate for the construction of the Pipeline; provided, however, that Invenergy (in its sole discretion) shall have the right to reject any cost structure that it deems unreasonable. Invenergy shall be responsible for the final cost of the construction of the Pipeline.

d. Potable Water Usage. In the event that the Treatment Facility is successful in rendering the water from Well 3A Potable, the Parties will negotiate a reasonable rate for the usage of the said Potable water.

e. Pipeline Transfer Documents. Promptly following the date of this LOI, Invenergy and PUD shall negotiate in good faith and execute any and all documents reasonably necessary to consummate the sale of the Pipeline to PUD (for the sum of \$10.00) in accordance with this Section 4.

5. Water Supply Agreement. In the event that Well 3A is re-activated and put into operation pursuant to the terms of this LOI, its use will be dedicated to the Parties, with the Project having first priority up to [REDACTED] or the determined safe yield (whether Potable or not), and the Parties will negotiate in good faith and enter into a long term exclusive water supply agreement (the "Water Supply Agreement") governing said use, which shall include, at a minimum, the terms outlined on Exhibit B attached hereto.

6. Permitting Schedule. The Parties shall use commercially reasonable efforts to meet the following permitting deadlines with respect to the Transaction:

a. Preparation and submission of all permits in connection with the Transaction by January 1, 2016.

b. Receipt of all permits by July 7, 2016.

c. Re-opening of Well 3A by June 1, 2017.

d. Construction of the Treatment Facility completed by June 1, 2017.

e. Construction of the Pipeline completed by June 1, 2017.

7. Indemnity. PUD shall defend, indemnify and hold harmless Invenergy from and against any and all third party claims, litigation, actions, proceedings, losses, damages, liabilities, obligations, costs and expenses, including reasonable attorneys', investigators' and consulting fees, court costs and litigation expenses suffered or incurred by Invenergy (or Invenergy's affiliates, lenders, successors, assigns, agents and representatives) arising from PUD's operation of Well 3A, the Treatment Facility and/or the Pipeline. For the avoidance of doubt, Invenergy shall not be liable for any condition, occurrence or presence of hazardous materials in Well 3A or affecting the water emanating therefrom, and/or the toxicity of the water from Well 3A generally.



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8. **Hold Harmless.** The Treatment Facility Agreement and the Water Supply Agreement shall include standard provisions pursuant to which Invenergy shall agree to hold PUD harmless from and against any and all third party claims which arise from Invenergy's development of the Project.

9. **Due Diligence.** PUD shall provide to Invenergy any existing reports, studies or permits relating to Well 3A in PUD's possession. Additionally, PUD shall cooperate with Invenergy regarding any additional reasonable information requests.

10. **Confidentiality/Public Announcement.**

a. The Parties each agree to keep confidential the existence, status, or terms and conditions of this LOI, including, without limitation, any compensation or lack of compensation hereunder (collectively, the "Confidential Information"), and not to disclose or otherwise convey any portion of the Confidential Information to any person other than the disclosing Party's attorneys, employees, family members, affiliates, potential third party power purchasers, potential financing parties, agents or representatives and other personal advisors who need to know such information for the purpose of assisting the disclosing Party in connection with this LOI or pursuant to lawful process, subpoena or court order; provided the disclosing Party in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the agreement of said party not to disclose the information. It is further understood and agreed by the Parties that money damages may not be a sufficient remedy for any breach of this Section 10 and that the non-disclosing Party shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach without the necessity of posting bond. Such remedies shall not be deemed to be the exclusive remedy for breaches of this Section 10, but shall be in addition to all other remedies that may be available at law or equity.

b. The Parties shall consult with each other on the desirability, timing and substance of any press release or public announcement, publicity statement or other public disclosure relating to this Transaction or the fact that negotiations between us are being held. Each Party agrees not to make any such public disclosures without the prior written consent of the other Party as to the content and timing of such disclosure; *provided, however*, that either Party may make such disclosures as are required to comply with applicable law.

11. **Other Agreements.** This LOI constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes any other prior agreements, written or oral, between the Parties concerning such subject matter.

[signatures on following page]

# Invenergy

PUD and Invenergy, by signing below, hereby indicate that the contents of this LOI are acceptable, and correctly set forth the understanding of the Parties.

PUD:

PASCOAG UTILITY DISTRICT,  
a Rhode Island Quasi-municipal Corporation

By: 

Name: Michael R. Kirkwood

Title: General Manager

INVENERGY:

INVENERGY THERMAL DEVELOPMENT LLC,  
a Delaware Limited Liability Company

By: 

Name: Bryan Schaefer

Title: Vice President



CONSENT ORDER


This matter is before the Department of Health, Office of Drinking Water Quality (hereinafter "Department") upon matters contained in an Administrative Hearing Notice, dated 28 December 2001, issued to Pascoag Utility District (hereinafter "Respondent"). The Notice informed "Respondent" that the "Department" proposed to revoke approval for well No. 3 and well No. 3A to be sources of public drinking water in that said sources are not safe and potable as required by R.I.G.L. (1996 Reenactment) Section 46-13-9 and Section 2.2 of the "Rules and Regulations Pertaining to Public Drinking Water."

Prior to the date set for hearing, it was agreed by and between the parties as follows:

1. That "Respondent" agrees to the revocation of the approval issued to the "Respondent" by the "Department" for well No. 3 and well No. 3A to be sources of public drinking water.
2. That well No. 3 and well No. 3A shall not be used as sources of public drinking water, provided, however, "Respondent" may, at a future date, apply to the "Department" for approval of the aforementioned wells as new sources of public drinking water.
3. That nothing herein shall prohibit "Respondent" from utilizing well No. 3 and well No. 3A for remediation of contamination provided said wells are not in any way connected to the public drinking water system.
4. That this Consent Order shall constitute a final disposition of the matters forming the basis thereof and obviate the necessity for a hearing on the matters contained in the Administrative Hearing Notice dated 28 December 2001.

  
Pascoag Utility District 2/8/02

William L. Bernstein, Engineer



  
June Swallow, P.E., Chief  
Office of Drinking Water Quality

  
Mary Ellen McCabe, Secretary



# Invenergy

## EXHIBIT B Water Supply Agreement Basic Terms

- 1) Invenergy will be responsible for all permitting, design and construction costs required to effectuate the use of the Well 3A water supply for its non-Potable process needs.
- 2) Invenergy will be responsible for all design, permitting and construction of a new dedicated water main from their property to our Well 3A building on Silver Lake Avenue. The water main must be of a size and specification consistent with use as a distribution main should the Well 3A water supply become commercially available as a Potable water supply in the future.
- 3) PUD will be responsible for operation of Well 3A to meet the non-potable water needs of Invenergy up to the daily safe yield amount of the well. Invenergy will reimburse PUD for all costs to construct the required treatment plant, and to maintain and operate Well 3A and related equipment during the term of its exclusive use. The parties will mutually agree upon a budget for the foregoing, which will be reviewed and revised annually.
  - a) The term of the Water Supply Agreement will be commensurate with that of the Project's life and no less than twenty (20) years, pursuant to the following schedule of maximum usage by Invenergy should the plant be permitted for Potable water use:  

  - b) Invenergy will pay a \$75,000 fixed fee annually during the term of its exclusive use as a contribution to PUD's fixed costs.
  - c) PUD and Invenergy will negotiate a rate for PUD retail customer use should the plant be permitted for Potable water use. Such rate will be allocated recognizing a fair allocation of the costs attributable to the Project and PUD, recognizing the priority rights of the Project during the term of the agreement.
  - d) At such time as the water becomes Potable, PUD will integrate Well 3A (or other well(s) in the same aquifer) for use in its overall system to serve both Invenergy and PUD's water customers.
- 4) The quantity of water to be delivered to the Project will be at least 30 gallons per minute with a maximum supply of  gallons per minute, or the determined safe yield of Well 3A.
- 5) The parties agree to negotiate other standard commercial terms in good faith.