

Department of Buildings & General Services
Office of the Commissioner
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Agency of Administration

April 22, 2013

Mr. William J. Fraser, City Manager
City of Montpelier
39 Main Street
Montpelier, Vermont 05602

VIA E-MAIL AND FIRST CLASS MAIL

Re: District Heat Plant

Dear Bill:

We have received your conditional agreement dated April 19, and the additional questions you posed yesterday. We cannot agree to your proposed conditions. We believe that there is some confusion at this point about the meaning of the original Thermal Energy Purchase and Sale Agreement (the "Agreement"), with respect to the "Commercial Operation Date." Section 2.2 of the Agreement provides that the Commercial Operation Date is *estimated* to occur on or before October 1, 2013. It goes on to say, and this is critical to our understanding, that the State and the City shall each certify agreement to the *actual* occurrence of the Commercial Operation Date. "Commercial Operation Date" is not a fixed date of October 1, 2013 or December 31, 2013, but the date the parties agree the Heat Plant is ready for commercial operation.

In response to your questions, the City never has an obligation to pay the Energy Payment Rate until after the Commercial Operation Date (agreed by the parties as set forth in Section 2.2) and the delivery of "Energy" in accordance with the Agreement. Section 4.2 of the Agreement, as amended, establishes the payment methodology and Section 6 of the Agreement sets forth the terms of billing and payment.

Further, the State proposed a letter agreement on April 3 rather than a contract amendment, because, in the State's view, there was no intention to modify Agreement terms.

We propose amending the April 3 letter as follows. The first paragraph of this language comes from the definition of "Commercial Operation Date" in the Agreement:



1. The City and the State shall certify agreement on the Commercial Operation Date once the State Heat Plant is ready for regular daily operation, has been connected to the City Distribution System, has satisfied all applicable Legal Requirements and necessary testing and commissioning and is capable of producing Energy in accordance with the Agreement. The permanent oil boiler of the Heat Plant is *estimated* to be operational in mid-November and the biomass boilers are *estimated* to be functional December 31, 2013. The parties acknowledge that there will be slightly higher initial operating costs until the biomass boilers are operating.
2. The City acknowledges that the State has submitted the materials required for flood plan permitting in connection with the Heat Plant and will handle as expeditiously as possible, specifically through administrative approvals to the extent permitted by law.
3. In accordance with Sections 5(g) and 5(h) of the Procurement Agreement, the parties have met to discuss anticipated cost overruns for the Heat Plant. The State and City agree that the current estimated cost of the Heat Plant is \$18,360,208. This represents an estimated cost overrun of \$3,312,883 from prior State estimates set forth in the Procurement Agreement between the parties. Of this amount \$732,288 represents costs not related to the City. Of the remaining \$2.5 million, the parties agree the City will reimburse the State in the amount of \$408,000 for the cost of the Thermal Conversion Unit, referenced in Section 11.2 of the Thermal Energy Purchase and Sale Agreement. This reimbursement is the City contribution towards the current estimated Heat Plant cost overruns and is not based on a percentage of Project costs.
4. The City's obligation for reimbursement of the costs of the Thermal Conversion Unit will be paid in two ways: (a) The City, after completing the City Distribution System and reconciling all City Distribution System Costs, will pay at least 50% of any surplus funds toward the \$408,000 total; the City may, at its discretion, pay more than 50%; and (b) any remaining unpaid balance will be added to the price of additional Capacity purchases by the City, with the price of each Unit of Capacity to be determined in accordance with the payment schedule in Attachment A of the Thermal Energy Purchase and Sale Agreement, as the same may be amended by its terms.

I urge you to contact me with any questions or concerns so that we may resolve this expeditiously. Again, we appreciate it if you could indicate your acknowledgement and agreement below.

Sincerely,

Michael J. Obuchowski 

Michael J. Obuchowski, Commissioner

ACKNOWLEDGED AND AGREED
