

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

TOWN OF BURRILLVILLE, RHODE ISLAND, :
Plaintiff :

-VS.- :

CLEAR RIVER ENERGY, LLC, and :
TOWN OF JOHNSTON, RHODE ISLAND, :
Defendants :

P.C. No.: 2017-_____

COMPLAINT

Introduction

1. This action seeks a declaration of the plain meaning of a Rhode Island Public Law that was enacted over a century ago.
2. This Honorable Court has subject-matter jurisdiction pursuant to the Uniform Declaratory Judgments Act, Rhode Island General Laws § 9-30-1, *et seq.*
3. Venue in Providence County is appropriate under to Rhode Island General Laws § 9-4-4.

Parties

4. Plaintiff, TOWN OF BURRILLVILLE (“Burrillville”), is a municipal corporation incorporated in 1806 under the laws of the State of Rhode Island, with its office and principal place of business at 150 Harrisville Main Street, Harrisville, Rhode Island. Burrillville is comprised of nine (9) villages: Harrisville, Pascoag, Oakland, Mapleville, Glendale, Mohegan, Wallum Lake, Bridgeton and Nasonville. Burrillville has approximately 16,000 residents.
5. Plaintiff Burrillville has incurred and continues to incur substantial costs opposing on behalf of itself and its residents a power plant proposed by Defendant CLEAR RIVER ENERGY, LLC (“Invenergy”) in proceedings before the Rhode Island Energy Facility Siting Board, the Public Utilities Commission and elsewhere.

6. Defendant Invenergy is a foreign limited liability company organized under the laws of the State of Delaware, having a principal place of business at 1 South Wacker Drive, Suite 1800, Chicago, Illinois 60606 and registered to do business in the State of Rhode Island.
7. Defendant TOWN OF JOHNSTON (“Johnston”) is a municipal corporation established under the laws of the State of Rhode Island.
8. On information and belief, the Conservation Law Foundation, a nonprofit organization incorporated under the laws of Massachusetts, has an interest in the requested declaration and is commencing a separate action seeking the same relief. Burrillville moves to consolidate these actions.

Factual Allegations

9. On or about January 6, 2017, Defendants Invenergy and Johnston executed a “Water Supply and Economic Development Agreement” (the “Water Contract”). The Water Contract is attached to this Complaint as Exhibit A. The contract was ratified by the Town Council of Johnston on or about January 10, 2017.
10. The Water Contract provides that Johnston will re-sell Providence water to Invenergy for Invenergy to truck to its proposed power plant in Burrillville, Rhode Island.
11. There is no contract in force between Providence and Johnston that creates a legal obligation for Providence to supply water to Johnston.
12. Thus, any legal obligation for Providence to supply water to Johnston would have to arise under law.
13. The applicable law is P.L. 1915, ch. 1278, as amended from time to time by the General Assembly (the “1915 Act”).
14. The current the version of the 1915 Act provides that certain cities and towns, including the Town of Johnston, “shall have the right to take and receive water ... for use for domestic, fire and other ordinary municipal water supply purposes.” 1915 Act § 18; *see also R&R Assoc. v. City of Providence Water Supply Bd.*, 724 A.2d 432, 434 (R.I. 1999).
15. Johnston’s selling water to Invenergy for Invenergy to use at a power plant located in Burrillville is not a use by Johnston “for domestic, fire, or ordinary municipal water supply purposes.”

16. Johnston therefore has no legal right to purchase water from Providence for resale to Invenergy.

COUNT ONE
Uniform Declaratory Judgments Act
Rhode Island General Laws § 9-30-1 *et seq.*

17. Burrillville hereby realleges and reincorporates the allegations set forth in paragraphs one (1) through sixteen (16) above.

18. Burrillville's rights, status and legal relations are affected by the 1915 Act.

19. Burrillville therefore seeks a declaration that Johnston has no legal right under the 1915 Act to obtain water from Providence for resale to Invenergy.

WHEREFORE, Burrillville prays that this Honorable Court:

1. Issue a Declaratory Judgment declaring that Johnston has no legal right under the 1915 Act to obtain water from Providence for resale to Invenergy for use in its proposed power plant located in Burrillville.
2. Order such other relief as this Honorable Court deems just and proper.

DATED: March 6, 2017

Plaintiff, Town of Burrillville
By its attorneys,

/s/ William C. Dimitri
WILLIAM C. DIMITRI, ESQ. #3129
Solicitor for Town of Burrillville
462 Broadway
Providence, RI 02909
Tel: (401) 273-9092
Fax: (401) 331-1898
bill@dimitrilaw.com

/s/ Amy E. Veri
AMY E. VERI, ESQ. #9297
Assistant Solicitor for Town of Burrillville
462 Broadway
Providence, RI 02909
Tel: 401-273-9092
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Amyveri721@gmail.com

WATER SUPPLY AND ECONOMIC DEVELOPMENT AGREEMENT

THIS WATER SUPPLY AND ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of January, 2017 (the "Effective Date"), by and between the Town of Johnston, a municipal corporation organized under the laws of the State of Rhode Island ("Johnston" or "the Town"), and Clear River Energy LLC, a limited liability company organized under the laws of the State of Delaware ("CREC"). Johnston and CREC may each be referred to herein individually as a "Party", and collectively as "Parties".

RECITALS

WHEREAS, Johnston is a municipal corporation located in Providence County, Rhode Island, and the owner and operator of a water system which currently provides municipal water services to residents of Johnston, Rhode Island, (the "Water System");

WHEREAS, CREC is the developer of a nominal one thousand (1,000) MW modern, energy efficient, dual-fuel combined cycle, thermal energy generation facility (the "Project"), which subject to licensure by the Rhode Island Energy Facility Siting Board, will be constructed and operated on certain real property located in Burrillville, Rhode Island;

WHEREAS, in connection with the operation of the Project, CREC requires a reliable source of water in sufficient quantities to meet the Project's demand;

WHEREAS, CREC has designed the Project such that its water demand has been reduced to the point where water can be delivered to the Project by truck;

WHEREAS, if Johnston becomes the primary water supply to the Project, it is desirable for CREC to develop a dedicated facility in Johnston to take delivery of water (the "Water Transport Facility");

WHEREAS, the development of a Water Transport Facility creates a unique economic development opportunity in Johnston;

WHEREAS, Johnston has the available water supply capacity and has agreed to supply the Project with a reliable source of water in sufficient quantities to meet the Project's demand on the terms and conditions set forth herein;

WHEREAS, CREC and Mayor Joseph Polisena have negotiated terms for the benefit of the Project and the Town of Johnston in terms of economic development;

WHEREAS, the Project requires redundancy in water supply; and

WHEREAS, Johnston desires to be the primary water supplier or is willing to serve as the secondary source of water supply for the Project.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals.** The foregoing recitals are hereby incorporated herein by this reference.
2. **Water Supply.**

(a) Flow Rate. During the Term (defined below), CREC will purchase from Johnston and Johnston shall supply to CREC potable, treated water meeting all applicable state and federal purity standards ("Potable Water") for use by and in connection with the Project. Johnston shall supply the Project's daily Water Demand (defined below). With both combustion turbines operating on natural gas at full-load average ambient conditions, the daily water demand for the Project will be supplied by trucks that are filled at a location located within the Town limits. The following approximate number of trucks required to satisfy the water usage rates are based upon the assumption that the trucks have a maximum capacity of 7,200 gallons.

(i) Average Operating Conditions. CREC estimates water usage rates during the summer season of approximately 13 GPM, or 18,720 GPD. In turn, CREC estimates that up to 3 truck deliveries per day will be required to satisfy expected water use needs of the Project. However, up to five (5) trucks a day may be necessary for certain operational occurrences and weather related impacts. This is the Average Demand Flow Rate.

(ii) Replenishing On-Site Storage. Once an oil event happens CREC would need to replenish the water tanks which would require an additional 10 to 11 water trucks per day over that required in subsection (i), above, for approximately 30 days. This is the Maximum Demand Flow Rate.

(b) Point of Delivery. Johnston shall deliver all Potable Water pursuant to this Agreement through a mutually designated point of delivery ("Point of Delivery") at the Water Transport Facility, or if Johnston is a secondary supply, a designated hydrant or point of delivery, which shall be equipped with a Water Meter (defined below) and backflow preventer. CREC shall take title to the Potable Water at the Point of Delivery.

(c) Quantity/Quality. Johnston shall immediately notify CREC of any condition in the Water System of which it learns may affect the quality or quantity of water supplied to CREC by Johnston.

3. Water Supply Terms.

(a) Water Supply Rates.

(i) Rate. As full consideration for Johnston's supply of Potable Water to the Project up to the Maximum Demand Flow Rate, CREC shall pay to Johnston the rate otherwise applicable to all customers located within the Town's service area per one hundred (100) standard cubic feet of Potable Water supplied to the Project. The Town shall not establish a rate applicable solely to CREC.

(ii) Invoices. Within thirty (30) days following the end of the quarter of the calendar year in which the commercial operations date of the Project occurs, Johnston shall send an invoice to CREC detailing CREC's usage as shown on the applicable water meter ("Water Meter"), any usage during the invoiced period by Additional Users (in order to determine any O&M Fee Adjustment or Water Supply Payment Adjustment, if any), and the amount due from CREC for its usage pursuant to this Agreement (an "Invoice"). CREC and Johnston agree that quarterly payment for the first three quarters of the calendar year will be based on actual usage and that the quarterly payment for the fourth quarter of the calendar year will be based on the greater of actual usage or the dollar amount required to meet the minimum annual payment. Johnston shall thereafter send an Invoice to CREC within thirty (30) days following each successive quarter during the Term.

(iii) *Audit.* Johnston shall maintain records documenting all relevant costs and usage by CREC and any Additional Users, and Johnston shall make the same available to CREC for viewing and copying upon reasonable notice. CREC shall have the right, within thirty (30) days following receipt of any Invoice, to dispute any item shown on such Invoice (including, without limitation, the payment due and usage) by giving written notice to Johnston of such dispute. Following CREC's delivery of any such dispute notice, the Parties shall work in good faith to determine whether the relevant Invoice contains incorrect information or whether the Water Meter has transmitted incorrect information.

(b) Capacity Reserve for Johnston to Serve the Secondary Source of Water Supply:

(i) *Secondary Supply Delivery.* If Johnston is the secondary source of water supply, the Town will identify a hydrant(s) or point of delivery within Johnston that is serviced by Johnston Water where trucks owned or contracted by CREC could be filled on an as-needed basis subject to the above water supply rates. "Secondary Source of Water Supply" is defined to mean that CREC has a Water Supply and Economic Development Agreement within the City of Woonsocket as the "Primary Water Supplier".

(ii) *Capacity Reserve Payment.* If Johnston is the Secondary Source of Water Supply, CREC will pay to the Town of Johnston Two Hundred Thousand and 00/100 (\$200,000.00) Dollars per year for capacity reserve for Johnston to act as the Secondary Source of Water Supply for the Project. Said annual payment will commence upon commercial operations of the Project and shall extend for a ten (10) year term with CREC having two, five (5) year options to extend. In addition, CREC shall pay the Town for any water consumed from the Town as the Secondary Source of Water Supply at the rates set forth in Section 3(a).

4. Economic Development Terms (Johnston Serving as a Primary Water Supplier to the Project).

- (a) Development and Location of Water Transport Facility. CREC will purchase a parcel of real estate within Johnston that is served by Johnston water. CREC will either construct a new Water Transport Facility or recondition an existing building, should there be a suitable building on the selected site. CREC will work with appropriate staff from Johnston to identify a suitable parcel. CREC also reserves the flexibility to lease and develop a suitable parcel. Notwithstanding, CREC and Johnston shall enter into a payment in lieu of taxes agreement (the "PILOT Agreement") applicable to the Water Transport Facility including all associated trucks, equipment and other real and tangible property for a term of twenty (20) years. The payments under the PILOT Agreement shall be in lieu of any and all taxes, assessments, levies, and/or tariffs that may be in existence or may be enacted relative to the Water Transport Facility, the associated trucks, equipment and all related real and tangible property. The payments in lieu of such taxes by CREC to the Town of Johnston shall be Two Hundred Thousand and 00/100 (\$200,000.00) Dollars per year for the twenty (20) year term of the PILOT Agreement.
- (b) Direct Payment to Johnston General Fund for Taxpayer Relief. During the term of this Agreement, CREC shall pay to the Johnston General Fund for taxpayer relief the sum of Five Hundred Thousand and 00/100 (\$500,000.00) Dollars per year with a three (3%) percent escalation every year. Said payments will commence upon commercial operation of the Project.
- (c) Contribution. For the first five (5) years of this Agreement, CREC will make a contribution to Johnston of Two Hundred Thousand and 00/100 (\$200,000.00) per year that will be utilized for

youth programs at the Administration's discretion. Said contributions will commence upon commercial operation of the Project.

(d) Termination of Economic Development Payments. The economic development payments as set forth in subparagraphs (a)-(c), above, shall continue during the term of this Agreement, so long as the Project remains licensed by the Rhode Island Energy Facility Siting Board, the Water Transport Facility continues to operate and be supplied water in the amounts set forth herein, and there has been no material breach of this Agreement. If during the term of this Agreement, such an event occurs, payments shall cease.

(e) Secondary Source of Water Supply. The Town, if it becomes the Secondary Source of Water Supply, shall not be entitled to the payments defined in this Section, notwithstanding any other provisions in this Agreement.

5. Term. This Agreement shall be for an initial term ("Initial Term") commencing on the Effective Date and continuing until the twentieth (20th) anniversary of the date after the Project begins commercial operations (the "Term"). CREC has the exclusive option of extending the Agreement for successive five (5) year period, CREC can terminate the Agreement after the Initial Term for any reason by providing written notice to the Town.

6. Termination.

(a) Notice. CREC shall have the right to terminate this Agreement for Cause effective upon written notice from CREC to Johnston. Following CREC's termination of this Agreement, neither Party shall have any obligation to the other Party under this Agreement. As used herein, "Cause" means CREC's decision (in its sole discretion) to either (i) discontinue the development of the Project prior to the commencement of construction of the Project as a result of CREC's inability to secure the necessary permits, licenses or regulatory approvals for the Project or obtain financing for the Project; (ii) suspension or termination of the Project's licensure; or (iii) CREC's decision to terminate commercial Project operations; or (iv) in the event that the Town is in breach of this Agreement.

7. Representations and Warranties.

(a) CREC's Representations and Warranties. CREC hereby represents, warrants and covenants to Johnston that:

(i) CREC has the unrestricted right and authority to execute this Agreement. Each person signing this Agreement on behalf of CREC is authorized to do so. Upon execution by all Parties hereto, this Agreement shall constitute a valid and binding agreement enforceable against CREC in accordance with its terms.

(ii) CREC has the ability to adjust its daily Water Demand through the use of on-site storage tanks and other operational adjustments between the Standard Demand Flow Rate and the Increased Demand Flow Rate when operating on natural gas. CREC also has the ability to adjust its daily demand for truck deliveries for any of the Demand Flow Rates by relying on such on-site tanks.

(b) Johnston's Representations and Warranties. Johnston hereby represents, warrants and covenants to CREC that:

(i) Johnston is the sole owner of the Water System and has been explicitly authorized to enter into this Agreement pursuant to an approved resolution of the Johnston Town Council attached hereto as Exhibit A (the "WSA Approval").

(ii) Johnston has the unrestricted right and authority to supply the Water Demand to CREC.

(iii) Johnston has the unrestricted right and authority to execute this Agreement. Each person signing this Agreement on behalf of Johnston is authorized to do so. Upon execution by all Parties hereto, and upon approvals as may be required by Johnston as a regulated water supplier, this Agreement shall constitute a valid and binding agreement enforceable against Johnston in accordance with its terms.

(iv) No litigation is pending, and, to the best of Johnston's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or which could affect, the Water System or the ability to deliver the Water Demand. If Johnston learns that any such litigation, action, claim or proceeding is threatened or has been instituted, Johnston shall promptly deliver notice thereof to CREC and provide CREC with periodic updates of the status of said litigation, action, claim or proceeding that is ongoing.

8. Assignment.

(a) Collateral Assignments. CREC shall have the absolute right in its sole and exclusive discretion, without obtaining the consent of Johnston, to finance, mortgage, encumber, hypothecate, pledge or transfer to one or more Mortgagees (defined below) any and all of the rights granted hereunder, and/or any or all rights and interests of CREC in and to the Project.

(b) Non-Collateral Assignments. CREC shall have the right, without the prior consent of Johnston, to sell, convey, assign or transfer any or all of its rights hereunder provided such transfer is related to the Project. CREC shall be relieved of all of its obligations arising under this Agreement from and after the effective date of such transfer, provided such rights and obligations have been assumed by such transferee.

(c) Acquisition of Interest. The acquisition of all interests, or any portion of interest, in CREC by another person shall not require the consent of Johnston or constitute a breach of any provision of this Agreement and Johnston shall recognize the person as CREC's proper successor.

(d) Assignment by the Town. The Town may assign this Agreement and the obligations hereunder to an entity that has acquired or leased the Town's water system so long as said entity enters into an agreement in a form acceptable to CREC, acceptance shall not unreasonably be withheld, acknowledging the obligations to supply water under the terms hereof. Notwithstanding, if the Town becomes the Primary Water Supplier to the Project, then the payments under Section 4, hereof, shall continue to be made to the Town for the term of this Agreement, despite such assignment, so long as the new operator of the Town's water system is in compliance of the terms and conditions of this Agreement.

9. Mortgagee Protection. In the event that any document memorializing a security interest in this Agreement or in any part of the Project (a "Mortgage"), is entered into by CREC, then any person who is the mortgagee, grantee or beneficiary of a Mortgage (a "Mortgagee") shall, for so long as its Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 9. CREC shall send written notice to Johnston of the name and address of any such Mortgagee;

provided that failure of CREC to give notice of any such Mortgagee shall not constitute a default under this Agreement and shall not invalidate such Mortgage.

(a) Notice of Default; Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any default of CREC, Johnston shall give a Notice of Default (defined below) to each Mortgagee of which it has notice, concurrently with delivery of such notice to CREC. In the event Johnston gives a Notice of Default, the following provisions shall apply:

(i) The Mortgagee shall have the same period after receipt of the Notice of Default to remedy the default, or cause the same to be remedied, as is given to CREC, plus, in each instance, the following additional time periods: (i) thirty (30) days in the event of any monetary default; and (ii) sixty (60) days in the event of any non-monetary default. The Mortgagee shall have the absolute right to substitute itself for CREC and perform the duties of CREC hereunder for purposes of curing such default. Johnston expressly consents to such substitution, agrees to accept such performance. Johnston shall not take any action to terminate this Agreement in law or equity prior to the expiration of the cure periods available to a Mortgagee as set forth above.

(ii) Neither the bankruptcy nor the insolvency of CREC shall be grounds for terminating this Agreement as long as all material obligations of CREC under the terms of this Agreement are performed by the Mortgagee in accordance with the terms hereunder.

(b) New Agreement to Mortgagee. If this Agreement terminates because of CREC's default or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, Johnston shall, upon written request from any Mortgagee within ninety (90) days after such event, enter into a new water supply agreement on the following terms and conditions:

(i) The terms of the new agreement shall commence on the date of termination, rejection or disaffirmance and shall continue for the remainder of the Term and subject to the same terms and conditions set forth in this Agreement.

(ii) The new agreement shall be executed within thirty (30) days after receipt by Johnston of written notice of the Mortgagee's election to enter a new agreement, provided said Mortgagee: (i) pays to Johnston all monetary charges payable by CREC under the terms of this Agreement up to the date of execution of the new agreement, as if this Agreement had not been terminated, rejected or disaffirmed; (ii) performs all other obligations of CREC under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Mortgagee; and (iii) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by CREC and would have accrued under this Agreement up to the date of commencement of the new agreement, except those obligations which constitute non-curable defaults.

(iii) At the option of the Mortgagee, the new agreement may be executed by a designee of such Mortgagee without the Mortgagee assuming the burdens and obligations of CREC thereunder.

(iv) The provisions of this Section 8 shall survive the termination, rejection or disaffirmance of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 9 were a separate and independent contract made by Johnston, CREC and such Mortgagee, and, from the effective date of such termination, rejection or disaffirmance of this Agreement to the date of execution and delivery of such new agreement, such Mortgagee may use and enjoy the Potable Water without hindrance by Johnston or any person claiming by, through or

under Johnston, provided that all of the conditions for a new agreement as set forth herein are complied with.

(c) Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Agreement to the contrary, the Parties agree that so long as there exists an unpaid Mortgage, this Agreement shall not be modified or amended and Johnston shall not accept a cancellation, termination or release of this Agreement from CREC prior to expiration of the Term without the prior written consent of the Mortgagee. This provision is for the express benefit of and shall be enforceable by such Mortgagee.

(d) No Waiver. No payment made to Johnston by a Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement; and a Mortgagee, having made any payment to Johnston pursuant to Johnston's wrongful, improper or mistaken notice or demand, shall be entitled to the return of any such payment.

(e) Estoppel Certificates, Etc. Johnston shall execute such estoppel certificates (certifying as to such matters as CREC may reasonably request, including without limitation that no default by CREC then exists under this Agreement, if such be the case) and/or consents to assignment (whether or not such consent is actually required) as CREC, any transferee of CREC or Mortgagee may reasonably request from time to time. The failure of Johnston to deliver any estoppel certificate within fifteen (15) days after CREC's written request therefor shall be conclusive evidence that (i) this Agreement is in full force and effect and has not been modified; (ii) any amounts payable by CREC to Johnston have been paid through the date of such written request; (iii) there are no uncured defaults by CREC; and (iv) the other certifications requested by CREC in its estoppel, are in fact, true and correct.

10. Default/Remedies.

(a) Default. If a Party defaults in or otherwise fails to perform an obligation under this Agreement, the non-defaulting Party shall not have the right to exercise any remedies hereunder if the default is cured by the defaulting Party within sixty (60) days of receiving written notice of such default specifying in detail the default and the requested remedy (a "Notice of Default"), provided, that if the nature of the default requires, in the exercise of commercially reasonable diligence, more than sixty (60) days to cure, the non-defaulting Party shall not have the right to exercise any remedies hereunder as long as the defaulting Party commences performance of the cure within sixty (60) days of receipt of Notice of Default and thereafter completes such cure with commercially reasonable diligence. Further, if the Parties have a good faith dispute as to whether a payment is due hereunder, the alleged defaulting Party may deposit the amount in controversy (not including claimed consequential, special, exemplary or punitive damages) into escrow with any reputable third party escrowee, or may interplead the same, which amount shall remain undistributed and shall not accrue interest penalties, and no default shall be deemed to have occurred, until final decision by a court of competent jurisdiction or upon agreement by the Parties. No such deposit shall constitute a waiver of the defaulting Party's right to institute legal action for recovery of such amounts.

(b) Remedies. Except as qualified by Section 9 regarding Mortgagee Protections, should a default remain uncured beyond the applicable cure periods, the non-defaulting Party shall have the right to exercise any and all remedies available to it at law or in equity, all of which remedies shall be cumulative, including the right to enforce this Agreement by injunction, specific performance or other equitable relief.

11. Indemnities. Each Party (the "Indemnifying Party") shall defend, indemnify, and hold harmless the other Party (the "Indemnified Party"), including its agents, servants, employees, affiliates;

contractors, licensees, invitees, and/or elected officials, from and against all liability, damage, loss, costs, (including reasonable attorneys' fees) claim, demands, and actions of any nature whatsoever for any personal injury, death, physical damage or fines which arise out of or are connected with, or claimed to arise out of or be connected with, the Indemnifying Party's violation of any applicable water use regulations, hazardous materials regulations, or regulations promulgated by RIDEM and/or RIDOH.

12. **Notice.** All notices or other communications required or permitted by this Agreement, including payments to Johnston, shall be in writing and shall be deemed given when personally delivered to Johnston or CREC, the same day if sent via facsimile with confirmation, or the next business day if sent via overnight delivery or five (5) days after deposit in the United States mail, first class, postage prepaid, certified, addressed as follows:

If to Johnston:

1385 Hartford Ave
Johnston RI 02919
Fax: 401-553-8835
Attn: M Lyon

If to CREC:

c/o Inyenergy LLC
One S. Wacker Drive, Suite 1800
Chicago, Illinois 60606
Fax: 312-224-1444
Attn: General Counsel

Either Party may change its address for purposes of this paragraph by giving written notice of such change to the other Parties in the manner provided in this paragraph.

13. **Notice of Primary or Secondary Supplier Status.** CREC shall provide Johnston with written notice on or before July 11, 2017 as to whether Johnston will serve as a primary or secondary supplier. If Johnston is a secondary supplier, the payments under Section 4 above, would not be applicable.

14. **Miscellaneous.**

(a) **Emergency.** Either party may terminate or suspend its obligations under this Agreement by reasonable advance written notice to the other in order to protect the public health and safety of its agents, servants, employees, affiliates, contractors, licensees, invitees and inhabitants pursuant to a written declaration of a health or safety emergency by either Party. Both Parties shall forthwith thereafter jointly address any such issues so as to promptly remedy the same and effectuate the intention and purposes of this Agreement.

(b) **Force Majeure.** If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure (defined below), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference, and the time to so perform herein shall be extended for such period of time. The affected Party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. As used herein, "Force Majeure" means fire, earthquake, flood, or other casualty, condemnation or accident, strikes or labor disputes, war, civil strife or other violence, any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility, or any other act or condition beyond the reasonable control of a Party hereto.

(c) **Successors/Assigns.** This Agreement shall inure to the benefit of and be binding upon CREC and Johnston and, to the extent provided in any assignment or other transfer permitted hereunder, any

transferee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them.

(d) Entire Agreement/Amendments. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between Johnston and CREC respecting its subject matter, and supersedes any and all oral or written agreements. All of the provisions of any exhibit hereto shall be treated as if such provisions were set forth in the body of this Agreement and shall represent binding obligations of each of the Parties as part of this Agreement. Any agreement, understanding or representation respecting the Property, or any other matter referenced herein not expressly set forth in this Agreement or a previous writing signed by both Parties is null and void. No purported modifications or amendments, including without limitation any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party unless in a writing signed by both Parties. Provided that no material default in the performance of CREC's obligations under this Agreement shall have occurred and remain uncured, Johnston shall cooperate with CREC in amending this Agreement from time to time to include any provision that may be reasonably requested by CREC for the purpose of implementing the provisions contained in this Agreement or for the purpose of preserving the security interest of any transferee of CREC or Mortgagee.

(e) Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Rhode Island. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the state courts located in the Providence County, Rhode Island. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Agreement and is hereby waived. The prevailing Party in any action or proceeding for the enforcement, protection or establishment of any right or remedy under this Agreement shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing Party.

(f) Partial Invalidity. Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding.

(g) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

(h) Partnership. Nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership, covenant, obligation or liability on or with regard to any one or more Parties in this Agreement.

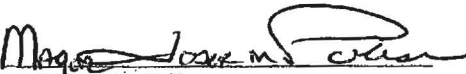
(i) Contingencies to Agreement. This Agreement is expressly subject to and conditioned upon the Project securing final licensure from the Rhode Island Energy Facility Siting Board with all applicable appeals periods having expired, said licensure remaining in full force and effect during the Term hereof, and the Project coming to financial closure on Project finance on terms deemed acceptable to CREC in CREC's sole discretion. If said contingencies are not satisfied, the obligations of CREC and/or CREC hereunder do not come into force and effect.

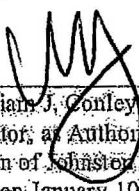
[signatures on following page].

IN WITNESS WHEREOF, CREC and Johnston, acting through their duly authorized representatives, have executed this Agreement with the intent that it be effective as of the Effective Date, and certify that they have read, understand and agree to the terms and conditions of this Agreement.

JOHNSTON:

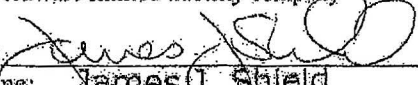
TOWN OF JOHNSTON

By: 
Name: Joseph M. Polisena
Title: Mayor

By: 
Name: William J. Conley Jr., Esq.
Title: Solicitor, as Authorized by the Town Council
for the Town of Johnston, having ratified this
Agreement on January 10, 2017. Said resolution
ratifying the Agreement as attached hereto as
Exhibit A.

CREC:

CLEAR RIVER ENERGY LLC,
a Delaware limited liability company

By: 
Name: James J. Shield
Title: Vice President