



Office of the City Solicitor

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September 26, 2014

Marcel Groen, Esquire
Fox Rothschild, LLP
2700 Kelly Road, Suite 300
Warrington PA 18976

RE: Delta Thermo Energy

Dear Marcel:

This letter will serve as notice of immediate termination of the Agreement dated March 29, 2012 (the "Agreement") between Delta Thermo Energy A, LLC ("DTE") and the City of Allentown ("City").

DTE has consistently failed to satisfy the financing requirement in Section 13.5 of the Agreement. That provision required DTE to "complete its financing by January 31, 2013." It permitted DTE to negotiate an extension of that deadline, provided that the City would be provided with a "highly confident" comfort letter from an investment bank that had been formally engaged by DTE to underwrite such financing, indicating that the financing is anticipated to close within a [specified] period." DTE did notify the City that it would be unable to complete its financing by January 31, 2013, and supplied a letter from Citigroup stating that Citigroup was "highly confident" that it would be able to underwrite the project and complete that process by March 31, 2013. Based upon that representation, the City negotiated in good faith with DTE and agreed to an extension of the financing deadline to March 31, 2013.

Notwithstanding that Section 13.5 contemplated a single extension of the financing deadline, on several additional occasions, the City agreed in good faith to further extensions requested by DTE pursuant to "highly confident" letters provided by Citigroup. The most recent such extension was agreed to in December, 2013, and extended the financing deadline until April 1, 2014.

When it became apparent that the April 1 deadline would not be met, DTE requested that the City agree to a further extension. In my letter of March 31, 2014, I advised you that in order to consider a further extension, DTE would be required to submit a new "highly confident" letter from an investment banker strictly in conformance with the provisions of Section 13.5. In that letter, I reminded you that the final completion date of January 1, 2016 was not subject to

extension. No such letter was received at that time, and no extension was agreed to.

In June, you provided me with additional documentation; including a letter from Citigroup dated April 16 in which Citigroup represented that it was "highly confident" that it could complete financing of the project by September 1, 2014. In my letter of July 2, I asked you about the feasibility of completing construction by the critical date of January, 2016 if financing were not completed until September, 2014. Again, on July 21, I re-emphasized the importance of the City receiving adequate assurances that the project could be completed and operational by January 1, 2016, and I raised the apparent inconsistency between the status of permit appeals and the conditions of the Citigroup "highly confident" letter. On July 29, I responded that your response did not satisfy the City's concerns.

In response to my additional requests for documented assurances that the project could be operational by January 1, 2016, you wrote me on August 26, renewing a request to meet with the Mayor and requesting permission to access the site and to begin certain preliminary work on September 2, 2014. I responded on August 29, denying your request for access to begin work.

You responded to that letter on September 3, 2014, advising the City, for the first time, that DTE was no longer working with Citigroup to pursue financing, but stating that it was planning to have the financing underwritten by Stern Brothers, with an investment from Translux. You further stated that you contractor had provided a timeline for completion of the project by January 1, 2016.

In my response the following day, I again requested that you provide certain enumerated documents as a condition for the City to consider the feasibility of proceeding with the project within the required completion date of January 1, 2016.

On September 16, I received a binder of documents, which included a term sheet between DTE and Stern Brothers, and a letter from Stern Brothers stating its "confidence" in the ability to finance the project, conditioned, *inter alia*, on an extension of the final deadline for project completion to June 1, 2016, and providing no date for the completion of the financing, as would be required under Section 13.5 of the Agreement.

Putting aside the insufficiency of the response in several respects, the key factor is that it is now beyond doubt that DTE cannot satisfy the final completion date of January 1, 2016. Not only is DTE's financing commitment expressly conditioned upon an extension of this firm date, but among the conditions for financing is final approval of the issuing of bonds by PEDFA. This must come from the board of PEDFA, and while DCED has agreed to increase the amount of financing that it would support and has yet again extended the deadline to December 31, 2014, PEDFA approval has not been obtained, and is not likely to be obtained within that time frame.

Further, it now appears from the materials provided to us last week that DTE has breached the Non-Assignment provision of Section 17.5.1 of the Agreement by the transfer of ownership of 51% of DTE to a third party, without even prior notice to the City, let alone the City's prior consent.

Moreover, DTE is in breach of its obligations under Sections 7.3.1 to apply for and obtain all Required Permits and Required Approvals. Throughout the exchanges of communications over the course of this year, in particular in failing to provide in full the documentation requested by the City, DTE has also breached its obligation under Section 7.3.8 to “deliver, execute and make any and all future assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the City of the rights and benefits provided” under the Agreement.

The City has been extremely flexible in agreeing to extend the financing deadline and the commencement of work on the project (the Construction Start Date was to be March 31, 2013). However, DTE has consistently failed to advance the project, and clearly cannot meet the deadline for final project operation. Under the circumstances, the City has no reasonable alternative than to declare the Agreement terminated.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jerry A. Snyder".

Jerry A. Snyder
City Solicitor

JAS/lis

cc: Mr. Van Naarden
Ed Pawlowski, Mayor