

NOTICE OF VIOLATION OF THE CODE OF CONDUCT FOR WIND FARM DEVELOPMENT

Pursuant to section IV(4) of the Wind Farm Code of Conduct, on October 18, 2018, Assistant Attorney General Judith Malkin advised Invenergy Wind Development LLC (hereinafter "Invenergy") of the nature of complaints received by the Attorney General's Office alleging that Invenergy had violated the Code of Conduct for Wind Farm Development (hereinafter "Code" or "Code of Conduct"). Invenergy was offered the opportunity to respond.

The complainants alleged that Invenergy failed to publicly disclose the financial interests of Freedom and Farmersville municipal officers, and/or their relatives, who had entered into wind lease agreements with Invenergy, and that these municipal officers were continuing to vote on wind-related matters. Additionally, the complainants reported that Invenergy had not posted a copy of the Wind Code of Conduct in its work location in Arcade, NY, and averred that the project manager had not been trained as required by the Code.

In Invenergy's response dated November 20, 2018, Michael S. Blazer, Senior Vice President and Special Counsel, documented that Invenergy conducted employee training on the Code in May 2016 and October 2018. According to Mr. Blazer, a copy of the most recent Code of Conduct has been available in the Ithaca office since early 2018, and was added to the Arcade office in October 2018. Mr. Blazer also documented that Invenergy updated its financial disclosure list, which has been published on Alle-Catt's website and forwarded to the Clerks for the Towns of Freedom, Farmersville, Centerville, Rushford and Arcade.

In its supplemental response dated February 25, 2019, Invenergy provided updated financial disclosure information for its other projects in New York State. In this correspondence, Invenergy acknowledged that it had failed to fully document its communications with local municipal officers and to publish updated financial disclosure lists as required by the Code.

Based on a review of the documents submitted, the Attorney General concludes that Invenergy has violated sections I, II and III of the Code as set forth below. The Attorney General notes, however, that Invenergy promptly corrected the violations and reports that it has implemented new protocols to ensure prompt and complete distribution and publication of disclosure lists in the future.

Section I(1) of the Code of Conduct prohibits the company from knowingly, directly or indirectly, offering to or conferring on, a municipal officer or his relative, or any third party on behalf of such municipal officer, any benefit, unless such municipal officer recuses him or herself from their official duties in connection with wind farm development. Accordingly, any compensation provided by Invenergy to such municipal officer, or to his or her relative, must be contingent on prior recusal. Furthermore, Invenergy must disclose in writing to the Attorney General any agreement that is

NOTICE OF VIOLATION OF THE CODE OF CONDUCT FOR WIND FARM DEVELOPMENT

contingent on recusal. For purposes of section I(1), only the non-discretionary duties of a Town Clerk or Tax Assessor are excluded from the definition of “official duties in connection with the Wind Company’s Wind Farm Development.”

Although Invenergy’s lease agreements include language regarding potential conflicts of interest for municipal officers and their recusal obligations,¹ we find that this is too broad to satisfy the requirements of Section I(1). Additionally, it does not appear that Invenergy, prior to lease signing, inquires of landowners if they or their relatives are municipal officers, or whether the municipal officer agrees to recuse him or herself from “any official duties in connection with the Wind Company’s Wind Farm Development.”

Section II of the Code of Conduct addresses Invenergy’s obligation to make public disclosures of any wind agreement it has with municipal officers and their relatives. For purposes of this section, relative includes spouse or domestic partner, child, step-child, parent, dependent and siblings. These disclosures must be made prior to Invenergy pursuing, either formally or informally, any approvals before any municipal board, including a town board, and/or submitting a Public Involvement Plan (“PIP”) to the Article 10 Siting Board, whichever is sooner. Section II(3) requires that the “Disclosure List” be updated or modified if a Wind Agreement is signed with any Municipal Officer or Relative after the initial disclosure date. The Disclosure list must include the full names and addresses of the parties to the wind agreement, identify the party that is a municipal officer or related to a municipal officer (specifying the relationship), provide a full description of the property subject to the wind agreement, and list the essential terms of the agreement, including a range of actual monetary consideration offered by the wind company. Section I(1) requires that the list be submitted in writing for public inspection to the Clerk of the municipality, published in a newspaper having a general circulation in the municipality, displayed on a website hosted by the wind company, and submitted in writing to the Office of the Attorney General. Section II(2) requires that Invenergy file, record and index with the County Clerk, an abstract or memorandum of each agreement. Prior to the Attorney General’s inquiry, Invenergy was not in compliance with section II(1-3) of the Code.

¹ The lease states that receipt of monetary and other good and valuable consideration may represent a conflict of interest for a public official and requires that the official agree to recuse him/herself from all such decisions related to Invenergy’s Development Rights, *if such recusal is required by law and not impracticable given the obligations of the public official’s position*. Additionally, the lease language informs a municipal officer that, if his spouse, child or other dependent has a financial interest in the project, he must so disclose at an open meeting, prior to participating in the decision. However, pursuant to the section I(1) of the Code, the municipal officer must agree to recuse him or herself from any official duties in connection with wind farm development if their relative (defined as spouse, domestic partner, child, parent or other dependent) has a financial interest in Invenergy’s wind development

**NOTICE OF VIOLATION OF THE
CODE OF CONDUCT FOR WIND FARM DEVELOPMENT**

The Attorney General's review of potential violations of the Wind Code of Conduct does not encompass the complainant's allegations that conflicted municipal officers are continuing to vote on wind-related matters. Whether or not a municipal officer has a conflict of interest requiring their recusal from voting on wind-related matters is an ethical issues that should be addressed at the local government level, by the town attorney or local or county ethics board. Invenergy's obligation pursuant to section III(6) the Code is, once it learns that a municipal officer or their relative has entered into a lease agreement, to (i) notify the attorney for the municipality and (ii) recommend to the municipal officer that he or she consult with the municipality's attorney concerning his or her legal obligations, including any obligation to recuse him or herself. A form letter for the municipal officer is incorporated into the Code at section VI(3). These notice requirements were included to ensure that these matters are properly addressed at the local government level. By not sending the required notices to the Town Attorney and Municipal Officers, Invenergy violated section III(6) of the code.

As set forth above, Invenergy has failed to meet its obligations pursuant to the Code of Conduct. The Code of Conduct establishes these procedures in order to avoid conflicts of interest, or even the appearance of conflicts of interest. By entering into lease agreements with municipal officers without first securing commitments from the municipal officers to recuse themselves from any official duties in connection with wind farm development; by failing, upon learning an individual is a municipal officer or relative of a municipal officer, to provide written notice to town attorneys and to the municipal officer of their potential obligation to recuse themselves from official duties in connection with wind farm development; by failing to update and publicly disclose its financial disclosure by posting it on the Alle-Catt website, submitting it to the Town Clerk, publishing it in the local newspaper and providing it to the Attorney General's Office; and by failing to post a copy of the Code in its Arcade office, Invenergy created the appearance of undisclosed conflicts of interest.


Based on the Attorney General's investigation, including information provided to this Office by Invenergy, it is determined that a preponderance of the evidence establishes that Invenergy violated the Code of Conduct in a material respect. As set forth above, the Attorney General has considered the relative severity of, and relative harm to the public integrity occasioned by such violation, and hereby assesses a penalty in the amount of \$25,000.

**NOTICE OF VIOLATION OF THE
CODE OF CONDUCT FOR WIND FARM DEVELOPMENT**

Pursuant to paragraph IV(3) of the Code of Conduct, Invenergy has the right to challenge in court the Attorney General's finding of a violation of the Code and its determination of the penalty amount on the grounds that the determinations are not

supported by a preponderance of the evidence. However, Invenenergy shall pay the assessed penalty to a reserve fund of the State of New York pending the resolution of any court challenge. In the event that the Attorney General's determination is overturned upon judicial review, the penalty payment, including accrued interest, shall be returned to Invenenergy

Dated: April 5, 2019



Jill Faber
Deputy Attorney General for Regional Affairs