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October 12, 2016

Todd A. Bianco, Ph.D.
Coordinator
Rhode Island Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, RI 02888

Re: Invenergy Thermal Development LLC – Clear River Energy Center
Docket No. SB-2015-06

Dear Dr. Bianco:

Enclosed for filing in this matter are an original and ten (10) copies of the Town of Burrillville's Statement Regarding Show Cause Hearing. Electronic copies have been sent to the service list.

If you need any further information, please do not hesitate to contact me.

Very truly yours,


Michael R. McElroy

cc: Service List

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD**

In Re: Invenergy Thermal Development LLC's :
Application to Construct the Clear River Energy : Docket No. SB-2015-06
Center in Burrillville, Rhode Island :

**THE TOWN OF BURRILLVILLE'S STATEMENT REGARDING
SHOW CAUSE HEARING**

The Town of Burrillville ("Town"), an intervenor as of right in this docket, hereby reaffirms and restates its previous request that the Energy Facility Siting Board ("EFSB" or "Board") enter an Order dismissing Invenergy Thermal Development LLC's ("Invenergy") Application to Construct the Clear River Energy Center ("Application") and closing the docket. It is the Town's firm position that this docket should be immediately dismissed and closed, not suspended.

A. Background

On October 29, 2015, Invenergy filed its Application before the EFSB to construct a natural gas/oil-fired electric generating facility of up to 1,000 MW in Burrillville, Rhode Island. The EFSB requested that several entities in the Town render advisory opinions as to the proposed facility's impact on the Town, its residents, and its environment.¹ Since that time, the Town has spent significant time evaluating Invenergy's Application, as well as great sums of money on attorneys and consultants. The deadline for filing all of the Advisory Opinions was September 12, 2016, and the Town met that deadline.

An electric generating facility cannot operate without a sufficient water supply. Invenergy's Application originally envisioned the use of water from MTBE-polluted Well 3A of

¹ In its Preliminary Decision and Order, the EFSB directed the following Town entities to render advisory opinions regarding Invenergy's Application: (a) Burrillville Zoning Board of Review, (b) Burrillville Building Inspector, (c) Burrillville Planning Board, and (d) Burrillville Tax Assessor (collectively "Entities").

the Pascoag Utility District (PUD).² However, on August 19, 2016, the PUD's Board of Utility Commissioners voted not to supply the project with water and terminated its Letter of Intent with Invenergy, closing the door on Invenergy's planned use of Well 3A. On August 22, 2016, Invenergy informed the EFSB that it would not be using the PUD well, and that it would provide the EFSB with a new proposal for a water source. Fifty (50) days have passed, yet Invenergy has failed to provide a water plan.

EFSB Rule 1.6(b)(11) requires all applications filed with the EFSB to include "[w]here applicable, required support facilities, e.g. road, gas, electric, *water*, telephone, and an *analysis of the availability of the facilities and/or resources to the project*." (Emphasis added.)³

On September 13, 2016, the Town filed a Motion to Dismiss and close this docket. The Town explained that Invenergy's failure to timely provide the EFSB and the Town with information regarding its proposed water supply rendered its Application incomplete.⁴ An incomplete Application cannot be evaluated in any meaningful way.

The Town itself, the Burrillville Planning Board and the Burrillville Zoning Board of Review, formally requested information from Invenergy regarding its proposed water source on multiple occasions.⁵ Invenergy repeatedly promised to provide such information, but to date has refused to do so. In a Motion for a 30-day extension filed by Invenergy on September 9, 2016,

² In its letter to the EFSB dated October 28, 2015, Invenergy stated: "The water supply for the Facility will be provided by the Pascoag Utility District through a dedicated pipeline to be installed from an existing PUD well to the Facility."

³ Moreover, R.I.G.L. §42-98-2(8)(iii) of the Energy Facility Siting Act ("Act") requires the EFSB to review water supply information for any energy generation project in order to determine whether certain criteria are met.

⁴ On September 19, 2016, CLF also served a Motion to Dismiss, based on incompleteness of the Application.

⁵ For example, the Town issued a data request to Invenergy on August 10, 2016, which stated "Please identify in detail all water supplies for the proposed facility that you currently have under consideration and the development status of each one." In its response, dated August 25, 2016, Invenergy refused to provide any details related to its proposed water source. Similar responses were given to requests from the Planning and Zoning Boards.

over a month ago, Invenergy stated that it “expects” to have a water source “within the coming weeks.”⁶

Due to the lack of information regarding Invenergy’s proposed water source, the rights of the Town, its Entities and its residents have been infringed upon. Without the water information, the Town, its Entities and residents have been denied a meaningful opportunity to fully evaluate and be heard on Invenergy’s Application and its impact on the Town’s residents and the Town’s environment, especially water quality and quantity issues, and any projected impacts on the aquifer that serves the Town’s wells.

On September 29, 2016, this Board issued an Amended Notice of Open Meeting for October 3, 2016 at 2:00 p.m. That Open Meeting Notice made it clear that because the Board would be conducting an Open Meeting and not a hearing, the Board would not be accepting oral public comments. The Notice also listed certain specific motions that the Board planned to rule upon and also stated that the Board “may also discuss other issues related to Invenergy’s application.”

At the October 3, 2016 Open Meeting, after ruling on certain pending motions (but not on the Town’s or CLF’s Motions to Dismiss), Board Member Coit *sua sponte* made a “suggestion” (tr., at 16). She pointed out that “we lack a water supply plan.” (at 16). On August 19, the Pascoag Utility District letter of intent was terminated, but six (6) weeks later “. . . we don’t have a water supply plan and alternate . . . we just have a big gap. We have a facility that needs up to one million gallons a day in some instances, and we don’t have any plan for water supply.” (tr., at 16).

She stated that the water supply “. . . is a key component of the overall operations of the facility, not just an area where we need some further evidence.” (tr., at 17). She also stated that

⁶ On September 20, 2016, the EFSB granted Invenergy’s Motion.

at this point “. . . **the application . . . isn’t complete.**” (tr., at 17) (emphasis added). She suggested that the EFSB issue a Show Cause Order directing Invenergy to show cause why the Board should not “suspend” the application because “you suspend the process when you have an area that’s not in compliance . . .” (tr., at 17). Therefore, “I feel we should suspend this process . . . until we have . . . the water supply that’s critical . . . to the functioning of the plant in front of us and others so we can evaluate it.” (tr., at 18).

Board Member Agrawall agreed that the water supply plan “is a critical component for this application” and that “. . . for this application to be complete, the Board would like to review the water supply plan.” (tr., at 18). Chairperson Curran also agreed (tr., at 18-19) and the Motion to issue the Show Cause Order passed unanimously.

The EFSB’s legal counsel then pointed out that if a Show Cause Order issued, “. . . we would be required under the rule to **have a hearing** . . . and at that time the applicant could come before the Board and explain why the matter should not be suspended, if they believe the matter should not be suspended for a certain period of time, or until they submit a water plan.” (at 19-20) (emphasis added).

Legal counsel also pointed out that the EFSB “. . . could make specific conditions or place certain conditions on the order for how long the suspension would last, or when the suspension would be rescinded.”

A Show Cause Order was then issued on October 4, 2016. In that Order, the EFSB found that “the lack of information regarding Invenergy’s water supply **renders its application incomplete and therefore not in compliance** with Rule 1.6(b)(4) of the Rules of Practice and Procedure.” (Emphasis added). The EFSB ordered Invenergy to appear on October 13, 2016, “to show cause why the licensing proceeding should not be suspended.”

On October 5, 2016, the Town, CLF and Invenergy notified the Board of the items that would be necessary, at a minimum, to meaningfully evaluate any water plan. A copy of that letter is attached hereto.

B. Dismissal, not suspension, is proper where an application remains incomplete.

To date, the EFSB has not set down a hearing on either the Town's Motion to Dismiss or CLF's Motion to Dismiss, yet this Board has agreed with both the Town and CLF (and made a clear finding) that the lack of a water plan renders Invenergy's application incomplete and not in compliance with EFSB's rules. The underlying basis of both the Town's Motion to Dismiss and CLF's Motion to Dismiss is incompleteness of Invenergy's application. Accordingly, it is the position of the Town that Invenergy's application must be dismissed, not suspended.

The Energy Facility Siting Act has strict time deadlines for consideration of an application. The Town believes those deadlines are intended, at least in part, for the benefit of the Town to avoid endless open-ended and expensive litigation. Therefore, those deadlines should be adhered to by the EFSB unless they are waived by all the parties. The Town is not prepared to waive those time deadlines. The Town has gone to great expense to oppose Invenergy's application. An indefinite suspension is not in the public interest and would violate the Energy Facility Siting Act's strict deadlines. Therefore, the Town reaffirms and restates its previously filed Motion to Dismiss and respectfully but firmly asks that the EFSB immediately dismiss Invenergy's application.

C. The Town has a right to be heard at the Show Cause hearing.

The Town expected that it would have the opportunity to be heard at the Show Cause hearing. The Town sought to confirm this by sending an email dated October 11, 2016 to the

Board's legal counsel, asking if the Town would "have the opportunity to make a brief statement on behalf of the Town at the show cause hearing."

Legal counsel to the Board responded in an email dated October 11, 2016: "No, the purpose of the hearing is only for Invenergy to show cause why the Board should not suspend them [sic] proceedings not for the parties to provide their opinion or comment."

The Town respectfully submits that it has an absolute right to be heard at the Show Cause hearing. It is well settled in Rhode Island "that due process in administrative procedures requires the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Millett v. Hoisting Engineers' Licensing Division of Dept. of Labor*, 377 A.2d 229, 236 (R.I. 1977) (quoting *Raper v. Lucey*, 488 F.2d 748, 753 (1st Cir. 1973)).

The Administrative Procedures Act (APA) R.I.G.L. § 42-35-9(c) mandates that "Opportunity shall be afforded to all parties to respond and present evidence and argument **on all issues involved**" in any contested case. (Emphasis added). This APA statutory directive is incorporated into the Board's Rules. Under Board Rule 1.15(a)(2), the issuance of a Show Cause Order requires the EFSB to hold a show cause **hearing**. (Emphasis added.) Under Board Rule 1.23(a)(4), which deals with hearings, the "Parties shall have the right of presentation of evidence, cross examination, objection, motion and argument."

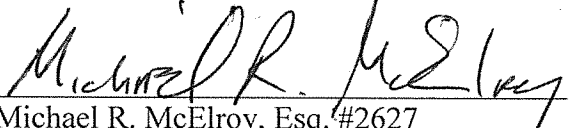
Accordingly, the Town respectfully submits that it has a constitutional, statutory, and regulatory right to be heard at the Show Cause hearing, as do the other parties in this docket. The Town vehemently objects to any attempt by the EFSB to eliminate the Town's right to be heard.

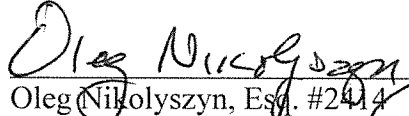
D. Conclusion

Therefore, because this Application is incomplete, the Town respectfully requests that the EFSB immediately dismiss Invenergy's Application to Construct the Clear River Energy Center and close this docket.

Respectfully submitted,
TOWN OF BURRILLVILLE
By its attorneys

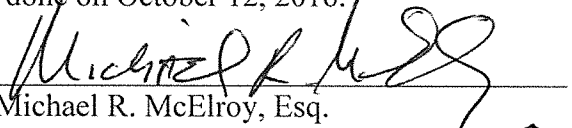
Dated: October 12, 2016


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CERTIFICATE OF SERVICE

I certify that the original and ten photocopies of this Motion were filed by U.S. Mail, postage prepared, with the Coordinator of the EFSB, 89 Jefferson Boulevard, Warwick, RI 02888. In addition, electronic copies of this Motion were served via email on the service list for this docket. I certify that all of the foregoing was done on October 12, 2016.


Michael R. McElroy, Esq.

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October 5, 2016

Patricia Lucarelli, Esq., Legal Counsel
Dr. Todd Bianco, Coordinator
Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, RI 02888

Re: Invenergy – Docket SB-2015-06

Dear Patricia and Todd:

In advance of the October 13, 2016 Show Cause hearing, please let the Energy Facility Siting Board members know that the Town of Burrillville, the Conservation Law Foundation, and Invenergy have all agreed that in order to meaningfully evaluate any water proposal from Invenergy, the following items will be provided by Invenergy, at a minimum:

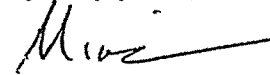
1. The source of the process water (from a municipality or water system, with details),
2. The identity of the municipality or water system,
3. The type of source (groundwater or surface water source),
4. Quantity of water available on a daily basis in gallons per day,
5. Quality of water from a chemical standpoint,
6. Routing or transport of water from source to the proposed facility,
7. Expected treatment of water at source and/or at the facility for use at the facility,
8. If water treatment is required, conceptual process and instrumentation diagram, expected size and location of building to be used for treatment, and the proposed treatment operator,

9. Identification of a redundant/contingent process water source, and
10. The proposed location of the discharge of water from the plant and the expected volume and chemical content of the water at discharge.

I am sending an original and 10 copies of this letter to Todd. I am also sending a copy to the service list.

Thank you.

Very truly yours,



Michael R. McElroy

MRMc:tmg

SB-2015-06 Invenergy CREC Service List as of 10/04/2016

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