

**STATE OF RHODE ISLAND
ENERGY FACILITY SITING BOARD**

In re: Sea 3 Providence, LLC Petition for Declaratory
Order Regarding the Rail Service Incorporation Project
(Providence, RI)

Docket SB-2021-03

**MOTION FOR INTERVENTION
OF CONSERVATION LAW FOUNDATION**

I. Introduction

The Conservation Law Foundation (“CLF”), pursuant to Energy Facility Siting Board (“EFSB” or the “Board”) Rule of Practice and Procedure 1.10(B)(3), respectfully files its Motion for Intervention in this Docket.

On March 15, 2021, Sea 3 Providence, LLC (“Sea 3 Providence”) filed a petition for a declaratory order, asking the Board to declare that a planned alteration to its facility located at 25 Fields Point Drive, Providence, Rhode Island (the “Facility”) is not subject to the jurisdiction of the EFSB because it isn’t an “alteration” as defined by the Energy Facility Siting Act (the “Act”).¹ The proposed expansion project would have several important impacts on Rhode Island’s environment. Because one of the stated goals of the project is to incentivize more Rhode Islanders to burn propane gas, it would cause an increase in state greenhouse gas (“GHG”) emissions. It would also have more localized public health, safety, and welfare impacts on some of the state’s most vulnerable and environmentally overburdened communities. As stated in our

¹ Whether a change to a facility is an “alteration” thus turns on the Board’s determination as to whether the change will have “a significant impact on the environment, or the public health, safety, and welfare.” R.I. Gen. Laws § 42-98-3(b)

previously submitted Memorandum of Law, CLF opposes the instant petition because Sea 3 Providence's proposed project has several significant potential impacts on Rhode Island's environment, and on its public health, safety, and welfare, and is therefore an alteration under the Act requiring the Board's review.

CLF's participation in this proceeding will be in the public interest within the meaning of EFSB Rule 1.10(B)(3).

II. The Intervenor

CLF is New England's leading environmental advocacy organization. Since 1966, CLF has worked to protect New England's people, natural resources, and communities. CLF is a nonprofit, member-supported organization with offices throughout New England. The Rhode Island CLF office is located at 235 Promenade Street, Suite 560, Providence.

CLF promotes clean, renewable, and efficient energy production and heating throughout New England and has an unparalleled record of advocacy on behalf of the region's environmental resources. As part of its 55-year legacy, CLF was a party in the landmark case in which the U.S. Supreme Court ruled that the U.S. Environmental Protection Agency has an obligation under the Clean Air Act to consider regulating tailpipe emissions that contribute to global warming, Massachusetts v. E.P.A., 127 S. Ct. 1438 (2007); CLF obtained an injunction to stop drilling for oil and gas on the environmentally sensitive Georges Bank, Conservation Law Foundation v. Sec'y of the Interior, 790 F.2d 965 (1st Cir. 1986); litigated to ensure enforcement of an earlier settlement agreement in a case stemming from the Big Dig, which settlement agreement required 20 public transit projects in and around Boston including construction of additional subway and rail lines, Conservation Law Foundation v. Romney, 421 F. Supp. 2d 344 (D. Mass. 2006); and successfully advanced legal strategies to restore groundfish to the Gulf of

Maine and southern New England waters. Conservation Law Foundation v. Evans, 211 F. Supp.2d 55 (D.D.C. 2002).

More recently, CLF successfully opposed the permitting of a 1,000-megawatt (“MW”) fossil fuel power plant in Burrillville, Rhode Island before the EFSB. In Re Application of Invenergy Thermal Development LLC’s Proposal for Clear River Energy Center, SB-2015-06.

III. The Standard Governing this Motion

Intervention in EFSB proceedings is governed by EFSB Rule 1.10. CLF does not claim a right to intervene conferred by statute (Section 1.10(B)(1)), nor any direct pecuniary interest (Section 1.10(B)(2)). Instead, CLF bases its motion on the provisions of Rule 1.10(B)(3), which states that a party may intervene where “appropriate” if the party has “any . . . interest of such nature that petitioner’s participation may be in the public interest.”

IV. CLF’s Interest in This Proceeding

As an organization committed to using the law to protect New England’s environment and combat the climate crisis, CLF has extensive experience in energy law and policy, including advocacy for responsible siting and permitting of both fossil fuel and renewable energy projects. In addition to Docket SB-2015-06, CLF has participated, without objection from any party, in many previous Public Utilities Commission (“PUC”) dockets related to energy facility siting and permitting. These include Docket No. 4111 (the first of two dockets concerning Deepwater Wind’s proposed Block Island demonstration wind project); Docket No. 4185 (the second of two dockets concerning Deepwater Wind’s proposed Block Island demonstration wind project); Docket No. 4600 (concerning the development of goals for the future electric system and a benefit-cost framework for proposals before the PUC); Docket No. 4822 (reviewing National Grid’s request for proposals for contracts for up to 400 MW of newly developed renewable

energy resources); and Docket No. 4929 (reviewing National Grid’s contract for the purchase of energy and renewable energy certificates from a proposed 400 MW offshore wind farm).

Additionally, CLF has participated in recent stakeholder processes in Rhode Island related to the siting of solar energy resources, the procurement of 100% of the state’s electricity from renewable resources by 2030, and the transformation of the heating sector. As such, CLF anticipates being able to present information that will be directly relevant to this proceeding, useful to the EFSB, and in the interest of the public.

In considering proposals—like Sea 3 Providence’s proposed alteration—that will increase state GHG emissions, the Board will need to apply the provisions of the Act on Climate (R.I. Gen. Laws 42-6.2-1, et seq.). This statute sets mandatory, enforceable carbon emissions reduction requirements for Rhode Island of 10% below 1990 levels by 2020; 45% below 1990 levels by 2030; 80% below 1990 levels by 2040, and net-zero emissions by 2050.² CLF has extensive experience related to the creation, implementation, and interpretation of statutes mandating emissions reductions throughout New England, including successful litigation to require Massachusetts to create and implement regulations to meet its carbon emissions reduction mandates under its equivalent of the Act on Climate—the Global Warming Solutions Act. Kain v. Dep’t of Env’tl. Prot., 49 N.E.3d 1124 (Mass. 2016).

As mentioned above, CLF was a full party to SB-2015-06, the largest case in the history of the EFSB. Additionally, CLF has a long history of participation in dockets before the PUC. These include Docket No. 3659 (setting Rules pursuant to R.I. Gen. Laws § 39-26-1, et seq., the state’s Renewable Energy Standard (“RES”)); Docket No. 3765 (considering National Grid’s 2007 RES compliance procurement); Docket No. 3901 (considering Grid’s 2008 RES

² Section 8 of the Act on Climate confers the power, the duty, and the obligation on the Board to consider the climate change implications of proposals that come before it. R.I. Gen. Laws § 42-6.2-8.

procurement); Docket No. 4012 (considering Grid's 2009 RES procurement); Docket No. 4770 (the most recent gas and electricity rate case); and Docket No. 4780 (the concurrent Power Sector Transformation case). As a result of this history, both in Rhode Island and in the rest of New England, CLF can play a constructive and helpful role in this Docket.

Moreover, the participation in this proceeding of a public interest organization such as CLF will serve the public interest. See, generally, John E. Bonine, [Public Interest Environmental Lawyers: Global Examples and Personal Reflections](#), 10 Widener L. Rev. 451 (2004) (emphasizing the constructive and salutary role of public interest environmental lawyers in a wide range of legislative, judicial, and regulatory fora).

V. Conclusion

WHEREFORE, for the foregoing reasons, CLF respectfully requests that its motion to intervene in this Docket be granted.

CONSERVATION LAW FOUNDATION

By its attorney,



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CERTIFICATE OF SERVICE

I certify that the original and seven copies of this Motion were filed with the Energy Facility Siting Board. In addition, a PDF version of this Motion was served electronically on the service list of this Docket, as that list was provided by the EFSB on June 11, 2021. I certify that all of the foregoing was done on June 11, 2021.

A handwritten signature in blue ink, appearing to read "Jim Cook", is written above a horizontal line.