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June 12, 2017

Dr. Todd Bianco, Coordinator
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:

As you know, this office is special counsel to the Town of Burrillville, an intervenor in this docket.

Enclosed for filing in this docket are an original and 10 copies of the status report from the Burrillville Building Inspector regarding his supplemental advisory opinions.

If you need any further information, please feel free to call.

Very truly yours,


Michael R. McElroy

MRMc/tmg
cc: Service List

IN RE: APPLICATION OF
INVENERGY THERMAL DEVELOPMENT, LLC;
(CLEAR RIVER ENERGY CENTER) and
ALGONQUIN GAS TRANSMISSION, LLC.
WALLUM LAKE ROAD (R.I. ROUTE 100)
BURRILLVILLE, RHODE ISLAND
ASSESSOR'S PLAT 120
LOT 7, PLAT 135 LOT2, PLAT 137
LOTS 1, 2, 3 and 21, and
PLAT 153, LOTS 1 and 2

SB-2015-06

STATUS REPORT

SUPPLEMENTAL ADVISORY OPINION TO THE ENERGY FACILITY SITING BOARD FROM THE BURRILLVILLE BUILDING INSPECTOR

INTRODUCTION

On April 13, 2017, the Energy Facility Siting Board issued a Decision and Order that supplemental information will assist the Board in its assessment of the above referenced application. Subsequently, the Board has directed that the Burrillville Building Inspector shall supplement his advisory opinion considering the new information that has been provided by the applicant since his original opinion was published on September 07, 2016.

The Building Inspector has been directed to address the following:

- (i) Whether the work proposed in the municipality as part of the Facility's construction and operation is subject to the Town of Burrillville Soil Erosion and Sediment Control Ordinance and, if so, whether Invenergy's Erosion and Sediment Control Plan would conform to the Ordinance; and
- (ii) Whether the Facility would meet the requirements of other Municipal Ordinances.

The Board has also requested that the Supplemental Advisory Opinions be filed by August 13, 2017, and that a status report be filed with the Board no later than June 13, 2017. Following is my status report.

STATUS REPORT ON SUPPLEMENTAL TO FIRST ADVISORY OPINION

Invenergy Thermal Development, LLC (Invenergy) submitted a draft copy of their Preliminary Stormwater Management Plan to the EFSB on September 27, 2016. Also submitted was a Preliminary Soil Erosion and Sediment Control Plan. In October, I started a cursory examination of the SESC Plan to determine whether the project would be subject to the Town's Soil Erosion and Sediment Control Ordinance.

Early on, it became evident as I had presumed in my Advisory Opinion that the project would be subject to the Town's SESC Ordinance. Invenergy submitted an SESC plan to the EFSB dated March 27, 2017. As to whether it will comply with the ordinance remains to be seen for a number of reasons. I intend to enumerate these reasons in my Supplemental Advisory Opinion which I will have prepared and submitted prior to the August 13, 2017 deadline. Some of these issues are as follows:

The applicant, Invenergy, has never submitted a legitimate plan creating a lot where the Clear River Energy Center (CREC) is proposed to be constructed. To date, the applicant has never submitted a subdivision plan, drawn by a Professional Land Surveyor, to actually create a new parcel of land. From the beginning, there have been a number of iterations of this "proposed" parcel. Until the parcel of land has been clarified, something that should have been one of the first things identified by the applicant, it is impossible to determine whether this project can actually be constructed on the site.

The applicant has yet to receive RIDEM Wetland approval for the proposed project. Invenergy submitted a Request to Alter Wetlands to RIDEM on April 04, 2017 (#17-0079). I last reviewed the DEM Wetland Permit Application search on June 07, 2017. The application is under review by the biologist at this time. Under the Town's SESC Ordinance, where any portion of a proposed development requires approval by DEM Wetlands, and, where the approval contains provisions for soil erosion and sediment controls, DEM Wetlands approval of the plan shall become a component of the overall SESC plan for the project. Any potential approval for the project should require final approval from DEM for their component of the project as any work undertaken within the wetland areas and wetland jurisdictional areas of the proposed site requires a wetland permit from RIDEM. Also, this project will require a Rhode Island Pollution Discharge Elimination System (RIPDES) Construction General Permit.

The applicant has yet to receive approval for an on-site wastewater treatment system (OWTS) for the project. Invenergy submitted an application to DEM-OWTS on March 08, 2017 (#1703-0050). I last reviewed the RIDEM OWTS Permit Search on June 07, 2017. The last entry on the page was dated April 18, 2017 regarding the review of a resubmission of the application which was found to be unacceptable.

I am aware that any permit or license whereby DEM is acting as the permitting or licensing authority pursuant to its delegated authority from the federal government is exempted from the EFSB's jurisdiction. I am certain that this is the case with the wetland permit. I am not as certain regarding OWTS installation. Notwithstanding, whether it is DEM who has jurisdiction over onsite waste disposal or it is the EFSB, you should be aware that in the RI State Building Code, RIGL 23-27.3-113.6.1 Approval of an individual sewage disposal system, it states that,

" No person shall install, construct, alter, or repair or cause to be installed, constructed, altered, or repaired any individual sewage disposal system, nor shall he or she begin construction of any improvement to his or her property from which sewage will have to be disposed of by means of an individual sewage disposal system,..., until he or she has obtained the written approval of the director of the department of environmental management of the plans and specifications for the work....A municipality may only grant a building permit pursuant to the State Building Code where the person applying for the building permit presents to the municipality the written approval of the director as required by departmental regulations on the individual sewage disposal system."

Whether permits for construction are procured through the Town Building Department, or through the EFSB, I believe that the Board will also require the wetland permits and the OWTS permit prior to any building permits being issued.

One last note; Regarding the SESC Plan, I would suggest to the applicant that the calculations submitted with the Plan be double checked by the Applicant's engineering team to make sure they are correct. For example, I noticed in the draft SESC last October that in designing temporary sediment basin A, in appendix A, on page two of nine, at the bottom, the calculation for the minimum wet storage is incorrect ($.14 \times 2 = .28$, not $.38$). In reviewing the March 27, 2017 SESC submitted to the EFSB, I noted that this had not been corrected. While this number actually appears to increase the minimum size needed and as such probably doesn't affect the design negatively, it would be prudent to check the calculations to be sure there are no other mistakes that would negatively affect the plan.

STATUS REPORT ON SUPPLEMENTAL TO SECOND ADVISORY OPINION

On September 26, 2016, Invenergy Thermal Development, LLC submitted a document to the EFSB titled: "Objection of Invenergy Thermal Development LLC to the Conservation Law Foundation's Motion to Dismiss". On pages ten (10) through thirteen (13), Invenergy presents a response to my Advisory Opinion. Regarding my second opinion, specifically addressing the Zoning issues that Invenergy failed to properly address with the Town Zoning Board in its application last summer, Invenergy states, " Finally, on the second question asked by the Board (compliance with other municipal ordinances), it is again

incorrect to suggest that no opinion was provided. The Opinion devotes nine (9) pages opining on findings with regard to zoning ordinances. Building Inspector Advisory Opinion, 5-13. It is not necessary to respond with Invenergy's reactions at this point; the notion that "no" opinion was provided is simply not true." In the associated footnote, Invenergy states that, "Invenergy is preparing detailed responses to each of these zoning ordinance findings, to present to the Board in its testimony and response to the Opinion."

As of this date, I have not received any information from Invenergy related to this Opinion. It is clear that the proposed site for the CREC has changed on a number of occasions since this project began. I previously noted that there is no actual lot created for this site leaving it our responsibility to carefully review anything that is sent to the Board in the form of a "site plan" to determine what has changed. Presently, there still is no lot and the property is still owned by Algonquin Gas Transmission LLC. The Town has never seen anything except a substantially redacted purchase and sale agreement between Invenergy Thermal Development, LLC and Algonquin Gas Transmission, LLC.

Regarding my determinations as to what Invenergy should have submitted to the Town Zoning Board, it has not changed these past ten months. Specifically, in the Preliminary Decision and Order of the Board dated March 10, 2017 (Order 86), it states that;

"While the Siting Act makes the Board the final licensing authority, an applicant for a Board license must still apply to all state and local governmental bodies for permits and license that would, absent the Siting Act, be required."

The EFSB directed the Burrillville Zoning Board to render an advisory opinion as to whether the Facility would meet the requirements of its respective zoning ordinances, and whether any variance should be granted, among other requests. In requesting zoning relief, it is the responsibility of the applicant to know what he or she is requesting and in this instance it was Invenergy's opinion that all that was needed was a special use permit and assorted dimensional variances for the height of structures on the property. It is my determination, as Zoning Official, that they are incorrect. At a minimum, the following relief is also required:

- The applicant requires a use variance to construct the CREC as this use is not allowed in an Aquifer A-80 Overlay Zone.
- The applicant requires a use variance as the zoning ordinance allows "electric generating facility" (in the singular) as a use in the F-5 zoning ordinance by special use permit. It is clear that the CREC facility is proposed with two electric generating facilities on the site (in the plural).

As substantial as these two issues are in themselves, with no actual site determined for the CREC, there may even be other zoning relief required. For example, with the large amount of wetlands in close proximity to where the CREC is proposed, until Invenergy submits a subdivision plan for the site showing otherwise, it could be that the property would require relief from the zoning ordinance, chapter 30-153,

lots containing wetlands, which would again require a use variance. Under 30-153, only single family housing is allowed.

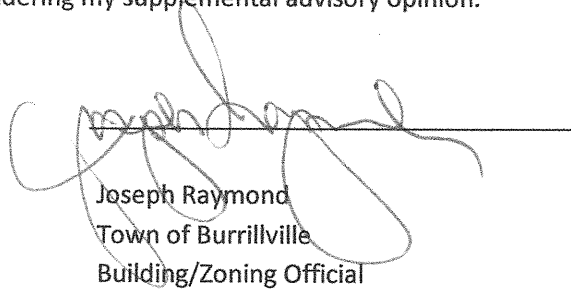
Any one of these three variances required would also prove fatal to the special use permit as granting zoning use relief in conjunction with a special use permit is not allowed.

Over the next two months, I intend to expand more in these three areas as a portion of my supplemental advisory opinion. I also intend to review the Town's Municipal Ordinances applicable to this proposal with the assistance of the appropriate people/boards in the Town to get a more comprehensive report to submit to the Energy Facility Siting Board.

I thank you in advance for your considering my supplemental advisory opinion.

Dated:

JUNE 09, 2017



Joseph Raymond
Town of Burrillville
Building/Zoning Official

SB-2015-06 Invenenergy CREC Service List as of 05/26/2017

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