

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

IN RE: Application of
Invenergy Thermal Development LLC's
Proposal for Clear River Energy Center

Docket No. SB 2015-06

**CONSERVATION LAW FOUNDATION'S OBJECTION TO RIBCTC'S BELATED
MOTION TO PROVIDE "REBUTTAL TESTIMONY"**

Conservation Law Foundation (CLF) objects to the belated motion of the Rhode Island Building and Construction Trade Council (RIBCTC) to provide "rebuttal testimony" of one Marc Vatter.

On January 7, 2016, the RIBCTC filed its "Motion for Late Intervention" (RIBCTC Late Intervention Motion). In that document, RIBCTC argued that it should be allowed to intervene after the deadline for intervention had passed because: (a) no other party would represent the interest of the union in arguing in favor of Invenergy because of the project's potential job creation (RIBCTC Late Intervention Motion, at 2-3); and (b) because it was yet early in the proceeding, before even the Preliminary Hearing. (RIBCTC Late Intervention Motion, at 2.)

The RIBCTC Late Intervention Motion made clear that the RIBCTC's participation would be limited to issues pertaining to job creation. With that understanding, CLF did not object to RIBCTC's belated motion.

On March 10, 2016, the EFSB issued an Order stating that the RIBCTC's "intervention shall be limited to issues affecting employment opportunities."

On September 1, 2017, the RIBCTC belatedly filed a new Motion, seeking leave to provide testimony purporting to rebut CLF's witness Robert Fagan. In his EFSB testimony, Mr. Fagan addresses only the issue of whether the proposed Invenenergy plant is needed (using only newly available ISO-NE data that was not in existence in July 2016, at the time of PUC Docket # 4609). Mr. Fagan does not address – nor even mention – any issues pertaining to job creation.

Although the RIBCTC dresses up Mr. Vatter's testimony as being “related to employment opportunities,” it is, in fact, all about whether the Invenenergy plant is needed. Mr. Vatter describes summer peak and overall load growth (Testimony, at 4); the role of behind-the-meter photo voltaics (Testimony at 5-6); the ISO's 2017 CELT Report (Testimony, page 8); the role of gas-fired generation as a backstop for variable-output renewable resources (Testimony, at 9-11). Mr. Vatter's testimony follows the issues presented by Mr. Fagan on system reliability point by point by point.

CLF understands why RIBCTC is belatedly so keen to rebut Mr. Fagan's EFSB testimony. Using ISO-NE data newly available since July 2016, Mr. Fagan demonstrates clearly that the electricity from the proposed Invenenergy plant is not needed for the reliability of the New England electricity grid. To the extent that the EFSB credits Mr. Fagan's testimony, approval of Invenenergy's application for a permit becomes far, far less likely: Why would the EFSB permit a new carbon-emitting fossil-fuel power plant that is just not needed? But the EFSB should not accommodate the RIBCTC at this late time.

Respectfully, there are three reasons why the EFSB should deny RIBCTC's belated motion.

First, RIBCTC's original "Motion for Late Intervention" was based on two factors, neither of which obtains now. One factor was that RIBCTC wanted to address Invenergy's potential for job creation; specifically, RIBCTC argued that it should be allowed to intervene late because it would be the only party addressing job creation. However, RIBCTC's current testimony addresses system reliability, which is being extensively covered by Ryan Hardy (Invenergy) and Mr. Fagan (CLF). The other argument that RIBCTC made back in January 2016 was that it was very early in the proceedings. Now, this docket is nearly two years old and we are on the eve of the Final Hearing.

Second, in January 2016, CLF did not object to the RIBCTC's "Motion for Late Intervention," understanding that the RIBCTC's participation would be limited to issues of job creation. CLF (and other parties) may have taken a different position if RIBCTC had timely disclosed the range of issues it intended to address.

Third, the EFSB's own Order made clear that RIBCTC's participation "shall be limited to issues affecting employment opportunities."

The days of trial by ambush are over. Martin v. Lilly, 505 A.2d 1156, 1162 (R.I. 1986) ("[T]rial by ambush is no longer allowed . . ."). All the other parties had to disclose witness lists and provide witness C.V.s months ago. All the other parties have had years to propound data requests to opposing sides addressing issues presented in witness's pre-filed testimony. All the other parties have complied with the EFSB's procedural schedule.

CLF objects to RIBCTC's belated request to file expert testimony on system reliability, and urges the EFSB to deny the RIBCTC's motion.

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CERTIFICATE OF SERVICE

I certify that the original and three copies of this Objection hand delivered to the Energy Facility Siting Board. In addition, hard copies of the Objection were served electronically on the service list of this Docket. I certify that all of the foregoing was done on September 5, 2017.

