



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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May 26, 2017

Todd Anthony Bianco
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 Mr. Bianco:

Enclosed for filing in this matter are an original and 10 copies of the Rhode Island Department of Environmental Management's Fourth Set of Data Requests to Invenergy Thermal Development, LLC. Electronic copies have been sent to the service list.

Should you need any further information, do not hesitate to contact me at (401) 222-4700 ext. 2023. Thank you for your time and attention to this matter.

Best regards,

A handwritten signature in purple ink, reading "Christina Hoefsmit".

Christina A. Hoefsmit, Esq.

enc: RIDEM's Fourth Set of Data Requests

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

IN RE: INVENERGY THERMAL DEVELOPMENT LLC'S :
APPLICATION TO CONSTRUCT THE : DOCKET No. SB-2015-06
CLEAR RIVER ENERGY CENTER IN :
BURRILLVILLE, RHODE ISLAND :

THE RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT'S
FOURTH SET OF DATA REQUESTS TO
INVENERGY THERMAL DEVELOPMENT, LLC

WASTEWATER:

- 4-1 Provide copies of any and all agreements or letters of intent with any and all facilities that will be accepting the Project's industrial wastewater for disposal.
- 4-2 Referencing Table 3.1 of the Water Supply Plan for Clear River Energy Center dated January 11, 2017, provide the analysis used to establish the industrial wastewater composition for the Project.
- 4-3 Provide a detailed summary of all industrial wastes streams for the Project.
- 4-4 Identify all specific USEPA effluent pretreatment discharge standards in 40 CFR 423 that are applicable to the Project. For any EPA requirement that was not determined to be applicable include a detailed reason why.

DEM'S THIRD DATA REQUEST

- 4-5 DEM's data request 3-8 requested the Applicant to provide "more detail on the specific means of detection for each bird species noted as a probable breeder at the site (i.e. what evidence of breeding was noted for each species and where). Section 6.6.2.2 provides this information for black-throated blue warbler, but no other species." The Applicant responded by reiterating the criteria that warranted listing as a probable breeder and provided information on the relative frequency that these indicators were observed, but did not provide the requested level of detail for each species. Provide the requested level of detail for each species as set out in DEM's data request 3-8.
- 4-6 DEM's data request 3-25 requested the distance into the forest at which the impacts from the Facility (both plants) do not contribute to an increased noise level. The Applicant responded that the CREC will contribute to an increase in noise level at a distance greater than 300 feet into the forest. However, the Applicant failed to indicate how far (distance) the noise level would travel. Provide this information.

- 4-7 DEM's data request 3-27 asked if venting/blowdowns and any other intermittent high-noise events were factored into the noise projections, and if so how (LCEQ)? In not, how much louder than the average noise levels are these events on the existing site and in adjacent forest, and how much louder than average can they be expected to be on the new site and in adjacent forest? The answers to these questions are not clear from the Applicant's response, which appears to relate only to predicted noise levels at the 5 selected residential "Noise Sensitive Areas" that range from approximately .3 to 1.3 miles from the proposed plant), despite the fact that Figures 5 through 8 of the Transient Noise Level Evaluation report (March 2016) that the Applicant referenced in its response (Exhibit 6) appear to indicate that data for the entire site vicinity and surrounding forest have already been modeled. Additionally, the data in the two tables that the Applicant referenced in its response and additional text from that same Transient Noise Level Evaluation report appear to contradict the Applicant's response, which indicated that "All regularly occurring venting has been silenced such at all plant operations, including venting, will be no louder than 43 dBA at residences at any time." The referenced tables, Tables 7 and 8, as well as Tables 5 and 6 and the text of the report all list CREC Noise Levels above 43 dBA at nearby residential properties, with some as high as 50 dBA. Provide the requested information and explain these discrepancies.
- 4-8 DEM's data request 3-30 asked about the timeline for the Applicant's claimed emissions reductions across the region. The Applicant indicated that the emissions reductions were calculated for 2019 through 2025. This is a short window and is likely to have shifted, both by a changing energy market and possible project delays. Does the Applicant still anticipate these benefits, and if so, is there any way to forecast whether there would be more than 7 years of benefits from such a large project?
- 4-9 DEM's data request 3-39 asked the Applicant to conduct a more comprehensive cost-benefit analysis of the proposed power plant. The Applicant indicated in its response that its emissions and input-output analyses "were designed to determine both the positive and negative impact of Clear River – in short, they reflect 'net' benefits (i.e. they are net of costs)". The Applicant further states that "the impacts to forests, biodiversity, and ecosystem services are not readily quantifiable, although expected to be negligible compared to the significant net reduction of regional emissions." Provide justification, with citations as applicable, for the claim that the "not readily quantifiable" "impacts to forest, biodiversity, and ecosystem service" are "expected to be negligible" when "compared to the significant net reductions of regional emissions", particularly when the impacts to developing mature forest and displaced species are long-term (perhaps permanent) and the emissions reductions purported to outweigh this were projected for only seven years.
- 4-10 The Applicant's response to DEM's data request 3-46 indicated that Section 10.1.2 should be amended to strike reference to Pennsylvania and insert reference to Rhode Island, but that the remainder of the language of this section was correct. Please revisit the last

sentence of the Applicant's response to this Item: "Recent opposition to wind farms has led to shutdowns and curtailments of operation for fear that bats might be killed", and explain where and to what this is in reference to.

- 4-11 DEM's data request 3-47 asked why high priority wildlife habitat was not on the list of areas that merited buffering from the project. The Applicant responded by noting that no High Value/High Vulnerability Habitats or Natural Heritage Areas are mapped within the project area. It appears that the Applicant may have misunderstood the question. DEM's question was why land with high habitat and conservation value was valued as a buffer from the project for residences but was not itself deemed worthy of being buffered from the project. DEM was not asking solely about areas of known populations of rare species (represented by Natural Heritage Areas) or about High Value/High Vulnerability (HVHV) Habitats. HVHV Habitats represent a small and very specific subset of important habitats that are both highly threatened and not well captured by the other elements of the Rhode Island Wildlife Action Plan's Conservation Opportunity Area mapping. Conservation Opportunity Areas include three categories of elements: Core Natural Areas, Corridors, and Sites. The last of these, which includes HVHV Habitats, is a category of elements designed to identify areas that are important despite not being of particular size or connectivity value. The Applicant correctly notes in its Application to Alter Freshwater Wetlands that the property is in both a large Core Natural Area and a major Corridor, and the ROW expansion crosses four more Core Natural Areas. Additionally, with respect to Sites, there is a HVHV Habitat located along the TNEC ROW widening project where a hemlock/hardwood forest flanks the forested swamp along the Clear River. Other sites along the ROW include two Natural Heritage Areas and numerous wetlands and streams. In light of the above clarification, please address this question again. This mistaken assumption about High Value High Vulnerability Habitat appears to be repeated in the Application to Alter Freshwater Wetlands (p. 36).
- 4-12 DEM's data request 3-53 asked if planting and seeding will consist of native stock with no cultivars. The Applicant did not address cultivars in its response, and the Application to Alter Freshwater Wetlands uses only common names. Address the use of cultivars and provide the full Latin name of any plant species proposed, including seed mixes.
- 4-13 Despite the Applicant's assertion that invasive species are relatively few on-site, Appendix P, Wetland Invasive Species Management Plan, lists twelve "common invasive species found in wetlands in the project area," at least two of which were also detected in the vicinity of wetlands on the CREC portion of the project. In the Applicant's response to DEM's data request 3-55, it indicated that it will implement a 10-year monitoring and management plan. The nature of invasive species is that they will flourish even after being managed for low numbers for an extensive period of time as soon as the control is removed. Assuming invasive plants on site are in low numbers, this could present a rare opportunity to eradicate invasive plants on site rather than participate in the unfortunate cycle described above where chemicals are often used to no long-term effect. Invasive plant numbers are

likely low now due to the relatively low amount of disturbance on site and in the vicinity, and development will very likely encourage these species to expand their range. Will the Applicant commit to a removal plan rather than the described plan to ensure low levels of invasive species for the duration of the monitoring commitment?

- 4-14 Appendix P also commits to a plan to avoid cross-contamination of wetlands by cleaning equipment, etc., but neither this narrative nor section 5.1.7.3 of the Application to Alter Freshwater Wetlands addresses this same issue with invasives in uplands even though the latter calls out four species of “potential invasive species of the forest edge.” This section also states that “due to this limited occurrence and distribution, a substantial introduction of invasive species is not anticipated,” but disturbance in such areas of relatively low abundance are precisely how populations spread. Provide detailed information on if/how/where equipment movement and cleaning will be addressed to avoid tracking invasive seed and other plant materials from any one portion of the project (upland or wetland) to any other portion. Indicate whether designated vehicle washing stations will be identified or how transport of seed and other viable plant material will otherwise be avoided, particularly for invasive species that can expand into otherwise undisturbed forested areas.

WETLAND APPLICATION:

- 4-15 Table 3-3 (p. 27) lists Potential Bird Species Found Within the Facility Site. Explain what the hash marks indicate under the Interior/Edge (I/E) Forest Species column. Also explain the methodology used to generate the results for this column. It is unclear, for example, why a species such as wood thrush that is very much impacted by forest fragmentation would be listed as I/E.
- 4-16 Where did the Applicant derive the distributions described in Table 3-7? Some appear to have come from the RI WAP, although they may have been misunderstood (e.g. black-throated blue warbler is only known to nest in the northwest corner of the state; it is only common along the coast as a migrant). Others appear to be from other sources and are either inaccurate or confusing (e.g. the description of Northern Goshawk). The RI WAP maps should not be used to depict range without the disclaimers and clarifying narratives associated with each species.
- 4-17 Section 3.1.9 Vernal Pools, indicates that a “limited number of spotted salamander (*Ambystoma maculatum*) egg masses” were found in both SAS’s within the CREC portion of the Project. Appendix G, Vernal Pool Data Forms, indicate that one adult wood frog, 12 wood frog egg masses, and 13 spotted salamander egg masses were found at SAS 1 and that 13 wood frog egg masses and 5 spotted salamander egg masses were found in SAS 2. Why were wood frog egg masses excluded from the narrative? Was any follow up field work conducted to determine what other species might use the pools (e.g dipnetting, etc.)? If so, describe the survey nature and level of effort. Were any photographs taken of these

SAS's (none appear in Appendix D with the photos of Wetlands 1-3 and some of the TNEC wetlands)? Additionally, explain why forms were not provided for the 14 additional vernal pools in the TNEC ROW?

- 4-18 The Applicant asserts in sections 3.2.8, 5.1.8, and throughout its wetland application that both USFWS and DEM "agreed with study results that Northern long-eared bats (NLEB) were not present in the survey area." On March 16, 2016, DEM indicated via email that "there are no known maternity roost trees in Rhode Island and there are no known hibernacula in Burrillville or Providence County." The USFWS determined that the Applicant had done its due diligence, and DEM DFW deferred to this conclusion. While the Applicant is under no further obligation with regard to this Federally-listed species, the USFWS's conclusions should not be construed to infer that DEM confirmed that no NLEB are on site or in the vicinity. Among the reasons is the fact that there is some level of error with differentiating bat species with bat detectors. Confirm DEM's understanding that the "survey area" appears to cover only the CREC portion of the project.
- 4-19 Section 3.2.8 of the Application to Alter Freshwater Wetlands indicates that "biological surveys had previously been completed for State-listed species for the IRP in 2011," that "biological surveys were completed for the identified State-listed plant species to document their presence and extent on the TNEC ROW" by POWER, on behalf of the Applicant, in August of 2016, and that "the Applicant will coordinate with the RIDEM and RINHS to report the findings of the biological surveys of listed species and to determine appropriate avoidance/protection measures that should be implemented during construction." Please provide the results of both surveys along with the survey protocol (i.e. times, locations, methods, and intensity of survey).
- 4-20 With respect to the CREC section of the Project, section 4.1.14 asserts that "Surveys and existing data have yielded no indication that state or federally-listed species are utilizing wetlands within the Facility Site." Is this statement limited to only fauna? Given that black-throated blue warbler was detected on-site, provide detailed information, with citations as applicable, which leads to the conclusion that this species does not utilize this habitat?
- 4-21 Section 4.2.15 states that "surveys and existing data have yielded no indication that State or Federally-listed species are utilizing wetlands within the TNEC ROW." Is this statement limited to only fauna? The Applicant's and DEM's records indicate the presence of several State-listed plant species in the TNEC ROW project footprint and vicinity. Clarify.
- 4-22 Section 5.1.7 states that direct impacts include the loss of wildlife habitat and plant communities and that these effects "were quantified by overlaying the limit of disturbance ("LOD") onto the vegetation cover type mapping provided by RIGIS." Provide the map.
- 4-23 Provide detailed justification, with applicable citations, for the Applicant's assertion in Section 5.1.7.3 that the development of a portion of one of the largest Core Natural Areas

in the State is relatively harmless precisely because it is large and is in proximity to other large cores. This assertion runs contrary to everything that makes the largest intact blocks of forest (especially those in proximity to other such blocks) such high value, high priority habitats in a highly developed state and allows them to support more robust breeding populations of forest interior neotropical migrant birds and other species than other portions of the state. Another example is the marbled salamander, which according to the RI WAP is common “in certain rural western and southern portions of the state in forested habitat tracts greater than 400 hectares in extent”. Further, the impact analysis is site-specific, and there are substantial impacts on site to important habitat.

- 4-24 The Applicant asserts multiple times, including in the Application to Alter Freshwater Wetlands (sec. 5.1.7.3, p. 92) and Wetland Addendum (p. 15), that DEM and the RI Wildlife Action Plan assess indirect impacts to 100 feet from the nearest disturbance. The only reference to impacts at something close to that distance are contained in the RI WAP where DEM used a 30 meter buffer from roads to generate its Core Natural Habitat layer. This distance was utilized to eliminate roadsides and their immediate environs when developing the Core Natural Habitat layer, not to represent the full extent or even the area of most indirect impacts to wildlife. Is this the number that the Applicant is utilizing when it repeatedly refers to 100'? If not, provide the reference to 100' along with applicable citations.
- 4-25 Section 5.2.7 discusses temporary impacts along the ROW corridor, and the RIDEM and USACE permit drawings identify “protected habitats” within and adjacent to this corridor. How will impacts to populations of State-listed species be avoided or minimized during construction in areas where rare plants are known to occur within the footprint of proposed overstory clearing and other work? What impacts will overstory clearing have on the long-term viability of these plant species? Will further survey in these areas be conducted to determine if additional populations exist?
- 4-26 Some site impacts could be minimized with proper time of year restrictions depending on what flora and fauna are on site (e.g. letting rare herbaceous plants go to seed, avoiding the nesting season for shrub and ground nesting birds and nesting turtles, etc.). Will the Applicant provide plans and time-of-year restrictions to minimize impacts to species during construction? The Applicant has stated that it will work with DEM to avoid impacts, but other than for NLEB, the anticipated timeline for this coordination is unclear. Additionally, such timelines would be best informed by the Applicant’s floral and faunal survey results. However, most survey work has been scheduled such that it will be completed in a very short time before DEM will need to issue its amended Advisory Opinion to the EFSB.
- 4-27 Section 5.2.9 Vernal Pools, enumerates avoidance/minimization measures for three vernal pools within the TNEC ROW. Of the fourteen vernal pools in this portion of the project, do these three represent all of the vernal pools that would be impacted by project construction? If not, how will the additional impacts be addressed?

- 4-28 Section 6.1.2.2 Construction Phase, lists “types of measures that may be implemented to minimize adverse impacts on vernal pools (special aquatic sites).” Why are the items listed here tentative and not included in the preceding list of commitments?
- 4-29 Section 7.1 indicates that compensatory mitigation will be necessary and lists the USACE requirements for mitigation, but does not propose any specific mitigation. Table 7-3: Anticipated Mitigation Obligations in the Form of Restoration or Preservation for the Project, appears to omit a substantial amount of acreage of wetland impacts on site. At least part of this discrepancy with site plans and narratives appears to be that shrub and forested wetlands that were not large enough to qualify as “swamps” under state regulation were not included. However, USACE thresholds for reporting and mitigation are based on overall square footage of wetland impacts rather than size thresholds for individual wetlands. Please revisit this table and expected mitigation requirements and either clarify or revise the chart.
- 4-30 Section 7.1 and the Wetlands Addendum make numerous additional references to mitigation, but all of the measures discussed other than the hypothetical land conservation or wetland creation ratios are, in fact, avoidance or minimization measures. Does the Applicant anticipate that a true mitigation proposal will be submitted prior to DEM’s deadline for submitting a revised Advisory Opinion to the EFSB? If so, what is the Applicant’s anticipated timeline for submitting this proposal?
- 4-31 Section 8.1 indicates that “Overall, the adverse impacts of the project will be outweighed by the energy supply, environmental and local financial benefits that will result from the project.” This conclusion is repeated in several of the Applicant’s submitted materials, but the Applicant has also indicated that it could not easily quantify the forest and wildlife values and its assessment of benefits are speculative as well. Provide justification for this conclusion, with applicable citations; along with the information or accounting method supporting this conclusion.
- 4-32 The Limits of Clearing and Limits of Disturbance are confusing in the plan sheets the Applicant submitted (RIDEM and USACE Permit Drawings), and at times the Limit of Clearing appears to extend beyond the Limit of Disturbance. Provide permit drawings that accurately depict the Limits of Clearing and Limits of Disturbance.
- 4-33 Depict the locations of all culverts (wildlife crossings or otherwise) and nearby wetlands on a single page (similar to the Overall Site Arrangement Sheet) and further clarify the design and chosen locations of these culverts.
- 4-34 Label all elements depicted in the Typical Wildlife Passage Section (SHEET 01C805).
- 4-35 In accordance with DEM’s earlier request to use RI native species and avoid cultivars, and

given the confusion that can arise from the use of common names, provide a version of the Reforestation Plant Quantity List (SHEET 01C700) that lists the full and precise Latin names of proposed species (e.g. with any varieties and cultivars called out if they are being proposed for use).

- 4-36 How does the Applicant propose to access their detention pond for maintenance if the area east of the SAS that is not to be filled is to be revegetated with tree species? (SHEET 01C306).
- 4-37 The only silt fence depicted appears to be around the topsoil stockpile area. Regarding the SESC Plan Phasing, explain/depict how areas downslope of the Limit of Disturbance will be protected (SESC PLAN PHASES I-IV, SHEETS 01C905 - 01C921).
- 4-38 Appendix B: ROW Vegetation Management Plan and all its attendant appendices appear to repeatedly reference Massachusetts and Massachusetts law rather than Rhode Island. Is this the correct plan? If yes, then provide a corrected plan ensuring that all references are to Rhode Island. If not, then provide the ROW Vegetation Management Plan.
- 4-39 Provide a map depicting locations of sample sites for each survey performed and a narrative explaining the placement of transects, spacing, habitats covered, etc.

WATER AND TRAFFIC

- 4-40 What does the term “Average Ambient Firing Natural Gas” represent in Appendix N: Water Supply Plan (i.e. does it represent an annual average or an average of some select portion of the season, is it a true average or a median across whatever timeframe it represents, etc.)?
- 4-41 Appendix N Table 2-1 appears to only include the two biggest potential uses of water (i.e. evaporative cooling and oil firing) in the footnotes and not in the actual numbers. Either clarify and/or revise the 18,720 gpd Summer Firing Natural Gas Potential for Evaporative cooling to include the additional gallons that would be represented by the Applicant’s estimated over 3.3 million additional gallons per year (assuming 4,600 gallons/hour at 8 hours/day for an estimated 90 days) and calculate the additional truck traffic that this represents. Likewise, do the same with the 15,840 gpd estimate for Winter Firing Natural Gas Potential for Oil Firing to include the additional over 3.6 million gallons per year represented by the estimated 724,000 gpd necessary to fire oil and the Applicant’s assertion that such facilities have had to fire oil an average of five days per year for the previous five years.
- 4-42 Explain, in detail, why the Applicant asserts that its estimate of 3 days of oil firing a year in Appendix N is conservative if the five-year average has been 5 days/year? Has this number been declining over the 5-year timeframe?

- 4-43 Appendix N Section 2.4 indicates that “On those exceptional days when evaporative cooling might be needed, CREC will utilize on-site storage and replenish the on-site storage over time.” It is understood that this is intended to indicate that these trips need not contribute to traffic congestion. However, DEM is concerned with total traffic as well and with times of day unrelated to congestion. Are these trips accounted for in traffic numbers? If so, indicate where.
- 4-44 Appendix E: McMahon Traffic Analysis includes a map of CREC Water Transport Routes. Is this the only additional truck traffic to the site since the original traffic analysis was performed? If not, provide any additional proposed routes. Also indicate what would cause trucks to use alternate routes.
- 4-45 Appendix E under Oil Fired Events indicates that “approximately 11 trucks per day will access the CREC facility to replenish the water tanks and approximately 7 trucks per day will access the facility to replenish the oil tanks as well as an additional demineralization trailer for a total of 19 trucks.” Then under peak hour truck traffic, the Applicant indicates “after the occurrence of an oil fired event, there will be approximately 22 trucks per day expected to access the site (11 water replenish, 7 oil, 2 ammonia/water discharge/demin trailers, and 2 typical water supply).” Is this latter estimate, which represents 44 total truck trips per day, a full accounting of truck traffic on site? How many days a year is this expected to be the volume of truck traffic and at what time(s) of day are these additional trips expected to occur? Also, explain why these number conflict with corresponding estimates in the Water Supply Plan?

GENERAL

- 4-46 There have been many changes to the Project since the initial application filed with the EFSB. Summarize, in detail, the changes to the Project that have been made from September 12, 2016, up to the date of this data request.

Respectfully submitted,
RHODE ISLAND DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
By its attorney,



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Dated: May 26, 2017

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2017, I sent a true copy of the following to the Energy Facilities Siting Board via first class mail, postage pre-paid and electronic mail, and to the parties on the attached service list via electronic mail.



Christina A. Hoefsmit

SB-2015-06 Invenenergy CREC Service List as of 04/17/2017

Name/Address	E-mail	Phone/FAX
<p>File an original and 10 copies with EFSB: Todd Bianco, Coordinator Energy Facility Siting Board 89 Jefferson Boulevard Warwick, RI 02888</p> <p>Margaret Curran, Chairperson Janet Coit, Board Member Assoc. Dir., Div. of Planning Parag Agrawal Patti Lucarelli Esq., Board Counsel Susan Forcier Esq., Counsel Rayna Maguire, Asst. to the Director DEM Catherine Pitassi, Asst. to. Assoc. Dir. Plann. Margaret Hogan, Sr. Legal Counsel</p>	Todd.Bianco@puc.ri.gov ;	401-780-2106
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