

September 27, 2017

**Via Federal Express/Electronic Mail**

Todd Anthony Bianco, EFSB Coordinator  
RI Energy Facilities Siting Board  
89 Jefferson Blvd.  
Warwick, RI 02888

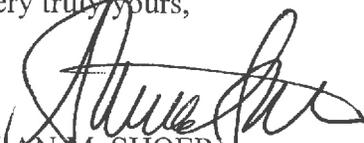
***Re: Invenergy Docket No. SB-2015-06***

Dear Mr. Bianco:

On behalf of Invenergy Thermal Development LLC and the Clear River Energy Center Project ("Invenergy"), enclosed please find an original and three (3) copies of Invenergy's Responses to the Town of Burrillville's 37th Set of Data Requests.

Please let me know if you have any questions.

Very truly yours,



ALAN M. SHOER  
[ashoer@apslaw.com](mailto:ashoer@apslaw.com)

Enclosures

cc: Service List

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

**INVENERGY THERMAL DEVELOPMENT LLC'S RESPONSES TO  
THE TOWN OF BURRILLVILLE'S 37<sup>th</sup> SET OF DATA REQUESTS**

Request 37-1 Mr. Feinblatt's rebuttal testimony on pages 12 —13 states that the Army Corps of Engineers is preparing an Environmental Assessment to determine whether an Environmental Impact Statement would be required for the project, and, if required, the Environmental Impact Statement would be the responsibility of the Army Corps of Engineers. Please provide an update on the current status of the Army Corps of Engineers Environmental Assessment and its evaluation of whether an Environmental Impact Statement will be required. Please provide an estimated date with regard to when the Environmental Assessment will be made available.

Response 37-1 33 CFR 325 establishes the National Environmental Protection Act ("NEPA") Implementation Procedures for the U.S. Army Corps of Engineers ("USACE") Regulatory Program. According to 33 CFR 325, Appendix B, Section 7a, "The district engineer should complete an [Environmental Assessment ("EA")] as soon as practicable after all relevant information is available (i.e., after the comment period for the public notice of the permit application has expired) and when the EA is a separate document it must be completed prior to completion of the statement of finding (SOF)."

According to 33 CFR 325.2(d), the public notice will be issued within 15 days of receipt of all information required to be submitted by the applicant. The comment period on the public notice should not be more than 30 days nor less than 15 days from the date of the notice.

Invenergy understands that the USACE is currently reviewing the application and will issue the required public notice of a complete application once that determination has been made. Invenergy Thermal Development LLC ("Invenergy") has not been given any estimate from the USACE as to the date when the public notice will be issued. The EA should be issued soon after the comment period for the public notice has expired and before the completion of the SOF, in accordance with 33 CFR 325, Appendix B, Section 7a.

RESPONDENT: Michael E. Feinblatt, ESS Group, Inc.

DATE: September 27, 2017

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Request 37-2 If the Army Corps of Engineers determines that an Environmental Impact Statement is required, would you agree that the Energy Facility Siting Board should, as it did in the Ocean State Power case, wait to render a decision as to whether the plant would cause unacceptable harm to the environment until after the Environmental Impact Statement is prepared and made available to the Energy Facility Siting Board and the parties. If you do not agree, please explain why.

Response 37-2 I do not agree. State and federal environmental regulations and environmental permitting programs have been established specifically to ensure that applicants proposing projects with potential environmental impacts will not cause unacceptable harm to the environment. This was firmly stated by Rhode Island Department of Environmental Management ("RIDEM") in its Supplemental Advisory Opinion, dated August 15, 2017, in the section responding to the question posed by the Rhode Island Energy Facility Siting Board ("EFSB") as to whether the Clear River Energy Center ("CREC" or "Facility") will present an unacceptable harm to the environment.

As stated on pages 14 and 15 of the RIDEM Supplemental Advisory Opinion:

- "If DEM finds that the Applicant has complied with the requirements of the applicable regulations, a permit will be issued for that proposed activity. The issuance of a permit indicates that DEM has determined that the nature and scope of the proposed activities are within standards for acceptable environmental impact established by State and federal laws and regulations."
- "While final decisions have not been rendered, review processes have not yet been completed (including public notice and comment), and the Applicant must still satisfy its regulatory burden of responding to any comments and deficiencies that may be identified on those applications; based on the information currently available to DEM it appears that it is possible for the Applicant to meet its regulatory burden in each of these programs. Should the Applicant follow through and meet those burdens it would receive permits under each of these program for the Facility."
- "To be clear, this in no way is meant to prejudice the outcome of the ongoing permitting processes, but rather to indicate that if, upon the completion of the regulatory processes, the requisite environmental permits are issued, it is a formal declaration that the proposed facility

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has met the standards and criteria for acceptable harm to the environment as established in State and federal laws and regulations.”

Also, as the Board pointed out in its Preliminary Order, the RIDEM and USACE environmental permitting processes are outside of the jurisdiction of the EFSB. It is my understanding that the Board typically will condition its licensing of major energy facility projects with the applicant being required to secure all required RIDEM and USACE permits. Because the EFSB approval (if granted) would be contingent on the issuance of these required permits, there is no reason for the EFSB to wait for any of the required permitting processes to be completed before rendering its Final Decision.

Finally, although RIDEM and USACE are separately reviewing CREC's environmental impacts according to their permitting programs, Invenergy has also provided the Board with its environmental analysis, reports, data and information sufficient to allow the Board to evaluate whether the Project will, or will not, cause unacceptable harm to the environment.

RESPONDENT: Michael E. Feinblatt, ESS Group, Inc.

DATE: September 27, 2017

INVENERGY THERMAL DEVELOPMENT LLC  
By its Attorneys,

/s/ Alan M. Shoer

Alan M. Shoer, Esq. (#3248)

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Dated: September 27, 2017

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2017, I delivered a true copy of the foregoing responses to the Town of Burrillville's 37<sup>th</sup> Set of Data Requests via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer