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October 12, 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 Dr. Bianco:

Enclosed for filing in this matter are an original and 3 copies of the Objection of Burrillville to the Motion of Invenergy to Treat Municipal Resolutions as Public Comment and not full Exhibits.

If you have any questions, please feel free to call.

Very truly yours,


Michael R. McElroy

MRMc:tmg

cc: Service List

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

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

**OBJECTION OF BURRILLVILLE TO MOTION OF INVENERGY
TO TREAT MUNICIPAL RESOLUTIONS AS
PUBLIC COMMENT AND NOT FULL EXHIBITS**

The Town of Burrillville (“Town”) objects to the Motion of Invenergy Thermal Development, LLC. (“Invenergy”) to treat Town Exhibit Nos. 20, 21, and 22 (35 municipal Resolutions formally opposing the Clear River Energy Center (“CREC”)) as public comment and not as full exhibits for evidentiary purposes.

Invenergy claims that the municipal Resolutions opposing CREC are “not relevant to the Board’s determination.” (at 1). This claim is wrong.

Rule 401 of the Rhode Island Rules of Evidence defines the term “relevant evidence” as follows:

“ ‘Relevant evidence’ means evidence having **any tendency** to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” (Emphasis added).

As further stated in the Advisory Committee’s Note to Rule 401: “To be admissible, evidence need pass only a **low threshold** of relevancy. . . .” (Emphasis added).

Under Rule 402, “All relevant evidence is admissible” with limited exceptions.

The municipal Resolutions are directly “relevant to the Board’s determination as to whether or not Invenergy can meet its burden under the Act.” (at 1). Under R.I.G.L. § 42-98-11(b)(3) and EFSB Rule 1.13(c)(1)(iv), Invenergy has the burden of proving the “proposed facility will not cause unacceptable harm to the environment.”

This mandate is explained in more detail in R.I.G.L. § 42-98-2(3), which states that any proposed major energy facility:

“. . . shall produce the fewest possible adverse effects on the quality of the state’s environment; most particularly, its land and its wildlife and resources, the health and safety of its citizens, the purity of its air and water, its aquatic and marine life, and its esthetic and recreational value to the public.”

These municipal Resolutions are the voice of the representatives of the people from 35 municipalities in Rhode Island and neighboring Massachusetts and Connecticut. In these Resolutions, the municipalities expressly address the environmental effects that are squarely before this Board.

Most of the Resolutions state (1) that “Burrillville, RI is not a suitable site for the Clear River Energy Center,” (2) that there has been “clear opposition to the siting of the Clear River Energy Center for reasons including the impact on property, environment, water and traffic,” and (3) that the municipalities request that their Resolutions “be submitted to the Rhode Island Energy Facility Siting Board for consideration during their hearings on Invenenergy Thermal Development, LLC.’s application to construct the Clear River Energy Center power plant in Burrillville, RI.”

The Resolutions are also supported in almost all cases by Burrillville’s “extensive study of the application with and through credentialed professionals,” as well as “expert testimony and . . . thorough public hearings” at the Burrillville Planning Board and Zoning Board of Review.

Some municipalities went into even more detail on harm to the environment. For example, Cranston states in its Resolution that, based on information from the Blackstone River Watershed Council, (1) CREC “would threaten 25 years of restoration efforts and millions of dollars of investment by the state and nonprofits”; (2) “emissions from the power plant, in particular methane and carbon dioxide, would affect a 30-mile area in the northwest corner of Rhode Island”; (3) particulate matter would “diminish air quality, local rivers and watersheds would be stressed,

additional deliveries of chemicals by large commercial vehicles would put residents at risk, noise pollution would increase and the biodiversity impacts and loss of wildlife habitats within the shared watershed would harm the regional environment”; and (4) CREC would “prevent Rhode Island from meeting a reduction in greenhouse gas emissions set by the 2014 Resilient Rhode Island Act.” Cranston concluded that CREC would have “potentially catastrophic environmental, economic, and health impacts . . . on Burrillville and the entire State of Rhode Island.” The Resolution from the City of Central Falls was similar to that of Cranston.

Similar detailed comments were made by the City of Providence, which also stated that CREC would have “negative impacts on property, environment, traffic, public health, public safety, and water” and that “the City Council does not support and hereby expresses serious concern over the use of water from the Providence Water Supply Board for the Clear River Energy Center.”

It is therefore abundantly clear that the information set forth in the 35 municipal Resolutions is relevant, especially considering the “any tendency” standard of Rule 401 of the Rules of Evidence and the “low threshold of relevancy” set forth therein.

Invenergy also argues that the municipal Resolutions should not be allowed into evidence unless Invenergy has “an opportunity to cross examine an appropriate witness on the contents of these Resolutions.” Once again, Invenergy is wrong. As public records, these Resolutions are admissible without further authentication from a live witness because they are self-authenticating under Rules 901 and 902 of the Rhode Island Rules of Evidence. Rule 901 provides in pertinent part that:

“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. . . . [b]y way of illustration only, and not

by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

* * *

Public Records or Reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form is from the public office where items of this nature are kept.”

Moreover, Rule 902 “Self-authentication” states that:

“Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) *Domestic Public Documents Under Seal.* A document bearing a seal purporting to be that of . . . any State . . . or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) *Domestic Public Documents Not Under Seal.* A document purporting to bear the signature in his or her official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal if the office in which the record is kept is within Rhode Island.

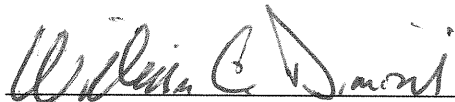
* * *

(4) *Certified Copies of Public Records.* A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office . . . certified as correct by the custodian or other person authorized to make the certification. . . .”

Most of the Resolutions are under seal and/or certified and/or authenticated by a public officer from the municipality in question. Moreover, with regard to the Resolution from the Town of Burrillville, the President of the Town Council of Burrillville, John Pacheco, will testify at the hearing and will be available for cross examination regarding the Burrillville Resolution.

For the foregoing reasons, the Town of Burrillville objects to Invenenergy’s Motion and respectfully requests that the 35 municipal Resolutions opposing CREC be admitted as full Burrillville Exhibit Nos. 20, 21, and 22.

Respectfully submitted,
Town of Burrillville
By its attorneys



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Date: October 12, 2017

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of October, 2017, I sent a copy of the foregoing to the attached service list.



Theresa Gallo

SB-2015-06 Invenenergy CREC Service List as of 10/04/2017

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