

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD**

In Re: Invenergy Thermal Development LLC’s :
Application to Construct the Clear River Energy : Docket No. SB-2015-06
Center in Burrillville, Rhode Island :

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF THE TOWN OF
BURRILLVILLE’S MOTION FOR DISMISSAL OR DENIAL OF
INVENERGY’S APPLICATION FOR FAILURE TO COMPLY
WITH AN ORDER OF THE EFSB AND EFSB RULES**

The Town of Burrillville (“Town”) hereby files this Supplemental Memorandum in support of the Town’s Motion for Dismissal or Denial of Invenergy Thermal Development LLC’s (“Invenergy”) Application for Failure to Comply with an Order of the EFSB and EFSB Rules (“Town’s Motion”).

As stated in the Town’s Motion (and CLF’s filing in support of the Town’s Motion), Invenergy has repeatedly failed to disclose essential information in this docket. Thus far, Invenergy has not been held responsible for withholding crucial information from the EFSB, the parties and the public. This cannot be allowed to continue.

The Town’s Motion was filed on Friday, October 27, 2017. In the ten (10) days since the Town’s Motion was filed, the EFSB and the parties have been presented with additional evidence that Invenergy is boldly continuing its pattern of material omissions.

First, as discussed more fully below, on November 1, 2017, Invenergy revealed that ISO-NE has barred Invenergy from participating in Forward Capacity Auction 12 (“FCA-12”). However, Invenergy withheld this information from the EFSB, the parties and the public until Invenergy’s consultants could present the ISO-NE disqualification from FCA-12 in the best light possible. And when Invenergy finally disclosed the fact of the disqualification, it failed to produce the important correspondence and other information from ISO-NE that is needed for the

EFSB and the parties to accurately assess the deeply negative impacts of this disqualification on whether the proposed facility is needed at all.

Second, as discussed more fully below, on November 3, 2017, Invenergy further withheld relevant information when it failed to disclose its funding of the public relations work being done on its behalf by a pro-CREC group called Rhode Islanders for Affordable Energy, and its related website, in its supplemental response to EFSB Data Request No. 1-3.

A. Invenergy (1) failed to inform the EFSB, the parties and the public that it is not qualified to bid into FCA-12 until Invenergy and its consultants could present the ISO-NE rejection in the best possible light, and then (2) has withheld the information from ISO-NE that is necessary for the EFSB and the parties to properly evaluate the negative impacts of this disqualification on whether CREC is needed at all.

On November 1, 2017, Invenergy announced that it had been disqualified by ISO-NE from participating in FCA-12. Invenergy admitted that when Invenergy learned that the second unit of the proposed Clear River Energy Project (“Project” or “CREC”) would not be permitted to bid into FCA-12, Invenergy did not immediately disclose this information to the EFSB, the parties and the public. Instead, Invenergy withheld the information until it could present the ISO-NE denial in the best light possible with an analysis from its consultants.

According to Invenergy’s letter to the EFSB, dated November 1, 2017: “Once Invenergy received the final notice from ISO-NE that the Project would not be able to participate in FCA 12, Invenergy requested [its consultants] to update the analysis previously provided to the EFSB...” The letter further states: “Invenergy wanted to have this updated information available to be submitted along with this notice.”

It is presently unclear exactly how long Invenergy withheld this crucial information. CLF and the Town are seeking leave from the EFSB, via a separate motion, to take additional discovery to determine (among other things) the period of time in which Invenergy knew, but did

not reveal, this vital information.¹ Invenergy could have had access to this information for weeks prior to disclosure, given the extensive nature of the memorandum produced by Invenergy's consultants.

In a major compounding of the delay in withholding the FAC-12 disqualification, even after Invenergy revealed the FCA-12 disqualification to the EFSB via a letter, Invenergy has continued to withhold all of the underlying documents explaining the disqualification by ISO-NE, including all explanatory correspondence between Invenergy and ISO-NE related to the disqualification from FCA-12.² The information underlying ISO-NE's disqualification of Invenergy from FCA-12 goes directly to the vital issue the EFSB must determine of whether construction of the proposed CREC facility is necessary to meet the needs of the state and/or region. EFSB Rule 1.13(c)(1).

An applicant is not required to provide an updated analysis simultaneously with notice of a material change in circumstances. Invenergy could have, and should have, provided notice of its rejection from FCA-12 to the EFSB immediately, together with all correspondence to and from ISO-NE related to the ISO-12 disqualification. Then the EFSB, all parties and their relevant consultants, including Invenergy, would have had an equal opportunity to review the information in its native form, and present the EFSB with their analysis of the impact on the need

¹ On November 3, 2017, the Town filed a Response Joining in and Supporting Conservation Law Foundation's Motion for Supplemental Advisory Opinions and Leave to Take Discovery and File Supplemental Expert Testimony. CLF's Motion and the Town's Response seek (1) new advisory opinions from the Statewide Division of Planning and the Office of Energy Resources; (2) leave to take additional discovery to address this newly discovered information; and (3) leave for the parties to file supplemental expert testimony that addresses this newly discovered information.

² Invenergy's summary of its discussions with ISO-NE regarding FCA-12 are wholly inadequate. Invenergy has a proven track record of withholding information and providing purposely vague or misleading responses to inquiries. The EFSB, the parties and the public need to review the correspondence and other information from ISO-NE directly, and not just as interpreted by Invenergy.

determination of this major development. Instead, Invenergy once again “hid the ball” for its own benefit, and continues to do so.

B. Invenergy improperly withheld relevant information when it failed to disclose its funding of a pro-CREC group and its related website in Invenergy’s supplemental response to EFSB Data Request No. 1-3.

On November 3, 2017, Invenergy filed a supplemental response to the EFSB’s Data Request No. 1-3 (“EFSB 1-3”).³ EFSB 1-3 seeks information about “community outreach that has been employed by [Invenergy]” as well as “copies of all materials circulated to individuals and media.” EFSB 1-3 also seeks “future plans for community outreach” during the application process, as well as during construction and operation.

Invenergy’s supplemental response failed to disclose that Invenergy and CREC are providing the funding for a pro-CREC group called “Rhode Islanders for Affordable Energy.”⁴ The purpose of the group (and its related website) is to “educate Rhode Islanders about the issue of high energy costs and to advocate that state regulators approve the proposed Clear River Energy Center in Burrillville as the first step.”⁵ The Rhode Islanders for Affordable Energy website states: “We believe the first step to solving our energy cost crisis is approving the new Burrillville power plant.”⁶ The website includes links to approximately 40 news articles and press releases about the proposed CREC Project.⁷

³ Invenergy initially responded to EFSB 1-3 on April 26, 2016.

⁴ See Rhode Islanders for Affordable Energy <http://riaffordableenergy.com> (last visited November 6, 2017)

⁵ See RIsers for Affordable Energy Launched to Support Invenergy Project in Burrillville, <http://www.golocalprov.com/news/rhode-islanders-for-affordable-energy-announces-formation-of-coalition-to-f> (last visited November 6, 2017).

⁶ See We Are Rhode Islanders for Affordable Energy <http://riaffordableenergy.com/index.html> (last visited November 6, 2017)

⁷ See In the News <http://riaffordableenergy.com/news.html> (last visited November 6, 2017).

The members of this group appear to be primarily local unions and business associations.⁸ The website was purchased from Network Solutions, LLC and was registered for use on May 8, 2017.⁹ On June 9, 2017, EcoRI published an article describing a “new pro-power plant group” and provided a link to the Rhode Islanders for Affordable Energy website in the article.¹⁰ Each page of the Rhode Islanders for Affordable Energy website states that the website is “Paid for by Clear River Energy Center, LLC.”¹¹ In addition, the source code to each page of the Rhode Islanders for Affordable Energy website states that the website is “Paid for by Invenergy LLC.”¹²

According to the June 9, 2017 EcoRI article, a “spokesman for Invenergy said the company is providing funding for advertising, which it has fully disclosed.”¹³ However, as usual, Invenergy had not disclosed its financial support or its involvement with Rhode Islanders for Affordable Energy to the EFSB or the parties to this docket. In fact, to date, Invenergy has still not provided the EFSB with information related to Invenergy’s funding of this pro-CREC group and its related community outreach.

⁸ See Coalition Members, <http://riaffordableenergy.com/members.html> (last visited November 6, 2017).

⁹ See “WHOIS Results for riaffordableenergy.com” <https://www.networksolutions.com/whois/results.jsp?domain=riaffordableenergy.com> (last visited November 6, 2017).

¹⁰ See “Chicago Developer Helps Fund Pro-Power Plant Group” <https://www.ecori.org/renewable-energy/2017/6/9/pro-power-plant-group-emerges-with-developers-funding> (last visited November 6, 2017).

¹¹ Neither Clear River Energy Center LLC nor Rhode Islanders for Affordable Energy are registered entities with the Rhode Island Secretary of State’s Office.

¹² See [view-source:http://riaffordableenergy.com/index.html](http://riaffordableenergy.com/index.html) (last visited November 6, 2017).

¹³ See “Chicago Developer Helps Fund Pro-Power Plant Group” <https://www.ecori.org/renewable-energy/2017/6/9/pro-power-plant-group-emerges-with-developers-funding> (last visited November 6, 2017).

C. Invenergy's application should be dismissed or denied with prejudice.

The energy facility siting process is effective, and inspires trust in the public, only when it is open and transparent. Invenergy has time and again withheld material information necessary for the process to work, and continues to do so. These actions and inactions have eroded the public's ability to trust in this process.

As detailed above and in the Town's Motion and CLF's supporting Response, Invenergy has disrespected the EFSB, the parties and the public by (1) withholding the CREC-Fall River Water Agreement while simultaneously denying the existence of such an agreement, (2) withholding crucial information about its disqualification from FCA-12 and continuing to withhold all related correspondence and information needed to properly evaluate the impact of this important development on the need determination, and (3) failing to disclose funding of a pro-CREC group and its related website. This cannot and should not be tolerated any longer.

Therefore, the Town respectfully requests that Invenergy's application be dismissed or denied with prejudice and this docket closed.

Respectfully submitted,
Town of Burrillville
By its attorneys

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Date: November 7, 2017

CERTIFICATE OF SERVICE

I certify that the original and ten photocopies of this Motion were filed by U.S. Mail, postage prepared, with the Coordinator of the EFSB, 89 Jefferson Boulevard, Warwick, RI 02888. In addition, electronic copies of this Motion were served via email on the service list for this docket. I certify that all of the foregoing was done on November 7, 2017.

/s/ Theresa Gallo _____
Theresa Gallo