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September 8, 2017

Via Electronic Mail and Federal Express

Todd Anthony Bianco, EFSB Coordinator
RI Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, RI 02888

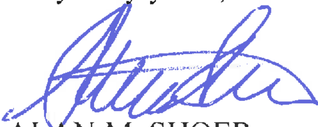
Re: Invenergy Thermal Development LLC's Application to Construct and Operate the Clear River Energy Center in Burrillville, Rhode Island
Docket No.: SB-2015-16

Dear Mr. Bianco:

On behalf of Invenergy Thermal Development LLC and the Clear River Energy Center Project ("Invenergy"), please find enclosed an original and three (3) copies of Invenergy's Objection to the Town of Burrillville's August 21, 2017 Motion.

Please let me know if you have any questions.

Very truly yours,



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Enclosures

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	)	**Docket No. SB-2015-06**
CLEAR RIVER ENERGY CENTER IN	)	
BURRILLVILLE, RHODE ISLAND	)	

OBJECTION OF INVENERGY THERMAL DEVELOPMENT LLC TO THE TOWN OF BURRILLVILLE'S AUGUST 21, 2017 MOTION

I. INTRODUCTION

Now comes Invenergy Thermal Development LLC ("Invenergy") and hereby objects to the Town of Burrillville's ("Town's") latest Motion, requesting the Rhode Island Energy Facility Siting Board ("EFSB" or "Board"): (1) strike Invenergy's Objection to the Town's Data Request, No. 33-1; (2) compel Invenergy to respond to the Town's Data Request, No. 33-1; and (3) stay the hearings until "all water issues are resolved." *See* Town's August 21, 2017 Motion ("Town's Mot."), at 3.

As discussed thoroughly below, the Town's Motion to strike Invenergy's Objection to the Town's Data Request, No. 33-1 should be denied because Invenergy's Objection was not "procedurally deficient." Second, the Town's Motion to compel Invenergy's response to the Town's Data Request, No. 33-1 should also be denied because, as stated in Invenergy's Objection to the Town's Data Request, No. 33-1, filed with the Board on August 15, 2017, the Request seeks confidential and proprietary information for an improper purpose that is unnecessary and not relevant to meaningfully evaluate Invenergy's water supply plan. Lastly, the Town's Motion to stay final hearings should be denied because Invenergy followed the EFSB Rules of Practice and Procedure ("EFSB Rules" or "Board Rules") and EFSB precedent and provided the Board with all that is required and necessary for it to make a final determination on

Invenergy's EFSB Application ("Application").

Throughout this proceeding, the Town has repeatedly demanded that Invenergy provide more information than what is required to fairly evaluate Invenergy's Application. The Town continues to insist that Invenergy provide the Town with whatever level of detail the Town demands, only to then ask for more, in an attempt to invent a standard that does not exist under Rhode Island law or in the EFSB Rules. The Town's Motion is its latest effort to complain that Invenergy cannot meet its contrived standard in order to unnecessarily delay final hearings and delay a final decision in this proceeding.

The Town's Motion requests that the Board compel Invenergy to respond to the Town's Data Request, No. 33-1, a request that seeks speculative, hypothetical, privileged and preliminary information that is not relevant to the water supply plan that is before the Board.[1] As explained in Invenergy's August 15, 2017 Objection, this request is beyond the scope of discovery permitted under the EFSB Rules. In furtherance of its objections to the Application, the Town presumably seeks this speculative, confidential and proprietary business information so that is can improperly interfere with Invenergy's attempt to negotiate with and/or contract with any other alternate contingent/redundant water supplier and prevent Invenergy from conducting business in Rhode Island. The Town should not be allowed to abuse the discovery rules and obtain proprietary business strategy or privileged information that is irrelevant to the water supply plan that is presently before the EFSB.

Finally, the Town's Motion concludes by unjustifiably requesting a stay of the EFSB

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[1] The Town seeks confidential and proprietary business information related to *potential* negotiations with any other *potential* contingent/redundant sources that have not at this time resulted in any formal agreement.

proceeding, arguing that the Board should not proceed if there are *any* objections or challenges pending. Aside from the fact that neither the EFSB Rules nor EFSB precedent have ever demanded that all aspects of an application be "unchallenged" in order for final hearings to occur, this latest Town Motion repeats the exact same argument that the Board rejected in the Town's earlier Motion to Dismiss. The Board already ruled that the revised Water Supply Plan ("Water Supply Plan"), filed with the Board on January 11, 2017, should be reviewed at the final hearings regardless of whether it may be challenged.[2]

Rather than acknowledging that Invenergy's Water Supply Plan contains the requisite information, the Town attempts to concoct a new standard, arguing that the Water Supply Plan must be "unchallenged" for it to meaningfully evaluate and proceed to final hearings. Not only does the Town mischaracterize (and make-up) a standard that is unsupported by the EFSB Rules and EFSB precedent, but the Town also completely ignores that it previously informed Invenergy of what information it believed was necessary for it to meaningfully evaluate a proposed water source. The Town completely ignores that Invenergy, in fact, included that requested information in its revised Water Supply Plan.

For all these reasons, the Board should deny the Town's latest Motion.

II. BACKGROUND

Pursuant to the Act, Chapter 42-98, *et seq.* of the General Laws of Rhode Island and the EFSB Rules, Invenergy filed its Application to seek the approval of the Board to site and

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[2] *See* Docket SB-2015-06, Order No. 107, dated Mar. 28, 2017 (effective Feb. 16, 2017). The Board denied the Town's Motion, stating that "the Town's contentions that the City of Providence is opposed to the siting of the proposed facility, *and the possibility that the water plan may face legal challenges are not issues which warrant dismissal*." *Id*. at 2 (emphasis added). The Board further noted that "the sufficiency of the water plan will be considered at the final hearing." *Id*. at 2.

construct the Clear River Energy Center, an approximately 850-1000 MW combined cycle electric generating facility on Wallum Lake Road in Burrillville, Rhode Island ("CREC" or "Project" or "Facility"). The Application was reviewed by the Board for completeness in accordance with Rule 1.7 and deemed complete as it provided the required contents set forth in the EFSB Rules. The Application was properly docketed on November 16, 2015.

When Invenergy's Application was deemed complete, it contained the best available information at the time on all support facilities, including water. At that time, Invenergy had a letter of intent with the Pascoag Utilities District ("PUD") for the use of Well 3A. During public comment, concerns were raised regarding Invenergy's use of Well 3A, including recommendations from many commenters, including the Town's expert before the Planning Board Advisory Opinion process, that Invenergy not use Well 3A and seek alternate supply options. Following public comments, the PUD terminated its letter of intent on August 19, 2016 and later issued an advisory opinion opposing the use of Well 3A.

Upon notification that the PUD terminated the letter of intent, Invenergy timely notified the Board of the PUD's decision. *See* Invenergy's Notification Letter to the EFSB, dated August 22, 2016. Subsequently, a local supplier, the Harrisville Fire District ("Harrisville"), considered supplying water to Invenergy, but voted against providing water to CREC. Invenergy then filed a Motion for Extension on September 9, 2016, requesting that the Board extend the dates listed in the procedural schedule to allow Invenergy an opportunity to negotiate and contract with a different water supply entity.

After a hearing on Invenergy's request, the Board ordered that the Application proceedings be suspended for ninety days and ordered Invenergy to submit a revised water plan by January 11, 2017. *See* Docket SB-2015-06, Order No. 103, dated Oct. 20, 2017 (effective

Oct. 13, 2016); Docket SB-2015-06, Order No. 107, dated Mar. 28, 2017 (effective Feb. 16, 2017). The Board also requested that Invenergy's water plan include, "at a minimum[,] those items that are listed in the October 5th, 2016 letter from the Town of Burrillville[.]" *See* Oct. 5, 2016 Transcript ("Tr."), at 41.[3] The Town's October 5, 2016 letter stated that these ten (10) items would allow it to "*meaningfully evaluate any water proposal from Invenergy*[.]" *See* Town's Oct. 5, 2016 Letter to the Board (emphasis added). Notably, there is no item stating that the water supply plan must also be "uncontested" or "unchallenged."

On January 11, 2017, Invenergy filed its revised Water Supply Plan and included all ten (10) of the items listed in the Town's October 5, 2016 letter.[4] Specifically, the Water Supply Plan stated that Invenergy had greatly reduced CREC's water needs so that trucking water to the Facility was now feasible. *See* Water Supply Plan, dated July 11, 2017. The Water Supply Plan explained that Invenergy has an agreement with the Town of Johnston to truck water to the Project. *Id*. The Water Supply Plan also identified Benn Water & Heavy Transport Corp. as a contingent/redundant supplier. *Id*.

[3] The Town's October 5, 2016 letter requested that Invenergy's water supply plan include the following:

1. The source of the process water (from a municipality or water system, with details),
2. The identity of the municipality or water system,
3. The type of source (groundwater or surface water source),
4. Quantity of water available on a daily basis in gallons per day,
5. Quality of water from a chemical standpoint,
6. Routing or transport of water from source to the proposed facility,
7. Expected treatment of water at source and/or at the facility for use at the facility,
8. If water treatment is required, conceptual process and instrumentation diagram, expected size and location of building to be used for treatment, and the proposed treatment operator;
9. Identification of a redundant/contingent process water source, and
10. The proposed location of the discharge of water from the plant and the expected volume and chemical content of the water at discharge.

[4] The Water Supply Plan included additional information as well.

After Invenergy filed its Water Supply Plan with the Board, the Town renewed and supplemented a motion to dismiss that it filed on September 13, 2016, asserting that Invenergy failed to provide timely information regarding its water supply and asserting that potential legal challenges to Invenergy's contract with the Town of Johnston to purchase water for the operation of the Facility called for this matter to be dismissed. *See* Docket SB-2015-06, Order No. 107, dated Mar. 28, 2017 (effective Feb. 16, 2017).

The Board denied the Town's motion to dismiss, stating that "[b]ecause the plan has been submitted, the Town's motion related to the lack of a water supply plan is moot. The Town, as well as every other party to this proceeding, has the opportunity to issue data requests and retain experts to further explore the water plan and will be given the opportunity to address the details of the plan during the final hearings." *Id*. at 1-2. The Board stated that "the Town's contentions that the City of Providence is opposed to the siting of the proposed facility, *and the possibility that the water plan may face legal challenges are not issues which warrant dismissal*." *Id*. at 2 (emphasis added). The Board further noted that "the sufficiency of the water plan will be considered at the final hearing." *Id*. at 2. The Board concluded by stating that "the submission of a water supply plan on January 1[1], 2017 rendered the [A]pplication complete." *Id*. at 3.

Unsatisfied with the Board's decision, the Town has yet again filed a similar motion seeking three forms of relief, one of which is to stay final hearings "until all water issues are resolved and a reliable, unchallenged water supply source has been identified and fully vetted." *See* Town's Mot., at 3. This Motion seeks a second "bite at the apple" on the same grounds asserted in the Town's supplemental motion to dismiss. For the reasons articulated below, the Town's latest Motion is meritless and should be denied.

III. ARGUMENT

A. The Town's Motion to Strike Should be Denied Because Invenergy's Objection to the Town's Data Request, No. 33-1 was Not "Procedurally Deficient."

The Town's Motion asserts that "Invenergy's objection to the Town's DR 33-1 should be stricken because it was not properly raised." *See* Town's Mot., at 4. The Town contends that because the document that Invenergy filed on August 15, 2017 objecting to the Town's Data Request, No. 33-1 was not titled "motion," but instead titled "objection," Invenergy's objection was "procedurally deficient." Town's Mot., at 4 (citing EFSB Rule 1.27(b)(3), which states that "[o]bjection to a data request in whole or in part on the ground that the request is unreasonable and/or the material is not relevant or not permitted or required by law shall be made by motion").

The Town's contention amounts to nothing more than a silly argument over semantics. EFSB Rule 1.17, entitled "Motions," explaining motion requirements, states:

> [o]ther than oral motions made during a hearing, any application to the Board to take any action or to enter any order after commencement of a proceeding or after commencement of an investigation by the Board shall be made in writing, shall be filed with the Coordinator, shall state specifically the grounds therefor, shall set forth the action or order sought, and shall be served upon all person entitled thereto by these rules.

Although Invenergy's August 15, 2017 filing was not titled "motion," it included all of the Rule 1.17 motion requirements. Nothing in the Board's Rules state what a filing must be titled in order to be considered a "motion."

Additionally, it is the practice of those appearing before the EFSB, the Public Utilities Commission ("PUC") and the Public Utilities Division ("Division") to title an objection to data requests as "objection," not motion.[5] *See e.g.* Division Docket No. 4550, Pawtucket Water

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[5] The Division's and PUC's rule pertaining to objections to data requests is very similar to EFSB Rule 1.27(b)(3), stating: "[o]bjection to a data request in whole or in part on the ground that the

Supply Board's Objection to Data Request from the Town of Cumberland, 3-10, available at http://www.ripuc.org/eventsactions/docket/4550-PWSB-Objection-Cumberland-DR3_5-22-15.pdf.

For these reasons, the Town's Motion to Strike Invenergy's Objection to 33-1 should be denied.

B. The Town's Motion to Compel Should be Denied Because the Town's Data Request, No. 33-1 Seeks Confidential and Proprietary Information for an Improper Purpose that is Unnecessary and Not Relevant to Meaningfully Evaluate Invenergy's Water Supply Plan.

The Town's Motion also asserts that "the EFSB should nevertheless require Invenergy to immediately provide the information sought by the Town [in Data Request, No. 33-1] because it is [allegedly] plainly relevant and central to this proceeding." Town's Mot., at 5. The Town also alleges that the information sought in Data Request, No. 33-1 "is necessary to ensure that the Town[,] the EFSB, the advisory agencies, and the public all have a meaningful opportunity to fully evaluate the effect Invenergy's water supply options will have on the environment, and the health, safety and welfare of the residents of the Town and the state." *Id.*[6] As discussed

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request is unreasonable and/or the material is not relevant or not permitted or required by law shall be made by motion filed as soon as practicable[.]" *See* Division Rule 21(c)(3); PUC Rule 1.18(c)(3).

[6] The Town also asserts that "Invenergy's refusal to provide a response to DR 33-1 is consistent with its [alleged] evasive manner throughout this proceeding." Town's Mot., at 8. The Town goes on to state that Invenergy has a pattern of "delay" and allegedly preventing advisory agencies from meaningfully reviewing the proposed Project. *Id.* Nothing could be further from the truth. First, it is the Town, not Invenergy, that has consistently tried to delay these proceedings. The number of repetitive and unnecessary motions filed by the Town proves that the Town's real goal is to delay final hearings in the proceeding. Additionally, it should be noted that the Town does not cite to any *supplemental* advisory opinion when stating that Invenergy has allegedly "attempted to 'hide the ball'" throughout this process. *Id.* at 9. Instead, the Town cites to original advisory opinions of which Invenergy either previously responded to and/or provided that agency with the information originally requested. The Town further ignores the massive amount of information Invenergy has supplied in its responses to hundreds of data

thoroughly in Invenergy's Objection to the Town's Data Request, No. 33-1, filed with the Board on August 15, 2017, and re-iterated below, the Town's contentions are erroneous and the Motion to compel should be denied.[7]

The Town's Data Request, No. 33-1 requests the following:

> In Response to the Town's data request 32-9, Invenergy stated "Invenergy has not made any attempts to secure alternative water sources **as a result of the litigation.**" (Emphasis added.) Invenergy went on to state that it is continuing "the exploration of additional contingent water sources to supplement the contingency contained in our previously filed water supply plan."
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> Regardless of whether Invenergy's attempts have been made to secure additional contingent water sources "as a result of the litigation" or not, please set forth in detail all of Invenergy's efforts to explore additional contingent water sources to supplement the contingency contained in your previously filed water supply plan. Please identify any and all additional possible sources of water that have been considered or explored including, but not limited to, the location of the water supply.

The information sought in Data Request, No. 33-1 is beyond the scope of discovery permitted under the EFSB Rules. As required by EFSB Rule 1.6(b)(11), Invenergy provided the Board with information on its support facilities, including water, and an analysis of their availability in its January 11, 2017 revised Water Supply Plan. If Invenergy actually enters into an agreement with an additional contingent/redundant supplier, it will supplement its Water Supply Plan and its response to the Town's Data Request, No. 32-9 to disclose the existence of

requests and in the form of informational filings. Stating that Invenergy has been "evasive" is flatly wrong and not consistent with the voluminous data already supplied by Invenergy.

[7] Invenergy adopts by reference all arguments raised in its August 15, 2017 Objection to the Town's Data Request, No. 33-1.

that agreement and supplier.[8] In the absence of an agreement with any other water supplier, requesting what Invenergy is thinking or speculating about, is not the subject of proper discovery.

The sensitive and confidential business information and strategy on what Invenergy might, or might not, be "considering" or "exploring" as an additional redundant/contingent process water source is unnecessary to meaningfully evaluate the Water Supply Plan that is before the Board. As stated in Invenergy's August 15, 2017 Objection, neither EFSB Rule 1.6(b)(11) nor any other EFSB Rule requires an applicant to provide information on its attempts to secure a contingent/redundant water source and/or the identities of possible prospective suppliers that an applicant is speculating about, talking to, "considering," or "exploring." Indeed, such information has no bearing on Invenergy's Water Supply Plan because Invenergy has not yet entered into an agreement with any other contingent/redundant supplier, and it is purely speculative as to whether Invenergy will reach another agreement. *See, e.g.*, *Micro Motion, Inc. v. Kane Steel Co., Inc.*, 894 F.2d 1318, 1328 (Fed. Cir. 1990) ("A litigant may not engage in merely speculative inquiries in the guise of relevant discovery."). Regardless of the Town's curiosity or other motives, the information sought in Data Request, No. 33-1 is beyond the scope of discovery permitted by the EFSB Rules and is flatly irrelevant to a meaningful evaluation of the Water Supply Plan that is before the Board.

Additionally, it appears likely that the Town's real motivation for seeking the identities of the potential water suppliers whom Invenergy is considering contacting or has contacted is so

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[8] Invenergy previously identified a contingent/redundant supply source, Benn Water & Heavy Transport Corp. *See* Invenergy's revised Water Supply Plan, filed with the Board on January 11, 2017; Invenergy's Response to the Town's Data Request, Nos. 22-57 & 32-9 n.1.

that the Town can approach these prospective water suppliers and attempt to convince them not to contract with Invenergy. This is not only an improper purpose of discovery, but also may constitute a violation of Rhode Island law. *See L.A. Ray Realty v. Town Council of Cumberland*, 698 A.2d 202, 207 (R.I. 1997) (finding a defendant liable for tortious interference with prospective contractual relations).[9] If the Board forces Invenergy to release this highly sensitive business information as to any other entity that has any contact with Invenergy, however remote, that release will adversely impact Invenergy's bargaining position and its ability to negotiate and secure additional contingent/redundant water supply arrangements.

Moreover, the Town previously informed the Board of what information it found necessary to meaningfully evaluate Invenergy's Water Supply Plan. *See* Town's Oct. 5, 2016 letter to the Board ("the Town of Burrillville, the Conservation Law Foundation, and Invenergy have all *agreed that in order to meaningfully evaluate any water proposal from Invenergy*, the following items will be provided, by Invenergy, at a minimum[.]") (emphasis added). When Invenergy filed its Water Supply Plan on January 11, 2017, it included all of the items that the Town requested be included in its water supply plan, as well as additional information. One of the items identified by the Town requested the "[i]dentification of a redundant/contingent process water source." *Id*. The Town did not state that all additional redundant/contingent

[9] The Town contends that this information can be released subject to a confidentiality agreement. Town's Mot., at n.4. However, because this information is wholly irrelevant to this proceeding and can only be used for an improper purpose, a confidentiality agreement would not resolve the problems associated with Data Request, No. 33-1. Additionally, the Town contends that Invenergy "opened the door" regarding this information because according to testimony, Invenergy is still considering additional redundant/contingent suppliers. *Id*. at 6. As explained thoroughly in Invenergy's August 15, 2017 objection, unless and until Invenergy has signed an agreement with these additional redundant/contingent suppliers, the companies that Invenergy is "considering" and "exploring" is not relevant to this proceeding, as they are not part of the Water Supply Plan filed with the Board.

suppliers Invenergy may be "considering" or "exploring" was also necessary to meaningfully evaluate the Water Supply Plan. Instead, it stated that it could meaningfully evaluate the Water Supply Plan if Invenergy identified "*a* [singular] contingent/redundant process water source[.]" *See* Town's Oct. 5, 2016 letter to the Board.

The Water Supply Plan included all the items listed in the Town's October 5, 2016 letter, as well as additional information. Invenergy provided the Town, the Board and the advisory agencies with all necessary information so the Water Supply Plan can be meaningfully evaluated, including identifying Benn Water & Heavy Transport Corp. as its redundant/contingent process water source. *See* Invenergy's revised Water Supply Plan, filed with the Board on January 11, 2017; Invenergy's Response to the Town's Data Request, Nos. 22-57 & 32-9 n.1.

Accordingly, the Town's motion to compel should be denied as the confidential and proprietary business information requested is irrelevant and unnecessary to meaningfully evaluate Invenergy's Water Supply Plan that was filed and presently under review.

C. The Town's Motion to Stay the Hearings Should be Denied Because Invenergy followed the EFSB Rules of Practice and Procedure and Provided the Board with All that is Required and Necessary for it to Make a Final Determination on Invenergy's EFSB Application.

The Town further requests that "evidentiary hearings should be stayed until all water issues are resolved and a reliable, unchallenged water supply source has been identified and vetted." Town's Mot., at 13. Specifically, the Town states that "[w]ithout all details of Invenergy's water supply plan, the EFSB, its advisory agencies, the parties and the public cannot meaningfully evaluate Invenergy's Application for the proposed facility." *Id.*

The Town's motion for a stay should be denied because the EFSB Rules and EFSB precedent do not require that an applicant present an "unchallenged" water supply plan in order to proceed to final hearings and because Invenergy's Water Supply Plan is complete and contains

sufficient details for all parties to meaningfully evaluate Invenergy's Application.

1. Neither the EFSB Rules nor EFSB Precedent Require that an Applicant Present an "unchallenged" Water Supply Plan in Order to Proceed to Final Hearings.

Because neither the EFSB Rules nor EFSB precedent require that an applicant present an "unchallenged" water supply plan to proceed to final hearings, the Town's motion to stay the proceedings should be denied.

Pursuant to EFSB Rule 1.15(a)(1), the Board is permitted to enter a stay only if an applicant fails "to comply with any duly promulgated board rule, regulation, requirement or procedure for the licensing of energy facilities or failure to pay lawfully assessed expenses[.]" EFSB Rule 1.15(a)(1). Invenergy has not failed to comply with any board rule, regulation requirement or procedure for licensing. EFSB Rule 1.6(b)(11) requires an applicant to provide information on its support facilities, including water, and an analysis of their availability. Invenergy provided that information to the Board (and all Parties) in its January 11, 2017 revised Water Supply Plan. Nowhere in Rule 1.6(b)(11) or any other EFSB Rule does it state that an applicant must present an "unchallenged" water supply source to proceed to final hearing.

Indeed, the EFSB previously conducted final hearings and rendered a license to applicants that presented a "challenged" or contingent water source to the Board. *See Manchester Street: Final Decision and Order*, Order 12, Docket No. SB-89-1, Dec. 17, 1990 (conditioning a license on an applicant reporting back to the Board regarding the ability of its water source to continuously meet the water demands of the project). Similarly, a siting board decision in Massachusetts reviewed an applicant's water supply plan although all water issues were neither settled nor resolved. *See In Re Petitioner of Exelon West Medway, LLC*, EFSB 15-01 & D.P.U. 15-25, dated Nov. 18, 2016, at 83 (The applicant had yet to enter into a water supply contract when the Board issued its final decision, accordingly, the Massachusetts siting

board made it a condition that the applicant provide the siting board with "a copy of the water-supply contract . . . prior to the commencement of . . . construction.").

When the EFSB rendered its final decision in *Manchester Street*, it expressed concern on the capacity of the applicants' water source. *Manchester Street: Final Decision and Order*, Order 12, Docket No. SB-89-1, Dec. 17, 1990. Instead of staying the proceedings until an "unchallenged" water source had been identified, the Board approved the use of water proposed and required that the applicant report back to the Board after two (2) years of operation. *Id*. The Board noted that "[i]n the event that the Board determines that the single well has not adequately met the water demands of the Station, *or that there is substantial uncertainty* as to whether it can do so in the future, the Applicants may be required to build or acquire a second well to supplement the Olneyville well." *Id*. (emphasis added).[10]

Here, the Town's assertion that "a confirmed, final and unchallenged water supply plan" is necessary to proceed to final hearings is simply wrong. The Town seeks to create a standard that is not only contrary to the EFSB Rules and EFSB precedent but (of course) is also impossible to reach: unless everything in an application (including water supply) is "unchallenged," final hearings must be stayed. The Board should refuse the Town's attempt to create an impossible standard. By now, it is clear that no matter how much information Invenergy provides, the Town and other objecting intervenors will continue to challenge Invenergy's Application as not containing enough information and will continue to demand more

[10] Additionally, at the time the EFSB rendered its decision in *Manchester Street*, the applicants had not yet identified alternative technology to ensure a control strategy was in place for both CO2 and NOx emissions, in the event CO2 re-designation was denied. *Id.* In that case, the Board certainly did not stay the final hearing merely because this data was not supplied in the application; instead the Board properly conditioned its license and gave the applicants sixty (60) days from the date the decision was rendered to submit an alternative plan for air emissions control. *Id*.

information than what is required. If the Board were to stay the proceedings until all objectors finish challenging the different aspects of the Application, this proceeding will never reach final hearings. The Town's efforts to raise the Applicant's burden, without demonstrating any support from the EFSB Rules or EFSB precedent to do so, must be rejected.

Accordingly, because neither the EFSB Rules nor EFSB precedent require that an application or a water supply plan be "unchallenged" in order to proceed to final hearings, the Town's Motion to stay this proceeding should be denied.

2. Invenergy's Water Supply Plan is Complete and Contains Sufficient Details for all to Meaningfully Evaluate Invenergy's Application.

Due to the fact that the Town is challenging the Water Supply Plan in Superior Court, the Town asserts that it does not have "all details of Invenergy's water supply plan" and, therefore, "cannot meaningfully evaluate Invenergy's [A]pplication for the proposed facility." Town's Mot., at 13. The Town's contentions are baseless. Simply because the Town (and the Conservation Law Foundation) have chosen to challenge an agreement within the Water Supply Plan, that does not equate to Invenergy failing to provide "all details" of its Water Supply Plan or render Invenergy's Water Supply Plan incomplete.

When Invenergy filed its revised Water Supply Plan with the Board on January 11, 2017, the Water Supply Plan included all of the items that the Town specifically requested be included in its water supply plan for it to "meaningfully evaluate" the Plan. The Water Supply Plan details that CREC minimized water consumption so that trucking water to the Project is feasible. The Water Supply Plan discusses CREC's process water source, identifies the municipality as the Town of Johnston, explains the quantity of water available on a daily basis, analyzes the water quality from a chemical stand point, shows the transport route, discusses the expected water treatment source for the Facility, which includes conceptual process and instrumentation

diagrams, identifies a redundant/contingent process water source and explains CREC's water discharge. *See* Invenergy's revised Water Supply Plan, filed with the Board on January 11, 2017. Invenergy provided further details about its Water Supply Plan in responses to many data requests. *See e.g.*, Invenergy's Responses to Town's Data Requests, Nos. 22-1 – 22-58; Invenergy's Responses to RIDEM's Data Requests, Nos. 4-1 – 4-4, 4-40 – 4-45; Invenergy's Responses to Town's Data Request, Nos. 27-12 – 27-13, 27-17 – 27-18, 27-27 – 27-31.

Additionally, as discussed above, after Invenergy filed its Water Supply Plan with the Board, the Town renewed and supplemented a September 13, 2016 motion to dismiss, asserting, among other things, that because of potential legal challenge to Invenergy's water supply agreement with the Town of Johnston, this matter should be dismissed. *See* Docket SB-2015-06, Order No. 107, dated Mar. 28, 2017 (effective Feb. 16, 2017). The Board denied the Town's motion to dismiss stating that "the Town's contentions that the City of Providence is opposed to the siting of the proposed facility, *and the possibility that the water plan may face legal challenges are not issues which warrant dismissal*." *Id.* at 2 (emphasis added). The Board further noted that "the sufficiency of the water plan will be considered at the final hearing." *Id.* at 2. The Board concluded by stating that "the submission of a water supply plan on January 1[1], 2017 *rendered the [A]pplication complete*." *Id.* at 3 (emphasis added). Although the Town seeks a stay, not dismissal, the Town recycles the same argument that it made in its 2016 supplemental motion to dismiss. Because the sufficiently of the Water Supply Agreement will be considered at the final hearing, a stay is unwarranted.

Moreover, no additional information is necessary for the Town (or any other Party) to meaningfully evaluate Invenergy's Water Supply Plan. The Water Supply Plan includes a contingent/redundant supplier, Benn Water & Heavy Transport Corp. If the Town's legal

challenge invalidates Invenergy's agreement with the Town of Johnston, Invenergy plans to utilize this identified contingent/redundant water source. Because Invenergy provided the Town, the Board, the relevant agencies and all Parties with the Water Supply Plan, which includes a primary source, as well as a contingent/redundant water source, all Parties have enough information to meaningfully evaluate the Water Supply Plan.

Accordingly, the Town has failed to present any legal basis to warrant a stay of the final hearings.

IV. CONCLUSION

For the foregoing reasons, Invenergy respectfully requests that the Board deny this latest Motion of the Town.

Respectfully submitted,

INVENERGY THERMAL DEVELOPMENT LLC

By Its Attorneys:

/s/ Alan M. Shoer
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Dated: September 8, 2017

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2017, I delivered a true copy of the foregoing document to the Energy Facilities Siting Board via electronic mail to the parties on the attached service list.

_/s/ Alan M. Shoer ___________________________