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April 24, 2017

Todd A. Bianco
Coordinator
Rhode Island Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, RI 02888

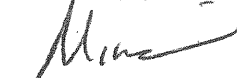
Re: Invenergy Thermal Development LLC – Clear River Energy Center
Docket No. SB-2015-06

Dear Dr. Bianco:

This office represents the Town of Burrillville in this docket. Enclosed for filing in this matter are an original and ten (10) copies of a Motion to Preclude Expert Testimony from Invenergy or, in the Alternative, to Compel Complete Data Responses, and Establish a Realistic Procedural Schedule. Electronic copies have been sent to the service list.

If you need any further information, please do not hesitate to contact me.

Very truly yours,


Michael R. McElroy

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 Energy : Docket No. SB-2015-06
Center in Burrillville, Rhode Island :

**TOWN OF BURRILLVILLE’S MOTION TO PRECLUDE
EXPERT TESTIMONY FROM INVENERGY OR,
IN THE ALTERNATIVE, TO COMPEL COMPLETE DATA RESPONSES,
AND ESTABLISH A REALISTIC PROCEDURAL SCHEDULE**

The Town of Burrillville (“Town”), an intervenor as of right in this docket, hereby moves the Energy Facility Siting Board (“EFSB” or “Board”) to preclude any and all expert witness testimony from Invenergy, including, but not limited to those expert witnesses listed in the Town’s 26th Set of Data Requests to Invenergy.¹ In the alternative, the Town requests that the Board compel Invenergy to promptly provide the Town with complete responses to the Town’s 26th Set of Data Requests. The Town also moves that a realistic procedural schedule be established.

I. INTRODUCTION

On March 7, 2017, in an effort to prepare for the anticipated evidentiary hearings, the Town filed and served its 26th Set of Data Requests to Invenergy. (See Attachment A.) The set included a single data request (“DR 26-1”) which sought information regarding Invenergy’s previously disclosed expert witnesses, as well as the identity of any undisclosed expert witnesses

¹ Invenergy disclosed a list of nineteen (19) expert witnesses to the Board on September 12, 2016. The Town included this list within its 26th Set of Data Requests. The disclosed witnesses are: John Niland, Michael Feinblatt, Ryan Hardy, Edinaldo Tebaldi, Jeff Hershberger, Jason Ringler, George Bacon, Jim Riordan, Michael Hankard, William Bailey, Christopher Donta, Maureen Chlebek, Robert Smith, Gordon Perkins, Edward Pimental, Michael Marous, Richard Lipsitz, John Carter, and Chad Jacobs.

Invenergy intends to call at the evidentiary hearings.² This information is needed so that the Town can hire expert witnesses to rebut Invenergy's expert testimony in this highly complex matter. The Town asked Invenergy to:

- (1) describe the subject matter upon which each expert is expected to testify;
- (2) provide supporting documentation for the substance of the facts and opinions to which each expert is expected to testify;
- (3) state the grounds for each opinion to which each expert is expected to testify; and
- (4) provide a summary of previous testimony given by each witness on the same subject.

Invenergy's counsel sought an extension of time to respond to Data Request 26-1. The Town agreed to a two-week extension for Invenergy to submit its responses. Importantly, however, Invenergy never sought a time extension relative to filing objections under EFSB Rule 1.27(b)(3).

On April 7, 2017, Invenergy filed its response to DR 26-1.³ (See Attachment B.) Invenergy's response was wholly insufficient and failed to provide any of the information requested by the Town. Invenergy objected to the Town's requests on the basis that the information requested was allegedly unreasonable and not required by law. Invenergy's

² EFSB Rule 1.27(b)(1) states: "In any proceeding pending before the Board, the Board and any party may request such data, studies, workpapers, reports and information as are reasonable, relevant to the proceeding and are permitted by these rules and/or statute."

³ Invenergy's response to DR 26-1 states, in part:

EFSB Rule 12.1(c) states that pre-filed direct testimony shall be filed no later than ten (10) days before the commencement date for the final hearing. This data request seeks the information that is required by the Board's Procedural Rules to be produced in the form of pre-filed direct testimony, which Invenergy anticipates it will be filing as the application moves toward final hearing, and in accordance with any further procedural schedule for the filing of Pre-Filed Direct, and Rebuttal Testimony that the Board may establish.

Invenergy's pre-filed testimony will provide the information required by Rule 1.12 ("all direct testimony in writing and copies of all documents and other evidence that the party proposes to introduce at the final hearing"). Invenergy's pre-filed testimony will also include the grounds and support for each opinion given.

objections were stated within its filed response. However, Invenergy did not file a motion setting forth any objections to DR 26-1 within the five-day period as required by EFSB Rule 1.27(b)(3).

The information sought by the Town in DR 26-1 is essential to ensure that the Town has a meaningful opportunity to be heard on the complex issues surrounding Invenergy's proposed power plant. Therefore, the testimony of these witnesses should be precluded in their entirety, or in the alternative, Invenergy should be required to promptly provide complete data responses to the Town.

II. ARGUMENT

A. Invenergy's responses to DR 26-1 are essential to ensure the Town has a meaningful opportunity to be heard on the complex issues related to the proposed power plant.

The information requested in DR 26-1 is necessary to ensure the Town has a meaningful opportunity to hire experts and prepare response testimony. It is important to note that the Town is not asking Invenergy to provide the complete testimony of its experts at this time. To the contrary, the Town simply seeks to obtain summary information consistent with Superior Court Rule 26, which provides for routine disclosure of certain testifying expert information in Superior Court.

Under the Superior Court Rules of Civil Procedure, any party may serve interrogatories requiring any other party to "identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion." R.I. Superior Ct. R. Civ. P. 26(b)(4)(A).

Rhode Island's Rule 26 corresponds to Federal Rule 26. In amending Federal Rule 26, the Advisory Committee observed that "evasion or resistance to reasonable discovery requests pose significant problems. [...] The purpose of discovery is to provide a mechanism for making

relevant information available to the litigants. “Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation.”” Advisory Committee Notes to 1983 Amendment to Fed. R. of Civ. P. 26 (*quoting Hickman v. Taylor*, 329 U.S. 495, 507 (1947)).

The EFSB Rules anticipate this type of expert disclosure as well. EFSB Rule 1.22(a)(2) states, in part:

At or before a pre-hearing conference, the Board may order a party to file copies of exhibits, names and addresses of all witnesses it intends to call in its direct case, together with a short statement of the purposes of each exhibit and of the testimony of each witness. After the entry of such an order, a party shall not be permitted, except in the discretion of the Board, to introduce into evidence in its direct case exhibits which are not filed in accordance with the order.

Invenergy identified 19 proposed experts on September 12, 2016, mostly Ph.D.s, engineers, and finance professionals. In its disclosure letter, Invenergy included short phrases to describe the subject matter to be covered by each expert. For example, “Economics and Jobs” or “Environmental.” These descriptions are much too broad to be useful and are entirely inadequate to allow the Town to hire experts and to meaningfully prepare response testimony. For this reason, the Town served DR 26-1 asking Invenergy to provide information consistent with Superior Court Rule of Civil Procedure 26(b)(4)(A).

However, Invenergy’s response to DR 26-1 failed to disclose any actual facts, opinions, grounds, or summaries thereof, to be expressed by its proposed experts. This makes it impossible for the Town to retain rebuttal witnesses and prepare response testimony.⁴

⁴ The Town acknowledges that, pursuant to EFSB Rule 1.18(b), the Town has the option to depose all 19 of Invenergy’s proposed witnesses to determine the subject matter, facts and opinions on which the experts are expected to testify, as well as the grounds for each opinion. However, to do so would be a time-consuming and expensive undertaking. This expense and delay can be avoided if Invenergy properly responds to DR 26-1.

In a recent case in the United States District Court for the District of Rhode Island, a plaintiff repeatedly failed to provide complete expert disclosures and the Court barred the proposed expert testimony. In that case, the Court found that:

Although Plaintiff identified her proposed expert, it is undisputed that the disclosures did not comply with the Rule and failed to disclose any actual opinion to be expressed by the proposed expert. The deficient expert disclosure effectively made it impossible for Defendants to retain and disclose a rebuttal expert report...

Luceus v. State of Rhode Island, C.A. No. 15-489ML (Memorandum and Order, dated January 20, 2017).

The Town therefore filed this Motion to Preclude Expert Testimony from Invenergy or, in the Alternative, to Compel Complete Data Responses.

B. Invenergy failed to timely object, therefore Invenergy's objections should be disregarded.

Invenergy's objections to DR 26-1 were not timely and properly raised. They should therefore be disregarded by the Board. EFSB Rule 1.27(b)(3) states, in part:

"Objection 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 filed as soon as practicable and in no event later than five (5) days after service of the request. The motion shall include the portions of the data request objected to and shall set forth the basis for the objection. [...] The Board shall thereupon determine by order the validity of the request and shall establish a date for compliance. The relevancy of such a request shall be determined under the standards established for such determinations under Rule 26 of the Superior Court Rules of Civil Procedure."

The Rhode Island Public Utilities Commission ("Commission") and Rhode Island Division of Public Utilities and Carriers ("Division") have similar objection requirements within their Rules.⁵ The United States Supreme Court has confirmed that requiring "the filing of

⁵ Commission Rule 1.18(c)(3) states, in part: "Objection 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 filed as soon as practicable and in no event later than ten (10) days after service of the request. [...] Objections shall include the portions of the data request objected to and shall detail the basis for the objection. The

objections is supported by sound considerations of judicial economy” and that failure to file timely objections waives subsequent review of the issue. *Thomas v. Arn*, 474 U.S. 140, 144-147 (1985).

The Town filed and served DR 26-1 on March 7, 2017. Any objection to DR 26-1, in whole or in part, was therefore required to be made on or before Monday, March 13, 2017.⁶ Invenergy did not file a motion setting forth any objections by March 13, 2017. Rather, Invenergy filed its response on April 7, 2017, and only then stated its objections. Accordingly, the Board should disregard Invenergy’s objections because they have been waived.

Invenergy requested a two-week extension to respond to DR 26-1, and the Town assented. Importantly however, Invenergy did not seek a time extension relative to the application of EFSB Rule 1.27(b)(3), nor did the Town agree to an extension allowing Invenergy to object under Rule 1.27(b)(3).

In a similar situation, the Division previously held that where a party sought an extension of time to respond to data requests, but did not specifically request an extension in time to object, the party waived its right to object to the data requests at issue. *In re: Care New England Health System and Kent Co. Memorial Hospital Complaint Against National Grid*, Docket No. D-14-23, Division Order 21594, Decision in Response to Discovery Disputes. In that docket, the Division

presiding officer shall thereupon determine the validity of the request and shall establish a date for compliance. The relevancy of a request shall be determined under the standards established for such determinations under Rule 26 of the Superior Court Rules of Procedure.”

Division Rule 21(c)(3) states, in part: “Objection 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 filed as soon as practicable and in no event later than ten (10) days after service of the request. [...] Objections shall include the portions of the data request objected to and shall detail the basis for the objection. The Hearing Officer shall thereupon determine the validity of the request and shall establish a date for compliance. The relevancy of a request shall be determined under the standards established for such determinations under Rule 26 of the Superior Court Rules of Procedure.”

⁶ DR 26-1 was filed and served on March 7, 2017. Five days after service was Sunday, March 12, 2017. Under EFSB Rule 1.18(a), when the last day of a period falls on a Sunday, the due date runs until the next business day, which in this case was Monday, March 13, 2017.

found that although National Grid requested additional time to file responses to certain data requests, National Grid “never sought a time extension relative to the application of Rule 21(c)(3).” *Id.* Instead, National Grid filed its objections within its data responses, just as Invenergy did here. *Id.* The Division found that “National Grid’s objections were unquestionably filed late.” *Id.* The Division found that “with respect to the ten (10) calendar-day requirement contained in Rule 21(c)(3), [...] this Rule does indeed apply in this discovery matter and that National Grid clearly violated this requirement.” *Id.*

In its findings, the Division reiterated that Rule 21(c)(3) “exists for an important reason, namely, to foster a timely use of discovery as a means toward making the administration of the case and the subsequent hearing process as efficient as possible. The Division is therefore disinclined to ignore the role and importance of Rule 21(c)(3) by allowing National Grid’s objections to stand in their entirety simply because the Complainant was not prejudiced. Therefore, the Division must find, reluctantly, that National Grid has **waived its right to object to the data requests in issue.**” *Id.* (emphasis added).⁷

Invenergy failed to timely object to DR 26-1. Therefore, Invenergy’s objections are waived.

C. Invenergy should not be permitted to offer testimony from any witness listed within Data Request 26-1.

As established above, Invenergy’s objections to DR 26-1 were waived and must be disregarded. The next question is what the consequences for this failure ought to be. Without the information requested in DR 26-1, the Town is unable to hire the experts it will need in order to meaningfully prepare its response testimony. Therefore, Invenergy should not be permitted to offer testimony from any witness listed in DR 26-1.

⁷ As noted above, EFSB Rule 1.27(b)(3) mimics Division Rule 21(c)(3) almost word for word.

EFSB Rule 1.27(b)(4) states: “The failure of a party to comply with a data request or a Board order related thereto may, at the discretion of the Board, be grounds for striking any testimony offered by the nonresponding party related to such request.”

In the *Luceus* case (mentioned above), the Court found that the plaintiff failed to disclose any actual opinion to be expressed by the proposed expert, which made it impossible for the defendant to retain a rebuttal expert. *Luceus v. State of Rhode Island*, C.A. No. 15-489ML (Memorandum and Order, dated January 20, 2017). The Court, therefore, granted the defendants’ motion to strike the plaintiff’s expert. *Id.*

The Board should exercise its authority here, and preclude Invenergy from offering testimony from any witnesses responsive to DR 26-1.

D. In the alternative, Invenergy should be ordered to promptly provide the Town with complete responses to Data Request 26-1, including detailed summaries of each expert’s expected testimony.

If the Board does not preclude Invenergy’s expert witness testimony based on EFSB Rule 1.27(b)(3), the Board should, in the alternative, compel Invenergy to promptly provide the information sought by the Town. The purpose of discovery is to “make trial less a game of blindman’s bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.” *U.S. v. Proctor & Gamble Co.*, 356 U.S. 677, 682 (1958). “Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation.” *Hickman v. Taylor*, 329 U.S. 495, 501 (1947).

As the Board is well aware, this is a very complicated docket that could have extensive and permanent repercussions to the Town and its residents. The information sought by the Town in DR 26-1 is necessary to allow the Town to properly prepare for the evidentiary hearings.

Therefore, if the Board does not preclude Invenergy’s witness testimony under EFSB Rule 1.27(b)(3) and (4), the Town asks that the Board compel Invenergy to promptly provide

complete responses to the Town's requests without objections. If, at that point, Invenenergy continues to refuse to comply, the Board should strike any and all testimony from Invenenergy's witnesses.

E. The Board should establish a realistic procedural schedule that will allow the Town adequate time to review Invenenergy's complete responses, hire appropriate experts, and prepare informed response testimony.

Finally, the Town requests that the Board establish a realistic procedural schedule that will allow the Town and its experts adequate time to review Invenenergy's complete responses. Some experts cannot be hired by the Town until the Town knows what Invenenergy's experts plan to say in their testimony. The Town will need adequate time to hire experts and meaningfully prepare response testimony. It is well settled in Rhode Island "that due process in administrative procedures requires the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Millett v. Hoisting Engineers' Licensing Division of Dept. of Labor*, 377 A.2d 229, 236 (R.I. 1977) (quoting *Raper v. Lucey*, 488 F.2d 748, 753 (1st Cir. 1973)).

Moreover, the Administrative Procedures Act (APA) mandates that "Opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved" in any contested case. R.I.G.L. § 42-35-9(c). This APA statutory directive is incorporated into the Board's Rules. Under Board Rule 1.23(a)(4), "Parties shall have the right of presentation of evidence, cross examination, objection, motion and argument." The opportunity guaranteed to all parties, including the Town, is meaningless unless the Board provides adequate time for the hiring of expert witnesses and preparation of response testimony.

Division Rule 21(a)(1) states that the "Division favors prompt and complete disclosure and exchange of information [...] Further, it is the Division's policy to encourage the timely use of discovery as a means toward effective presentations at hearing and avoidance of the use of cross-examination at hearing for discovery purposes."

As part of its late-filed objections, Invenergy cited to EFSB Rule 12.1(c) which states, in part:

Not later than ten (10) days before the commencement date for the final hearing, each party shall file with the Coordinator all direct testimony in writing and copies of all documents and other evidence that the party proposes to introduce at the final hearing.

Three things should be noted. First, DR 26-1 did not request that Invenergy provide its direct testimony in full as called for in Rule 12.1(c). As discussed above, the Town seeks summaries to allow the Town to hire experts and prepare meaningful responses. Second, the phrase “no later than” shows that the Board has the discretion to require these submissions sooner than 10 days prior to the final hearing.

Third, the language relates to the direct testimony of all parties, not just the applicant. In order for **all** direct testimony to be submitted 10 days prior to the final hearing, and to ensure the final hearing goes as smoothly as possible, a realistic procedural schedule must require the applicant to submit direct testimony much sooner than “10 days before” in order to allow time for response testimony from all parties, and to allow time for rebuttal testimony. Therefore, to imagine that Invenergy need not provide expert disclosures until 10 days before the final hearings is unrealistic and would violate the parties’ procedural due process rights.

Therefore, the Town respectfully requests that the Board establish a realistic procedural schedule that will ensure adequate time is included therein for the hiring of experts who can respond to Invenergy’s testimony. The Town suggests the following schedule:

- May 15, 2017: Invenergy to provide complete responses to DR 26-1
- August 15, 2017: Supplemental advisory opinions to be filed
- September 15, 2017: Invenergy direct testimony for all witnesses to be filed
- October 15, 2017: Intervenor direct testimony for all witnesses to be filed

- October 30, 2017: Invenergy rebuttal testimony to be filed
- November 13, 2017: Intervenor rebuttal testimony to be filed

III. CONCLUSION

WHEREFORE, the Town respectfully requests that the EFSB enter an Order preventing Invenergy from offering testimony from any and all expert witnesses, including, but not limited to those expert witnesses listed in Town's 26th Set of Data Requests, or, in the alternative, compelling Invenergy to promptly provide complete responses to the Town's 26th Set of Data Requests. Additionally, the Town requests that the Board establish a realistic procedural schedule so that all parties have sufficient time to prepare meaningful testimony.

Dated: April 24, 2017

TOWN OF BURRILLVILLE

By its attorneys


Michael R. McElroy, Esq. #2627

Leah J. Donaldson, Esq. #7711

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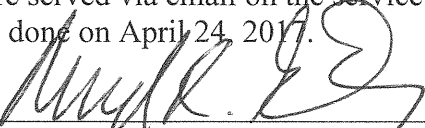
Fax: (401) 421-5696

Michael@McElroyLawOffice.com

Leah@McElroyLawOffice.com

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 April 24, 2017.


Michael R. McElroy, Esq.

Attachment A

Schacht & McElroy

Michael R. McElroy
Leah J. Donaldson

Attorneys at Law

Michael@McElroyLawOffice.com
Leah@McElroyLawOffice.com

Members of the Rhode Island
and Massachusetts Bars

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March 7, 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 10 copies of the Town of Burrillville's 26th Set of Data Requests to Invenergy Thermal Development LLC. Electronic copies have been sent to the service list.

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 :

**THE TOWN OF BURRILLVILLE'S 26th SET OF DATA REQUESTS TO
INVENERGY THERMAL DEVELOPMENT LLC**

26-1 With regard to (a) each of the expert witnesses previously disclosed by Invenergy as shown below, (b) any additional expert witnesses that have been identified since Invenergy's original expert disclosure, and (c) any additional expert witnesses Invenergy believes it may call at the evidentiary presentation in this matter, please provide separately for each witness the following:

1. Describe in detail the subject matter upon which each expert is expected to testify.
2. State in detail and provide supporting documentation for the substance of the facts and opinions to which each expert is expected to testify.
3. State in detail the grounds for each opinion to which each expert is expected to testify.
4. For each expert witness, please state whether the expert has previously provided testimony on the subject matter to which the expert is expected to testify, and if so, please provide a summary of the testimony previously given, together with a copy of the transcript of such testimony, if available.

- John Niland
- Michael Feinblatt
- Ryan Hardy
- Edinaldo Tebaldi
- Jeff Hershberger
- Jason Ringler
- George Bacon
- Jim Riordan
- Michael Hankard
- William Bailey
- Christopher Donta
- Maureen Chlebek
- Robert Smith
- Gordon Perkins
- Edward Pimentel
- Michael Marous
- Richard Lipsitz
- John Carter
- Chad Jacobs

Please supplement this answer as any additional witnesses are identified or any additional information becomes available.

Respectfully submitted,
Town of Burrillville
By its attorneys



William C. Dimitri, Esq. #2414

Town Solicitor

462 Broadway


Providence, RI 02909-1626

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by MKK



Michael R. McElroy, Esq. #2627

Leah J. Donaldson, Esq. #7711

Special Counsel

21 Dryden Lane

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Providence, RI 02940-6721

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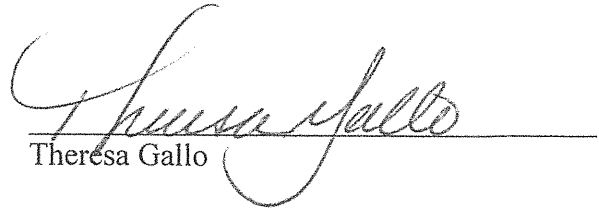
Michael@McElroyLawOffice.com

Leah@McElroyLawOffice.com

Date: March 7, 2017

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of March, 2017, I sent a copy of the foregoing to the attached service list.


Theresa Gallo

Burrillville Invenenergy EFSB Data Requests Set 26

Attachment B

April 7, 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 ("Invenergy"), enclosed please find an original and ten (10) copies of Invenergy's Response to the Town of Burrillville's 26th Set of Data Requests.

Please let me know if you have any questions.

Very truly yours,



ALAN M. SHOER
ashoer@apslaw.com

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 CLEAR RIVER
ENERGY CENTER IN BURRILLVILLE, RHODE ISLAND

DOCKET No. SB-2015-06

**INVENERGY THERMAL DEVELOPMENT LLC'S RESPONSES TO
THE TOWN OF BURRILLVILLE'S 26th SET OF DATA REQUESTS**

26-1

With regard to (a) each of the expert witnesses previously disclosed by Invenergy as shown below, (b) any additional expert witnesses that have been identified since Invenergy's original expert disclosure, and (c) any additional expert witnesses Invenergy believes it may call at the evidentiary presentation in this matter, please provide separately for each witness the following:

1. Describe in detail the subject matter upon which each expert is expected to testify.
2. State in detail and provide supporting documentation for the substance of the facts and opinions to which each expert is expected to testify.
3. State in detail the grounds for each opinion to which each expert is expected to testify.
4. For each expert witness, please state whether the expert has previously provided testimony on the subject matter to which the expert is expected to testify, and if so, please provide a summary of the testimony previously given, together with a copy of the transcript of such testimony, if available.

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- Maureen Chlebek
- Robert Smith
- Gordon Perkins
- Edward Pimentel
- Michael Marous
- Richard Lipsitz
- John Carter
- Chad Jacobs

RESPONSE 26-1: On September 12, 2016, pursuant to the Energy Facility Siting Board ("EFSB" or "Board") schedule, Invenergy submitted a list of the expert witnesses that it expects will be testifying in this matter, and the primary topics they will address. The witnesses described above were included in that filing. That filing was provided in response to the Board's procedural schedule, in anticipation of testimony at the final hearings. Additionally, Invenergy filed with the Board copies of the CVs for the experts identified. Again, these experts are identified in the list noted above.

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 CENTER IN BURRILLVILLE, RHODE ISLAND

DOCKET No. SB-2015-06

**INVENERGY THERMAL DEVELOPMENT LLC'S RESPONSES TO
THE TOWN OF BURRILLVILLE'S 26th SET OF DATA REQUESTS**

EFSB Rule 12.1(c) states that pre-filed direct testimony shall be filed no later than ten (10) days before the commencement date for the final hearing. This data request seeks the information that is required by the Board's Procedural Rules to be produced in the form of pre-filed direct testimony, which Invenergy anticipates it will be filing as the application moves towards final hearing, and in accordance with any further procedural schedule for the filing of Pre-Filed Direct, and Rebuttal Testimony that the Board may establish.

Invenergy's pre-filed testimony will provide the information required by Rule 1.12 ("all direct testimony in writing and copies of all documents and other evidence that the party proposes to introduce at the final hearing"). Invenergy's Pre Filed testimony will also include the grounds and support for each opinion given.

Further, the request that Invenergy provide a summary of the testimony previously given by each expert throughout their careers, on similar and general "subject matters" of expertise, together with a copy of the transcript of such testimony is vague and overbroad and overly burdensome. For example, Edward Pimentel, Invenergy's planning expert, has testified in hundreds of Zoning and Planning Board hearings over the course of his career on the "subject matter" of land use planning and compliance with local zoning codes and ordinances generally and with regard to a particular project. It would be nearly impossible to provide a summary of all the testimony previously given by this expert on all development projects throughout his career or to locate all the transcripts of testimony previously given. The same holds true for other expert witnesses. Invenergy objects to this portion of the data request if that is the intent of the request.

If the scope of the data requests relates to testimony regarding the Invenergy application, and testimony provided thus far on the application by Invenergy's expert witnesses, on information and belief, the Town is in possession of the testimony and transcripts of the Invenergy expert witnesses, identified above, that testified at the Town Planning and Zoning Advisory Opinion process. Similarly, on information and belief, the Town is in possession of the transcripts of the testimony of Invenergy's witnesses, identified above, that testified at the Advisory Opinion process with the Public Utilities Commission, in Docket 4609.

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 CENTER IN BURRILLVILLE, RHODE ISLAND

DOCKET No. SB-2015-06

**INVENERGY THERMAL DEVELOPMENT LLC'S RESPONSES TO
THE TOWN OF BURRILLVILLE'S 26th SET OF DATA REQUESTS**

INVENERGY THERMAL DEVELOPMENT LLC
By its Attorneys,

/s/ Alan M. Shoer

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Dated: April 7, 2017

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2017, I delivered a true copy of the foregoing responses to the Town of Burrillville's 26th Set of Data Requests via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer

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

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