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March 1, 2017

Todd A. Bianco, Ph.D.
Coordinator
Rhode Island Energy Facility Siting Board
89 Jefferson Boulevard
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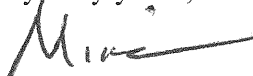
Re: Invenenergy Thermal Development LLC – Clear River Energy Center
Docket No. SB-2015-06

Dear Dr. Bianco:

Enclosed for filing in this matter are an original and ten (10) copies of the Town of Burrillville's Motion for Oral Argument. 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 :

**THE TOWN OF BURRILLVILLE'S
MOTION FOR ORAL ARGUMENT**

The Town of Burrillville ("Town"), an intervenor as of right in this docket, hereby requests the opportunity for oral argument regarding the issues of revised or additional advisory opinions, the timeline for the proceeding, and whether the Board should retain independent experts.

A. Background

On February 16, 2017, the Board held a hearing to hear arguments on pending motions to dismiss. At that hearing, the Board concluded that it needed more information before it could decide on which revised or additional advisory opinions it would require. Toward the end of the hearing, the Board discussed setting a date for another hearing to continue its evaluation regarding revised or additional advisory opinions.

Board Member Coit: "We need to schedule then **another hearing** to talk about the order in regards to the advisory opinions. Is that right Madam Chair?"

Chairperson Curran: "Yes." (Emphasis added.)

Following discussion, the Board selected Monday, March 6, 2017 for the hearing.

Based on the discussion at the February 16th hearing, the Town believed the Board was seeking additional information from all parties – including the Town – regarding advisory opinions, and that the matters would be argued at the March 6th hearing. Therefore, on February 21, 2017, the Town filed its pending Motion seeking (1) supplemental advisory opinions, (2) new advisory opinions, and (3) employment by the Board of independent expert witnesses.

On March 1, 2017, the Town was surprised to receive a Notice of Open Meeting for March 6, instead of a Notice of Hearing, as previously discussed at the February 16th hearing. Without a hearing, the parties would be precluded from presenting oral argument.

B. The Town has a right to be heard on all issues involved in a contested case.

The Town expected that it would have a meaningful opportunity to be heard at the March 6, 2017 hearing. The Town continues to object to repeated attempts by the EFSB to impede the Town's absolute right to be heard, which violates the Town's due process rights.¹

The Town has an absolute right to be heard on these important issues. 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) (emphasis added). 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.**" (Emphasis added).

Accordingly, the Town respectfully submits that it has a constitutional, statutory, and regulatory right to present oral argument prior to the Board ruling on all of the issues in this


¹ This is the third instance in which the Board has prevented, or attempted to prevent, the Town from being heard on issues in this docket. First, the Board initially refused to permit the Town to present oral argument at the October 13, 2016 Show Cause Hearing, but then relented after the Town formally objected. Second, at the February 6, 2017 hearing, the Board refused to allow the Town to present oral argument on its Motion to Postpone.

contested case, including issues related to revised or additional advisory opinions, the timeline for the proceeding, and whether the Board should retain independent experts.

C. Conclusion


Therefore, the Town requests the opportunity for oral argument regarding supplemental advisory opinions, new advisory opinions, and employment by the Board of independent expert witnesses, prior to the Board ruling on any of these crucial issues.

Respectfully submitted,
TOWN OF BURRILLVILLE
By its attorneys



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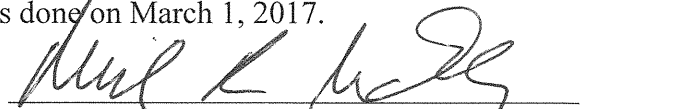


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Dated: March 1, 2017

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 March 1, 2017.



Michael R. McElroy, Esq.

SB-2015-06 Invenergy CREC Service List as of 02/13/2017

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