

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

IN RE: INVENERGY THERMAL DEVELOPMENT LLC :
APPLICATION TO CONSTRUCT AND :
OPERATE THE CLEAR RIVER ENERGY : SB-2015-06
CENTER, BURRILLVILLE, RHODE ISLAND :
CONSERVATION LAW FOUNDATION AND :
TOWN OF BURRILLVILLE MOTIONS FOR :
SUPPLEMENTAL AND ADDITIONAL ADVISORY :
OPINIONS AND INDEPENDENT EXPERTS :

DECISION AND ORDER

This matter came before the Energy Facility Siting Board (Board or EFSB) on motions filed by the Conservation Law Foundation (CLF) and the Town of Burrillville (Town) asking the Board to order additional and supplemental advisory opinions and for the Board to retain independent experts.

Specifically, CLF asked the Board to order the Burrillville Zoning Board, the Burrillville Planning Board, the Burrillville Building Inspector, the Rhode Island Department of Transportation (DOT), the Rhode Island Department of Environmental Management (DEM), and the Rhode Island Department of Health (DOH) to submit data requests to Invenergy Thermal Development LLC (Invenergy), to order Invenergy to respond to those data requests, and to order those agencies to complete advisory opinions by September 1, 2017. CLF also asked the Board to hire an independent expert to review Invenergy’s water supply proposal, direct the Public Utilities Commission (PUC) to readdress the issues of need and cost, order other advisory opinions from the Planning Boards and Tax Assessors in Glocester and Smithfield, order an advisory opinion from the Providence Water Supply Board (PWSB), and order a supplemental advisory opinion from DOT on the issue of truck traffic.

The Town's motion asked the Board to order supplemental advisory opinions from the Town's Planning Board, Zoning Board, and Building Inspector as well as from DOT, DOH, the Statewide Planning Program (Statewide Planning), and DEM to address Invenergy's new water supply plan. The Town also asked the Board to order Statewide Planning to supplement its advisory opinion by addressing a number of state guide plans that the Town asserted were absent from the original advisory opinion; the Rhode Island Office of Energy Resources (OER) to supplement its advisory opinion to take into account the EC4 Greenhouse Gas Emissions Reduction Plan; and the PUC to rehear, based on alleged new evidence, the issues of need and cost. In addition to the supplemental advisory opinions, the Town asked the Board to order new advisory opinions from the Planning Boards and Tax Assessors in the Towns of Johnston, Smithfield, and Glocester. Finally, the Town sought to have the Board hire independent experts to review and evaluate Invenergy's new water supply plan, the need for and cost of the Project, and the socio-economic and environmental impacts of the proposed Invenergy plant.

On March 21, 2017, the Board held a hearing on the motions and heard extensive arguments from the parties. Immediately after the hearing on the motions concluded, the Board convened an Open Meeting to consider the arguments and determine whether it should require any agencies or experts to provide further information. The Board first addressed CLF's and the Town's requests that the Board hire an independent expert. Noting that, in the past, an independent expert had been retained to address a critical issue that was not fully litigated by the parties,¹ the Board found that the current situation, where the major parties have retained numerous experts to address the issues at the final hearing, does not necessitate the Board retaining its own expert.

¹ SB-2012-01, Order No. 68 (June 14, 2013).

The Board found that because a new water supply plan had been filed by Invenergy, supplemental advisory opinions from some of the originally designated agencies were appropriate to address the new plan and reevaluate certain aspects of the original application that the designated agencies were unable to consider previously.

The Board has determined that the following supplemental information will assist it in assessing Invenergy's application:

- 1. The Burrillville Building Inspector** is directed to supplement his advisory opinion considering the new information that he has been provided since his original opinion was issued, including but not limited to the preliminary soil erosion and sediment control drawings and plans and the preliminary site plan and design drawings. The advisory opinion should address (i) whether the work proposed in the municipality as part of the Facility's construction and operation is subject to the municipality's Erosion and Sediment Control Ordinance and, if so, whether Invenergy's Erosion and Sediment Control Plan would conform to the Ordinance; and (ii) whether the Facility would meet the requirements of other municipal ordinances.
- 2. The Rhode Island Department of Transportation** is directed to supplement its advisory opinion considering the new information that has been provided since its original opinion was issued, as well as to render an advisory opinion as to whether Invenergy's proposed water supply plan and the resultant increased traffic will negatively impact state highways and roads. Such advisory opinion should specifically consider the traffic analysis provided by Invenergy in its original application as well as the revised analysis provided with the new water supply plan, dated January 11, 2017, and the potential impacts upon traffic and road conditions associated with the Facility during construction and operation.

3. **The Rhode Island Department of Environmental Management** is directed to supplement its advisory opinion to address any issues that it was unable to consider due to lack of information in its original advisory opinion, as well as the impacts of Invenenergy's water supply plan, and any other elements of the project – including new permit applications – that that have been added, updated, or modified since its original advisory opinion was issued. DEM is also directed to identify and characterize the scope of the harm to the environment that this project would cause, and if it determines such harm to be unacceptable, to provide a detailed explanation supporting that conclusion.
4. **The Statewide Planning Program** within the Division of Planning shall supplement its original informational advisory opinion to address Invenenergy's new water supply plan and address the elements of the State Guide Plans. In supplementing its original opinion, the Statewide Planning Program should consider the additional information obtained in response to its data requests to Invenenergy.
5. **The Rhode Island Department of Health** shall supplement its informational advisory opinion on the potential health impacts associated with Invenenergy's new water supply plan.

The Board requests that these agencies file supplemental advisory opinions within four months after their designation by the Board (i.e., August 13, 2017). Additionally, the Board requests that the designated agencies provide the Board with a status reports of their progress by June 13, 2017.

As to the PUC, OER, the PWSB, and the Town of Burrillville Zoning and Planning Boards, the Board rejected the arguments made by CLF and the Town and found that there was no need to request supplemental or initial advisory opinions from these other agencies. It held that any new information could be presented to the Board at the final hearings. Additionally, the Board found that because the Towns of Johnston, Smithfield, and Gloucester are not directly affected by the

siting of the Invenergy facility, advisory opinions from those Towns are not necessary. Furthermore, the Board noted that those Towns could have moved to intervene in the process in January, after the water supply plan was filed.

Finally, with regard to CLF's and the Town's request that the Board order an advisory opinion from the PWSB, the Town agreed that the Board could take administrative notice of the testimony given in PWSB's recent general rate case before the PUC by General Manager Ricky Caruolo.²

Accordingly, it is hereby

(110) ORDERED:

1. The Conservation Law Foundation's and Town of Burrillville's Motions for Supplemental and Additional Advisory Opinions are granted in part, and the following State of Rhode Island and local agencies and political subdivisions of the State shall act at the direction of the Energy Facility Siting Board for the purpose of rendering supplemental advisory opinions on the issues set forth above:
 - a. The Statewide Planning Program
 - b. The Department of Health
 - c. The Department of Environmental Management
 - d. The Burrillville Building Inspector
 - e. The Department of Transportation
2. To the extent the Motions for Supplemental and Additional Advisory Opinions ask the Board to do anything beyond directing the five agencies listed above to provide supplemental advisory opinions, they are denied.


² Docket No. 4618.

3. The Coordinator of the Energy Facility Siting Board shall prepare and forward to the five agencies designated above a certified copy of this Order and a separate written notice of designation.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND THIS 13th DAY OF APRIL, 2017.

ENERGY FACILITY SITING BOARD






Margaret E. Curran, Chairperson



Janet Coit, Member



Parag Agrawal, Member

APPENDIX A

**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

NOTICE OF DESIGNATION TO THE RHODE ISLAND STATEWIDE PLANNING PROGRAM TO RENDER A SUPPLEMENTAL ADVISORY OPINION

By Order 110 of the Energy Facility Siting Board, pursuant to the Energy Facility Siting Act R.I. Gen. Laws § 42-98 (Act), in particular § 42-98-9, the Rhode Island Statewide Planning Program has been designated as an agency of state government that shall act at the direction of the Rhode Island Energy Facility Siting Board (Board) for the purpose of rendering a supplemental advisory opinion on certain issues to be considered in evaluating Invenergy Thermal Development LLC's (Invenergy) application to construct the Clear River Energy Center in Burrillville, Rhode Island filed in Docket No. SB-2015-06. A description of the required advisory opinion is set forth in the enclosed Order.

Pursuant to R.I. Gen. Laws § 42-98-10, a designated agency shall proceed to consider the issue or issues consigned to it for review. By Order 110 of the Board, the designated agency shall conclude its consideration and issue its advisory opinion on or before August 13, 2017, or the right to exercise the function shall be forfeited to the Board. Advisory opinions should be submitted to the Coordinator of the Energy Facility Siting Board, 89 Jefferson Boulevard, Warwick, Rhode Island 02888.

In accordance with Rule 1.11(a) of the Board's Rules of Practice and Procedure (Rules), the designated agency shall render its advisory opinion, to the extent possible, pursuant to the procedures that would be followed absent Board designation of the agency. Where necessary, an agency shall modify its procedures to conform to the requirements of the Act, the Rules, and the Preliminary Decision. In accordance with Rule 1.11(c) the advisory opinion shall conform with the Rhode Island Administrative Procedures Act R.I. Gen. Laws § 42-35 requirements regarding Decisions and Orders and shall be clearly identified as an advisory opinion issued to the Board for consideration at the Board's final hearing. A designated agency lacking a process compliant with the Administrative Procedures Act may, and shall at the direction of the Board's Chairperson, make a witness available to sponsor and be examined on its advisory opinion at the final hearing to be scheduled and held following the advisory opinion deadline.

If you have any questions or require any assistance from Board staff, please contact me by phone at 401-780-2106, or by email at todd.bianco@puc.ri.gov.



Todd Anthony Bianco, Coordinator
Energy Facility Siting Board
April 13, 2017

**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

**NOTICE OF DESIGNATION TO THE RHODE ISLAND DEPARTMENT OF HEALTH
TO RENDER A SUPPLEMENTAL ADVISORY OPINION**

By Order 110 of the Energy Facility Siting Board, pursuant to the Energy Facility Siting Act R.I. Gen. Laws § 42-98 (Act), in particular § 42-98-9, the Rhode Island Department of Health has been designated as an agency of state government that shall act at the direction of the Rhode Island Energy Facility Siting Board (Board) for the purpose of rendering a supplemental advisory opinion on certain issues to be considered in evaluating Invenergy Thermal Development LLC's (Invenergy) application to construct the Clear River Energy Center in Burrillville, Rhode Island filed in Docket No. SB-2015-06. A description of the required advisory opinion is set forth in the enclosed Order.

Pursuant to R.I. Gen. Laws § 42-98-10, a designated agency shall proceed to consider the issue or issues consigned to it for review. By Order 110 of the Board, the designated agency shall conclude its consideration and issue its advisory opinion on or before August 13, 2017, or the right to exercise the function shall be forfeited to the Board. Advisory opinions should be submitted to the Coordinator of the Energy Facility Siting Board, 89 Jefferson Boulevard, Warwick, Rhode Island 02888.

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Energy Facility Siting Board
April 13, 2017

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

NOTICE OF DESIGNATION TO THE RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT TO RENDER A SUPPLEMENTAL ADVISORY OPINION

By Order 110 of the Energy Facility Siting Board, pursuant to the Energy Facility Siting Act R.I. Gen. Laws § 42-98 (Act), in particular § 42-98-9, the Rhode Island Department of Environmental Management has been designated as an agency of state government that shall act at the direction of the Rhode Island Energy Facility Siting Board (Board) for the purpose of rendering a supplemental advisory opinion on certain issues to be considered in evaluating Invenergy Thermal Development LLC's (Invenergy) application to construct the Clear River Energy Center in Burrillville, Rhode Island filed in Docket No. SB-2015-06. A description of the required advisory opinion is set forth in the enclosed Order.

Pursuant to R.I. Gen. Laws § 42-98-10, a designated agency shall proceed to consider the issue or issues consigned to it for review. By Order 110 of the Board, the designated agency shall conclude its consideration and issue its advisory opinion on or before August 13, 2017, or the right to exercise the function shall be forfeited to the Board. Advisory opinions should be submitted to the Coordinator of the Energy Facility Siting Board, 89 Jefferson Boulevard, Warwick, Rhode Island 02888.

In accordance with Rule 1.11(a) of the Board's Rules of Practice and Procedure (Rules), the designated agency shall render its advisory opinion, to the extent possible, pursuant to the procedures that would be followed absent Board designation of the agency. Where necessary, an agency shall modify its procedures to conform to the requirements of the Act, the Rules, and the Preliminary Decision. In accordance with Rule 1.11(c) the advisory opinion shall conform with the Rhode Island Administrative Procedures Act R.I. Gen. Laws § 42-35 requirements regarding Decisions and Orders and shall be clearly identified as an advisory opinion issued to the Board for consideration at the Board's final hearing. A designated agency lacking a process compliant with the Administrative Procedures Act may, and shall at the direction of the Board's Chairperson, make a witness available to sponsor and be examined on its advisory opinion at the final hearing to be scheduled and held following the advisory opinion deadline.

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ENERGY FACILITY SITING BOARD

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NOTICE OF DESIGNATION TO THE TOWN OF BURRILLVILLE BUILDING INSPECTOR TO RENDER A SUPPLEMENTAL ADVISORY OPINION

By Order 110 of the Energy Facility Siting Board, pursuant to the Energy Facility Siting Act R.I. Gen. Laws § 42-98 (Act), in particular § 42-98-9, the Town of Burrillville Building Inspector has been designated as a political subdivision of the state that shall act at the direction of the Rhode Island Energy Facility Siting Board (Board) for the purpose of rendering a supplemental advisory opinion on certain issues to be considered in evaluating Invenergy Thermal Development LLC's (Invenergy) application to construct the Clear River Energy Center in Burrillville, Rhode Island filed in Docket No. SB-2015-06. A description of the required advisory opinion is set forth in the enclosed Order.

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In accordance with Rule 1.11(a) of the Board's Rules of Practice and Procedure (Rules), the designated agency shall render its advisory opinion, to the extent possible, pursuant to the procedures that would be followed absent Board designation of the agency. Where necessary, an agency shall modify its procedures to conform to the requirements of the Act, the Rules, and the Preliminary Decision. In accordance with Rule 1.11(c) the advisory opinion shall conform with the Rhode Island Administrative Procedures Act R.I. Gen. Laws § 42-35 requirements regarding Decisions and Orders and shall be clearly identified as an advisory opinion issued to the Board for consideration at the Board's final hearing. A designated agency lacking a process compliant with the Administrative Procedures Act may, and shall at the direction of the Board's Chairperson, make a witness available to sponsor and be examined on its advisory opinion at the final hearing to be scheduled and held following the advisory opinion deadline.

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NOTICE OF DESIGNATION TO THE RHODE ISLAND DEPARTMENT OF TRANSPORTATION TO RENDER A SUPPLEMENTAL ADVISORY OPINION

By Order 110 of the Energy Facility Siting Board, pursuant to the Energy Facility Siting Act R.I. Gen. Laws § 42-98 (Act), in particular § 42-98-9, the Rhode Island Department of Transportation has been designated as an agency of state government that shall act at the direction of the Rhode Island Energy Facility Siting Board (Board) for the purpose of rendering a supplemental advisory opinion on certain issues to be considered in evaluating Invenergy Thermal Development LLC's (Invenergy) application to construct the Clear River Energy Center in Burrillville, Rhode Island filed in Docket No. SB-2015-06. A description of the required advisory opinion is set forth in the enclosed Order.

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