

October 19, 2017

Chairperson Margaret Curran
Energy Facility Siting Board
89 Jefferson Blvd.
Warwick, RI 02888

Dear Chairperson Curran:

I write in response to Invenergy's letter to the Energy Facility Siting Board (EFSB) dated October 19, 2017, requesting "an additional public hearing in Burrillville, Rhode Island pursuant to R. I. Gen. Laws § 42-98-9.1 and the EFSB Rules . . . [a]s a result of modifications to its application since the initial public hearing"

Conservation Law Foundation (CLF) agrees with Invenergy that the modifications to Invenergy's proposal, including Invenergy's new water plan, render the currently pending application a new application, requiring a new hearing.

This is exactly the argument CLF made to the EFSB in support of its Motion To Dismiss the Application and Close the Docket (September 16, 2016), its Supplement To The Motion to Dismiss the Application and Close the Docket (dated January 30, 2017), and its February 24, 2017 Motion Regarding Additional Advisory Opinions.

At those times, CLF variously urged the EFSB to dismiss the proceedings or take account of the new plan by obtaining appropriate new Advisory Opinions – because Invenergy's new water plan was sufficiently material that it rendered the entire proposal a new proposal.

Specifically, on page 4 of its Supplement To The Motion to Dismiss, CLF argued that "Invenergy's January 11, 2017 Water Supply Plan d[id] not address any . . . gaps and deficiencies, but instead pose[d] new questions."

Later, at the hearing on its Motion Regarding Additional Advisory Opinions, CLF argued: "What is before the Board today is a whole new proposal for a new power plant." March 21, 2017 Hearing Transcript, page 5, lines 10-12 ("Transcript"). CLF then went on to explain that Invenergy's new plan for obtaining different amounts of water from a different source for its plant rendered this a different project than the one described in Invenergy's originally application

filed on October 29, 2015 Transcript, page 6, line 13 to page 7, line 18. For the convenience of the EFSB, I attach the relevant pages of the Transcript.

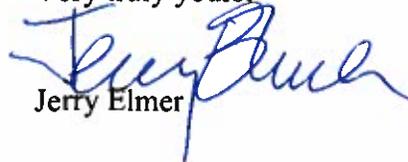
At that March 21, 2017, hearing, Invenergy expressly argued that its new water proposal did not make its pending proposal a new proposal: “I think in response to CLF’s arguments is that this is not a different power plant project that you’re facing. This is the same power plant that you were presented with essentially from the very beginning. Yes, there has been a change to the water supply component . . . [but] the project otherwise is relatively conceptually the same. Yes, there are some -- there are some adjustments that have been made . . . So to suggest that this is now an entirely new application is just false.” Transcript, page 47, line 7 to page 48, line 13 (emphasis supplied).

As you know, on February 6, 2017, and March 21, 2017, the EFSB heard CLF’s Motions. The EFSB denied outright CLF’s Motion to Dismiss, and further denied several of CLF’s requests that new Advisory Opinions be obtained relating to the new water plan. In addition, the EFSB denied CLF’s request that the matter be returned for the PUC for consideration of newly available evidence from the ISO-New England demonstrating that the Invenergy plant is not needed.

CLF’s Motions were predicated on multiple material differences between Invenergy’s original proposal and the new proposal then before the Board, including the new water plan. Invenergy has now told the EFSB that it (belatedly) agrees with CLF concerning the material nature of Invenergy’s changes from its original proposal.

In light of Invenergy’s candid admission in its October 19, 2017 letter, CLF respectfully requests a rehearing on its earlier September 16, 2016 Motion to Dismiss (Supplement dated January 30, 2017) and its February 24, 2017 Motion Regarding Additional Advisory Opinions.

Very truly yours,


Jerry Elmer

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

HEARING IN RE:

INVENERGY THERMAL DEVELOPMENT,
LLC'S APPLICATION TO CONSTRUCT
THE CLEAR RIVER ENERGY CENTER
IN BURRILLVILLE, RHODE ISLAND

DOCKET NO. SB-2015-06

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MARCH 21, 2017
1:00 P.M.

89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND

BEFORE THE BOARD:

MARGARET E. CURRAN, CHAIRPERSON
JANET COIT, BOARD MEMBER
PARAG AGRAWAL, BOARD MEMBER

PATRICIA LUCARELLI, LEGAL COUNSEL
TODD BIANCO, COORDINATOR

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APPEARANCES:

FOR INVENERGY:

ADLER, POLLOCK & SHEEHAN
BY: ALAN SHOER, ESQ.
NICOLE VERDI, ESQ.
- AND -
MARK RUSSO, ESQ.

FOR THE CONSERVATION LAW FOUNDATION:

JERRY ELMER, ESQ.
MAX GREENE, ESQ.

FOR THE TOWN OF BURRILLVILLE:

SCHACHT & McELROY
BY: MICHAEL McELROY, ESQ.

FOR THE OFFICE OF ENERGY RESOURCES:

ANDREW MARCACCIO, ESQ.

FOR THE RHODE ISLAND BUILDING TRADES:

SINAPI LAW ASSOCIATES
BY: GREGORY MANCINI, ESQ.

1 Madam Chairwoman, that the town is
2 withdrawing two motions. The first is the
3 motion for oral argument which is rendered
4 moot by the granting of the oral argument
5 that we're about to have here today.

6 And the second is a motion for a
7 change of the location of the hearing room
8 which Mr. Bianco has graciously arranged to
9 have these hearings streamed and has
10 committed to having all of the hearings
11 streamed, and in light of that commitment
12 and the streaming, which has worked very
13 well, which we are very appreciative of, we
14 are withdrawing that motion.

15 THE CHAIRPERSON: Okay. Thank you
16 very much. So we're down two motions. And
17 then we have a motion -- the Conservation
18 Law Foundation motion for additional
19 advisory opinions, and then Burrillville
20 also has a motion. And I understand the
21 parties have agreed that Conservation Law
22 Foundation will go first.

23 MR. ELMER: Yes. Thank you very
24 much, Madam Chairperson, and may it please

1 the Board, I'd like to address four matters
2 this morning. One is the context that
3 brings us here, second is the advisory
4 opinions and expert opinions to which
5 Invenergy has interposed no objection, third
6 is the matter of advisory opinions to which
7 Invenergy has interposed objection, and
8 fourth and finally, I'd like to discuss
9 timing.

10 [First the context. What is before
11 the Board today is a whole new proposal for
12 a new power plant. On October 29th, 2015
13 Invenergy filed an application with the
14 EFSB, for a 997 megawatt, two-turbine power
15 plant costing \$700 million. When CLF was
16 before the PUC at the Invenergy hearing July
17 25th to 27th and we raised the matter that
18 Invenergy had only acquired a capacity
19 supply obligation from the ISO for 485
20 megawatts, one turbine, we were told
21 everybody in this room knows what's going to
22 happen in FCA 11, forward capacity auction
23 11, that the ISO ran on February 6th.
24 Invenergy will definitely clear its second

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turbine. This is a 1,000 megawatt project. Everybody knows that this is a 1,000 megawatt project. We now know that that's not true.

In FAC 11 on February 6 Invenergy failed to clear its second turbine. We now have a proposal for a plant that is half the size of the original proposal, but one in which the cost estimate has gone up from \$700 million to \$1 billion, an increase of 42.8 percent for a plant half the proposed original size.

A completely different proposal in other ways as well, and that is that the current proposal is much, much more complicated than the original one. The original application filed in October 2015 on Page 46, Section 6.2.3.1, Invenergy said, and I quote, "CREC is expected to operated at a high capacity factor," that is, be a base load plant. But in order to do that the application said, "Water supply to the project must meet large volume requirements."

1 We now have a new design before the
2 Board that would use much, much less water
3 and a novel plan to truck water across the
4 state to the plant. It may be possible do
5 that, I'm not saying it's not possible, I'm
6 saying that we have a new proposal that is
7 much more complicated than the original one.

8 In Invenergy's original proposal on
9 Page 55, Section 6.2.5 regarding the sewer
10 connection, Invenergy said that it would
11 connect to the Burrillville public sanitary
12 sewer, but we now have a new proposal before
13 the Board and Invenergy plans to truck waste
14 away. It's a new design with a new, novel
15 proposal to truck sewerage across the state.
16 Again, we're not saying that it isn't
17 possible, but it is a new and novel
18 proposal.

19 Second, let's acknowledge the
20 request for new additional advisory opinions
21 for which there is no opposition from
22 Invenergy. CLF, and, for that matter,
23 Burrillville also requested that the EFSB
24 hire its own neutral engineering expert as

1 we have suggested. Thank you for your time.

2 [MR. SHOER: Thank you, Madam Chair,
3 members of the Board. I think you can hear
4 that -- you'll hear very shortly and you can
5 see in the papers we filed, we have a very,
6 very different perspective on where we stand
7 and what is needed to be done next.

8 We're here because the Board
9 suspended the process properly and we
10 conceded to that because there was a lack of
11 a water supply plan. That was the element
12 that was missing from the application. We
13 supplied that plan. In fact, we went beyond
14 just supplying an updated water supply plan.
15 We provided ten specific requested items
16 that the town asked for so that there would
17 be even further detail, even further
18 information in this water supply plan than
19 what might normally be filed before the
20 Board. That happened and that may explain
21 why the water supply plan this time was a
22 little bit longer than the water supply plan
23 that was in the initial filing. And I also
24 point out that in the initial filing there

1 presenting its views to you and they will as
2 we move forward. They don't need to have an
3 advisory opinion process to answer and to
4 respond to every single question that's come
5 up in this process. So that's No. 1 for
6 perspective.

7 No. 2 for perspective I think in
8 response to CLF's arguments is that this is
9 not a different power plant project that
10 you're facing. This is the same power plant
11 project that you were presented with
12 essentially from the very beginning.

13 Yes, there has been a change to the
14 water supply component, to the resource that
15 will be provided to the project, the project
16 otherwise is relatively conceptually the
17 same. Yes, there are some -- there are some
18 adjustments that have been made to some of
19 the components of the project as the process
20 has moved forward, and certainly in response
21 to concerns and questions that we've
22 received back, as the process is supposed to
23 work with comments, with responses, with
24 input from the public and adjustments to the

1 project as best we can to adjust for the
2 concerns that have been raised. So to
3 suggest that this is now an entirely new
4 application is just false. This is still an
5 application that is calling for a nominal
6 1,000 megawatt project. Even though the ISO
7 has not yet awarded a capacity supply
8 obligation for that second turbine, that's a
9 yearly process that will happen every year
10 and circumstances change every single year
11 and that's why it's a competitive process.
12 But the plant at this point is essentially
13 the same.

14 So we've heard some description
15 about some of the agencies that we think --
16 that CLF and the town think should be
17 referred to for a future advisory. We break
18 these down into three components. There are
19 agencies that we agree should take a look at
20 the revised water supply plan. We have some
21 agencies that we think the Board -- we leave
22 to the Board's discretion on whether you
23 should or whether you think that it would be
24 of value to receive some opinions, and then