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March 11, 2019

Energy Facility Siting Board
89 Jefferson Blvd.
Warwick, RI 02889

To: The Energy Facility Siting Board

Re: Invenergy Permit Application
Docket SB 2015-06

This letter addresses certain matters pertaining to Invenergy's pending permit application: (a) recent ISO events; and (b) the status of Invenergy's other pending permit applications. Based on these two matters, Conservation Law Foundation (CLF) has two requests of the EFSB pertaining to the remaining schedule of this case.

Based on recent events at the ISO, CLF believes that Invenergy may now anticipate the possibility of an adverse decision from the EFSB in this Docket. Those recent ISO events are: (a) the unprecedented termination of Invenergy's entire CSO on September 20, 2018; (b) the disqualification of Invenergy's second turbine from FCA-13 (disqualification on September 28, 2018; FCA-13 conducted on February 4, 2019); (c) ISO running FCA-13 with no participation whatever by Invenergy; (d) the auction clearing significant surplus capacity beyond the ISO's own Net Installed Capacity Requirement, without Invenergy; (e) at a very low clearing price, revealing no need for Invenergy.

Because of this confluence of facts adverse to Invenergy, CLF fears that Invenergy may now be seeking to stall or delay the EFSB's decision until some vague future time when Invenergy hopes for a more propitious energy market outlook. CLF is persuaded that market trends are in the opposite direction, but, of course, Invenergy can always hope.

CLF already sees evidence of Invenergy slow-walking matters so that permitting decisions may be delayed. With regard to the required Major Source Permit under the Clean Air Act, Invenergy has not successfully pushed DEM even to issue a draft permit yet. With regard to the DEM Wetlands Alteration Permit application, DEM does not even consider Invenergy's application to be complete. See Glenn Walker's September 14, 2018 Testimony, Exhibit GCW-10. With regard to the required Clean Water Act permit to be issued by the Army Corps of Engineers (ACOE), CLF has learned that the ACOE also does not even consider Invenergy's permit to be complete. Of course, neither DEM nor the ACOE can or will act on an application that is not complete.

CLF is deeply concerned that in the fourth year of this Docket – and at least five years since Invenergy started working on this project – required permit applications are not even deemed to be complete by the relevant permitting agencies.

In this regard, CLF respectfully makes the following two modest requests with regard to scheduling in this Docket. First, CLF requests that the EFSB allow parties no more than six weeks for post-hearing memoranda. Second CLF requests that the EFSB reserve the required dates now for the Open Meetings at which the EFSB can discuss the merits of the case and rule on the pending application.

CLF respectfully notes that Section 11(a) of the Energy Facility Siting Act (EFSA) requires that the Final Hearing "shall be concluded not more than sixty days following its initiation." R.I. Gen. Laws § 42-98-11(a). The Final Hearing in this case commenced on April 11, 2018, and is now scheduled to last for over a year (with the last witness now scheduled for April 23, 2019). CLF knows that the 60-day stricture is "directory in nature" and not mandatory. West v. McDonald, 18 A.3d 526, 534 (R.I. 2011). That is, CLF cannot seek to have the Docket dismissed based on the time limit in the statute. Nevertheless, CLF respectfully believes that the provisions of the EFSA are not a nullity; they are, as our Supreme Court has often stated "directory."

CLF anticipates that Invenergy will argue with CLF's recitation of recent events discussed in Paragraph 2 of this letter; and, of course, Invenergy will try to put a favorable spin on the delays and incomplete applications recited in Paragraph 4 of this letter. Be that as it may, CLF respectfully stands by the two modest scheduling requests above.

Very truly yours,

Jerry Elmer

cc.: Service List in Docket SB 2015-06