



For a thriving New England

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Todd Bianco, Coordinator
Energy Facility Siting Board
89 Jefferson Blvd.
Warwick, RI 02888

Andrew S. Marcaccio¹
Counsel to OER
One Capitol Hill, 4th floor
Providence, RI 02908-5890

Dear Messrs. Bianco and Marcaccio:

Re: EFSB Docket SB 2015-06
Invenergy Proposal

This letter follows today's Open Meeting at the Energy Facility Siting Board (EFSB) regarding this Docket.

At today's Open Meeting, the EFSB referred a number of issues and matters to the Office of Energy Resources (OER) for advisory opinions. These matters included issues pertaining to carbon emissions, climate change impacts, and application of the Resilient Rhode Island Act, R.I. Gen. Laws § 42-6.2-1, et seq. Today's referral expressly contemplated that OER may involve additional state agencies in the process of developing its advisory opinion for the EFSB, including the Executive Climate Change Coordinating Council (EC4) and the Office of Statewide Planning.

CLF will offer at least one expert witness on this broad subject (carbon emissions, climate impacts, and application of the Resilient Rhode Island Act). In conformity with EFSB Rule of Procedure 1.12(c), CLF will pre-file the direct testimony of its witness(es) in advance.

Our question now is to which agency the testimony of this/these witness(es) is properly directed: to the EFSB or to the OER? We acknowledge that requirements of due process will mean that adverse parties (in this case, at least Invenergy) will have to have an opportunity to cross-examine CLF's witness(es).

At this time, we do not know what process or procedure OER intends to follow in developing its advisory opinion (and the Energy Facility Siting Act (EFSA) is silent on the subject, except that Section 10(b) of the EFSA provides that OER's advisory opinion is not immediately appealable under the Administrative Procedures Act). Depending on what process OER intends to use to

¹ CLF acknowledges that this letter might have been addressed to the Commissioner of the Office of Energy Resources, Dr. Marion Gold. CLF instead addresses the letter to OER's counsel, in recognition of R.I. Rule of Professional Responsibility 4.2. While this letter poses a question of procedure, the letter could be considered "about the subject" of Docket 2015-06.



develop its advisory opinion – that is, whether OER does or does not plan to hold open hearings with witnesses, testimony, and cross-examination – CLF’s evidence on climate may or may not be appropriately filed with OER.

At today’s hearing, the EFSB made clear its determination that issues pertaining to carbon emissions, climate, and the Resilient Rhode Island Act be carefully and fully addressed in this Docket. CLF has evidence and expert testimony to submit on this topic. CLF will follow your instruction as to whether to file that evidence and testimony with OER only, with the EFSB only, or with both agencies.

Very truly yours,

Jerry Elmer

Max Greene

cc.: Service List in Docket 2015-06