



**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**  
**Department of Administration**  
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February 8, 2016

Via U.S. Mail & Email

Jerry Elmer  
Conservation Law Foundation  
55 Dorrance St.  
Providence, RI 02903

**Re: Docket No. SB-2015-06**  
**Invenergy Thermal Development LLC – Clear River Energy Center**

Dear Attorney Elmer:

We write in response to your correspondence dated January 29, 2016 in which you raised the question to which agency should the testimony of your expert witness(es) be properly directed: to the EFSB or to the OER. As detailed herein, we believe any formal testimony should be filed with the EFSB unless otherwise directed.

Pursuant to R.I. Gen. Laws § 42-98-9(a), designated state agencies “shall act at the direction of the board for the purpose of rendering advisory opinions on these issues.” Accordingly, OER will comply with any and all procedural directions given by the EFSB in addition to all statutory and regulatory requirements.

As you indicated in your correspondence, the statute provides little procedural guidance to agencies rendering advisory opinions although it provides that “[a]dvisory opinions issued by agencies designated under § 42-98-9 shall not be considered as final decisions of the agencies making the opinions, and shall not be subject to judicial review under § 42-35-15, or any other provision of the general laws”. See R.I. Gen. Laws § 42-98-10(b). However, Section 1.11(c) of the EFSB Rules and Regulations entitled “Form of Advisory Opinion” provides that “a designated agency’s advisory opinion shall conform with the Rhode Island Administrative Procedures Act [“APA”] requirements regarding Decisions and Orders.” In regards to form, the APA requires that the order, or in our case the advisory opinion, “be in writing or stated in the record” and “shall include findings of fact and conclusions of law, separately stated.” See R.I. Gen. Laws § 42-35-12. Accordingly, OER will render a written advisory opinion that clearly specifies its findings of fact and conclusions of law.

By satisfying the APA's form requirements, the parties will have an opportunity to vet OER's findings after submission. This process aligns with the Energy Facility Siting Act which provides that after the submission of the advisory opinion, "the applicant, intervenors, the public, and all other parties in the proceeding, [will have] the opportunity to address in a single forum, and from a consolidated, statewide prospective, the issues reviewed, and the recommendations made in the proceedings before the agencies designated under § 42-98-9." See R.I. Gen. Laws § 42-98-11. Section 1.12 of the EFSB Rules of Practice and Procedure reiterates this statutory process. "After the time in which advisory opinions must be submitted, the Board shall convene a final hearing which shall provide the applicant, intervenors, the public and all other parties the opportunity to address in a single forum and from a consolidated statewide perspective, the issued reviewed and the recommendations made in the proceedings before designated agencies and DEM and CRMC." See Section 1.12(a) of the EFSB Rules of Practice and Procedure.

We hope this addresses your concerns. If you have any additional questions or concerns, please do not hesitate to contact me.

Sincerely,



Andrew S. Marcaccio  
Legal Counsel

cc: Todd Bianco, EFSB Coordinator  
EFSB Service List (Via Email)