

# *Schacht & McElroy*

*Michael R. McElroy  
Leah J. Donaldson*

*Attorneys at Law*

*Michael@McElroyLawOffice.com  
Leah@McElroyLawOffice.com*

*Members of the Rhode Island  
and Massachusetts Bars*

*21 Dryden Lane  
Post Office Box 6721  
Providence, RI 02940-6721*

*(401) 351-4100  
fax (401) 421-5696*

August 31, 2016

Todd Bianco  
Coordinator  
Rhode Island Energy Facility Siting Board  
89 Jefferson Boulevard  
Warwick, RI 02888

In Re: Application of Invenergy Thermal Development LLC – Clear River Energy Center  
Docket No. SB2015-06

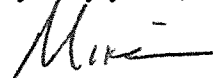
Dear Mr. Bianco:

I am an Assistant Solicitor for the Town of Burrillville.

Attached are an original and ten (10) copies of the Advisory Opinion of the Burrillville Planning Board to the Energy Facility Siting Board, together with an Appendix of referenced materials.

If you have any questions, please feel free to call.

Very truly yours,

  
Michael R. McElroy

cc: Service List

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
ENERGY FACILITY SITING BOARD

IN RE: INVENERGY THERMAL DEVELOPMENT LLC's :  
APPLICATION TO CONSTRUCTION THE : DOCKET No. SB-2015-06  
CLEAR RIVER ENERGY CENTER IN :  
BURRILLVILLE, RHODE ISLAND :

**ADVISORY OPINION OF THE BURRILLVILLE PLANNING BOARD  
TO THE ENERGY FACILITY SITING BOARD**

Michael R. McElroy, Esq. #2627  
Assistant Town Solicitor  
Schacht & McElroy  
21 Dryden Lane  
P.O. Box 6721  
Providence, RI 02940-6721  
Tel: (401) 351-4100  
Fax: (401) 421-5696  
[Michael@McElroyLawOffice.com](mailto:Michael@McElroyLawOffice.com)

Dated: August 31, 2016

BEFORE THE  
TOWN OF BURRILLVILLE  
PLANNING BOARD

IN RE: APPLICATION OF  
INVENERGY THERMAL DEVELOPMENT, LLC.;  
(CLEAR RIVER ENERGY CENTER) and  
ALGONQUIN GAS TRANSMISSION, LLC.  
WALLUM LAKE ROAD (R.I. ROUTE 100)  
BURRILLVILLE, RHODE ISLAND  
ASSESSOR'S PLAT 120  
LOT 7, PLAT 135 LOT 2, PLAT 137  
LOTS 1, 2, 3, and 21, and  
PLAT 153, LOTS 1 and 2

**ADVISORY OPINION TO THE ENERGY FACILITY SITING BOARD  
AND TO THE BURRILLVILLE ZONING BOARD OF REVIEW**

INTRODUCTION

Invenergy Thermal Development, LLC (Invenergy) filed an application with the State of Rhode Island Energy Facility Siting Board (EFSB) to construct and operate a combined-cycle electric generating facility on Wallum Lake Road, in Burrillville, Rhode Island. This facility, designated the Clear River Energy Center (CREC), is rated for a nominal power generation capacity of 850 to 1,000 megawatts (MW) when firing with natural gas. The facility will primarily fire with natural gas provided from the adjacent Spectra Energy Algonquin Compressor Station. However, the system will be capable of firing with ultra-low sulfur diesel (ULSD) fuel, when sufficient natural gas supply is unavailable

As directed by the EFSB in its Preliminary Decision and Order dated March 10, 2016, subsection VII. Advisory Opinions, subsection B Non-Jurisdictional Agencies, subsection 4, Burrillville was directed to render an Advisory Opinion to the EFSB as to:

1. Whether the Facility would be a land use consistent with its respective comprehensive plan pursuant to the Comprehensive Planning and Land Use Act, R.I. General Laws § 45-22.2-1; and
2. Whether Invenergy will be able to comply with the Burrillville Noise Ordinance during construction and operation.

In rendering this Advisory Opinion, we followed our normal process of review. We implement our Comprehensive Plan through application of the Town's Zoning Ordinance and adherence to the Town's Subdivision and Land Development Regulations. In accordance with the EFSB directive and the Zoning Enabling Act, R.I.G.L. § 45-24-41 (General Provisions Variances), R.I.G.L. § 45-24-42 (General Provisions Special-use permits), and R.I.G.L. § 45-24-43 (General Provisions – Special conditions), we hereby offer to both the EFSB and the Burrillville Zoning Board of Review (ZBR) the following Advisory Opinion in reference to the CREC.

This Advisory Opinion draws upon numerous data responses and other filings from Invenergy, government input memoranda as required by R.I.G.L. § 45-23-40(a)(3), testimony from Invenergy, oral and written comments from the general public as required by R.I.G.L. § 45-23-40(d)(3), and guidance and testimony from professional consultants retained by the Town. These items serve as the basis for this Advisory Opinion as it relates to various Comprehensive Plan citations (Goals, Policies and Actions) and the Burrillville Noise Ordinance.

A pre-application meeting was conducted on May 2<sup>nd</sup>, 2016. Subsequent to that meeting we met on June 20<sup>th</sup>, July 11<sup>th</sup>, and August 15<sup>th</sup> to receive testimony, public comment, and to deliberate. The final meeting to deliberate this matter was held on August 22<sup>nd</sup>, 2016.

## **SUMMARY OF HEARINGS**

A meeting and evidentiary hearing was held on June 20, 2016. It lasted about 4 hours.

The discussion began with Town Assistant Solicitor Michael R. McElroy explaining the process the Planning Board would follow to render an Advisory Opinion to the EFSB on the proposed CREC. He then requested that the Town's experts provide their input and recommendations based on their review of the materials provided by the Invenergy representatives.

David Hessler, of Hessler Associates, provided testimony and answered questions from the Board as to the information provided by the Invenergy experts in regards to noise.

Eric Epner, of Russ & O'Neill, provided testimony and answered questions from the Board as to the information provided by the Invenergy experts in regards to air quality.

Tom Hevner, of Sovereign Consulting, Inc., provided testimony and answered questions from the Board as to the information provided by the Invenergy experts in regards to the proposed ammonia storage as well as the proposed water use from Well #3A in reference to the MBTE contamination.

James Jackson, of CDR Maguire, provided testimony and answered questions from the Board as to the information provided by the Invenergy experts in regards to traffic, drainage, the Master Plan submission, and the proposed connection to the Burrillville Wastewater Treatment Facility.

Invenergy Attorney Elizabeth Noonan then began calling the Invenergy witnesses to offer their testimony.

Michael Hankard, of Hankard Environmental, provided testimony in regards to noise. He assured the Board, under oath, that the facility would comply with the Town's overall 43 dba noise limit.

Maureen Chlebek, of McMahon Associates, provided testimony and answered questions from the Board in regards to proposed traffic from the proposed facility, during construction and operation.

Robert Smith, of McMahon & Associates, provided testimony and answered questions from the Board in regards to pavement conditions (current and proposed) for the roadways involved in the route to the proposed facility.

Michael Feinblatt, of ESS Group, provided testimony and answered questions from the Board in regards to air quality from the proposed facility.

The hearing resumed on July 11<sup>th</sup> and lasted about 4 ½ hours.

Board Member Woods read into the record a letter of recusal from the Invenergy application for the CREC due to the fact that he had previously testified in opposition to the proposal before the EFSB in May.

Attorney Noonan then began the discussion by first addressing a question presented by Board Member Presbrey from the last meeting in regards to the submitted survey not being in conformance with the new survey standards in effect as of January 1, 2016. She stated that she had spoken with Richard Lipsitz, a registered land surveyor, who indicated that under those regulations, any surveys commenced prior to January 1, 2016 are subject to the 1994 regulations and that this survey is in full compliance with those regulations. Mr. Presbrey felt that the survey was still not in conformance with the 1994 regulations, noting that the dimensions and bearings cannot be read and no calculations can be done because it is unreadable. Attorney Noonan said that she could provide full size copies of the survey.

Ms. Noonan then called Edward Pimentel, Professional Planning Consultant, to offer his testimony. Mr. Pimentel provided testimony and answered questions from the Board regarding the project and how, in his opinion, the CREC complies with the Town's Comprehensive Plan.

Town Planner Kravitz then told the Board that his memo dated June 18, 2016, regarding his review of the Comprehensive Plan analysis conducted by Pimentel Consulting, stands on its own and sets forth reasons why the proposal may not conform to the Town's Comprehensive Plan. He stated that Mr. Pimentel looked at the Comprehensive Plan from a different perspective and he should recognize that there are goals and objectives that relate to other types of planning in Town that the Town is trying to effectuate as well.

A motion was then made and approved to open public comment. Chairman Partington informed the public that each person would be allowed 5 minutes to speak.

Approximately 35 individuals spoke, offering comments and/or questions. Some provided documentation in support of their requests. The overwhelming majority of the public comment was in opposition to the CREC. The public also overwhelmingly stated that the proposed facility would not comply with the Comprehensive Plan and would not comply with the Noise Ordinance.

Attorney McElroy requested two items from the Invenergy representatives: written confirmation as to whether the proposed power plant would comply with the recommendations from all of the Town's experts, and if not, the reasons why; and written confirmation as to whether the proposed power plant would comply with all of the recommendations offered by the RI Department of Health (DOH) report, and if not, why.

The hearing resumed on August 15, 2016. It lasted about 4 hours. Invenergy presented testimony from William Ahlert, Ph.D. regarding Invenergy's plan to work with the Pascoag Utility District (PUD) to utilize Well #3A to obtain the needed water for the CREC and to remove the MBTE through granular activated carbon (GAC) to a non-detect level before piping the water to the CREC. Dr. Ahlert answered a number of questions from the Board on various water issues.

At the time he provided his testimony, Dr. Ahlert was unaware of the PUD's draft advisory opinion, which had been circulated that day for public comment. The draft advisory opinion concluded, among other things, that Invenenergy's proposed withdrawal of water from the Clear River Watershed "leaves minimum margin for any future increases in municipal water demands, compromising the ability of the watershed to meet future municipal water demands." (at 5).

The draft advisory also concluded that "based upon the research and finding of the District's assessment it is strongly believed that activation of Well #3A to provide water supply to the CREC facility will modify the direction of the existing [MTBE] contaminant plume, such that it will move in the direction of Well #3A. This in turn will draw MTBE/BTEX contaminant into closer proximity to the proposed Clear River Infiltration Gallery that is intended to provide water for the district." (at 7).

With regard to proposed GAC treatment system to remove the MTBE, the draft advisory opinion concluded that "[n]o determination of the viability of the GAC groundwater treatment system can be made at this time, until a comprehensive pumping test and water quality monitoring program have been completed, followed by the development of a comprehensive groundwater model and assessment impact upon the contaminant plume and anticipated groundwater characterization, execution of treatability studies and preparation of the detailed design of the proposed GAC Filtration treatment system, and the building and infrastructure to house the system." (at 10).

With regard to the construction of the proposed pipeline, the draft opinion concluded that: "Insufficient information has been provided at this time to allow a thorough assessment of the proposed pipeline construction materials and methods, scheduling, safety, traffic control and protection of existing utility systems, monitoring instrumentation and controls." (at 11-12).



Finally, the draft advisory concluded that “A long term pumping test of Well #3A is recommended to evaluate contaminant concentrations and migration in the well field and Well #3A. Vapor intrusion into residences and occupied buildings must be assessed using multiple lines of evidence and testing for existing and anticipated groundwater concentrations resulting from the long term pumping of Well #3A. In addition, a groundwater model should be developed that includes a detailed assessment of groundwater quality throughout the well field including areas near the former Mobil Station.” (at 13).<sup>1</sup>

After the testimony of Dr. Ahlert, public comment was opened, but was restricted to questions regarding the water testimony of Dr. Ahlert. Approximately 20 members of the public presented comment and posed questions to Dr. Ahlert and the Invenergy representatives, primarily concerning various water issues. Dr. Ahlert and the Invenergy representatives also answered a number of questions from our Board.

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<sup>1</sup> On August 19, 2016, the PUD unanimously voted as follows:

Over the past several months we have sought and received much information from various sources including our own experts, other consultants and our ratepayers concerning the re-activation of Well 3A to supply the proposed power plant with processed water for industrial purposes. This information has made it abundantly clear to us that there are numerous concerns that have either not been addressed at all to date or have been addressed in such a way as to raise serious doubts that this endeavor can be taken on without serious risk. Our own consultant has indeed raised many red flags, which cautions us going forward.

After review and input from counsel, it is clear that the provision of water to the power plant from Well 3A cannot occur without resort to the Superior Court. While we recognize that the existing order allows for pumping of the well for remediation, it does not allow for this arrangement. Pascoag does not intend to seek modification of that order to allow for this project.

Therefore, I will entertain a motion to:

- 1) Terminate the letter of intent and any other obligations to Invenergy;
- 2) Not to negotiate further nor to agree to sell any water from Well 3A to Invenergy at any time, nor or in the future.
- 3) Not to seek any change in the existing court orders for this proposal.
- 4) Authorize the Chairman and/or the General Manager and our attorneys to take the appropriate actions to effectuate the action taken by the Board forthwith.

Assistant Solicitor McElroy asked Invenergy to notify the Board whether it would be willing to post a performance bond or other financial security that would provide security to the Town in the event Invenergy was unable to meet the requirements of the Noise Ordinance.

In addition, attorney McElroy asked Invenergy representatives whether they would be willing to commit to redesigning and rebuilding the Church Street/High Street intersection to make it safer for large trucks to pass through the intersection.<sup>2</sup>

After the conclusion of the testimony and the additional public comment/questions, the Board commenced deliberations and then voted unanimously, by a count of eight to zero (8-0) (with Member Woods having recused), that the CREC facility would be a land use that would not be consistent with our Comprehensive Plan and would not be consistent with R.I.G.L. § 45-22.2-1 *et seq.*, the Rhode Island Comprehensive Planning and Land Use Regulation Act.

## **DISCUSSION**

### **I. EFSB**

#### **A. COMPREHENSIVE PLAN**

Unlike typical major land development projects that are not subject to the Energy Facility Siting Act, R.I.G.L. § 42-98-1 *et seq.*, the CREC is subject to an accelerated review process that supersedes that described in the Rhode Island Land Development and Subdivision Review Enabling Act of 1992, R.I.G.L. § 45-23-25 *et seq.* Therefore, we must unfortunately provide this Advisory Opinion without having seen either the complete engineering design for the CREC or permits from other state agencies. Typically, this is not the case. We usually reserve the right to withhold Preliminary and Final Plan approvals until we receive the benefit of reviewing such engineering designs and permits.

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<sup>2</sup> In a letter dated August 19, 2016, Invenergy did not agree to either post a performance bond or to commit to redesigning and rebuilding the Church Street/High Street intersection.

All of the Board members agree that levels of the usual regulatory review by governmental authorities are at this point not complete, such as the Army Corps of Engineers Environmental Impact process, and the RI Department of Environmental Management (DEM) air quality review, which we understand is about 18 months long and will not be issued until after EFSB review. This is troubling to us. Many questions have arisen that relate to various issues, including, but not limited to, air quality, wetlands impacts, wildlife and biodiversity impacts, lighting impacts, traffic impacts, and the incompleteness of Invenergy's Air Dispersion Modeling Report and the related Health Risk Assessment Report.

It is also our opinion that many of the data responses we received from Invenergy were incomplete and at times evasive. For example, we believe that Invenergy deliberately evaded certain regulatory requirements by, for example, utilizing a 19 percent aqueous ammonia mix. While this may technically be legal, a 20 percent or more storage requirement would have triggered much more comprehensive hazard response planning and documentation and would have provided more comfort to the Town. Another example is the lack of presentation detail regarding hydrogen storage. Colonel Stephen Lynch of the Burrillville Police Department has also offered several important suggestions relating to security. These are public safety concerns that are very important to the Town, and directly affect our analysis of whether the CREC would be consistent with our Comprehensive Plan.

Water use has been a concern to us from the beginning, both in terms of quantity and quality. The applicant agreed to remove MTBE at the PUD Well #3A to non-detect using vessels of GAC. We concede that there are obvious potential benefits to removing MTBE from the aquifer. However, at our most recent meeting on August 15th, a substantial figure of 1.6 million gallons per day was cited should both units be running on ULSD. This is a huge amount of water. We also need modeling and pump testing to determine the ability of Well #3A to

provide water to Invenergy, but such pumping/testing and modeling has not been done. Harrisville Water Department has recently rejected the applicant's request for water, and PUD did the same on August 19, 2016. Available water quantity therefore remains a serious concern for us.

Beginning with our Chairman, Jeffrey Partington, each board member has expressed his opinion on this Application, concluding that the CREC facility would not be in accordance with either our Comprehensive Plan or R.I.G.L. § 45-27.1-1 *et seq.* Aside from recognizing the economic potential to Burrillville in terms of tax and impact fee revenues and about 25 permanent jobs, our members were very clear that we should place much greater weight on numerous other Comprehensive Plan Goals and Policies that we feel the CREC would not be in compliance with, such as natural and cultural resources, landscapes, wildlife and biodiversity, local air quality, groundwater quantity and quality, excessive traffic impacts, and noise. We have a particular quality of life in Burrillville that is unique and worthy of preservation. Burrillville's unique European growth pattern (i.e., a mix of dense villages beset by rural spaces) is also supported for preservation and replication as a model for growth for western Rhode Island by the State Guide Plan - a plan with which the Burrillville Comprehensive Plan is consistent.

One of our members stated it this way:

"The CREC proposal is contrary to the economic development objectives of the Town of Burrillville, specifically its efforts toward balancing locally-sourced jobs with natural resource and historic preservation, and its long-term land use plan which promotes the conservation and economic development of its natural resources and tourism potential, preserves open space resources and the low density character of the community.

The Burrillville Comprehensive Plan recognizes the important role the Town plays as a host of energy infrastructure (Land Use Goal IX.5), and it seeks to broaden sources of revenue from industrial projects (Economic Development Goal VII.1). However, the Comp Plan does not encourage further expansion of, or siting of additional power plants within the borders of Burrillville.

Specifically, the following sections of the Comp Plan promote a vastly different planning scenario for our Town.”

The following provisions of the Comprehensive Plan with which CREC was found to be inconsistent are:

### **Natural and Cultural Resources Chapter II**

#### **Goals:**

- II.1 Promote a harmonious relationship between land development and natural resources.
- II.3 To consider the natural capacity of land to support future development and population.
- II.4 To ensure that current and future development does not adversely affect natural or cultural resources, or the existing rural qualities of Burrillville, and that environmentally sensitive areas are protected, especially water supply and quality.

#### **Policy:**

- II.4.b Maintain and improve the existing quality of drinking water in the community.
- II.6.a Encourage measures which reduce air pollution levels.

#### **Action:**

- II.4.b.16 To preserve the Town's rural character, promote low-intensity land use and protect high quality surface and groundwater the F-5 zone should continue as currently mapped in the Town's zoning ordinance.

### **Community Facilities and Services Chapter III**

#### **Goal:**

- III.4 Provide the Town of Burrillville with sufficient potable water supply and the distribution system necessary to meet the community's residential, commercial, and industrial requirements, utilizing on-site well development where appropriate, while maintaining the Town's self-sufficiency.

**Policy:**

III.4.a Protect existing groundwater sources from contamination to allow continued supply to the local water distribution systems.

III.5.a Conserve existing water supplies to eliminate the development of costly and unnecessary sources.<sup>3</sup>

**Circulation Chapter VI**

**Goal:**

VI.1 To provide and maintain a safe, convenient and cost-effective transportation system.

**Economic Development Chapter VII**

**Goals:**

VII.1 To broaden the sources of Town revenue through development in the industrial and commercial sectors in order to ensure a sound financial future and assist in funding the achievement of Town goals.

VII.2 To recognize the importance of recreation, open space, public access to water bodies, and historic resources to the Town's economy, to tourism development . . .

**Policies:**

VII.1.a Maintain industrial and commercial sector growth at a rate adequate to support the Town's population in a manner consistent with the Town's labor characteristics, land capabilities and environmental objectives

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<sup>3</sup> At the August 15th meeting, Invenergy stated that providing for sustainable reuse of spent processed water through replenishment of the aquifer was not infeasible, rather, discharge to the wastewater system was simply preferred by Invenergy.

VII.2.a Promote economic development which is sited and designed to fit within the rural village character of Burrillville, and harmonizes with environmental surroundings and adjacent land uses.

VII.2.d Encourage natural resource based industry, including forestry, agriculture, and recreation. (Please see Economic Impact of RI Forest-Based Economy, NASF, 2015 <http://www.dem.ri.gov/programs/bnatres/forest/pdf/econimpl5.pdf>).

**Action:**

VII.2.d.3 Identify valuable, unique and ecologically sensitive forestlands so that they may be protected.

**Recreation, Conservation, and Open Space Chapter VIII**

**Actions:**

VIII.1.h Recognize the importance of the Town's recreational and open space resources, and ensure that their development is carefully integrated with efforts to promote Burrillville to visitors.

VIII.2.a Preserve the Town's natural resources by working to save the best representatives of the ecosystem types found in Burrillville, and protecting rare and endangered plants, animals, and unique geologic or other natural features.

VIII.2.a.1 Work toward prevention or mitigation of adverse impacts of human activities on wildlife habitat.

**Land Use Chapter IX**

**Policies:**

IX.3.b Recognize the importance of recreation, open space, public access to water bodies, and historic resources to the Town's economy, in tourism development and in attracting

and retaining industry, and endeavor to protect and enhance these resources in economic development siting and design activity.

IX.4.b Recognize the Town's scenic rural landscapes, roads and vistas as important cultural and economic resources, and act to preserve them.

IX.5.b Minimize the adverse impacts of power generation and transmission facilities on the environment.

**B. THE RHODE ISLAND COMPREHENSIVE PLANNING AND LAND USE  
REGULATION ACT · R.I.G.L. § 45-22.2-1 *et seq.***

The Planning Board is also unanimously of the opinion that the CREC would not be consistent with the following sections of the Rhode Island Comprehensive Planning and Land Use Regulation Act, R.I.G.L. § 45-22.2-1 *et seq.*:

**R.I.G.L. § 45-22.2-3 Legislative findings and intent – Statement of goals.**

*(a) Findings. The general assembly recognizes these findings, each with equal priority and numbered for reference only, as representing the need for effective planning, declares that:*

*(1) Comprehensive planning by municipal government is necessary to form a rational basis for the long-term physical development of a municipality and to avoid conflicting requirements and reactive land use regulations and decisions.*

As has already been discussed in this Advisory Opinion, particularly as to how it relates to the approval process in conjunction with the sheer amount of water which would be pulled from Burrillville's aquifers, we believe that approving the CREC would be a reactive land use decision.



*(2) Municipal government is responsible for land use, and requires accurate technical information and financial resources to plan for orderly growth and development, and the protection and management of our land and natural resources.*

With respect to offering financial resources, such as tax revenues, impact fees, and jobs, the CREC has some benefit, but at an unacceptable cost. For example, based on the information available to us at this time, it appears that the Town would be facing a public water moratorium on future village growth if the CREC is approved. Invenergy's recently denied application to the Harrisville Water Department makes it clear that, at this time, Invenergy has no workable water solution.

*(3) Land, water, and air are finite natural resources. Comprehensive planning is needed to provide for protection, development, use, and management of our land and natural resources.*

\* \* \*

*(c) Goals. The general assembly hereby establishes a series of goals to provide overall direction and consistency for state and municipal agencies in the comprehensive planning process established by this chapter. The goals have equal priority and are numbered for reference only.*

*(1) To promote orderly growth and development that recognizes the natural characteristics of the land, its suitability for use, the availability of existing and proposed public and/or private services and facilities, and is consistent with available resources and the need to protect public health, including drinking water supply, drinking water safety, and environmental quality.*

\* \* \*

*(4) To promote the protection of the natural, historic and cultural resources of each municipality and the state.*

(5) *To promote the preservation of the open space and recreational resources of each municipality and the state.*

### **C. NOISE**

As to whether Invenergy will be able to comply with the Burrillville Noise Ordinance during both construction and operation, Burrillville's Noise Ordinance provides in pertinent part.

Sec. 16-31 - Findings; statement of policy.

- (a) The town council hereby finds and declares that:
  - (1) Excessive noise is a serious hazard to the public health, safety and welfare and the quality of life.
  - (2) A substantial body of science and technology exists by which excessive noise can be substantially abated without serious inconvenience to the public.
  - (3) Certain of the noise-producing equipment in this community is essential to the quality of life and should be allowed to continue at reasonable levels with responsible regulation.
  - (4) Each person has a right to an environment reasonably free from noise which jeopardizes health or welfare or unnecessarily degrades the quality of life.
- (b) It is the declared policy of the town to promote an environment free from excessive noise, otherwise properly called noise pollution, which unnecessarily jeopardizes the public health, safety welfare and degrades the quality of the lives of the residents of this community, without unduly prohibiting, limiting or otherwise regulating the function of certain noise-producing equipment which is not amenable to such controls and yet is essential to the quality of life in the community.

Sec. 16-32 - Purpose, title and scope of article.

- (a) *Purpose.* The purpose of this article is to establish standards for the control of noise pollution in the town by setting maximum permissible sound levels for various activities to protect the public health, safety and general welfare.

\* \* \*

Sec. 16-39. – Maximum permissible sound levels by receiving land use.

- (a) With the exception of sound levels elsewhere specifically authorized or allowed in this article or exempted by this article or by special use permit, the following are the maximum permissible sound levels allowed at or within the real property boundary of a receiving land use.

Table 1, which is incorporated into Sec. 16-39, has a daytime single number equivalent maximum of 53 dba and a maximum non-daytime limit of 43 dba. Because the CREC will essentially be operating around the clock on many days, this effectively means that the maximum single number equivalent will be 43 dba for the facility. Invenergy has committed under oath that the facility will be designed, constructed, and operated at all times, including during start up and shut down, so that it does not exceed the overall 43 dba standard. However, our noise standard also has maximum allowable octave band sound pressure levels that essentially control low frequency sound. Invenergy has asked for a waiver of the octave band limitations. Such a waiver requires a special use permit under Section 16-48. That Section states as follows:

Sec. 16-48. – Special use permits.

- (a) *Designated.* The zoning board of review, established pursuant to G.L. 1956, § 45-24-57(vii) is hereby designated as the board of appeal and relief from this article.
- (b) *Authority.* The zoning board of review, acting pursuant to G.L. 1956, § 45-24-57(vii), shall have the authority, consistent with this section, to grant special use permits after a public hearing.
- (c) *Application.* Any person seeking a special use permit under this section shall file an application with the zoning board of review. The application shall contain information which demonstrates that bringing the source of sound or activity for which the special use permit is sought into compliance with this article would constitute an unreasonable hardship on the applicant, on the community or on other persons.

\* \* \*

- (e) *Grant, denial or revocation.*
  - (1) In determining whether to grant or deny an application, or revoke a special use permit previously granted, the zoning board of review

shall balance the hardship to the applicant, the community and other persons if the special use permit is not allowed, against the adverse impact on the health, safety and welfare of persons affected, the adverse impact on the property affected, and any other adverse impact, if the special use permit is allowed. The zoning board may grant the relief as applied for if it finds that:

- a. Additional time is necessary for the applicant to alter or modify his activity or operation to comply with this section; or
- b. The activity, operation or noise source will be of temporary duration, and cannot be done in a manner that would comply with other subsections of this section; and
- c. No other reasonable alternative is available to the applicant.

\* \* \*

- (f) *Conditions.* The special use permit shall be granted by notice to the applicant containing all conditions necessary to minimize adverse effects upon the community or the surrounding neighborhood, including a time limit on the permitted activity. The special use permit shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the special use permit shall terminate it and subject that person to those provisions of this article regulating the source of sound or activity for which the special use permit was granted.

It should be noted that the Zoning Board of Review, not the Planning Board, is the appropriate body to issue any special use permit. However, the Planning Board will issue an advisory to both the EFSB and the Zoning Board regarding this requested octave band noise waiver/special use permit.

Over the course of several meetings, the Planning Board and the public questioned the Town's noise consultant, David Hessler, and the noise consultant for Invenergy. Both of them seemed comfortable that CREC would be able to achieve the Town's required 43 dba or less noise limits at all times, including during start up and shut down, so as long as appropriate

lagging (and possible building encapsulation) was installed over all air cooled condenser (ACC) ducts.

As for Burrillville's admittedly low set of octave band noise requirements, we had concerns about possible low frequency noise effects on wildlife. We therefore continued the August 15<sup>th</sup> meeting until August 22<sup>nd</sup> in order to obtain information on possible wildlife impacts. Mr. Hessler then informed us in writing that "CREC won't substantially change or increase the low frequency sound levels in any meaningful way. That means that any potential impact on wildlife from low frequency noise, if there is one, is already present [from the existing Spectra turbine exhausts]."

We met again on August 22<sup>nd</sup> to discuss and vote on the noise issues. However, we are unable to render an opinion as to whether the CREC facility will be able to comply with our Noise Ordinance. R.I.G.L. § 45-23-63(f) requires 5 affirmative votes of our 9 member Board for a motion to succeed. At the August 22<sup>nd</sup> meeting, one member was recused and another member had an excused absence. Despite a number of motions on noise compliance, all failed because we were unable to obtain 5 votes on any of these motions. Therefore, we cannot issue an advisory opinion on noise compliance. We were, however, able to vote to render an advisory opinion that, because the octave band limits present an unreasonable hardship with no corresponding benefits per our noise expert, we recommend that the Zoning Board grant the octave band waiver/special use permit and exempt the CREC from the octave band limits of the Noise Ordinance, provided all of the conditions set forth in paragraph 3 (page 20) below are strictly complied with.

## **REQUESTED EFSB CONDITIONS OF APPROVAL**

Not knowing whether the EFSB will ultimately approve the CREC, we respectfully request that if the EFSB approves the CREC, the following conditions should be imposed on Invenergy's EFSB license, based primarily on the testimony, the recommendations in the Town's expert consultant letters/reports, and the staff memos obtained by the planning office:

1. The EFSB should consider the CREC as a component of the broader inter-state energy reliability project that includes a variety of improvements. We assume an Environmental Impact Statement (EIS) will be developed as part of that review process. The EIS needs to be considered by the EFSB. Accordingly, we respectfully submit that the EFSB should withhold its decision on the siting of CREC until the results of the EIS are available and analyzed.
2. The existing access road with Algonquin/Spectra should be utilized as the CREC access. A new access road should not be constructed because it would disturb significant wetlands. This condition will limit the impact on wetlands disturbance, visual impacts to abutting properties, and traffic.
3. There should be continuous monitoring and reporting of noise levels by Invenergy, and compliance with 43 dba at all times should be an explicit condition of the EFSB license, so that all violations are penalized with fines, a cease and desist order, and possible revocation of the operating license. There should be a commitment from Invenergy to post a performance bond or other financial assurance for the benefit of the Town to ensure that this condition is satisfied and that Town residents who are adversely affected by noise violations are compensated;

4. Sufficient water quantity, alternate supply source, aquifer withdrawal, and aquifer replenishment conditions should be EFSB permit conditions, as recommended by the appropriate agencies.
5. There needs to be traffic management and emergency response enhancement and financial support for the state and town roads impacted by this project, including, but not limited to commitments from Invenergy to (1) rebuild all roads damaged by Invenergy, and (2) redesign and reconstruct the intersection of Church Street and High Street in order to increase the safe turning radius for large trucks.
6. Enhanced safety requirements should be imposed on all trucks hauling fuel oil, ammonia, hydrogen, and other hazardous chemicals through Town.
7. Development of a suitable property value guarantee agreement with the Town that compensates residents for negative impacts to real estate values.
8. Development of a suitable decommissioning agreement for the CREC and related financial assurances.
9. The air modeling revisions, corrections, and recommendations set forth by the Town's air consultant Fuss & O'Neill in their letter of June 17, 2016 must be a condition so that a corrected Air Dispersion Model Report and a new Health Risk Assessment Report showing no health risks are prepared and approved by the Rhode Island Department of Environmental Management (DEM).
10. The Department of Health (DOH) recommendations set forth in DOH's draft advisory opinion dated July 8, 2016 should be conditions.
11. In light of the decisions of the Harrisville Water Department and the PUD, we are of the opinion that to date, it has not been demonstrated by Invenergy that they have access to adequate sources of water or that withdrawing these large amounts

of water will not harm either water quantity or quality in the Town, which relies primarily on wells. Demonstration of the availability of an adequate water supply should be an express condition.

12. Apply as conditions the Burrillville Sewer Commission conditions set forth in their memo to the Town Planner dated May 12, 2016.
13. Apply as conditions all recommendations set forth in Town consultant CDR/Maguire's letters/memoranda to the Town dated June 15, 2016 (ammonia), June 16, 2016 (traffic), June 16, 2016 (master plan), June 16, 2016 (MTBE/Water/Sewer), August 9, 2016 (various issues), and August 11, 2016 (DOH).
14. Apply as conditions all recommendations set forth in Town noise consultant David Hessler's letters/memoranda dated May 26, 2016, July 12, 2016, August 8, 2016, August 10, 2016, August 16, 2016, and August 22, 2016.
15. Require construction of a full time, 24 hour hazardous response center at the CREC that can respond to incidents at both CREC and Spectra Energy/Algonquin compressor station.
16. Require that ULSD only be used during maintenance testing or upon direction from ISO-NE, and will not be used solely for economic reasons, and include the Town as part of a live notification messaging system so that residents can know exactly when ULSD is being used and for what duration.
17. If the PUD Well #3A will be utilized, it should be a condition that Invenenergy must obtain a court order lifting the previous court-ordered ban.
18. Pursuant to EFSB Rule 1.14(b), we respectfully request that the EFSB consider delegating to our Board the authority, during the construction period, the period of



plant start up, and a reporting period to follow “to visit the plant and plant site to determine if construction, construction practices, operation or operational practices are in compliance with the terms of the Board’s license.”

## **II. ZONING BOARD**

### **ADVISORY OPINION TO THE BURRILLVILLE ZONING BOARD OF REVIEW ON INVENERGY’S REQUEST FOR A SPECIAL USE PERMIT FOR THE CREC**

At a Zoning Board Meeting on July 12, 2016, Invenergy provided testimony from their planning consultant Edward Pimentel. Mr. Pimentel acknowledged that the Town does not offer special use permit standards to support electrical generating facilities such as the CREC. In place of performance standards, Mr. Pimentel stated that he often looks to the Town’s Comprehensive Plan and Site Plan Review Standards. Mr. Pimentel pointed to standards relating to buffering and suggested the CREC meets buffering standards because of its proposed location. However, the Planning Board is of the opinion that open space in the vicinity of the CREC (such as the Pulaski State Forest) is more in conformance with numerous preservation policies, and that a power plant is not.

Invenergy placed great weight on testimony that claimed that a Special Use Permit is a conditionally permitted land use that must be permitted by the municipality if performance standards are met. However, the notion that a Town needs to grant a special use permit if specific performance standards are met by an applicant is not proper because the standards only represent one evaluation task by the community. For communities to approve applications in this manner would be a reckless land use practice.

This one facility would consume a tremendous amount of the Town’s groundwater resources, to the point where the Town’s future land use growth, specifically as it relates to dense village growth, could be compromised.

The Comprehensive Plan, in its entirety, including all of the other goals and policies, need to be factored into consideration.

The Town must consider whether the amount of water consumed from the aquifer (but not returned to it), meets zoning standards, and more importantly, how much consideration must be given to groundwater, open space, wildlife, traffic, light pollution, noise pollution, air quality, surface water quality, etc., as compared to a buffering requirement that it appears is being misconstrued by the applicant

In terms of Zoning Section 30-34(e), *Special use permit*, we offer the following opinion for the Burrillville ZBR:

Zoning Sections 30-34(e)(4)(a)(b) and (c) require the Board to consider:

- a. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
- b. Off-street parking and loading areas where required.
- c. Required yard setbacks and other open spaces.

These requirements, in our opinion, are all better served by Invenergy utilizing the existing Algonquin/Spectra access road. A common road would better serve the planned parking area for the CREC, would greatly limit the extent of wetlands impacts, and would serve as an adequate setback by not disturbing forests along Wallum Lake Road in order to construct a new access road.

Zoning Section 30-34(e)(4)(g) and (h) require the Board to consider:

- e. Screening and buffering with reference to type, dimensions, and character.

\* \* \*

- g. General compatibility, the pertinent traffic, economic, noise, glare or odor effects of the special use permit on adjoining properties and properties generally in the district.
- h. Protection of sensitive features.

These requirements, in our opinion, are better served by not constructing a new access road, thereby disturbing less forest and preserving the existing woodland buffer to Wallum Lake Road.

We ask that the ZBR at a minimum weigh impacts on the Town's aquifer system as special conditions under Zoning Section 34-30(f) which provides in part:

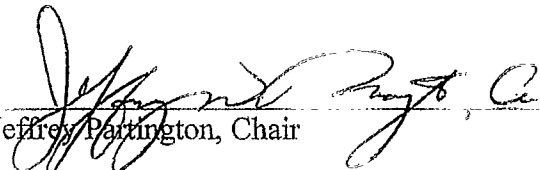
- f. Special conditions. In granting a variance a special use permit or in making any determination upon which it is required to pass after a public hearing under a zoning ordinance, the zoning board of review or other zoning enforcement agency may apply such special conditions that may, in the opinion of the board or agency, be required to promote the intent and purposes of the comprehensive plan and the zoning chapter of the town. Failure to abide by any special conditions attached to a grant shall constitute a zoning violation. Those special conditions shall be based on competent credible evidence on the record, be incorporated into the decision, and may include, but are not limited to, provisions for:
  - 1. Minimizing adverse impact of the development upon other land, including the type, intensity, design, and performance of activities;

Of course, as set forth in detail herein, the Planning Board believes the CREC is inconsistent with the Comprehensive Plan, and we only recommend these conditions as safeguards in the event the EFSB approves the CREC.

As to the requested octave band waiver/special use permit, we are of the opinion that the evidence, especially the testimony of the Town's noise consultant, has shown that (1) the octave band limits are unreasonably restrictive, (2) the waiver will not increase the low frequency noise already present in the area due to the Spectra/Algonquin facility, and (3) there will be no adverse effect on residents or wildlife if the waiver is granted. We therefore recommend to the Zoning

Board that the waiver should be approved, if the conditions set forth in paragraph 3 on page 20 above are strictly complied with.

Dated: 8/22/2016

  
Jeffrey Partridge, Chair

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
ENERGY FACILITY SITING BOARD

IN RE: INVENERGY THERMAL DEVELOPMENT LLC's :  
APPLICATION TO CONSTRUCTION THE : DOCKET No. SB-2015-06  
CLEAR RIVER ENERGY CENTER IN :  
BURRILLVILLE, RHODE ISLAND :

**APPENDIX OF REPORTS CONTAINING REQUESTED CONDITIONS  
IF AN EFSB PERMIT IS ISSUED**

- 1 **Fuss & O'Neill** -- June 17, 2016 (Air)
  
- 2 **Department of Health, Draft Advisory Opinion** July 8, 2016  
  
Electromagnetic Fields (p. 3); Noise (p. 5); Drinking Water Quality (p. 11);  
Air Pollution (p. 12); Asthma (p. 15); Emergency Response and Prevention (p. 18);  
Climate Change and Health (p. 22)
  
3. **Burrillville Sewer Commission**
  
4. **CDR Maguire**
  - A. June 15, 2016 Ammonia
  - B. June 16, 2016 Traffic
  - C. June 16, 2016 Master Plan; Stormwater; Wetlands; Traffic
  - D. June 16, 2016 Water; MTBE; Sewer
  - E. August 9, 2016 Spill Prevention Control; Stormwater Pollution Prevention;  
Water Use and Wastewater Discharge; Wetlands; Stormwater  
Geology and Soils; Traffic; Solid Wastes
  - F. August 11, 2016 Drinking Water Quality; Emergency Response and Prevention;  
Ammonia
  
- 5 **Hessler** (Noise)
  - A. May 26, 2016
  - B. July 12, 2016
  - C. August 8, 2016
  - D. August 10, 2016
  - E. August 16, 2016
  - F. August 22, 2016