



May 4, 2016

Todd Bianco  
EFSB  
89 Jefferson Blvd.  
Warwick, RI 02888

Cynthia Wilson-Frias  
PUC  
89 Jefferson Blvd.  
Warwick, RI 02888

Dear Mr. Bianco and Ms. Wilson-Frias:

Re: Invenenergy Power Plant Proposal  
EFSB Docket SB 2015-06  
PUC Docket # 4609

Reference is made to our March 31, 2016 letter addressed to Messrs. Bianco and Marcaccio, a copy of which is enclosed for your convenience.

In paragraphs 1 through 3 of that letter, we expressed two things: (a) CLF's concern and uncertainty about what the forum would be for consideration of the carbon and climate impacts of the Invenenergy Proposal, and the application of the Resilient Rhode Island Act; and (b) CLF's skepticism that the information we had previously received from Mr. Marcaccio on these questions was correct.

CLF's concern and confusion were compounded on April 22, 2016 by the pre-filed testimony of Invenenergy's witnesses in PUC Docket # 4609. Mr. Marcaccio had told CLF that issues pertaining to carbon, climate, and the Resilient Rhode Island Act would surely be heard in the EFSB. But Invenenergy's witnesses in the PUC Docket address these matters. See Niland, page 8, line 3 to 21; Hardy, page 10, lines 7 to 21; and page 12 line 16 to page 13, line 4; and page 16 line 5 to page 23 line 7.

On March 31, 2016, CLF filed the testimony of its expert witness on carbon, climate, and the Resilient Rhode Island Act with the EFSB (and OER), but not with the PUC.

CLF respectfully requests that there be appropriate communication between the EFSB and the PUC in order that this question may be answered definitively for the benefit of both regulatory bodies and for the benefit of all the parties.

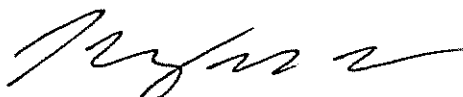
In this regard, CLF repeats what it stated in its March 31, 2016 letter:

CLF emphasizes that a full hearing on the broad issue of carbon emissions, climate impacts, and the application of the Resilient Rhode Island Act is required both by the statute (the Energy Facility Siting Act) and the Rhode Island and United States Constitutions (in their respective due process clauses). That full hearing must be open to the public, on the record, with evidence presented, and witnesses under oath and subject to cross-examination. The EFSB's Order acknowledges this fact: "The purpose of the [EFSB's] final hearing is not to rehear evidence presented in hearings before designated agencies providing advisory opinions, but rather to provide the parties the opportunity to address – in a single forum and from a consolidated, statewide perspective – the issues reviewed and the recommendations made by such agencies." Order, Page 8, ¶ 2, (emphasis supplied).

CLF will participate in the proceedings on carbon, climate and the Resilient Rhode Island Act if those proceedings occur in the EFSB. CLF will participate in the proceedings on carbon, climate and the Resilient Rhode Island Act if those proceedings occur in the PUC.

There remains, however, confusion and uncertainty as to where those proceedings will take place. CLF respectfully requests that the EFSB and PUC provide the parties with a definitive answer to this question. If appropriate, such an answer could be provided in a suitable Order.

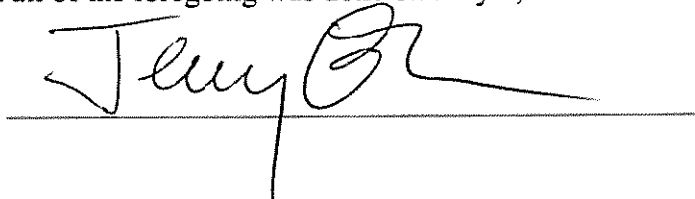
Very truly yours,



Max Greene  
Staff Attorney, Bar # 7321  
Tel: 401-351-1102, ext. 2013

CERTIFICATE OF SERVICE

I certify that an original copy of this letter, plus 10 photocopies, were hand delivered to the EFSB, 89 Jefferson Blvd., Warwick, RI. I further certify that an original copy of this letter, plus 10 photocopies were hand delivered to the PUC, 89 Jefferson Blvd., Warwick, RI. In addition, electronic copies of this letter were served by email on the service lists of EFSB Docket 2015 -06 and PUC Docket #4609. I certify that all of the foregoing was done on May 4, 2016.





For a thriving New England

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March 31, 2016

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

Andrew S. Marcaccio  
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

Reference is made to our letter to you dated January 29, 2016, in which we stated that, in this proceeding, CLF will offer at least one witness on the subject of carbon emissions, climate impacts, and the application of the Resilient Rhode Island Act. In that Jan. 29 letter, we posed a simple question: “[T]o which agency the testimony of this/these witnesses is properly directed: to the EFSB or to the OER?”

By letter dated February 8, 2016, Mr. Marcaccio replied to our letter, stating that “we believe any formal testimony should be filed with the EFSB unless otherwise directed.”

Following our own review of relevant statutes and rules, as well as the EFSB’s Preliminary Decision and Order dated March 10, 2016 (Order), we are not fully satisfied that filing testimony solely with the EFSB will adequately protect CLF’s right to present evidence in this proceeding. First, we note that the Order states (at page 17) that “[t]he Rhode Island Office of Energy Resources . . . shall render an advisory opinion as to: (i) the impacts of the Facility on anticipated greenhouse gas emissions that would result from the proposed Facility and the cumulative impact over the life of the project and (ii) whether the Facility will conform to the requirements and provisions of the Resilient Rhode Island Act . . . and state energy policies.”

Second, we note that EFSB Rule 1.12(d)(1) states that “parties shall have the obligation to present all relevant testimony and evidence and to fully participate in designated agency proceedings . . .” (Emphasis supplied.)

Therefore, today, we are pre-filing, in written form, the testimony of Dr. J. Timmons Roberts, an expert witness on the issue of carbon emissions, climate impacts, and the application of the Resilient Rhode Island Act. (CLF may present additional witness(es) on this subject.) We file this testimony duplicatively with the EFSB and OER in order to ensure that the OER takes full account of this evidence in arriving at its advisory opinion, even if Dr. Roberts’s appearance and cross-examination are to occur later at the EFSB, as Mr. Marcaccio’s Feb. 8 letter suggests.



conservation law foundation

CLF emphasizes that a full hearing on the broad issue of carbon emissions, climate impacts, and the application of the Resilient Rhode Island Act is required both by the statute (the Energy Facility Siting Act) and the Rhode Island and United States Constitutions (in their respective due process clauses). That full hearing must be open to the public, on the record, with evidence presented, and witnesses under oath and subject to cross-examination. The EFSB's Order acknowledges this fact: "The purpose of the [EFSB's] final hearing is not to rehear evidence presented in hearings before designated agencies providing advisory opinions, but rather to provide the parties the opportunity to address – in a single forum and from a consolidated, statewide perspective – the issues reviewed and the recommendations made by such agencies." Order, Page 8, ¶ 2, (emphasis supplied).

CLF looks forward to participating actively in the upcoming public hearing on the record addressing the carbon and climate impacts of the proposed Invenenergy fossil-fuel plant.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jerry Elmer', written in a cursive style.

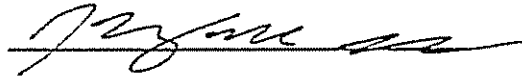
Jerry Elmer

A handwritten signature in black ink, appearing to read 'Max Greene', written in a cursive style.

Max Greene

CERTIFICATE OF SERVICE

I certify that an original copy of this letter, plus 10 photocopies, were hand delivered to the Energy Facility Siting Board (EFSB), 89 Jefferson Blvd., Warwick, RI, along with 10 hard copies of the referenced Direct Testimony of Dr. Roberts. I further certify that three photocopies of this letter and three hard copies of the referenced Direct Testimony of Dr. Roberts were hand delivered to the Office of Energy Resources, One Capitol Hill, fourth floor, Providence, RI. In addition, electronic copies of this letter and the referenced Direct Testimony of Dr. Roberts (with all exhibits) were served by e-mail on the entire service list of EFSB Docket 2015-06. Service was made on the service list in the form of four separate PDFs, as follows: (1) this letter; (2) Dr. Timmons's Direct Testimony; (3) Exhibits A and B; (4) Exhibits C through E. I certify that all of the foregoing was done on Thursday, March 31, 2016.

A handwritten signature in black ink, appearing to read "Jeffrey M. [unclear]", written over a horizontal line.