

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

IN RE: Application of
Invenergy Thermal Development LLC's
Proposal for Clear River Energy Center

Docket No. SB 2015-06

CONSERVATION LAW FOUNDATION'S
MOTION TO COMPEL

On January 13, 2016, Conservation Law Foundation (CLF) filed and served its First Set of Data Requests to Invenergy. A true and accurate copy of those requests is attached at Tab A. CLF's First Set of Data Requests were narrowly drawn to address matters that had been directly placed into controversy by Invenergy. Invenergy's responses were due on January 28, 2016. EFSB Rule 1.27(b)(2).

As of the filing of this Motion to Compel, CLF has not yet received adequate answers to its First Set of Data Requests. This is true, despite the fact that Invenergy is pushing the EFSB for permits on a highly accelerated schedule, in order that Invenergy can meet its Capacity Supply Obligation (CSO) to the ISO-New England.

On January 19, 2016, Invenergy filed and served a document purporting to be an Objection to CLF's First Set of Data Requests. (Tab B.) There were two separate problems with Invenergy's document.

First, EFSB Rule 1.27(b)(3) requires that Objections to discovery be filed and served within five days. Invenergy did not file and serve its purported Objection within five days. Therefore, pursuant to EFSB Rule 1.27(b)(3), Invenergy has waived any objection it might otherwise have had.

Even if that were not the case, Invenergy's purported Objection is nothing but general, inappropriate boilerplate objections to every part of CLF's narrow First Data Request. Indeed, Invenergy's purported Objection is exactly the kind of boilerplate objection that is not allowed, either in Rhode Island, Limoges v. Eats Restaurant, 621 A.2d 188 (R.I. 1993), or anywhere in the United States. DL v. District of Columbia, 251 F.R.D. 38 (D.D.C. 2008).

On January 28, 2016, Invenergy provided what it entitled "Responses" to CLF's First Set of Data Requests. Invenergy did not withdraw its untimely filed, improper, boilerplate objections, but carefully incorporated them by reference. Presumably based on those objections, Invenergy failed to provide responsive answers. For example:

- Request 1.3(b) asks for "all work papers", and instead Invenergy provided two summary sheets.
- Request 1.3(b) asks to "explain in detail how the \$280 figure was derived," and instead Invenergy provided only the conclusory figures of "Capacity Compensation Differential (\$/kw-mo.)" with no explanation whatever of how the figures were derived.
- Request 1.3(c) asks to "identify all inputs into these calculations," and Invenergy replies that "the universe of inputs cannot easily be divulged."

In short, Invenergy not only did not provide responsive answers the CLF's first set of Data Requests, Invenergy actually explained why it was not providing responsive answers: because "the universe of inputs cannot be easily divulged."

On March 17, 2016, Invenergy's counsel insisted that CLF execute a Non-Disclosure Agreement (NDA) before Invenergy would provide responses to CLF's Data Requests. CLF immediately agreed to sign – and did sign – the form of NDA demanded by Invenergy. But Invenergy has not provided responsive answers to CLF's First Set of Data Requests.

No extensive case citation is necessary to support the proposition that discovery is permissible when specifically directed at matters at the heart of the litigation. Lohr v. Stanley-Bostitch, Inc., 135 F.R.D. 162, 164 (W.D. Mich. 1991).

Of course, this is especially true where, as here, the discovery is narrowly directed to matters that the party to whom the discovery is directed has, itself, placed into controversy. Martinez v. State Farm Ins. Co., 2010 WL 668241, Feb. 19, 2010 (M.D. Fla. 2010).

Indeed, the Rhode Island Energy Facility Siting Act provides that an applicant's filing of an application with the EFSB "constitutes consent ... to the jurisdiction of this state for the purposes of discovery relevant to the application." R.I. Gen. Laws § 42-98-14. Simply put, Invenergy must provide full discovery responses on matters relevant to its application.

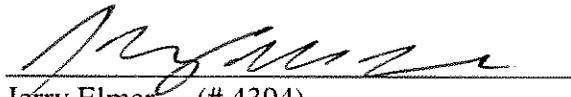
The situation here could not be clearer. To take but one example, Invenergy boldly told the EFSB that its proposed power plant would save Rhode Island ratepayers \$280 million in its first three years of operation. CLF asked Invenergy to "identify all inputs into these calculations." Invenergy replied that "the universe of inputs cannot easily be divulged."

Invenergy placed the issue into controversy. Invenergy must respond to CLF's discovery request.

EFSB Rules are pellucid on the consequences for Invenergy for failing to provide responsive answers to CLF's First Data Request: "The failure of a party to comply with a data request or a Board order related thereto may, at the discretion of the Board, be grounds for striking any testimony offered by the nonresponding party related to such request." EFSB Rule 1.27(b)(4).

Invenergy's response to the CLF's First Set of Data Requests was due no later than January 28, 2016. Today is April 8, 2016. Enough is enough.

CONSERVATION LAW FOUNDATION,
by its Attorneys,



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CERTIFICATE OF SERVICE

I certify that the original and ten copies of this Motion to Compel were sent to the Energy Facility Siting Board, by first-class mail postage prepaid. In addition, PDF copies of the Data Request were served electronically on the entire service list of this Docket. I certify that all of the foregoing was done on April 8, 2016.

Kim Jui

Tab A

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

IN RE: Application of
Invenergy Thermal Development LLC's
Proposal for Clear River Energy Center

Docket No. SB 2015-06

**CONSERVATION LAW FOUNDATION'S
FIRST DATA REQUEST DIRECTED TO INVENERGY**

1-1. A copy of the material transmitted by ESS Group on behalf of Invenergy on October 30, 2015 to Doug McVay, R.I. Department of Environmental Management, entitled "Air Dispersion Modeling Report – Clear River Energy Center – Burrillville, Rhode Island."

1-2. A copy of the material transmitted by ESS Group on behalf of Invenergy on June 26, 2015 to Barbara Morin, R.I. Department of Environmental Management, entitled "Health Risk Assessment Protocol – Clear River Energy Center – Burrillville, Rhode Island."

1-3. This Data Request pertains to PowerPoint Slide 21 used by Invenergy at the January 12, 2016 Preliminary Hearing, specifically this sentence: "By displacing older, inefficient plants Clear River is projected to save ratepayers \$280 million in cumulative savings between 2019 and 2022."

(a) Please confirm that the cumulate savings referred to pertain to: (i) the value of energy, not capacity or ancillary services; (ii) ratepayers in the Rhode Island load zone, not rest of pool; and (iii) the ISO-NE Capacity Commitment Periods 10, 11 and 12.

(b) Explain in detail how the \$280 million figure was derived, and provide all work-papers used in the calculations.

(c) Identify all inputs into these calculations derived from outside sources, and identify the outside source(s).

(d) For all inputs that were not derived from outside sources (that is, assumptions made by Invenergy), identify the assumption and explain why Invenergy believes the assumption to be reasonable.

(e) Identify the principal person(s) responsible for this calculation.

(f) Identify additional person(s) involved in this calculation and generally the role of each one.

1.4. This Data Request pertains to PowerPoint Slide 24 used by Invenergy at the January 12, 2016 Preliminary Hearing, specifically the figure of ratepayer savings of \$258 million in cumulative savings between 2019 and 2022.

(a) Please confirm that the cumulate savings referred to pertain to: (i) capacity payments, not energy or ancillary services; (ii) ratepayers in the Rhode Island load zone, not rest of pool; and (iii) the ISO-NE Capacity Commitment Periods 10, 11 and 12.

(b) Explain in detail how the \$258 million figure was derived, and provide all work-papers used in the calculations.

- (c) Identify all inputs into these calculations derived from outside sources, and identify the outside source(s).
- (d) For all inputs that were not derived from outside sources (that is, assumptions made by Invenergy), identify the assumption and explain why Invenergy believes the assumption to be reasonable.
- (e) Identify the principal person(s) responsible for this calculation.
- (f) Identify additional person(s) involved in this calculation and generally the role of each one.

CONSERVATION LAW FOUNDATION,
by its Attorneys,



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CERTIFICATE OF SERVICE

I certify that the original and ten copies of this Data Request were sent to the Energy Facility Siting Board, by first-class mail postage prepaid. In addition, copies of the Data Request were served electronically on the entire service list of this Docket. I certify that all of the foregoing was done on January 13, 2016. In addition, pursuant to the instructions of the EFSB Coordinator at the January 12, 2016 Preliminary Hearing, CLF is willing to provide hard-copy service to any party who requests that.



Tab B

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD**

**In Re: INVENERGY THERMAL DEVELOPMENT)
LLC'S APPLICATION TO CONSTRUCT THE) Docket No. SB-2015-06
CLEAR RIVER ENERGY CENTER IN)
BURRILLVILLE, RHODE ISLAND)**

**OBJECTIONS OF INVENERGY THERMAL DEVELOPMENT LLC
REGARDING THE FIRST DATA REQUEST OF THE
CONSERVATION LAW FOUNDATION**

Pursuant to Rule 1.27 of the Board's Rules of Practice and Procedure, Invenergy Thermal Development LLC ("Invenergy") objects to certain data requests served on Invenergy by the Conservation Law Foundation ("CLF"), dated January 13, 2016. Invenergy has objections with regard to some of the subparts of the following questions identified in CLF Request numbers 1-3 and 1-4.¹

CLF REQUEST 1-3:

"1-3. This Data Request pertains to PowerPoint Slide 21 used by Invenergy at the January 12, 2016 Preliminary Hearing, specifically this sentence: "By displacing older, inefficient plants Clear River is projected to save ratepayers \$280 million in cumulative savings between 2019 and 2022."

(a) Please confirm that the cumulate savings referred to pertain to: (1) the value of energy, not capacity or ancillary services; (ii) ratepayers in the Rhode Island load zone, not rest of pool; and (iii) the ISO-NE Capacity Commitment Periods 10, 11 and 12.

(b) Explain in detail how the \$280 million figure was derived, and provide all work-papers used in the calculations.

(c) Identify all inputs into these calculations derived from outside sources, and identify the outside source(s).

(d) For all inputs that were not derived from outside sources (that is, assumptions made by Invenergy), identify the assumption and explain why Invenergy believes the assumption to be reasonable.

(e) identify the principal person(s) responsible for this calculation.

(f) Identify additional person(s) involved in this calculation and generally the role of each one."

¹ Invenergy is preparing relevant and non-confidential responses to the CLF First Data Requests that Invenergy believes will be responsive to the questions. However, given the very short time in the Board's Rules (for identifying objections) Invenergy identifies these objections as described in this document.

OBJECTIONS:

Invenergy generally objects to responding to the questions identified within CLF 1-3 sub parts (b), (c), (d) and (f) on the grounds that these data requests are vague, overbroad and unduly burdensome, and potentially seeks information and data that is protected as trade secret, confidential and/or proprietary and not subject to public disclosure.

For example, in sub-part (b), CLF seeks details on how PA Consulting Group, Inc. (“PA”) derived its calculations and supporting information. PA has explained some of the market assumptions in documents that Invenergy filed with the Rhode Island Energy Facility Siting Board (“Board”) in support of the application. The Board granted Invenergy’s request for confidential treatment of portions of these PA documents. To the extent that PA and/or Invenergy relied on any of this confidential information in its calculations that information has been granted protected status by the Board, as confidential and not subject to further public disclosure.

With regard to the questions in sub-parts (c) and (d), CLF never defines the term “input” or what it means by the term “input.” Accordingly, this term is too vague, overbroad and confusing that Invenergy is unsure what CLF is specifically requesting. Also, to the extent that any of the “assumptions” used by PA or Invenergy are derived from the analysis that the Board has deemed protected as “confidential,” Invenergy objects to providing this information to CLF. Similarly, to the extent that any of the “assumptions” used by PA are derived from commercially sensitive, confidential or proprietary information, Invenergy notes this objection as well.

Finally, with regard to the question in sub-part (f), where CLF seeks information on additional persons “involved” in certain calculations, the term “involved” is vague, overbroad and confusing and in no way defined by CLF. Therefore, Invenergy notes this general objection

as well and is unsure how identifying specific individuals and what their role was for the Clear River analysis is in any way germane to data presented in CREC's evaluation. For these reasons, Invenergy generally objects to responding to this question because the request as being overbroad and unduly burdensome.

CLF REQUEST 1-4:

"1.4. This Data Request pertains to PowerPoint Slide 24 used by Invenergy at the January 12, 2016 Preliminary Hearing, specifically the figure of ratepayer savings of \$258 million in cumulative savings between 2019 and 2022.

(a) Please confirm that the cumulative savings referred to pertain to: (i) capacity payments, not energy or ancillary services; (ii) ratepayers in the Rhode Island load zone, not rest of pool; and (iii) the ISO-NE Capacity Commitment Periods 10, 11 and 12.

(b) Explain in detail how the \$258 million figure was derived, and provide all work-papers used in the calculations.

(c) Identify all inputs into these calculations derived from outside sources, and identify the outside source(s).

(d) For all inputs that were not derived from outside sources (that is, assumptions made by Invenergy), identify the assumption and explain why Invenergy believes the assumption to be reasonable.

(e) Identify the principal person(s) responsible for this calculation.

(f) Identify additional person(s) involved in this calculation and generally the role of each one."

OBJECTIONS:

For the same reasons explained above, Invenergy generally objects to responding to the questions identified within CLF 1-4 sub parts (b), (c), (d) and (f) on the grounds that these data requests are vague, overbroad and unduly burdensome, and potentially seeks information and data that is protected as trade secret, confidential and/or proprietary and not subject to public disclosure.

For example, in sub-part (b), CLF seeks details on how PA derived its calculations and supporting information. PA has explained some of the market assumptions in documents that Invenergy filed with the Board in support of the application. The Board granted Invenergy's request for confidential treatment of portions of these PA documents. To the extent that PA

and/or Invenenergy relied on any of this confidential information in its calculations that information has been granted protected status by the Board, as confidential and not subject to further public disclosure.

With regard to the questions in sub-parts (c) and (d), CLF never defines the term "input," and what it means by the term "input." Accordingly, this term is too vague, overbroad, and confusing, and Invenenergy is unsure what CLF is specifically requesting. Also, to the extent that any of the "assumptions" used by PA or Invenenergy are derived from the analysis that the Board has deemed protected as "confidential," Invenenergy objects to providing this information to CLF. Similarly, to the extent that any of the "assumptions" used by PA are derived from commercially sensitive, confidential or proprietary information, Invenenergy notes this objection as well.

Finally, with regard to the question in sub-part (f), where CLF seeks information on additional persons "involved" in certain calculations, the term "involved" is vague, overbroad and confusing and in no way defined by CLF. Invenenergy notes this general objection as well.

Respectfully submitted,

INVENERGY THERMAL DEVELOPMENT

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Dated: January 4, 2016

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2016, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer