

**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)**

**OBJECTION OF INVENERGY THERMAL DEVELOPMENT, LLC
TO SALLY J. MENDZELA’S MOTION FOR INTERVENTION**

I. INTRODUCTION

Now comes Invenergy Thermal Development, LLC (“Invenergy”) and hereby objects to Sally J. Mendzela’s (“Ms. Mendzela”) Motion for Intervention. As explained more thoroughly herein, Ms. Mendzela’s Motion for Intervention as a Party should be denied for the following reasons: (1) Ms. Mendzela is not an attorney, as required by the Rhode Island Energy Facility Siting Board Rules; (2) Ms. Mendzela does not have a statutory right to intervene; (3) Ms. Mendzela’s general concerns and asserted interests are not sufficient to warrant intervention Party status; and (4) Ms. Mendzela has failed to demonstrate good cause as to why her late Motion for Intervention should be accepted. Accordingly, Invenergy respectfully requests that Ms. Mendzela’s Motion for Intervention be denied.

II. BACKGROUND

Pursuant to the Energy Facilities Siting Act, Chapter 42-98 of the General Laws of Rhode Island, as amended (“Act”), and the Rules of Practice and Procedure (“Rules”) of the Rhode Island Energy Facilities Siting Board (“RI EFSB” or “Board”), Invenergy filed an application to seek the approval of the RI EFSB to site and construct the Clear River Energy Center, an approximately 850-1000 MW combined cycle electric generating facility on Wallum Lake Road in Burrillville, R.I. (“CREC” or “Project”).

In accordance with the Act and the Rules, the RI EFSB held the statutorily mandated Preliminary Hearing on January 12, 2016 to consider Invenergy's application and the required elements as set forth in the Act and the Rules. On January 29, 2016, the RI EFSB will hold an open meeting. Although the Board will not be taking public comment at this meeting, it is anticipated that there will be ample opportunity for Ms. Mendzela to offer public comment at several dates to be scheduled by the Board.

III. LEGAL STANDARD FOR INTERVENTION

The legal standard for intervention as a Party is well established. Pursuant to Rule 1.10(b) "any person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate may intervene in any proceeding" where such a "right or interest" may be: (1) a right conferred by statute; (2) an interest which may be directly affected and which is not adequately represented by existing Parties and as to which petitioners may be bound by the Board's action in the proceeding; (3) any other interest of such a nature that petitioner's participation may be in the public interest. Rule 1.10(d)(3) provides that the Board may, "[f]or good cause[,]" authorize the filing of a late notice of intervention or motion to intervene.

While Rule 1.10(b) is intended to "ensure that the interests of interested parties are met through the adversarial process,"¹ this Rule on necessary and appropriate interventions should not allow persons or entities to intervene whose interests are only indirectly affected, where their interests are adequately represented by other Parties or where there is insufficient compelling public interest to warrant intervention as a full Party. *See, e.g., In Re: Island Hi Speed Form of Regulation and Review of Rates*, PUC Docket 3495 (Order issued May 9, 2003), citing *In re Island Hi-Speed Ferry, LLC*, 746 A.2d at 1245-46 (questioning the wisdom of the Commission's

¹ *In re Island Hi-Speed Ferry, LLC*, 746 A.2d 1240,1245 (2000).

decision allowing intervention to Parties with indirect interests in the outcome). Similarly, in evaluating whether an organization has sufficiently demonstrated interests that are adversely affected by a proceeding, the R.I. Supreme Court has held that “mere interest in a problem, no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization adversely affected . . .” *In Re Review of Proposed Town of New Shoreham Project*, 19 A.3d 1226, 1227 (R.I. 2011)(internal quotation marks and citations omitted).

In short, intervention as full Parties should be limited to Parties that have either statutory rights to intervene, directly affected interests that will not be adequately represented by other Parties or special public interests that compel intervention as a Party. *See, e.g., In Re: Application of R.I. Fast Ferry, Inc. for Water Carrier Authority*, Docket D-13-51, Order No. 21170 (9/24/2013), at pp 15-20. *See also Public Service Co. of New Hampshire v. Patch*, 136 F.3rd 233, 207-208 (R.I. 1975) (“It is well settled beyond peradventure, however, that an undifferentiated, generalized interest in the outcome of an ongoing action is too porous a foundation on which to premise intervention as of right . . .”).

Finally, Rule 1.4(a) requires that “[a]ll parties to a proceeding shall be represented by an attorney, unless otherwise ordered by the Board for good cause shown” and that “[p]articipants, other than parties, may appear in any proceeding in person or by an attorney.”

IV. ARGUMENT

A Motion for Intervention was filed on behalf of Ms. Mendzela, as an individual, and received via e-mail, on January 25, 2016. It is not clear if the required certificate of service, pursuant to EFSB Rule 1.5(d), was filed with the document. In any event, Invenergy respectfully requests that the Board deny Ms. Mendzela’s Motion for Intervention for the reasons discussed

below.

First, Ms. Mendzela does not appear to be a licensed attorney in Rhode Island, contrary to the requirement in Rule 1.4(a).² Next, Ms. Mendzela asserts an interest in this proceeding that is based on her general environmental concerns for protecting the Earth and the public health in Rhode Island. Invenergy respectfully suggests that Ms. Mendzela's generally stated interests do not justify intervention as a necessary or appropriate party in this licensing proceeding.

Also, Ms. Mendzela does not assert a statutory right to intervene. Ms. Mendzela asserts general interests in the subject matter of the environment. However, a purely general interest in the environment is insufficient as a matter of law to warrant full Party status in this licensing proceeding. *See, e.g., In Re Review of Proposed Town of New Shoreham Project*, 19 A.3d at 1227; *In Re: Island Hi Speed Form of Regulation and Review of Rates*, PUC Docket 3495 (Order issued May 9, 2003), citing *In re Island Hi-Speed Ferry, LLC*, 746 A.2d at 1245-46.

Moreover, Ms. Mendzela filed her Motion for Intervention late, after the Preliminary Hearing. Rule 1.10(d)(3) requires that parties filing late motions show that they had "good cause" for intervening late. Nowhere in Ms. Mendzela's Motion does she establish good cause for filing her late motion.

Finally, there will be ample opportunity for Ms. Mendzela to provide comments, views, oppositions and data, in the form of public comment, in writing or in public testimony, at the appropriate time, on whether the Project is consistent with Rhode Island law.

² The Board, similar to the R.I. Public Utilities Commission, has no jurisdiction to grant a waiver from the requirement that a Rhode Island entity be represented by legal counsel licensed to practice law in Rhode Island, as only the Supreme Court can determine who may practice law and the representation of a client before administrative agencies does constitute the practice of law under the R.I. Supreme Court rules. *See In Re: Steven E. Ferry*, 774 A.2d 62 (R.I. 2001).

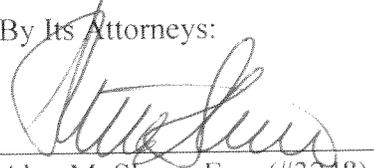
V. CONCLUSION

For the reasons detailed above, Invenergy hereby requests that the RI EFSB deny Ms. Mendzela's Motion for Intervention.

Respectfully submitted,

INVENERGY THERMAL DEVELOPMENT, LLC

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Dated: January 28, 2016

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2016, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.

A handwritten signature in cursive script, appearing to read "Andrew", is written over a horizontal line.