



Burrillville Land Trust

Protecting our open space and rural character

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March 21, 2016

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US EPA Region 1 - New England
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ADDENDUM to March 7, 2016 petition to EPA Region 1 to conduct an Environmental Impact Statement for the Clear River Energy Center

Dear Administrator Spalding:

On March 7, 2016, the Burrillville Land Trust sent a petition asking you to open up a docket/file and have the EPA conduct an Environmental Impact Statement of the proposed gas-fired power plant known as the Clear River Energy Center (CREC).

The Burrillville Land Trust has received comments from a host of sources who have reviewed the March 7 petition.

Many suggested that the BLT send an ADDENDUM to the March 7 petition.

The ADDENDUM - written on the following pages - contains one item that pertains to the overall "inadmissible segmentation in regards to the segmentation of projects from the construction of the CREC project. The BLT would like to add this information to the March 7 petition in the hopes of strengthening our position that an Environmental Impact Statement is warranted and necessary.

In essence, Federal court rulings and federal law are clear on the issue of "inadmissible segmentation" or "cumulative" impacted areas and impacts on the environment and region.

The BLT believes that Invenergy and other agencies are segmenting the construction projects to lessen the perceived impacted areas. A detailed account of the ADDENDUM information as well as the original March 7 letter is attached for your review.

The BLT once again requests that EPA issue a request for an Environmental Impact Statement.

Sincerely,

Paul A. Roselli

President - Burrillville Land Trust

ADDENDUM
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
PETITION FOR AN ENVIRONMENTAL IMPACT STATEMENT ON THE
PROPOSED CLEAR RIVER ENERGY CENTER

Prepared by
The Burrillville Land Trust
board of directors and consultants

March 21, 2016

ADDENDUM
**PETITION TO US EPA REGION 1 TO CONDUCT AN ENVIRONMENTAL IMPACT
STATEMENT ON THE PROPOSED CLEAR RIVER ENERGY CENTER**

I. ADDENDUM

The Burrillville Land Trust respectfully submits a request to use “insubmittable segmentation” as a means to bypass or avoid licensing and/or permits required for a project Environmental Impact Statement in regards to the impact to the environment during construction of the CREC - the Clear River Energy Center energy project.

The Burrillville Land Trust is concerned that Invenergy Thermal Development, LLC - the electric producing company - is segmenting different parts of the construction of the CREC in-order to lessen perceived environmental impact and/or avoid further licensing and/or permitting by both state and federal agencies.

On November 17, 2015, the Rhode Island Energy Facility Siting Board (EFSB) opened Docket No. SB 2015-06 Clear River Energy Center (CREC), regarding the application by Invenergy Thermal Development LLC (known here as Invenergy) to site a 900 megawatt (MW) gas-fired combined-cycle electricity generating facility (known here as the Project) just off of Wallum Lake Road, near the northwest corner of the Town of Burrillville, Rhode Island.

The construction of the CREC involves the following construction and impacted areas:

- construction of a new 150-foot wide, 0.8 mile 345 kV overhead transmission line ROW;¹
- construction of two two-hundred foot CO₂ and ash emitting towers;
- construction of two one-million gallon ultra low-sulfur diesel fuel tanks;

¹ If the new overhead transmission line is 0.8 miles long, as stated in the CREC application, that amounts to 4224 linear feet. If the corridor for the new transmission line is 150 feet wide, the product of 4224 x 150 amounts to 633,600 sq.ft. There are 43560 sq.ft. in one acre. This line would take up an area of approximately 14.55 acres. Not the 1.53 as stated in the application.

- construction of a gas-fired electric generating facility (67 acres)² and the surrounding impacted areas (83 acres)³;
- construction of a new overhead transmission line ROW to the Sherman Road Substation in Burrillville, Rhode Island;
- construction of a connection from the CREC to the existing NationalGrid 345 kV line⁴;
- construction of a new switchyard;
- construction of a new gas line connection to the newly re-constructed compressor station owned by Spectra Energy
- construction of a new facility access road;
- the construction of an underground pipe to a sewer main to the Burrillville Sewage Treatment Plant;
- and, the construction of a 6.8 mile new 345 kV line along an existing 17.7 mile ROW constructed by NationalGrid as part of the Interstate Reliability Project.

The BLT is suggesting that the impact is well over 200 acres. This amount of land in rural northwestern Rhode Island is not being looked at from a holistic point of view and there is no one federal state agency that is looking at the project with this lens.

There is state and federal legal precedent looking at projects of this nature from a project point of view.

One example is an ongoing project that started many years ago. This project illustrates the complexity that local and state regulatory agencies face when issuing permits. In regards to the “Algonquin” Incremental Market (AIM) Project, the Atlantic Bridge Project and the Access Northeast Project. These gas pipeline upgrade projects were proposed by Spectra Energy and their subsidiaries some many years ago. The first two of those projects were officially filed with the Federal Energy Regulatory Commission (FERC), with the third having been publicly announced by Spectra.

² Clear River Energy Center application section 6.6.2.2 Impacts to Wildlife and Ecology p.76 paragraph 6

³ CREC application section 6.6.2.2 Impacts to Wildlife and Ecology p.77 paragraph 1 Invenergy states in this section that their own analysis indicates that “The existing forest interior habitat indirectly affected by the proposed limits of work includes an additional 83 acres.” yet they do not provide any indication of the biodiversity impacts for this or for any of the proposed wetlands and forest disturbances.

⁴ CREC application section 6.3.3.1 Permanent Impacts to Wetlands / Forested Wetland Conversion p.66 paragraph 1

You may recall that the AIM and Atlantic Bridge project proposals called for pipeline construction in some of the identical geographic regions of New York and Connecticut - and even construction on two of the same compressor stations along the Spectra pipeline route. All three projects were part of one central plan to bring more gas into New England along the same pipeline route, and ultimately create the capacity to export gas out of LNG export terminals in Canada.

Initially the impact of these three proposals were not considered cumulatively. A Final Environmental Impact Statement for the AIM Project was written without the benefit of using the insubmissible segmentation legal challenge as a means of looking at the three projects as one project that fell under one impact statement.

Federal court rulings and federal law provide some guidance to regulatory agencies looking for a means to look at the totality of a project broken into segments. Federal court rulings and federal law are clear on this issue. Beginning with the Supreme Court:

“proposals for . . . actions that will have cumulative or synergistic environmental impact upon a region. . . pending concurrently before an agency. . . must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action.” The U.S. Supreme Court in Kleppe v. Sierra Club, 427 U.S. 390, 410 (1976)⁵.

Another legal precedent setting example comes from a court case involving FERC and the Delaware Riverkeeper Network. FERC lost a court case on the matter of impermissible segmentation in Delaware Riverkeeper Network v. Federal Energy Regulatory Commission (2014)⁶. The court ruled in this case that FERC failed to provide a cumulative impact analysis for a series of upgrades to the Tennessee Gas Pipeline system. The court defined such an analysis in this way:

“A meaningful cumulative impact analysis must identify (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions—past, present, and proposed, and reasonably foreseeable—that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.” Grand Canyon Trust v. FAA, 290 F.3d 339, 345 (D.C. Cir. 2002).

Similarly, FERC, at the time, failed to carry out a meaningful cumulative impact analysis for the three planned Spectra pipeline upgrades. At the time, these projects fell into the category of “other

⁵ <https://supreme.justia.com/cases/federal/us/427/390/case.html>

⁶ [https://www.cadc.uscourts.gov/internet/opinions.nsf/30B6F48600A85C1E85257CEF004E34F1/\\$file/13-1015-1496336.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/30B6F48600A85C1E85257CEF004E34F1/$file/13-1015-1496336.pdf)

actions—past, present, and proposed, and reasonably foreseeable—that have had or are expected to have impacts in the same area”.

FERC’s assertion at the time was that “although the same region of influence would be affected, the temporal scale of the projects was different. The AIM Project would be constructed in 2015 and 2016. The earliest the Atlantic Bridge Project would be placed into service would be November 2017”

That assumption failed to stand up to legal precedent and the argument failed with the court. For example in *Riverkeeper Network v. Federal Energy Regulatory Commission*, the projects that the Court ruled should be measured cumulatively were constructed over a three year period.

In the case of the CREC, multiple projects are scheduled over a 2 to 4 year time table. National Grid, for example, will be given the task of installing a new 6 mile long 345kV transmission line⁷ The CREC will connect to the National Grid electric utility system at the Sherman Road Switching Station. Also, one of two gas-fired electricity producing turbines that was scheduled to be fully operational by 2019 will not be brought on-line until market conditions are suited for the amount of electricity that is generated. These two alone will not be brought into permitting along with the others as local, state and federal agencies are not required to look at past, present and future actions associated with the CREC project.

Under the National Environmental Policy Act (NEPA), when producing an environmental impact statement FERC and others must consider connected, cumulative and similar actions.

These actions are defined as:

*(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they: (iii) Are interdependent parts of a larger action and depend on the larger action for their justification. (2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement. (3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences.*⁸

⁷ Rhode Island Energy Facility Siting Board Application – Clear River Energy Center application, October 28, 2015, 3.5.7 Transmission Facilities - Page 15 “The transmission line will be installed and owned by National Grid as part of the generation interconnection

⁸ <https://www.law.cornell.edu/cfr/text/40/1508.25>

The BLT is requesting that all agencies - local, state and federal agencies coordinate their reports and findings to determine cumulative impacts regarding the CREC. NEPA also makes clear that “while the statute does not demand forecasting that is ‘not meaningfully possible,’ an agency must fulfill its duties to “the fullest extent possible⁹.”

Under this definition, it was clear that at the time, the Spectra upgrade proposal was submitted, impacts regarding that project should have been defined as a series of connected, cumulative and at the very least similar actions. It is also clear that FERC failed - at that time - to fulfill its scoping duties “to the fullest extent possible”.

We believe that the CREC construction is similar and should be looked at in its entirety to avoid potential legal challenges in not fulfilling the agencies duties “to the fullest extent possible.”

We are gravely concerned that FERC, the FAA, the EPA, RIDEM - all charged with separate permitting, licensing and regulatory authority - might be looking at separate permitting and licensing requirements on a project by project basis, but not looking at the project as one project.

We are also concerned that if these agencies rely on current regulatory authority for issuing permits, they could be subject to legal action for failing to fulfill its duties and in failing to provide a complete report as to the impact of this one project. FERC, the FAA, RIDEM must not be allowed to dismiss federal court and federal law in its analysis of the CREC construction and the many other projects associated with the gas fired plant.

IV. Conclusion

The Burrillville Land Trust believes that there is no-one in local or state government authorized to make these connections and analyze the impacts of the CREC. What does remain, is the applicant’s (Invenergy) environmental assessment that is segmented in scope, misleading in the impacted acres and conclusions, and could be damaging to the local, state and regional environment for decades to come.

Finally, the Burrillville Land Trust petitions the US EPA Region Administrator to recommend and conduct an EIS with this ADDENDUM information in mind. Both the EFSB, RIDEM and State leaders are pushing for and in favor of permitting with no one at the local or state level who is acting

⁹ <http://caselaw.findlaw.com/us-dc-circuit/1669208.html>

on behalf of the birds, the trees, and all the life in this area. We are asking that the Environmental Impact Statement help give the natural world moral, ethical and legal standing.

Respectfully,

A handwritten signature in black ink that reads "Paul A. Roselli". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Paul A. Roselli

President - Burrillville Land Trust

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cc. Burrillville Land Trust Board members

cc. EFSB Service List as of January 11, 2016