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January 5, 2016

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS ENERGY FACILITY SITING BOARD

IN RE: INVENERGY THERMAL DEVELOPMENT LLC'S APPLICATION TO CONSTRUCT THE CLEAR RIVER ENERGY CENTER IN BURRILLVILLE, RHODE ISLAND—DOCKET NO. SB-2015-06

We are filing a response to Invenergy's objections to motion of intervention. Copies have been handdeliverd to Siting Board Coordinator, Todd Bianco and have been served by US Mail to the parties listed on the service list.

Respectfully submitted,

M.P. Withfayfak

Peter Nightingale, Fossil Free Rhode Island



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INTRODUCTION

On November 17, 2015, the Energy Facility Siting Board (EFSB) opened Docket SB 2015-06, regarding the proposal of Invenergy Thermal Development LLC (Invenergy) to site a 900 MW gas-fired power plant in Burrillville, Rhode Island.

Fossil Free Rhode Island (FFRI) filed a Motion for Intervention on December 20, 2015. On December 28, 2015, Invenergy filed an objection to the Motions for Intervention of several organizations and individuals of which FFRI is one.

FFRI hereby respectfully submits, as explained in detail below, that Invenergy failed to meet the requirement of the well-established principle *actori incumbit onus probandi*. In other words, as a claimant it is incumbent on Invenergy to justify its objection, but it failed to do so.

LEGAL STANDARD FOR OBJECTION

The arguments justifying Invenergy's objection to FFRI's status as intervenor appear in a section with the same heading as above. Their arguments pertain to rules governing the RI Public Utility Commission (PUC). Those rules differ from those that govern this EFSB docket.

To wit, PUC Rule(1.4)(a)(1) states:

Each party to and participant in a proceeding, other than individuals who appear pro se, shall be represented by an attorney, who shall enter an appearance in writing with the Clerk.

By contrast, EFSB Rule(1.4)(a)(1) states:

All parties to a proceeding shall be represented by an attorney, unless otherwise ordered by the Board for good cause shown. Participants, other than parties, may appear in any proceeding in person or by an attorney.

Because of the discrepancies in rules displayed above, the cases Invenergy cites are irrelevant; they fail both as precedents and as analogies.

Furthermore, Invenergy's objections ignore the arguments made by FFRI and the rules quoted in the FFRI's Motion for Intervention. FFRI respectfully refers to its Motion for Intervention for the details. Let it suffice to state here that Invenergy's objections misconstrue EFSB Rule 1.4(a), according to which attorney is an option, not a requirement, for those who intervene as a participant.

II. OBJECTIONS TO INTERVENTION REQUEST

The increase in greenhouse gas emissions from newly-built fossil fuel infrastructure is a scientifically established fact. Invenergy's use of the phrase "(allegedly) increase" at the top of the page 4 of the objection under discussion goes to the heart of the matter. Given the state of technology, regulation, inspection and enforcement in the foreseeable future, current insights have thoroughly debunked the myth that methane has a smaller greenhouse footprint than coal and oil. This point was made clearly in FFRI's Motion for Intervention. Despite Invenergy's suggestion that there is a "debate about climate change," there is no such debate. There is only the well-established obfuscation of Invenergy and its counterparts, who, in the short term, stand to profit from continued extreme fossil fuel extraction.¹

The Raimondo administration plainly fails to understand the risks of expansion of the fossil fuel infrastructure and the same seems to apply to its representatives on the EFSB and its allies among the parties to these proceedings, notably Invenergy.

Invenergy states that the "interests related to carbon emissions and the state's overall energy will be more than adequately represented by other Parties," and leaves it as an exercise to the reader to provide evidence for this sweeping statement. As a matter of fact, irreconcilable differences exist between FFRI and the RI Office of Energy Resources, as we learned meeting with representative of this office. FFRI invites Invenergy to name explicitly at least one of the parties whom they deem legitimate intervenors who will accurately represent the methane facts. Once again, Invenergy does not live up to *actori incumbit onus probandi* as a claimant objecting to FFRI's intervention.

Invenergy suggests that FFRI lacks sufficient interest to justify intervention. It makes this claim in spite of the fact that in *Massachusetts v. EPA* (2007), the U.S. Supreme Court held that greenhouse gases are pollutants under the Clean Air Act.² Invenergy also ignores that, subsequently in 2009, the EPA determined that greenhouse gas emissions endanger the public health and welfare of current and future generations. Note that EPA's *Endangerment Finding*³ was made after an exhaustive review of climate change research and extensive

¹See Global Climaate Coalition, https://en.wikipedia.org/wiki/Global_Climate_Coalition

³Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act http://www3.epa.gov/climatechange/endangerment/

public comment.

Furthermore, in 1910, in *Payne & Buttler v. Providence Gas Co.*, 31, R.I. at 295, the Rhode Island Supreme Court ruled that corporations who create "deleterious and poisonous substances" are liable to any person who is injured thereby in his private capacity and apart from being one of the public. If this combination of facts and liabilities does not constitute a direct interest, nothing will.

Finally, FFRI maintains that it is manifestly justified in its view that the public interest is not adequately represented by members of a state government and its corporate allies who willfully act in violation of Article 1, Section 17 of the Rhode Island Constitution, the supreme law of the State which clearly specifies the duty to provide for the conservation of the State's air, water and land.⁴

Respectfully submitted,

M.P. hightingak

Peter Nightingale, Fossil Free Rhode Island