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January 6, 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 hand-delivered to Siting Board Coordinator, Todd Bianco, and have been served by US Mail to the parties listed on the service list.

Respectfully submitted,

A handwritten signature in cursive script that reads "Patricia J. Fontes". The signature is written in black ink on a light-colored background.

Patricia J. Fontes
Occupy Providence



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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.

Occupy Providence 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 Occupy Providence is one.

Occupy Providence hereby respectfully submits, as explained in detail below, that Invenergy fails 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 objections, but it did not do so. Until it does, the onus of the proof is on the claimant, Invenergy.

LEGAL STANDARD FOR OBJECTION

The arguments justifying Invenergy's objections to Occupy Providence's status as intervenor appear in a section with the same heading as above. The arguments pertain to rules governing the Rhode Island Public Utility Commission (PUC). Those rules differ from those that govern the current 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 quoted above, the cases Invenergy cites are irrelevant; they fail both as precedents and as analogies.

Furthermore, Invenergy's objections ignore the arguments made by Occupy Providence and the rules quoted in the our Motion for Intervention. Occupy Providence 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. Scientific studies have thoroughly debunked the myth that methane (aka "natural gas") has a smaller greenhouse footprint than coal and oil. This point was made clearly in Occupy Providence's Motion for Intervention despite Invenergy's insinuations about a "debate about climate change." There is no such debate; there is only the well-established obfuscation of those, such as Invenergy, who stand to profit in the short-term from continued extreme fossil fuel extraction.¹

The Raimondo administration fails to understand the risks of the expansion of the fossil fuel infrastructure and presumably the same applies 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." It provides no evidence for this statement. As a matter of fact, irreconcilable differences exist between the views of Occupy Providence and those of the RI Office of Energy Resources, as we learned meeting with representative of this office. We invite Invenergy to name explicitly at least one of the parties among those they deem legitimate intervenors who will accurately represent the methane facts. Once again, as a claimant Invenergy fails to live up to *actori incumbit onus probandi*.

In spite of the fact that Invenergy's power plant proposal makes it impossible to realize the goals of the Resilient Rhode Island Act of 2014 as set forth in [Chapter 42-6.2, Section 42-6.2-2](#), Invenergy's suggests that Occupy Providence's lacks sufficient interest to justify intervention. Invenergy ignores 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 skips over the fact that, in 2009, the EPA issued an *Endangerment Finding* in

¹See *Global Climate Coalition*, <https://en.wikipedia.org/wiki/Global.Climate.Coalition>

²Massachusetts et al. v. Environmental Protection Agency et al., <http://www.supremecourt.gov/opinions/06pdf/05-1120.pdf>

which it determined that greenhouse gas emissions endanger the public health and welfare of current and future generations.³

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.

Inenergy cannot credibly argue that Occupy Providence lacks sufficient interests to justify intervention, in spite of the fact that “the proposed plant will produce greenhouse gases highly injurious to the 99% for the purpose of producing profits which will go almost entirely and certainly disproportionately to the 1%.”

On the contrary, it is clear that Occupy Providence is fully justified in its view that the public interest is not adequately represented by a corporation and state government acting 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,

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Patricia J. Fontes
Occupy Providence

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

⁴Constitution of the State of Rhode Island and Providence Plantations, <http://webserver.rilin.state.ri.us/RiConstitution/ConstFull.html>