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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

I am 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 black ink that reads "Mary Pendergast". The signature is written in a cursive, flowing style.

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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.

I 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 I am one.

I hereby respectfully submit, as detailed below, that Invenergy in its objection fails to meet the requirement of the well-established principle *actori incumbit onus probandi*, the onus of the proof is on the claimant.

**LEGAL STANDARD FOR OBJECTION**

The arguments justifying Invenergy's objection to my status as intervenor appear in a section with the same heading as above. The arguments pertain to rules governing the RI Public Utility Commission (PUC). Those rules differ from those that govern present 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 shown above, the cases Invenergy cites are irrelevant; they fail both as precedents and as analogies.

Furthermore, Invenergy's objections ignore the arguments and the rules I quoted in my motion for intervention. I respectfully refer to [that motion](#) for the details. Clearly, in its objections Invenergy misconstrues 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 INTERVENION REQUEST

Invenergy claims, and I quote:

the Board should be cautious about opening up this precedent to allow individuals to participate as full Party intervenors who have, however well intentioned, general views of energy and environmental policies where they cannot show sufficient “direct interest” that is affected by the Project.

Invenergy fails to mention that in *Massachusetts v. EPA* (2007), the U.S. Supreme Court held that greenhouse gases are pollutants under the Clean Air Act,<sup>1</sup> and that in 2009, the EPA determined that greenhouse gas emissions endanger the public health and welfare of current and future generations. EPA’s *Endangerment Finding*<sup>2</sup> was made after an exhaustive review of climate change research and extensive 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 the liability of Invenergy for the injury it is likely to inflict and the health of the Rhode Island citizens of present and future generations fail to qualify as “direct interests,” I wonder what does. Invenergy’s line of reasoning can be understood from Pope Francis’ writing in *Laudato Si*.<sup>3</sup>

26. Many of those who possess more resources and economic or political power seem mostly to be concerned with masking the problems or concealing their symptoms, simply making efforts to reduce some of the negative impacts of climate change. However, many of these symptoms indicate that such effects will continue to worsen if we continue with current models of production and consumption. There is an urgent need to develop policies so that, in the next few years, the emission of carbon dioxide and other highly polluting gases can be drastically reduced, for example, substituting for fossil fuels and developing sources of renewable energy. Worldwide there is minimal access to clean and renewable energy.

Invenergy’s proposal and its objections clash with the implied moral imperative.

Respectfully submitted,



Sister Mary Pendergast, RSM

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<sup>1</sup>Massachusetts et al. v. Environmental Protection Agency et al., <http://www.supremecourt.gov/opinions/06pdf/05-1120.pdf>

<sup>2</sup>Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act <http://www3.epa.gov/climatechange/endangerment/>

<sup>3</sup>Encyclical Letter of the Holy Father Francis on Care for Our Common Home [http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco\\_20150524\\_enciclica-laudato-si.html](http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html)