ADLER POLLOCK & SHEEHAN P.C.

One Citizens Plaza, 8th Floor
Providence, RI 02903-1345
Telephone 401-274-7200
Fax 401-751-0604 | 351-4607

175 Federal Street
Boston, MA 02110-2210
Telephone 617-482-0701
Fax 617-482-0604

www.apslaw.com

January 8, 2016

Via Federal Express/Electronic Mail

Todd Anthony Bianco, EFSB Coordinator
RI Energy Facilities Siting Board
89 Jefferson Blvd.
Warwick, RI 02888

RE: Invenergy Thermal Development LLC'S Application to Construct the Clear River Energy Center in Burrillville, Rhode Island - Docket No. SB-2015-06

Dear Mr. Bianco:

On behalf of Invenergy Thermal Development LLC and the Clean River Energy Center Project, I enclose an original and (10) copies for filing with the Board the following:

1. Objection of Invenergy Thermal Development LLC to Motion of Conservation Law Foundation to Close the Docket.

Please let me know if you have any questions.

Very truly yours,

ALAN M. SHOER
ashoer@apslaw.com

Enclosures

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**

OBJECTION OF INVENERGY THERMAL DEVELOPMENT LLC TO MOTION OF CONSERVATION LAW FOUNDATION TO CLOSE THE DOCKET

I. INTRODUCTION

Now comes Invenergy Thermal Development LLC ("Invenergy") and hereby objects to the Motion filed on behalf of the Conservation Law Foundation ("CLF") that seeks to persuade the Rhode Island Energy Facility Siting Board ("RI EFSB" or "Board") to close this docket. As explained more thoroughly herein, CLF's Motion should be denied for the following reasons: (1) Invenergy's application is complete, as Invenergy complied with all the requirements of what is required in an application pursuant to the Energy Facility Siting Act ("Act") and the RI EFSB Rules of Practice and Procedure ("EFSB Rules"); (2) R.I. Gen. Laws § 42-6.2-1, *et seq*, titled "Climate Change Coordinating Council," referred to by CLF as the "Resilient Rhode Island Act" does not establish by law what is required in Invenergy's application in order for the application to be deemed complete; (3) A basic review of the contents of the application contains extensive analysis and data that detail the Project's combined environmental impacts and benefits, including air emissions analysis, explaining how the Project will comply with applicable Rhode Island Department of Environmental Management ("RIDEM") air quality rules as well as how the Project will be consistent with state and regional efforts to reduce greenhouse gas emissions; (4) Invenergy's timing for filing permit applications is consistent and customary with the design

and intent of the ISO New England's ("ISO-NE") plan and objective of the Forward Capacity Market ("FCM"), and therefore, Invenergy appropriately responded to the timing sequence in response to the upcoming ISO-NE Forward Capacity Auction – Number 10; and (5) CLF's Motion is untimely and improper. Accordingly, Invenergy objects to CLF's Motion and respectfully requests the Board deny CLF's Motion.

II. BACKGROUND

Pursuant to the Energy Facilities Siting Act, Chapter 42-98, *et seq* of the General Laws of Rhode Island and the EFSB Rules, Invenergy filed an application to seek the approval of the Board 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"). The application was reviewed by the Board for completeness in accordance with Rule 1.7 and deemed complete as it provided the required contents set forth in the Rules. The application was properly docketed on November 16, 2015.

In accordance with the mandatory time frames required by the Act and the EFSB Rules, the Board has scheduled a date for a Preliminary Hearing. The Preliminary Hearing is scheduled for January 12, 2016, to address the items required by the Act and the EFSB Rules.

III. ARGUMENT

A. CLF's Motion Must Be Denied Because Invenergy's Application Complies With The Act And The EFSB Rules.

CLF contends that Invenergy's application with the RI EFSB ("EFSB Application") is incomplete, that Invenergy's Major Source Permit application ("MSP Application") is incomplete, and that Invenergy's other permit applications filed with RIDEM are incomplete. *See* CLF January 4, 2015 Motion ("CLF Motion"), 3, 4 & 6. Therefore, CLF asks the Board to

close this docket. However, as discussed more thoroughly below, Invenergy's Application is complete, as it complies with the necessary application requirements.

1. Invenergy's EFSB Application Is Complete.

Pursuant to the governing statute that establishes the requirements for energy facility siting licensing applications, and the EFSB Rules, all applications filed with the Board "shall contain at least the following, where applicable: . . . [d]etailed description of the proposed facility, including its function and operating characteristics, and complete plans as to all structures[.]" R.I. Gen. Laws § 42-98-8(a)(2); *codified in* EFSB Rule 1.6(b)(4). According to EFSB Rule 1.6(b)(20), Board applications shall include:

> all pertinent information regarding filings for licenses made with federal, state, local foreign governmental agencies, including the nature of the license sought, copies of the applicable statutes or regulations, and copies of all documents filed in compliance with the National Environmental Policy Act, the date of filing and the expected date of decision.

EFSB Rule 1.6(b)(20). Also, applications shall contain "[a] detailed description and analysis of the impact of the proposed facility on its physical and social environment together with a detailed description of all environmental characteristics of the proposed site, and a summary of all studies prepared and relied upon in connection therewith." R.I. Gen. Laws § 42-98-8(a)(3); *see also* EFSB Rule 1.6(b)(12). As discussed below, and as is evident upon even a casual review of the EFSB Application, Invenergy complied fully with these requirements.

First, we contest strongly the whole notion that Invenergy's EFSB Application is incomplete or missing any of the required information in order for the Board to proceed towards full hearings. Invenergy submitted its Application to the RI EFSB Coordinator for initial review, as required by Rule 1.7. The Coordinator properly coordinated his review with the Board and properly determined that the EFSB Application is complete. In fact, on November 16, 2015,

Invenergy's EFSB Application was deemed complete by the Coordinator and formally docketed with the Board. Therefore, the Board should deny CLF's motion solely on the grounds that the EFSB Coordinator has already deemed Invenergy's EFSB Application complete after thoroughly reviewing the Application in accordance with the Rules. For example, Rule 1.5(b)("Contents") is quite clear: "The application shall conform with all requirements of these Rules and Procedure." The Rules then go on to establish a very detailed list of contents that are required in order for an application to be deemed complete. *See* Rule 1.6(b)(1-21). Invenergy's EFSB Application contains each of the required items as set forth in Rule 1.6(b), and the Board properly determined that the EFSB Application contained each and every necessary component when the Application was deemed complete by the Coordinator. The Board was therefore correct in its determination because, as seen below, the EFSB Application complied with all necessary requirements.[1]

With respect to R.I. Gen. Laws § 42-98-8(a)(2), Invenergy's EFSB Application contained a detailed description of the proposed facility. *See* Invenergy's EFSB Application, pp. 6-20. The description included the Project's function and operating characteristics, as well as plans for the structures. *See id.* at 6-9; 12; Figure 2, Site Layout; Figure 3.4-3, Site Plan.

Next, Invenergy complied with EFSB Rule 1.6(b)(20) which states that applications must include all pertinent information regarding filings of licenses made. Here, Invenergy included

[1] CLF cites to non-binding cases from outside of the State to support the proposition that the Board can dismiss Invenergy's application for alleged incompleteness. *See* CLF Motion, 6 & 9. It is important to note that none of the cases cited involve a State Energy Siting Board application and that none of the cases are in any way analogous to the facts here. For example, in *Altamont Gas Transmission Co. v. F.E.R.C.*, 965 F.2d 1098 (D.C. Cir. 1992), the only cases dealing with an energy application, the Federal Energy Regulatory Commission, not a state agency, dismissed an application after that Federal Commission repeatedly asked the applicant for additional information and the applicant failed to provide the additional information. *Id.* at 1099-1101. Here, unlike in *Altamont*, the RI EFSB is not asking for additional information from Invenergy. To the contrary, the EFSB Coordinator has specifically deemed Invenergy's EFSB Application complete.

copies of its other applications, including the MSP Application, in its EFSB Application that establish that Invenergy comprehensively studied the air quality impact of the Project, which is included in the Application and supporting tables and exhibits in Appendix B. Although CLF believes Invenergy's other applications are insufficient—which Invenergy strongly denies and addresses in the next two sections of this objection—Invenergy certainly provided the Board with the initial RIDEM MSP Application, and these applications were accepted by the agency and are being reviewed in the ordinary due course by the agency (not the Board) with the designated jurisdiction over air permitting, as required by the Act. *See* R.I. Gen. Laws § 42-98-7; Invenergy's EFSB Application, Appendix B; Invenergy's MSP Application, Appendix C.

Regarding the requirement that applications include a description and analysis of the physical and social environmental impacts of the proposed site, CLF incorrectly asserts that Invenergy's EFSB Application is incomplete. Throughout its Application, Invenergy addresses and discusses the physical and social environmental impacts of the Project, including air emission issues that are of concern to CLF. *See* Invenergy's EFSB Application, pp 15-17; pp 29-114; Invenergy's MSP Application, Appendix B (MSP narrative, Tables, and the Appendix A/Emissions Data Summaries). Specifically, Section 3.8, titled "Environmental Controls" delves into a detailed description and analysis of the facility's impact on the air, wastewater, stormwater and noise. *Id.* Section 3.8 discusses some of the controls that will be taken to minimize any adverse environmental impact the Project may cause. *See id.* at p. 16 (noting that "[s]ource control and pollution prevention measures will be employed to minimize adverse water quality impacts from Facility runoff").

Also, Section 6.0 of the Application, titled "Assessment of Environmental Impacts," devotes eighty-four single-spaced pages thoroughly describing and analyzing the Project's

environmental impacts, in accordance with R.I. Gen. Laws § 42-98-8(a)(3) and EFSB Rule 1.6(b)(12). *See* Invenergy's EFSB Application, pp. 29-114. In particular, Sections 5.0 and 6.0 of Invenergy's EFSB Application analyzes the Project's emissions, including carbon dioxide emissions; discusses how the Project will comply with all applicable State and Federal environmental regulations; summarizes the results of the air quality impact assessment conducted for the project; examines how the project will actually improve the air quality in the region by displacing older less efficient units; examines how the Project will fit within the the Regional Greenhouse Gas Initiative ("RGGI") as well as the Environmental Protection Agency's ("EPA") Clean Power Plan and also examines the facility's potential impact on the ground and surface water. *See* Invenergy's EFSB Application, pp 29-114. For example, specific data for year-by-year carbon dioxide reductions, as determined by expert consultants, are identified on page 120 of the application.

Moreover, the EFSB Application specifically identifies that an air quality impact analysis protocol and a health risk assessment protocol have been completed for the Project and submitted to RIDEM,[2] to assess the impacts from the emissions of all criteria pollutants and air toxics that are required by the applicable permitting agency, RIDEM. *See id.* at pp. 31, 38-39. To suggest, as CLF does, that the EFSB Application does not contain *any* information with regard to applicable air emissions criteria, including carbon dioxide emissions, is not only misleading, it is simply wrong, disingenuous and completely ignores the completeness review performed by the EFSB Coordinator and the details of the EFSB Application itself.

[2] Invenergy's air quality impact analysis was submitted to RIDEM on October 30, 2015 and is currently in review by the relevant permitting staff at RIDEM. Invenergy also submitted its health risk assessment protocol to RIDEM on June 26, 2015 and is currently awaiting RIDEM approval.

And, although CLF may disagree with the facts and the environmental and air quality analysis in Invenergy's EFSB Application, a mere disagreement on the facts in the Application cannot be a reason for closing the docket; on the contrary, a disagreement on the facts and analysis supplied by the EFSB Application is proof that the Board, not CLF, will ultimately decide if it is in the best interests of the State of Rhode Island to grant a license to site and construct the Project. In short, CLF cannot dispute that the EFSB Application does, in fact, identify, discuss and analyze—in detail—the physical and social environmental impacts of the Project, including air emissions criteria.

As seen from the specific Application sections cited above, CLF's Motion is incorrect and completely mistaken and misleading in its assertion that Invenergy's EFSB Application is incomplete in accordance with the governing Act and Rules. Therefore, as Invenergy's EFSB Application is complete and as Invenergy complied with the pertinent Act that specifies in detail what is required in an application, as reinforced in the EFSB Rules, the docket should remain open and the process towards full hearings should continue.

2. Invenergy's Major Source Permit Application is Complete.

Next, CLF's asserts that Invenergy's MSP Application is "facially incomplete in multiple respects" and, therefore, this docket should be closed. *See* CLF Motion, 2. CLF is again incorrect.

First, any complaint CLF may have about the information included in Invenergy's MSP Application is misplaced because R.I. Gen. Laws § 42-98-7—the statute that specifically details the powers and duties of the Board—expressly excludes RIDEM's permitting process from the Board's oversight. *See* Section 42-98-7(a)(3) (stating that "the authority to issue licenses and permits delegated to the department of environmental management . . . and to the Coastal

Resources Management Council . . . shall remain with those agencies"). RIDEM, therefore controls what is required for a properly filed permitting application with that agency, not the Board.

Moreover, CLF cites to EFSB Rule 1.29(c) to contend that the Board can take administrative notice of RIDEM Air Pollution Control Regulations. *See* CLF Motion, 2 n.2. It is important to note that EFSB Rule 1.29(c) states that:

> In all proceedings wherein evidence is taken, notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Board's specialized knowledge, but parties shall be notified either before or during the hearing, or be [sic] reference in preliminary reports or otherwise, of the material noticed, including any report or data required by law or regulation to be filed with the Board and they shall be afforded an opportunity to contest the material so noticed.

Although EFSB Rule 1.29(c) allows the Board to take administrative notice in certain situations, it certainly does not provide that failure to answer every specific section of another agency's permitting application, prior to submitting an application with the Board, will deem the application with the Board incomplete for purposes of Rule 1.7 of the Board's Rules.

Nevertheless, and for the benefit of the Board as it reviews this Motion, Invenergy's MSP Application does in fact comply fully with the necessary RIDEM Regulations. Specifically, Invenergy's MSP Application complies with Rhode Island Air Pollution Control Regulation Number 9. For example, CLF asserts in its Motion that Invenergy's MSP Application failed to comply with Regulation 9.4.2(c), (g) and (h). *See* CLF Motion, 3. CLF is again incorrect. Regulation 9.4.2(c) states that

> applicant must provide evidence in accordance with Subsection 9.4.3 that the total tonnage of emissions of the applicable nonattainment air pollutant allowed from the proposed new source or net emissions increase from the modification, shall be offset by

> a greater reduction in the actual emissions of such air pollutant from the same or other sources.

Obtaining Offsets, or Emission Reduction Credits ("ERCs"), is a condition of approval, not an application completeness issue. Invenergy has identified ERCs from a viable source and has requested a determination from RIDEM as to whether these ERCs can be used for the Project. RIDEM is consulting with the EPA, and the EPA has yet to render a decision. The fact that the Offsets have not yet been secured is immaterial and out of Invenergy's control.

Regulation 9.4.2(g) states that the "applicant must demonstrate that emissions from the stationary source will not cause an impact on the ground level ambient concentration at or beyond the property line in excess of that allowed by Air Pollution Control Regulation No. 22 and any Calculated Acceptable Ambient Levels." Regulation 9.4.2(h) states that the "applicant must conduct any studies required by the Guidelines for Assessing Health Risks from Proposed Air Pollution Sources and meet the criteria therein." In this case, on June 26, 2015, Invenergy submitted a health risk assessment protocol to RIDEM, and on October 30, 2015, Invenergy completed and submitted its air quality impact analysis. Invenergy is awaiting RIDEM's feedback for both of these studies. Invenergy's air quality impact analysis establishes that the Project complies with the applicable Rhode Island Air Pollution Control Regulations; in any event RIDEM has the sole authority to make that determination, not the Board. *See* R.I. Gen. Laws § 42-98-7.

Therefore, as R.I. Gen. Laws § 42-98-7 expressly excludes RIDEM's permitting from the Board's licensing authority, the Board does not need to address the details of what boxes were checked off and what boxes were left for later determination in the MSP Application. In any event, Invenergy's MSP Application includes all the required information for its initial presentation to RIDEM, as set forth in Rhode Island Air Pollution Control Regulation Number 9.

To the extent that the Board believes an advisory opinion is secured from RIDEM on any air emissions issue it can request such an Advisory Opinion.

3. Invenergy's Other RIDEM Permit Applications Are Also Complete.

CLF also asserts that Invenergy's other RIDEM permit applications are incomplete. *See* CLF Motion, 4. Again, CLF is incorrect. As discussed in the section above, Rhode Island law expressly excludes RIDEM's permitting from the Board's oversight. *See* Section 42-98-7(a)(3) (stating that "the authority to issue licenses and permits delegated to the department of environmental management . . . shall remain with [RIDEM]"). Therefore, RIDEM is the proper party to determine whether Invenergy's other permit applications are complete—not the Board.

Also, the "other" RIDEM permit applications CLF tries to find fault with are technically part of Invenergy's MSP Application. The forms CLF describes in its Motion were entries included in its MSP Application. *See* Invenergy's MSP Application, Appendix C. Furthermore, Invenergy has discussed its applications with RIDEM. Although some of Invenergy's RIDEM permit applications did not include a specific manufacturer name or model number or included the term "TBD" or "to be determined," the applications are nevertheless complete. It is important to point out that RIDEM does not require that all details of an application be included in an application's initial filing, because at the time of filing, not all information is typically known. For example, in this case, Invenergy is still in negotiations and discussions regarding some of the information requested in RIDEM's permit applications. Invenergy has informed RIDEM that it will include this information at a later date, and RIDEM has confirmed that this is entirely appropriate and that Invenergy could supplement its applications at the appropriate time, which is standard practice.

Because RIDEM deemed the initially filings appropriate, the Board should not be able to—and lacks any authority to—determine that Invenergy's RIDEM permit applications are incomplete. For this reason, CLF's attempt to rely on the status of the RIDEM permit application review must fail.

B. CLF's Motion Must Be Denied Because Rhode Island Law Does Not Require Invenergy's EFSB Application To Comply With R.I. Gen. Laws § 42-6.2-1, *et seq*, The "Resilient Rhode Island Act."

Next, CLF incorrectly asserts that Invenergy's EFSB Application "omitted" an analysis allegedly required by R.I. Gen. Laws § 42-6.2-1, *et seq*, which CLF categorizes as the "Resilient Rhode Island Act." Specifically, CLF's Motion alleged that Invenergy's Application "omitted" an "analysis of the [Project's] impacts on the specific carbon-emission-reduction targets set in the Resilient Rhode Island Act." *See* CLF Motion, 7. As discussed thoroughly below, CLF is again incorrect and completely misstates the intent of the statute because (1) neither the Act, nor any existing EFSB Rules require that applications contain specific information addressing the "Resilient Rhode Island Act"; and (2) even if the Board did determine that Invenergy's EFSB Application should have analysis to speak to the carbon reduction goals of the "Resilient Rhode Island Act," there is ample evidence in its Application to establish compliance with the Project's plans for carbon reductions, in order to proceed to evidentiary hearings on the Application.

The first problem with CLF's contention is that it reads language into the "Resilient Rhode Island Act" that does not exist in the RI Energy Facility Siting Board Act or the EFSB Rules. First, the plain language of Title 42, Chapter 6.2, titled "Climate Change Coordinating Council," which CLF refers to as the "Resilient Rhode Island Act," establishes a climate change coordinating council, which is separate and distinct from the EFSB. Section 42-6.2-1 creates the council and gives the council the "responsibility and oversight relating to assessing, integrating,

and coordinating climate change efforts." R.I. Gen. Laws § 42-6.2-1. Section 42-6.2-2 lists the duties of the council. For example, the council is tasked with submitting a plan to the governor and general assembly (that has not been developed yet and is due for delivery by the end of 2016) detailing strategies, programs and actions to meet target percentage greenhouse gas emission reductions, identified as goals of the statute. *See* R.I. Gen. Laws § 42-6.2-2(a)(2).

Read in its entirety, the statute creates a climate change coordinating council and sets forth a number of goals for this council to consider in its development of a strategy document. However, nowhere in this statute does it mention the RI EFSB, nor the Board's application process. Further, nowhere in the statute does it state that applications filed with the Board must include certain information in a particular manner or conforming to a particular type of analysis to match what another council is still evaluating in a yet-to-be delivered report. At most, the statute provides that the Board has the discretion to "consider" the issue of whether the Project will be consistent with efforts to mitigate the impacts on climate change and greenhouse gas emissions. *See* R.I. Gen. Laws § 42-6.2-8. These efforts, as pointed out above, are thoroughly explained in Invenergy's EFSB Application.

In fact, on January 4, 2016, CLF filed a "Petition for Rulemaking" asking the Board to adopt a new rule requiring that applications contain a specific exhibit or analysis to comply with the "Resilient Rhode Island Act." This should be proof enough that the requirements that CLF believes must be in this EFSB Application *do not exist at this time.* At the risk of stating the obvious, CLF would not find it necessary to file that petition for *new* rules if the Board's rules *already* required that applications needed to contain a specifically designed analysis to comport with the carbon reduction goals in the "Resilient Rhode Island Act," in order to be deemed

"complete."[3] Nevertheless, Invenergy's EFSB Application shows how the Project's expected environmental and air quality benefits support compliance with the goals set forth in the "Resilient Rhode Island Act" and certainly contains sufficient detail for the Board to determine that the Application is complete for purposes of moving this proceeding forward.

As for the greenhouse gas reductions associated with the Project, Invenergy's EFSB Application discusses the Project's emissions reductions in detail, stating that the Project will "[r]educe regional air emissions by displacing older, less efficient and more polluting generation and improve air quality through Best Available emission control technology." *See* Invenergy's EFSB Application, 6. The Application also states that the Project will modernize the electric generating infrastructure to "help support the integration of new and existing renewable generation onto the power grid[.]" *Id.* The Application notes that the Project will, at minimum, "reduce ISO-NE/NYISO Footprint CO_2, NO_x and SO_2 emission by one (1) to four (4) percent per annum" and that given the high efficiency of the Project, it will likely lead to an overall decrease in regional CO_2 emissions. *Id.* at 28-29. The tons of carbon reductions are identified on the table on page 120 of the EFSB Application.

As the Board will appreciate, the Application devotes over eighty pages assessing environmental impacts, and benefits, of the Project. *Id.* at 29-114. And, the MSP Application, supporting Tables, Emissions Data and analysis provided the technological criteria that RIDEM will evaluate. Of course, CLF completely ignores all this material in its Motion. Thus, even if the Board were to deem that applications must speak to climate change mitigation and

[3] That said, it certainly remains with the Board's prerogative to determine whether one of the discretionary issues in the proceeding for agency opinions and Board review will be a consideration of whether the Project is compatible with regional greenhouse gas reduction strategies and state policies. *See* Rule 1.9(e)(2) (authorizing the Board to identify any discretionary issue "of any type which in its discretion it finds should be considered in the Board's final hearing").

greenhouse gas reductions (the goals set forth in the "Resilient Rhode Island Act" that the climate change council is tasked with from a planning perspective) Invenergy's EFSB Application does this to the extent, if any, deemed necessary. The EFSB Application is, therefore, complete for this reason as well.

It is important to emphasize to the Board that Invenergy's opposition to CLF's Motion is in no way diminishing the fact that efforts to address climate change is important. Invenergy is one of the leading developers of renewable energy projects in the country and takes the climate change issue very seriously. Overall, this Project will provide a net environmental benefit to the State of Rhode Island and the New England Region, for the many reasons explained in the EFSB Application. As for air emissions, these obviously do not stop at state borders, which is why Rhode Island is working with region states to address climate change problems in a regional manner, as set forth in the recently issued State Energy Plan. The RGGI program is exactly one of the regional state groups working on this problem, and this is one of the means by which the newly created R.I. Climate Change Council is working to implement the "Rhode Island Resilient Act."

Regarding the Project, RIDEM will be evaluating whether the Project is consistent with the goals of the RGGI states, including Rhode Island, among other air permitting obligations. As emphasized above, Invenergy's EFSB Application therefore includes a thorough discussion on the Project's regional environmental benefits, including reducing regional air emissions, which includes greenhouse gases. *Id.* at 6, 28-40. CLF would like this Board to ignore the many benefits this Project will have on the environment, including the benefits of lowering carbon emissions in the region. Although CLF may disagree with Invenergy's analysis, an analysis of the Project's environmental impact was certainly included in its Application. Again, a mere

disagreement on the facts is insufficient cause to dismiss the Application but is proof that there are important issues for the Board to review, along with the many other benefits of the Project, as identified in detail in the EFSB Application.

Accordingly, CLF's contentions regarding the "Resilient Rhode Island Act" lack merit, and the Board should continue on with the application process.

C. CLF's Motion Must Be Denied Because Invenergy Appropriately Entered Into the ISO-NE Forward Capacity Auction-10.

Also, CLF tries to assert that Invenergy's election to enter the ISO-NE Forward Capacity Auction - #10, prior to obtaining all permitting, is wrongful. CLF clearly does not understand the Board's role or the process required to implement a project such as this one. The development of a new generating resource in New England is a costly and time consuming process. As such, Independent Power Producers ("IPP") do not embark on this process until there is a clear consistent signal from the market that there is a need and a good likelihood that the IPP's efforts will be successful.

The ISO-NE's FCM[4] is *designed* to provide "*economic incentives to attract investment in new generation in order to achieve power system reliability requirements.*"[5] The incentives or market signals come in the form of clearing prices that result from an annual auction that the ISO-NE performs. As stated in Section 7 of Invenergy's EFSB Application, ISO-NE's FCM capacity procurement mechanism is utilized by ISO-NE market participants as a means to ensure that the ISO-NE power system has sufficient resources to reliably meet the future demand for electricity. Under the FCM, Forward Capacity Auctions ("FCA") are utilized as a market-based approach to determine both system-wide and localized needs for both existing and new

[4] *ISO New England Inc. Transmission, Markets, and Services Tariff*, Section III, Market Rule 1 section 13; III.13 Forward Capacity Market.
[5] ISO-NE 2015 Regional Electricity Outlook, 36 (emphasis added).

generation capacity through a competitive auction process designed to select the portfolio of existing and new resources needed for system-wide and local reliability with the greatest social surplus.[6] In other words, resources that clear an FCA are, by definition, the resources that maximize social surplus in order to meet both system-wide and local reliability needs. The ISO-NE conducts an annual FCA for capacity three years in advance of when it is needed, and the auction process sets ceiling (high) prices and floor (minimum) prices for the region. Need for new capacity is demonstrated by the results of the auction on where the auction clearing price ends up.

Furthermore, the New England Region is divided into zones and each zone has a separate clearing price, so high prices within a zone provide an indication of need for new capacity within that zone. Over the past three auctions, FCA # 7, 8 & 9, the zone that includes Rhode Island has cleared at or come close to the ceiling price. In early 2014, after FCA 8, Invenergy commenced the development of the CREC, and Invenergy's response and approach is completely in accordance with the design construct that the ISO-NE contemplated when they created the FCM. Invenergy's approach—seeking a Capacity Supply Obligation ("CSO") prior to having all permits in hand— is similar to other IPPs that have successfully participated in prior FCA's over that last several years, i.e. Footprint Power at Salem, Massachusetts and CPV's Towantic project in Oxford, Connecticut, both of whom had cleared the FCA and obtained CSO prior to obtaining all the necessary permits, so Invenergy's choice to proceed in this fashion is more typical than not for IPP's participating in the FCM.

The reason the FCA is conducted three years in advance is to give developers sufficient time to complete permitting and development activities and to construct the project prior to

[6] Social surplus, sometimes called social welfare, is the sum of consumer and supplier surplus, which is maximized when demand equals supply.

undertaking a CSO. The CSO is obtained once the IPP is determined to be qualified to participate in the FCA, participates and clears or is successful in the FCA. In order to even participate in the FCA, the IPP must go through a detailed and rigorous qualification process that is conducted by the ISO-NE. The qualification process evaluates the technical issues of the Project—generation technology, electrical interconnection, fuel supply etc., and also evaluates the permitting status of the Project—number of permits and their status and evaluates the Project schedule for permitting and construction in order to determine that the CSO date can be met. The reason the ISO-NE goes through the qualification process is due to the fact that it is customary and standard practice that IPP will *not* have all of the required permits in advance of participating in the FCA. The ISO-NE knows this and in an effort to determine the IPP's ability to complete all the steps necessary to meet their CSO, performs a rigorous qualification review. CLF ignores all of this in its Motion.

Therefore, Invenergy's decision to enter the ISO-NE Forward Capacity Auction-10 without obtaining all permits is not unusual and is in fact quite typical and necessary in order to build this Project. Additionally it is important to note that Invenergy is not making a unilateral decision that ISO-NE (or Rhode Island) needs capacity, but rather there is a broader market mechanism in place that will determine if the facility is needed. If CREC clears FCA then the market finds the unit necessary, and the market deems Clear River to be a needed and cost-effective resource for the system. Thus, Invenergy's decision on complying with the market signals set by ISO-NE is by no means a reason to close this docket.

D. CLF's Motion Must Be Denied Because It Is Untimely And Improper.

Lastly, CLF's Motion must be denied because it is untimely and improper. At this stage in the process, it is up to the Board to determine the issues it will consider when evaluating

Invenergy's EFSB Application, and it is the Board that determines whose advisory opinions it will seek for guidance regarding those issues. *See* EFSB Rule 1.9(a) ("After the docketing of an application the [B]oard shall convene a preliminary hearing to determine the issues to be considered by the Board in evaluating the application, to designate those agencies which shall act at the direction of the Board for the purpose of rendering advisory opinions, and to identify those licenses required by the facility which are under the direct control of DEM and CRMC.").

As the Board has yet to establish what issues it will consider when evaluating Invenergy's EFSB Application, the requests made in CLF's Motion are untimely and inappropriate. If the Board determines that it would like to obtain the benefit of an advisory opinion from RIDEM or any other state agency regarding whether this Project complies with the State's policies and goals with regard to taking steps to address concerns related to climate change and greenhouse gas emissions, such as the "Rhode Island Resilient Act," RGGI, the State Energy Plan, etc., the Board can ask those agencies for their opinions.

However, at this point in the process, a few days prior to the statutorily mandated Preliminary Hearing, it is inappropriate for CLF to request that the Board close the docket because Invenergy's EFSB Application allegedly did not address an issue in a specific manner and to the extent that CLF deems important. *See* R.I. Gen. Laws § 42-98-9(a). The Board, not CLF, has the authority to determine what issues the Board should consider when evaluating Invenergy's EFSB Application.

Accordingly, we request the Board deny CLF's motion.

IV. CONCLUSION

For the foregoing reasons, Invenergy respectfully requests that the Board deny CLF's Motion and continue on with the application proceedings.

Respectfully submitted,

INVENERGY THERMAL DEVELOPMENT

By Its Attorneys:

Alan M. Shoer, Esq. (#3248)
Richard R. Beretta, Jr., Esq. (#4313)
ADLER POLLOCK & SHEEHAN, P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903-1345
Tel: 401-274-7200
Fax: 401-751-0604

Dated: January 8, 2016

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2016, I delivered a true copy of the foregoing document via electronic mail and via regular mail to the parties on the attached service list.

/s/ Alan M. Shoer

SB-2015-06 Invenergy CREC Service List as of 01/06/2016

Name/Address	E-mail	Phone/FAX
File an original and 10 copies with EFSB: Todd Bianco, Coordinator Energy Facility Siting Board 89 Jefferson Boulevard Warwick, RI 02888 Margaret Curran, Chairperson Janet Coit, Board Member Assoc. Dir., Div. of Planning c/o Kim Crabill Patti Lucarelli Esq., Board Counsel Susan Forcier Esq., Counsel Rayna Maguire, Asst. to the Director DEM	Todd.Bianco@puc.ri.gov; Patricia.lucarelli@puc.ri.gov; Margaret.Curran@puc.ri.gov; janet.coit@dem.ri.gov; kimberly.Crabill@doa.ri.gov; susan.forcier@dem.ri.gov; rayna.maguire@dem.ri.gov;	401-780-2106
Parties		
Invenergy Thermal Development LLC Alan Shoer, Esq. Richard Beretta, Esq. Elizabeth Noonan, Esq. Nicole Verdi, Esq. Adler, Pollock & Sheehan One Citizens Plaza, 8th Floor Providence, RI 02903 John Niland, Dir. Of Business Development Tyrone Thomas, Esq., Asst. General Counsel Invenergy Thermal Development LLC One South Wacker Drive, Suite 1900 Chicago, IL 60600	ashoer@apslaw.com; rberetta@apslaw.com; enoonan@apslaw.com; nverdi@apslaw.com; jniland@invenergyllc.com; Tthomas@invenergyllc.com;	401-274-7200 312-224-1400
Town of Burrillville Michael McElroy, Esq., Special Counsel Schacht & McElroy PO Box 6721 Providence, RI 02940-6721 Oleg Nikolyszyn, Esq., Town Solicitor 155 South Main St., Suite 303 Providence, RI 02903	Michael@mcelroylawoffice.com; Nikolyszyn@gmail.com;	401-351-4100 401-474-4370
Parties with pending motions to intervene		
Conservation Law Foundation Jerry Elmer, Esq. Max Greene, Esq. 55 Dorrance Street Providence RI, 02903	Jelmer@clf.org; Mgreene@clf.org;	401-351-1102
Ms. Bess B. Gorman, Esq. Assistant General Counsel and Director Legal Department, National Grid 40 Sylvan Road Waltham, MA 02451	Bess.Gorman@nationalgrid.com;	781-907-1843

Office of Energy Resources Andrew Marcaccio, Esq. Nick Ucci, Chief of Staff Chris Kearns, Chief Program Development One Capitol Hill Providence, RI 02908	Andrew.Marcaccio@doa.ri.gov; Nicholas.Ucci@energy.ri.gov; Christopher.Kearns@energy.ri.gov;	401-222-3417 401-574-9100
Peter Nightingale, member Fossil Free Rhode Island 52 Nichols Road Kingston, RI 02881	divest@fossilfreeri.org;	401-789-7649
Sister Mary Pendergast, RSM 99 Fillmore Street Pawtucket, RI 02860	mpendergast@mercyne.org;	401-724-2237
Patricia J. Fontes, member Occupy Providence 57 Lawton Foster Road South Hopkinton, RI 02833	Patfontes167@gmail.com;	401-516-7678
Burrillville Land Trust Marc Gertsacov, Esq. Law Offices of Ronald C. Markoff 144 Medway Street Providence, RI 02906	marc@ronmarkoff.com;	401-272-9330
Paul Roselli, President Burrillville Land Trust PO Box 506 Harrisville, RI 02830	proselli@cox.net;	401-447-1560
Rhode Island Progressive Democrats of America Andrew Aleman, Esq. 168 Elmgrove Avenue Providence, RI 02906	andrew@andrewaleman.com;	401-429-6779
Residents of Wallum Lake Road, Pascoag, RI Dennis Sherman and Kathryn Sherman 1035 Wallum Lake Road Pascoag, RI 02859	kags8943@gmail.com;	401-316-7708
Residents of Wallum Lake Road, Pascoag, RI Paul Bolduc and Mary Bolduc 915 Wallum Lake Road Pascoag, RI 02859	oatyss1@verizon.net;	401-529-0367
Fighting Against Natural Gas and Burrillville Against Spectra Expansion Jillian Dubois, Esq. The Law Office of Jillian Dubois 91 Friendship Street, 4th Floor Providence, RI 02903	jillian.dubois.esq@gmail.com;	401-274-4591

Interested Persons		
Burrillville Town Council c/o Louise Phaneuf, Town Clerk 105 Harrisville Main Street Harrisville, RI 02830	lphaneuf@burrillville.org;	401-568-4300
Thomas J. Kravitz, Town Planner Town of Burrillville 144 Harrisville Main Street Harrisville, RI 02830	tkravitz@burrillville.org;	401-568-4300
Michael C. Wood, Town Manager Town of Burrillville 105 Harrisville Main Street Harrisville, RI 02830	mcwood@burrillville.org;	401-568-4300 ext. 115
Mr. Leo Wold, Esq. Department of Attorney General 150 South Main Street Providence, RI 02903	LWold@riag.ri.gov;	401-274-4400
Public Utilities Commission Cynthia Wilson Frias, Esq., Dep. Chief of Legal Alan Nault, Rate Analyst	Cynthia.Wilsonfrias@puc.ri.gov; Alan.nault@puc.ri.gov;	401-941-4500
Division of Public Utilities and Carriers John J. Spirito, Esq., Chief of Legal Steve Scialabba, Chief Accountant Tom Kogut, Chief of Information	john.spirito@dpuc.ri.gov; steve.scialabba@dpuc.ri.gov; thomas.kogut@dpuc.ri.gov;	401-941-4500
Matthew Jerzyk, Deputy Legal Counsel Office of the Speaker of the House State House, Room 302 Providence RI, 02903	mjerzyk@rilin.state.ri.us;	401-222-2466
Hon. Cale Keable, Esq., Representative of Burrillville and Glocester	Cale.keable@gmail.com;	401-222-2258
Nick Katkevich	nkatkevich@gmail.com;	
Ambar Espinoza	aespinoza@ripr.org;	
Joseph Bucci, Acting Administrator Highway and Bridge Maintenance Operations RI Department of Transportation	joseph.bucci@dot.ri.gov;	
Jared Rhodes, Chief Statewide Planning Program	jared.rhodes@doa.ri.gov;	
Doug Gablinske, Executive Director TEC-RI	doug@tecri.org;	
Tim Faulkner ecoRI News 111 Hope Street Providence, RI 02906	tim@ecori.org;	401-330-6276