

January 11, 2016

Via Hand Delivery/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-2015-16

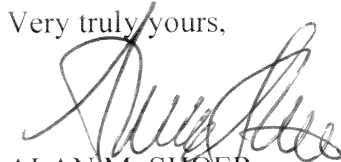
Dear Mr. Bianco:

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 Burrillville Land Trust 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) Docket No. SB-2015-06
CLEAR RIVER ENERGY CENTER IN)
BURRILLVILLE, RHODE ISLAND)**

**OBJECTION OF INVENERGY THERMAL DEVELOPMENT LLC TO MOTION
OF BURRILLVILLE LAND TRUST TO CLOSE THE DOCKET**

I. INTRODUCTION

Now comes Invenergy Thermal Development LLC (“Invenergy”) and hereby objects to the Motion filed on behalf of the Burrillville Land Trust (“BLT”) that seeks to persuade the Rhode Island Energy Facility Siting Board (“RI EFSB” or “Board”) to close this docket. BLT completely misunderstands the siting board process and misunderstands that the Rhode Island Department of Environmental Management (“RIDEM”) has exclusive permitting authority over the water and wetlands issues—which are being reviewed concurrently by RIDEM—that BLT is concerned about. Further, BLT concedes that Invenergy’s EFSB Application (“EFSB Application” or “Application”) contains the applicant’s description of the studies of the environmental conditions of the project location, including water permitting and wetlands issues. Evidently, BLT has different opinions and/or disputes regarding the facts of the expert analysis supplied in the EFSB Application. However, a mere disagreement of the facts is not a reason to close a docket, and for these reasons alone, BLT’s Motion must be denied.

Accordingly, BLT’s Motion should be also denied for the following reasons: (1) Invenergy’s Application was correctly deemed complete by the RI EFSB Coordinator and the Board, 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) Although BLT may disagree with the facts of the analysis in Invenergy’s Application, a mere disagreement of the information supplied to the Board is insufficient grounds to close a docket; rather it supports Invenergy’s assertion that the docket should remain open and the process should continue; (3) BLT’s Motion is improper because the issues raised in its Motion—water permitting and wetlands—are vested exclusively with RIDEM; and (4) BLT’s Motion is untimely. Accordingly, Invenergy objects to BLT’s Motion and respectfully requests the Board deny BLT’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 its 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, Rhode Island (“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 EFSB 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

In BLT’s Motion, it asserts the following: (1) Invenergy’s EFSB Application is incomplete because it allegedly “omits” an analysis of the Project’s impact on the surrounding wetlands and allegedly does not address the Clean Water Act; (2) “[t]here seems to be a confusing or inaccurate calculation of the number of impacted acres for construction of . . . [an]

overhead transmission line”; (3) “[t]here is inadequate and missing information and data cited in the application . . . as to the impact on biodiversity during construction and operation phases”; (4) Invenergy’s Application allegedly includes “[c]onfusion over which State of Rhode Island RIDEM delineation of wetland resource areas should be used”; (5) Blackstone River Valley National Heritage Corridor (“BRVNHC”) has jurisdiction over the Clean River and, therefore, “all appropriate permitting should be sent to BRVNHC”; and (6) the Project will allegedly “severely impact the mission of the” BLT. *See* BLT Motion, 1-3. As discussed more thoroughly below, *none* of BLT’s contentions are grounds for closing this docket.

A. BLT’s Motion Must Be Denied Because Invenergy’s Application Was Properly Deemed Complete by the EFSB Coordinator And The Board And Docketed On November 16, 2015.

To begin, 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 BLT’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 of Practice 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.

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.

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.

Regarding the requirement that applications include a description and analysis of the physical and social environmental impacts of the proposed site, BLT 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, in great detail, including the water and wetland and habitat issues that are of concern to BLT. *See* Invenergy's EFSB Application, Section 6.0, pp 29-114, and supporting tables, studies and appendix. The application section "Environmental Controls" delves into a detailed description and analysis of the facility's impact on the air, wastewater, stormwater and noise. *Id.* at pp. 15-16. 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"). Section 6.0 of the Application, titled "Assessment of Environmental Impacts," thoroughly describes and analyses 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, in almost a hundred pages, plus exhibits, tables, maps and supplemental information in the appendices, Invenergy's EFSB Application analyzes the Project's water impact, including the Project's impact on Burrillville's drinking water resources; discusses how the Project will comply with all applicable State and Federal environmental regulations; examines how the Project will impact the wetlands; analyzes the impact of withdrawals on the Clean River; summarizes the results of a United States Geological Survey ("USGS") Water Resources Investigation Report; examines the facility's potential impact on the ground and surface water; examines the Project's construction of a new transmission line; and evaluates the Project's potential noise impact, including how the Project will conform to relevant noise

regulations. *See* Invenergy's EFSB Application, pp 29-114; Noise Assessment Report; EMF Analysis – Transmission Line. Moreover, Invenergy's EFSB Application specifically includes a description of the existing wetland resource area, a description of the permanent and temporary impacts to those wetlands that is expected to occur as a result of the Project and an analysis of the avoidance, minimization and mitigation practices the Project will use to lessen any wetland impact. *See id.* at pp 55-67. To suggest, as BLT does, that the EFSB Application does not contain *any* information with regard to the Project's wetland impacts, plans for mitigation or the required criteria that is being reviewed by RIDEM in its delegated capacity to review Clean Water Act permitting issues is simply wrong, disingenuous and completely ignores the information in the Application and the completeness review performed by the EFSB Coordinator.

Although BLT may disagree with the facts and the environmental 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 BLT, 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, BLT cannot dispute that the EFSB Application does, in fact, identify, discuss and analyze—in detail—the physical and social environmental impacts of the Project and the Project's impact on the surrounding wetlands.

As seen from the specific Application sections cited above, BLT's Motion is therefore incorrect, 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.

B. BLT’s Motion Must Be Denied Because The Issues Raised In BLT’s Motion Are Not Grounds To Close This Docket.

Next, BLT’s Motion must be denied because many of the issues they raise—clean water permitting and wetlands permitting—are permitting matters that the Act expressly delegated to RIDEM, not the Board. See R.I. Gen. Laws § 42-98-7(a)(3)(delegating, among other environmental permitting responsibility, federal Clean Water Act permitting authority to RIDEM). Pursuant to the Act, R.I. Gen. Laws § 42-98-7(a)(1), the Board “is the licensing and permitting authority for all licenses, permits, assents, or variances which, under any statute of the state or ordinance of any political subdivision of the state, would be required for siting, construction or alteration of a major energy facility in the state.” Section 8(b) of the Act states that “[w]ithin thirty (30) days of the filing of an applicant under this chapter,” the Board shall then notify the applicant “whether the application is in the form and addresses the matters that are required by this section and the rules and regulations as are promulgated pursuant to § 42-98-7. An application meeting these requirements shall then be docketed.” See R.I. Gen. Laws § 42-98-8(b). Section 9 of the Act establishes that a statutorily mandated Preliminary Hearing shall follow the Board’s docketing. See R.I. Gen. Laws § 42-98-9(a). Also, Rule 1.9(a) specifically states that “[a]fter 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.” The point of this Preliminary Hearing phase is not to conduct debate or argument over disagreements of opinions or over disagreements over the

facts contained in the Application. There is ample time to address all these issues in the course of the proceedings, including full evidentiary hearings.

At this stage in the process, it is up to the Board to simply determine the issues it will consider when evaluating Invenenergy's EFSB Application, and it is the Board that determines whose advisory opinions it will seek guidance from regarding those issues. *See* EFSB Rule 1.9(a). As the Board has yet to establish what issues it will consider when evaluating Invenenergy's EFSB Application, the requests made in BLT's Motion to close the docket are inappropriate. If the Board determines that it would like to obtain the benefit of an advisory opinion from RIDEM or any other state or local agency regarding the concerns identified by BLT, such as whether this Project complies with the State's water, wetlands, or other natural resource habitat requirements, 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 BLT to request that the Board close the docket because Invenenergy's EFSB Application allegedly did not address an issue in a specific manner and to the extent that BLT would like to see. *See* R.I. Gen. Laws § 42-98-9(a). Accordingly, we request the Board deny BLT's motion.

C. BLT's Motion Must Be Denied Because It Is Untimely.

Lastly, BLT's Motion must be denied because it was filed out of time. BLT filed this Motion not even two business days before the statutorily mandated Preliminary Hearing. Invenenergy has tried to respond immediately, so that the Board can have the benefit of Invenenergy's immediate reactions, and objections. Therefore, Invenenergy reserves the right to supplement this objection, if the Board deems it necessary.

IV. CONCLUSION

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

Respectfully submitted,

INVENERGY THERMAL DEVELOPMENT

By Its Attorneys:

A handwritten signature in cursive script, appearing to read "Alan M. Shoer", is written over a horizontal line.

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Dated: January 11, 2016

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2016, I delivered a true copy of the foregoing document via electronic mail and regular mail to the parties on the attached service list.

/s/ Alan M. Shoer

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

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