

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD**

IN RE:	INVENERGY THERMAL DEVELOPMENT LLC	:	
	APPLICATION TO CONSTRUCT AND	:	
	OPERATE THE CLEAR RIVER ENERGY	:	SB-2015-06
	CENTER, BURRILLVILLE, RHODE ISLAND	:	
	CONSERVATION LAW FOUNDATION	:	
	MOTION TO CLOSE DOCKET	:	

DECISION AND ORDER

This matter came before the Energy Facility Siting Board (Board or EFSB) on a Motion To Close This Docket Due To Incomplete Filing (Motion to Close) filed by the Conservation Law Foundation (CLF). CLF asserts that Invenergy Thermal Development LLC's (Invenergy) application to the Board is incomplete because: 1) its Major Source Permit Application filed with the Department of Environmental Management (DEM) is incomplete; 2) other DEM applications are incomplete; 3) it does not identify the manufacturer name and model number for its intended boilers and combustion turbines; and 4) it does not provide detailed information about climate change as required by the Resilient Rhode Island Act, R.I. Gen. Laws §§ 42-6.2-1 to 42-6.2-8. CLF also asserts that its motion is somehow supported by the fact that Invenergy filed for a capacity supply obligation with ISO-NE prior to having obtained a license from the Board and required permits from DEM. CLF argues that because the Invenergy application is not complete, the Board cannot rule on it and should not have docketed it. The Board finds that CLF's motion must be denied. Invenergy's application meets the requirements of the Energy Facility Siting Act (Siting Act), R.I. Gen. Laws §§ 42-98-1 to 42-98-20 and the Board's Rules and was properly docketed.

The Siting Act expressly grants licensing authority to DEM in those instances where it has been delegated authority by federal law.¹ Nothing in the Siting Act or the EFSB Rules of Practice and Procedure (Rules) requires that applications filed with other agencies be complete before a matter can be docketed by the Board. The issue of whether a DEM application is complete is a determination to be made solely by DEM.

CLF acknowledged that the Board lacks jurisdiction over matters such as the Major Source Permit under the Federal Clean Air Act, 33 U.S.C. §§ 7401 to 7661, and matters under the Federal Clean Water Act, 42 U.S.C. §§ 1251 to 1387.² This is set forth expressly in the Siting Act, R.I. Gen. Laws § 42-98-7(a)(3) which provides that where DEM exercises licensing authority pursuant to a federal delegation, DEM shall be the permitting and licensing authority. The Board will not trespass into DEM's jurisdiction, nor will it invade that department's regulatory realm. There is no requirement in either the Siting Act or the Board's Rules that an applicant obtain all necessary DEM permits or that the applications for such permits be complete prior to the Board's issuance of a license to do so. The Board, in prior proceedings, granted licenses conditioned upon an applicant obtaining all necessary permits.³ The Board finds that it lacks jurisdiction to rule on the completeness of the DEM applications and finds no authority to close the Docket based on those allegations. Therefore, CLF's argument that incomplete DEM permit applications require the matter be closed must fail.

Likewise, CLF's argument that the Board cannot rule on Invenergy's application because it fails to specify the manufacturer name and model numbers of the boiler and gas turbines it

¹ R.I. Gen. Laws § 42-98-7(a)(3).

² Hr'g Tr. at 84 (Jan. 12, 2016).

³ *In re: Application of Ocean State Power to Construct Major Energy Facility*, Docket No. 87-1, Order No. 7 (Oct. 25, 1988); *In re: Application of Narragansett Electric Company and New England Power Company for License to Alter a Major Energy Facility*, Docket No. 89-1, Order No. 12 (Dec. 15, 1990).

intends to use must also be rejected. The application at the time CLF filed its motion already contained sufficiently detailed information regarding the project. As the matter progresses, however, the Board may determine that further information is necessary to conduct a thorough review and make an informed decision as to whether a license should issue. The Board, as well as the other parties, can engage in discovery.

None of the cases cited by CLF is binding, on point, or informative. Invenergy is correct in noting that only one, *Altamont Gas Transmission Co. v. F.E.R.C.*, 965 F.2d 1098 (D.C. 1992) dealt with an energy application. In that case, the applicant failed to file additional information after being ordered by FERC to do so. Here, Invenergy has not been ordered to file additional information. If the Board, or any other party, files for discovery and Invenergy does not comply, the Board can compel a response upon proper motion. This has not happened.

Neither the Resilient Rhode Island Act of 2014, R.I. Gen. Laws §§ 42-6.2-1 to 46-6.2-8, the Siting Act, nor the Board's Rules contain any language that requires the inclusion of detailed information about climate change in a Board application. Absent such a requirement, the Board finds CLF's argument that climate change data is required to be without merit. The Board finds the information submitted by Invenergy in its application to be sufficient for the purpose of docketing. The Board is aware of its responsibilities under the Resilient Rhode Island Act, and will make data requests to the extent that it believes additional information in this regard is necessary.

Finally, CLF argues that because Invenergy sought a capacity supply obligation with ISO-NE in the Forward Capacity Auction prior to obtaining a license from the Board Invenergy's application is somehow questionable. But Invenergy's strategic plan is not before the Board.

Invenergy's participation in the auction is neither relevant nor material to whether the application is complete. Therefore, this issue does not need to be addressed by the Board.

Accordingly, it is hereby

(81) ORDERED:

The Conservation Law Foundation's Motion to Close the Docket is denied.

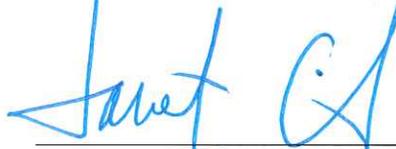
EFFECTIVE AT WARWICK, RHODE ISLAND, JANUARY 12, 2016. WRITTEN ORDER
ISSUED MARCH 10, 2016.

ENERGY FACILITY SITING BOARD





Margaret E. Curran, Chairperson



Janet Coit, Member