



## Burrillville Land Trust

Protecting our open space and rural character  
PO Box 506, Harrisville, Rhode Island 02830  
(401) 447-1560 • e-mail: [proselli@cox.net](mailto:proselli@cox.net)

### BURRILLVILLE LAND TRUST Board of Directors

Doris Alberg  
(401) 365-7273  
[dorisj1@cox.net](mailto:dorisj1@cox.net)

Robert Charpentier  
(401) 568-8538  
[Robert\\_Charpentier@yahoo.com](mailto:Robert_Charpentier@yahoo.com)

Laurie Espinosa  
(401) 441-3385  
[lgespinosa7@yahoo.com](mailto:lgespinosa7@yahoo.com)

Betty & Carlo Mencucci  
(401) 568-8449  
[bmencucci@verizon.net](mailto:bmencucci@verizon.net)

Paul A. Roselli  
(401) 447-1560  
[proselli@cox.net](mailto:proselli@cox.net)

Donald Waterman  
(401) 568-2077  
[dewaterman@live.com](mailto:dewaterman@live.com)

Chairperson Margaret Curran  
Rhode Island Public Utilities Commission

June 30, 2016

RE: PUC Docket No. 4609

Dear Chairperson Curran:

The Burrillville Land Trust is writing to you regarding PUC Docket No. 4609.

The document listed here includes the following concerns and sections:

- I. Is the Project in line and consistent with the other Federal reports? Who receives notification and who has jurisdiction over the Clear River?
- II. The mission of the Burrillville Land Trust is at risk and needs protection
- III. Construct a valid biodiversity report or impact statement and the demise of the RIDEM Natural Heritage Program.
- IV. Bats, the Black-throated Blue Warbler and the Wood Turtle
- V. Initiate a biodiversity impact statement to address the biodiversity impact from all components of Project.
- VI. The Project site has been designated as a Natural Heritage Area for over thirty years.
- VII. The construction of the one thousand megawatt fracked gas/fired oil plant is NOT necessary.
- VIII. The Project will make it impossible for Rhode Island to meet the greenhouse gas emission targets of the Resilient Rhode Island Act.
- IX. Insubmissible segmentation
- X. Conclusion

If you have any questions or comments, please direct them to me using one of the means of contact listed above.

Sincerely,

Paul A. Roselli  
President - Burrillville Land Trust

STATE OF RHODE ISLAND ND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION  
PUBLIC COMMENT

INVENERGY THERMAL LLC

PUC DOCKET NO. 4609

PUC ADVISORY OPINION REGARDING NEED TO CONSTRUCT THE  
CLEAR RIVER ENERGY FACILITY

June 30, 2016

Prepared by  
The Burrillville Land Trust board of directors and consultants

**Introduction**

The Burrillville Land Trust (BLT), a non-profit private land trust in the Town of Burrillville, Burrillville, Rhode Island, respectively files a “public comment” in behalf of the Burrillville Land Trust regarding the company known as Invenenergy and the PUC Advisory Opinion Regarding Need to Construct the Clear River Energy Facility referred here as the Project under Docket No. 4609.

The land trust is focused on nine areas that may be of interest to the Public Utilities Commission in the construction of their advisory opinion. In summary, those areas are:

1. Is the Project in line and consistent with the other Federal reports and rulings? Who receives notification and who has jurisdiction over the Clear River? The Clear River - a protected tributary to the Blackstone River - is under the Blackstone River Valley National Heritage Corridor<sup>1</sup> and all appropriate permitting and notification should be sent to the BRVNHC. The Clear River flows through two properties owned by the Burrillville Land Trust and flows from Wallum Lake in Pascoag, RI through Burrillville to North Smithfield then connects to the Branch River, then to the Blackstone River and then into Narragansett Bay;

2. During construction and operation phase, the Project would severely impact the mission of the Burrillville Land Trust in its quest to preserve and protect the rural characteristics of the Town of Burrillville as most of our protected property is near to or abutting sections of the Project<sup>2</sup>;

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<sup>1</sup> SEC. 3031. BLACKSTONE RIVER VALLEY NATIONAL HISTORICAL PARK and specifically Sec. 3031(c)(2)(vi) from the 113th Congress, dated January 3, 2014.

<sup>2</sup> Burrillville Land Trust web site, <http://www.burrillvillelandtrust.org/our-mission-history/>

3. As of June 30, 2016 no NGO or government agency has constructed a valid biodiversity report or biological impact statement for the construction site and all the ancillary components of the Project?;

4. As of June 30, 2016 no NGO or government agency has constructed a valid report or impact statement on the impact to rare and threatened species such as the Black-throated Blue Warbler, the Wood Turtle and other species including bats;

5. As of June 30, 2016, other than the Burrillville Land Trust, no NGO or government agency has made any attempt to issue an intent to construct or initiate a biodiversity impact statement on the the Project site as well as all the ancillary components of the Project for all the species that may be impacted;

6. The construction site for the Project and surrounding area has been designated as a Natural Heritage Area. The Rhode Island Department of Environmental Management, Town of Burrillville Comprehensive Plans (approved by Rhode Island Statewide Planning) and other state and federal agencies and contained in reports and journals have made and promoted this designation for over thirty years. A Natural Heritage Area includes known occurrences of state and federal rare, threatened and endangered species;

7. The construction of a one thousand megawatt Project is not necessary. Existing and future capacity, energy efficiency, solar and wind energy installations have more than supplanted the proposed one gigawatt output of the Project.

8. The Project will make it impossible for Rhode Island to reach the greenhouse gas reductions as set forth by law in the Resilient Rhode Island Act.

9. and, the Project is being categorically and purposely broken up into segments to avoid a federal or state Environmental Impact Statement. Insubmissible segmentation is not allowed by federal case law.

Each of those nine areas is listed here in more detail...

**I. Is the Project in line and consistent with the other Federal reports? Who receives notification and who has jurisdiction over the Clear River?**

On January 3, 2014, the One Hundred Thirteenth Congress of the United States enacted legislation to authorize appropriations for fiscal year 2015 for military activities (known here as the Act). In Section 3031 of the Act the Blackstone River Valley National Historical Park (the Park) was established<sup>3</sup>. The boundaries of the Park include the “Blackstone River and the tributaries of [the] Blackstone River”. While the Act does not contain any authorization for enforcement or protection of the tributaries of the Blackstone River, it is clear that the intention of the Act was to protect the tributaries of the Blackstone River. The Clear River is one of the tributaries to the Blackstone River flowing from the headwaters (on Burrillville Land Trust property) near Wallum Lake, Pascoag, RI to the Branch River near Slatersville, RI and then to the Blackstone River.

The Burrillville Land Trust (BLT) is asking the PUC to ask the Army Corps of Engineers and RIDEM to study the impact to the Clear River from the Project construction and specifically the operation of the fracked gas fired power plant. The BLT is asking the Rhode Island Public Utilities Commission (PUC) to research the impact to the Clear River and answer the question, “Is the impact in line and consistent with the recommendations and findings of Blackstone River Valley, Special Resource Study, Study Report 2011, Chapter Four: Management Options<sup>4</sup>?”

**II. The mission of the Burrillville Land Trust is at risk and needs protection**

The BLT is asking the PUC to help protect the properties and the mission of the Burrillville Land Trust. We are a private non-profit land trust in the Town of Burrillville. We own 212 acres. Most of our properties are within a few thousand feet of the proposed construction site in the northwestern portion of Rhode Island. We are dependent on funds raised through grants, estate gifts and donations. We don't have the funds for legal representation if and when construction takes place.

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<sup>3</sup> SEC. 3031. BLACKSTONE RIVER VALLEY NATIONAL HISTORICAL PARK and specifically Sec. 3031(c)(2)(vi) from the 113th Congress, dated January 3, 2014.

<sup>4</sup> United States Department of the Interior, National Park Service, Northeast Region. Blackstone River Valley, Special Resource Study, Study Report 2011, Chapter Four: Management Options, Management Option 3. Blackstone River Valley Industrial Heritage National Historical Park, Page 79 - 81

We are asking the PUC to pay special attention to protected lands that were purchased with federal, state, local and private funds as those funds often come with restrictions.

### **III. Construct a valid biodiversity report or impact statement and the demise of the RIDEM Natural Heritage Program.**

The PUC may be interested in learning some of the history of a Rhode Island Department of Environmental Management department that no longer exists.

In 1982, the Rhode Island Natural Heritage Program (NHP) published its first Technical Report with an initial list of 416 rare plants and animals, most of which were known from fewer than six sites in the state, and a database of 1400 occurrence records of listed species. As a matter of record, the rare plant list, which was updated in 2015, today includes 388 species (119 more than in 1982, representing about 30% of the state's native flora), with more than 70 of these identified as State Historic, i.e., extirpated from Rhode Island. These statistics reflect the steady degradation of Rhode Island's biodiversity, despite the considerable land protection effort that has already taken place. This continuing decline demands that all development projects and the impacts that could be imposed by them on biodiversity are scrutinized fully by multiple agencies and multiple disciplines, and this strategy should be applied most stringently to projects that pose significant impacts, for example the placement of a power plant in the middle of a designated Natural Heritage Area and has been a high prioritization for conservation for nearly four decades.

The mission of the NHP was not merely to catalog biodiversity information, but also served as the interpreter of that information to assist in planning and conservation, and in environmental review for a variety of local, state, and federal agencies. These activities included, but were not limited to, providing information and review for town comprehensive plans, assessments of properties and management plan review for the Open Space grant program (administered by the Natural Heritage Preservation Commission), assessments for the RIDEM Land Acquisition Committee, Forest Legacy Program, Agricultural Land Preservation Commission, and The Nature Conservancy. The NHP also reviewed literally thousands of requests submitted by government agencies, environmental consultants, and private landowners for consultations regarding proposed development projects. In other words, the NHP was the "go-to" agency for biodiversity information,

and as such would have been assigned to assess the impacts to biodiversity posed by the construction of a one gigawatt power plant and the impact to nearly two hundred acres of forests and forested wetland acres, that review being a part of an overall RIDEM response.

The NHP was dissolved in 2007, and this circumstance leaves the BLT, RIDEM and all federal, state and local agencies with a dilemma - there is no department in RI state government whose responsibility is the interpretation of biodiversity information.

The agency that is available for state biodiversity review is the Division of Fish and Wildlife (DFW) within the Rhode Island Department of Environmental Management. The DFW is a resource managing agency whose primary responsibility is ensuring sustainable populations of game, fish, and shellfish for the consuming public. DFW staff is principally comprised of resource managers – there are no botanists, entomologists, or ecologists on staff, and therefore the DFW cannot be relied on to provide the complete ecological perspective necessary to assess biodiversity.

Based on this history and the current state of RIDEM, the BLT is asking the PUC NOT to use as reference, the ESS consultants report on biodiversity submitted to the RI PUC Energy Facility Siting Board Docket SB2015-06 as we believe, the ESS report on biodiversity lacks the breath and depth of a report generated by NHP and draws the wrong conclusions about the impact to biodiversity by the proposed power plant in northwestern Rhode Island. Here is a sample of the ESS conclusion about impact by the proposed power plant:

“The reduction in the amount of interior forest habitat at the proposed Project site will negatively impact species that require interior forest habitat, such as breeding birds. However, the net increase in non-interior forest habitat within the proposed limits of work may benefit other species that require early successional or edge habitats. Increased light penetration into the newly-created interior forest may promote the growth of understory species which could support edge-dependent wildlife.”<sup>5</sup>

We ask the PUC to use other consultants in assessing the impact to biodiversity along the Project site as well as all the segmented projects. We are asking the PUC to look for consultants that will assess the impact on biodiversity from sources other than the Invenenergy ESS biodiversity report<sup>6</sup> or from RIDEM Fish and Wildlife Department.

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<sup>5</sup> RI PUC EFSB docket# SB2015-06 6.6.2.2 Impacts to Wildlife and Ecology p.89

<sup>6</sup> Inveny application to the RI PUC Energy Facility Siting Board SB2015-06 Section 6.6.2 Wildlife constructed by ESS Group

#### **IV. Bats, the Black-throated Blue Warbler and the Wood Turtle**

In regard to bats, there is considerable concern throughout the Northeast concerning the decline of many species due to White-nosed syndrome. Acoustic surveys during the appropriate seasons are needed to determine the potential impacts to both resident and migratory bat populations from both noise and obstructions. Federally protected species are regulated by state agencies. But when the state agency has no personnel to analyze the impacts, a federal agency must step in. We are asking the PUC to hire consultants to analyze the impacts to bats.

The Black-throated Blue Warbler has been observed at the Project site. The breeding range of this threatened species is limited to the northwest corner of the state, and the success of this population is directly related to the amount of un-fragmented forest remaining in this part of the state<sup>7</sup>. It must be noted that conclusions from the ESS report<sup>8</sup> conflict with the basic tenets of biodiversity conservation and decades of research in successional habitats and biodiversity by suggesting that the loss of some species will be offset by their replacement with other species.

However, in the case cited in RI PUC Docket SB2015-06, the conclusion drawn from the ESS Group report is based on the loss of specialized, habitat-dependent rare species and replacement by relatively common, generalist, opportunistic species. The result is reduced biodiversity. We hope that a report by the BLT will clearly illustrate this basic tenet of biodiversity conservation and correct the mis-information of the ESS Group for the proposed power plant.

In our site selection criteria for new potentially acquired lands, the Burrillville Land Trust favors those lands that are already connected to existing conserved or preserved properties. Our goal is to make sure properties are connected to other conserved parcels so that the end result is a conserved area that is bigger and contiguous, increasing in size as new lands are acquired. The loss of any acre in a rural contiguous forest area and the impact to hundreds of acres along the path and corridor of the Project is inconsistent with BLT mission and land acquisition criteria. The impact from the Project is unprecedented in size and scope and biodiversity impact needs further study.

Another species of conservation concern that is likely present on this site during construction and operation of the Project is the wood turtle, a species also dependent on large tracts of forest as

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<sup>7</sup> Enser, R.W. and J.A. Lundgren. 2006. Natural Communities of Rhode Island. Rhode Island Natural History Survey. Web published at: <http://rinhs.org/partners-resources/download-pubs/>

<sup>8</sup> Invenergy CREC application before the RI PUC SB2015-06 pp. 77-78

well as access to streams and rivers<sup>9</sup>. The Clear River and Iron Mine River populations have been consistently documented by observations over several decades – it may be one of only a few viable populations remaining in southern New England. In recognition of the well-documented regional decline of this species, a Conservation Plan for the wood turtle was recently published (Jones and Willey 2015). This document provides protocols for research, and management actions for conserving wood turtle populations throughout the region, and should be referenced to guide assessment of the Clear River and Iron Mine river populations. It should be noted here that the land trust owns 22 acres across the street from the Project site. The Clear River bisects a portion of the BLT property. At a minimum, a concerted inventory effort should be made to determine the full extent of the wood turtle population, and especially how the wetland, upland, and riparian habitats at and adjacent to the Project site contribute to the survival of the Clear River population. Along with a concerted inventory, the BLT recommends a relocation program for any and all species that are impacted by the proposed Project as well as all ancillary components of the Project.

In 2015, the BLT conducted a biodiversity survey of of the Clear River property finding evidence of wood turtle populations. The property and wood turtle populations could be impacted by runoff from the construction site, noise and air pollution and transfer of materials during the construction, expansion and operation of the Project.

## **V. Initiate a biodiversity impact statement to address the biodiversity impact from all components of Project.**

As of June 30, 2016, other than the Burrillville Land Trust, no NGO or government agency has made any attempt to issue an intent to construct or initiate a biodiversity impact statement on the the Project site as well as all the ancillary components of the Project for all the species that may be impacted.

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<sup>9</sup> Jones, M.T. and L.L. Willey. 2015. Status and conservation of the wood turtle in the Northeastern United States. US Regional Conservation Needs Program, US Fish and Wildlife Service. The executive summary of this document states: “Abundant evidence strongly indicates that the wood turtle has undergone widespread population declines, and that it now occurs primarily in small, isolated, declining populations. This appears to be due in part to the fragmentation and degradation of its preferred riverine, in-stream, riparian, and upland habitats, but is exacerbated by heavy adult mortality from agricultural machinery, cars, and collection for pet markets. This (decline) is compounded by the wood turtle’s late maturity (15–18 years), low reproductive potential (one clutch of approximately eight eggs every one to two years), and high nest and hatchling depredation rates.”

BLT believes there is a cumulative impact from the construction and continued operation of the Project as well as the construction of all the components of the Project. Therefore we ask the PUC to focus on all of the components of Projects and treat all the components as one project.

The components include, the expansion of the pipeline, the use of gas compressors at the compressor station, the construction of both the power plant and the upgrades to the compressor station facility, the construction of the facility access road, the new gas and sewage pipelines, the new 345 kV transmission line, the construction and maintenance of one two-million gallon ULSD tank, construction of two two-hundred foot particulate emission stacks, the use of and maintenance of a 40,000 gallon 19% aqueous ammonia tank, the 345kV access line to NationalGrids ROW, the release of over three million tons of CO<sub>2</sub> and the staging area used during construction.

We believe there are cumulative potential impacts to biological resources<sup>10</sup> from the construction and operation of a facility of this magnitude<sup>11</sup> and the other components from the disturbance of nearly 200 acres in one of Rhode Island's most rural areas with recognized notably high biodiversity values. This disturbance demands that considerably more scrutiny of the impacts to biological resources is warranted. As a result the BLT is asking the PUC to demand an on-site environmental impact statement and an on-site inventory report.

A thorough plant inventory is especially necessary at this site because of the number of rare plant occurrences known to exist on surrounding properties where similar habitats are supported<sup>12</sup>. The northwestern part of Rhode Island is particularly significant to the preservation of the state's biodiversity because of its geographic position in New England where the relatively un-fragmented forest supports many species of plants and animals at the southern limit of their range. Many of these species will be undergoing additional stress in the coming years due to a warming climate and maintaining the current extent of forest in this area will be crucial to the continued survival of these species in Rhode Island. In short, the fragmentation limit has been reached in this corner of the state. The conversion of hundreds of acres of forest, wetlands and forested wetlands and other acres

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<sup>10</sup> Alvarez, R.A., S.W. Pacala, J.J. Winebrake, W.L. Chameides, and S.P. Hamburg. 2012. Greater focus needed on methane leakage from natural gas infrastructure. *Proceedings of the National Academy of Sciences* 109:6435–6440.

<sup>11</sup> Union of Concerned Scientists, *Environmental Impacts of Natural Gas* [http://www.ucsusa.org/clean\\_energy/our-energy-choices/coal-and-other-fossil-fuels/environmental-impacts-of-natural-gas.html#.Vo8EXTaxHzI](http://www.ucsusa.org/clean_energy/our-energy-choices/coal-and-other-fossil-fuels/environmental-impacts-of-natural-gas.html#.Vo8EXTaxHzI)

<sup>12</sup> *Rare Native Plants of Rhode Island*. Enser, R.W. 2007. Rhode Island Natural Heritage Program. Rhode Island Department of Environmental Management. Providence, RI.

impacted from road construction, power plant construction, compressor station expansion, staging, digging and clear cutting - will be a significant impact alone. However, based on research widely available in the literature the construction and operation of both the power plant (the Project) and the compressor station is likely to be a significant impact to an unknown extent into the surrounding ecosystems and to state and region biodiversity for decades to come<sup>13</sup>. If the “life expectancy” of the Project is greater than 30 years and if market conditions are favorable the Project could see further expansion, redesign and updates and continue to operate in the area for 30 or perhaps 40 years. Given that natural systems are slow to regenerate, this means that the impacts to biodiversity will continue 50 to 100 years well beyond market viability. One has to look no further than other areas within the Town of Burrillville to see the impact of other historic, 18th, 19th and 20th century long term industrial facilities: the former Western Sand and Gravel – 25 acres; Landfill & Resource Recovery, Inc., North Smithfield, RI – 28 acres; MeTech International<sup>14</sup> – 37 acres; textile mills turned into brown fields, underground telephone lines, above and below ground electric and gas pipe lines that impact rivers, streams, forests, lands and the biodiversity within each of these areas.

There is one piece to the impact puzzle that is known and has been known for some time: that is, the potential impact of noise from pressure release, blow offs and methane release on bird populations. Research conducted by Bayne et.al. (2008) at natural gas compressor stations in Canada determined that chronic noise levels of 70-90 decibels (at the source) were sufficiently loud enough to affect birds up to 700m (2300 ft) into the surrounding forest. It is not clear from the Project application what the chronic noise level will be produced at the source of the Project or from each one of the gas/oil fired turbines; however, it is shown that some operations will exceed 90 decibels<sup>15</sup> and can be predicted to impact bird populations at least 700m (2300 ft) from the source. Figure 1 depicts the extent of the more than a thousand acres of forest that would be impacted under this scenario, portions extending into the George Washington Management Area. The noise from this one power plant will impact an area flowing into Massachusetts and Connecticut.

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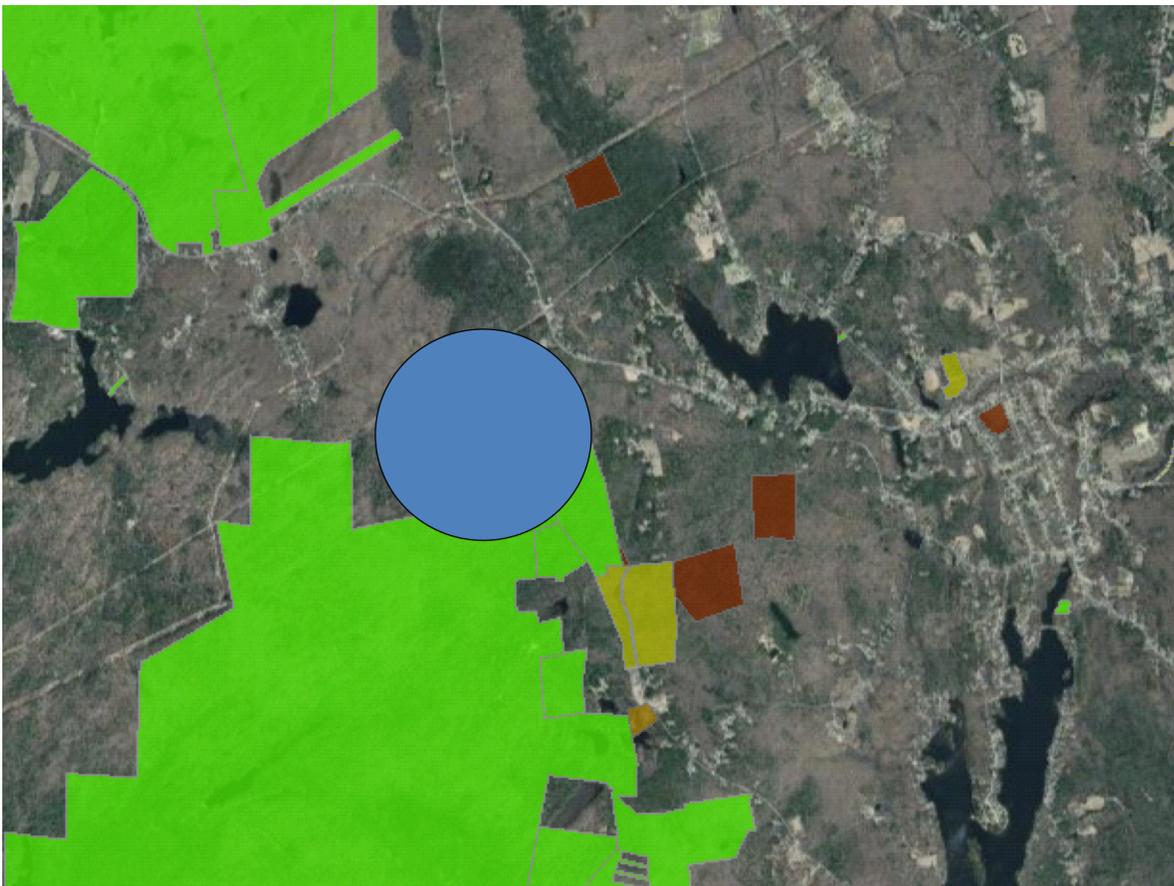
<sup>13</sup> Invenery application p. 123 9.4 De-Commissioning

<sup>14</sup> MeTech Main Street, Mapleville, RI <http://www.epa.gov/sites/production/files/2015-11/documents/2015-ri-brownfields-fact-sheet.pdf>

<sup>15</sup> Invenery application SB2015-06 Appendix E, page 32

Daniel D. Russell PhD of Penn State University has presented on the internet Acoustic and Vibration Animations, and among these he includes one for 'temperature inversion' where the atmosphere locally (as on top of the power plant or the compressor station) is above the nearby ambient temperature of air closer to the surrounding ground. According to findings in that report, the sound intensity focused onto nearby ground, including lateral positions, will be greater than 90 decibels. A clearer picture of the true impact of noise to avian communities will be available after completion of bird inventory work at and surrounding the Project site.<sup>16</sup> The BLT encourages the PUC to demand an on-site inventory of fauna and conduct noise tests to observe impacts.

Figure 1. Area of potential impact to bird populations from chronic noise levels of 70-90 decibels at the Clear River Energy Center (blue) and in other areas near the compressor station (red). Area would be greater at higher decibels.



<sup>16</sup> Bayne, E. M., L. Habib, and S. Boutin. 2008. Impacts of Chronic Anthropogenic Noise from Energy-Sector Activity on Abundance of Songbirds in the Boreal Forest. *Conservation Biology* 22:1186-1193.

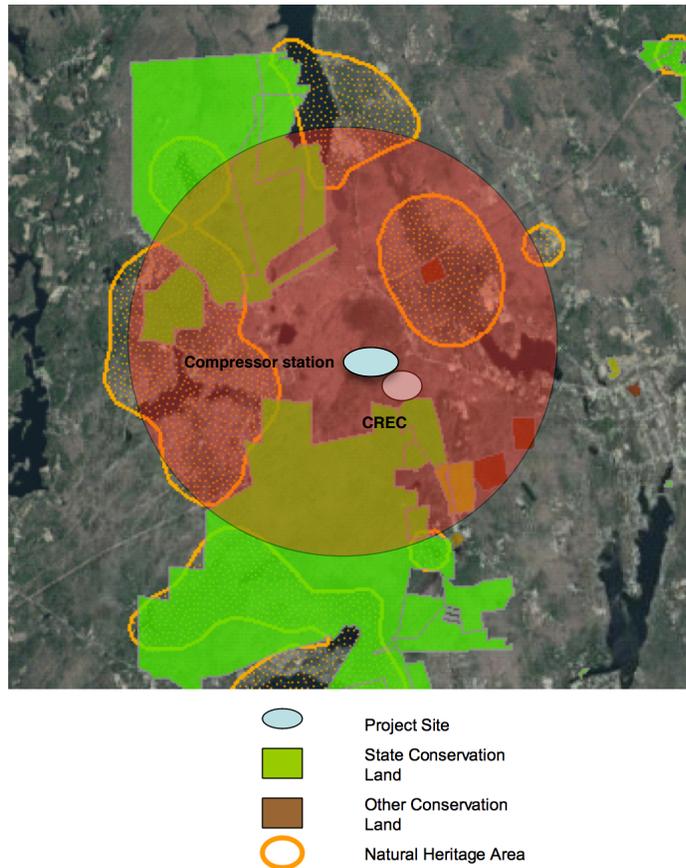
Because of the poor inventory effort to date, it is difficult to thoroughly examine the impacts of the Project on biodiversity both at the site, and more importantly off the site. In order to better assess potential impacts we ask the PUC to hire consultants who are knowledgeable enough to ask the appropriate questions and search for answers to impacts on noise.

**VI. The Project site has been designated as a Natural Heritage Area for over thirty years.**

Many of the questions that need to be asked (and answered) reflect the overall impact of shrinking a significantly-sized tract of forest, but more importantly the extent of those impacts off-site into the surrounding landscape. As a guide for the PUC, see Figure 1 which shows the landscape context within which the Project site is located, along with identification of conservation lands within a several mile radius, and Natural Heritage areas (identified habitats for Rhode Island rare species). Its important to note here that the Burrillville Land Trust owns properties shaded in dark greenish yellow and brown on the map shown below.

Its important to note that within a 5 mile radius of the Project site are 20 bodies of water, 26 conservation land areas, 25 state recreation areas, 15 historic districts, 8 state conservation areas, campgrounds and youth camps, 3 public drinking water supplies and on the western edge of the Blackstone River Valley National Heritage Corridor - a U.S. National Park.

Figure 2.



Natural Heritage Areas include known occurrences of state and federal rare, threatened and endangered species. The polygons in Figure 2 depict the estimated extent of rare species populations, although in most cases inventory and habitat assessments are needed to accurately determine the current status of individual populations.

We are asking the PUC to review the Natural Heritage database for the Project and take into account all lands and property abutting all of the components to this Project.

The presence of rare species information has been available for more than 30 years and is commonly accessed by many users. Since the demise of the Natural Heritage Program within the Rhode Island Department of Environmental Management there is no other entity within RIDEM available for providing expert opinion on the impact of projects to rare species and biodiversity. The department of Fish & Wildlife can address those fish and wildlife species that most concern them as a management agency, but do not have the expertise to address the full sphere of biodiversity.

Zoologists, botanists, and community ecologists, not managers, are necessary and there is no one at DEM or any other state agency capable of addressing biodiversity. However, despite the unavailability of interpretation, information on the presence of rare species on or near sites is readily accessible, as shown in Figure 1 which was prepared from information currently found on the environmental resource maps available on the RIDEM web page.

The Burrillville Land Trust is asking that this glaring oversight be addressed. We ask that all biodiversity over the entire impacted area be part of a request by the PUC to initiate an Environmental Impact Statement for the Project and all the components of the Project. Remember, the impact for construction of the Project, upgrades to the compressor station, staging area and all the other disturbances to forests and wetlands amounts to hundreds of acres. To put this in perspective, the Burrillville Land Trust owns a little more than 212 acres. That means that nearly all of the 16 years of efforts in working towards saving land for conservation, building large tracts of protected contiguous forest and wetlands, species habitat protection, maintaining the rural character of the Town of Burrillville, could be wiped out with the construction and the expansion and operation of this one Project.

In constructing our public comment, the BLT asked our consultants, biologists, foresters and board members skilled in local plant and animal species to make recommendations to our board in other areas of concern that may not be addressed.

Here is what they have come up with:

1. What will be the effects of noise on fauna in the surrounding landscape? Although 47 decibels may be acceptable for the purpose of local Town of Burrillville noise permitting, this relatively rural part of the state has not been previously subjected to this level of noise on a continual basis. A review of the literature will easily locate research concerning noise and disturbance to wildlife. We are asking PUC to include a noise analysis as part of their call to construct an EIS.

2. What will be the impact to migrating birds and bats caused by random noise levels exceeding 90dB? What will be the impact of methane gas release, blow off, or the release of three million tons of CO<sub>2</sub> and more on the local fauna populations?

The proposed power plant will have two 200 foot tall stacks emitting nearly 814 lbs/MW-hr (net) (pounds per mega watt hour)<sup>17</sup> average CO<sub>2</sub> emission rates. The U.S. Fish and Wildlife Service has determined that collisions with manmade structures is a leading cause of bird and bat mortality<sup>18</sup>, and there is considerable research on this topic<sup>19</sup>. There is no mention in Invenergy's application PUC Docket SB2015-06 of the impact to both diurnal and nocturnal species from the construction and operation of two GT/HRSG stacks, 200 feet above grade. We would hope that the EIS takes into account stack height and a reduction in forest canopy, as well as all noise levels and the accumulative levels of noise from present and future projects.

### **VII. The construction of the one thousand megawatt fracked gas/fired oil plant is NOT necessary.**

According to RI PUC Docket No. 4609 - PUC Conservation Law Foundation Advisory Opinion Regarding Need to Construct the Clear River Energy Facility, the testimony of Robert Fagan submitted on June 14, 2016 answers the question of necessity, "There is no near-to-medium term reliability need for the proposed plant. The proposed power plant is not needed for near-term New England or Rhode Island electric power sector reliability. Rhode Island and New England net loads exhibit declining trends, contrary to the applicant's assertions....This result directly indicates surplus capacity in excess of reliability requirements...No long-term need for the proposed plant."<sup>20</sup>

### **VIII. The Project will make it impossible for Rhode Island to meet the greenhouse gas emission targets of the Resilient Rhode Island Act**

If the power plant is built, emissions from the plant along with the accumulative emissions during pre-, post-construction and future operation will "...make it impossible for Rhode Island to meet the carbon-emission reduction targets"<sup>21</sup> of the Resilient Rhode Island Act.

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<sup>17</sup> Invenergy CREC application p.34 Gas Turbines/HRSGs paragraph 5

<sup>18</sup> Erickson, W.P., G.D. Johnson, and D.P. Young. 2005. A summary and comparison of bird mortality from anthropogenic causes with an emphasis on collisions. USDA Forest Service Gen. Tech. Rep. PSW-GTR-191.

<sup>19</sup> There are too many references to list here. Studies by U.S. Fish and Wildlife go back to 1978 and as recent as May 2015, <https://www.federalregister.gov/articles/2015/05/26/2015-12666/migratory-bird-permits-programmatic-environmental-impact-statement>

<sup>20</sup> RI PUC Docket No. 4609 - PUC Conservation Law Foundation Advisory Opinion Regarding Need to Construct the Clear River Energy Facility, Testimony of Robert Fagan, June 14, 2016

<sup>21</sup> Conservation Law Foundation pre-filed direct testimony of J. Timmons Roberts - Ittleson Professor of Environmental Studies and Sociology, Brown University. Filed with the RI PUC EFSB Docket No. SB 2015-06; Page 10 - lines 10-14, March 31, 2016

While the Resilient Rhode Island Act (Act) has no enforcement power and no regulatory “teeth”, the Act signed into law by then Governor Chafee on August 1, 2014, is public law and public policy for all local and state permitting agencies. And, the application of the Resilient Rhode Island Act is required both by statute and the Rhode Island and United States Constitutions - in their respective due process clauses.

Given the long life of generating plants and the \$700 million cost for the Project, Rhode Island will be locked into a fossil fuel future for nearly 40 years at a time when the world is rapidly shifting away from fossil fuels.

### **IX. Insubmissible segmentation**

The Burrillville Land Trust respectfully submits that Invenergy is using “segmentation” as a means to bypass sections or impacts resulting from conducting an Environmental Impact Statement for all associated projects.

The Burrillville Land Trust is concerned that the Project does not include impacts from the components. Segmenting different parts of the construction in-order to lessen perceived environmental impact and/or avoid further licensing and/or permitting by both state and federal agencies seems to be taking place.

For example, in the case of constructing the Project, the following construction and impacted areas from other projects should be included in the total impacted area:

- construction of a new 150-foot wide, 0.8 mile 345 kV overhead transmission line ROW;<sup>22</sup>
- construction of two two-hundred foot CO<sub>2</sub> and ash emitting towers;
- construction of one two-million gallon ultra low-sulfur diesel fuel tank;
- construction of a gas-fired electric generating facility (67 acres)<sup>23</sup> and the surrounding impacted areas (83 acres)<sup>24</sup>;
- construction of a connection from the power plant to the existing NationalGrid 345 kV line<sup>25</sup>;

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<sup>22</sup> If the new overhead transmission line is 0.8 miles long, as stated in the CREC application, that amounts to 4224 linear feet. If the corridor for the new transmission line is 150 feet wide, the product of 4224 x 150 amounts to 633,600 sq.ft. There are 43560 sq.ft. in one acre. This line would take up an area of approximately 14.55 acres. Not the 1.53 as stated in the application.

<sup>23</sup> Clear River Energy Center application section 6.6.2.2 Impacts to Wildlife and Ecology p.76 paragraph 6

<sup>24</sup> CREC application section 6.6.2.2 Impacts to Wildlife and Ecology p.77 paragraph 1 Invenergy states in this section that their own analysis indicates that “The existing forest interior habitat indirectly affected by the proposed limits of work includes an additional 83 acres.” yet they do not provide any indication of the biodiversity impacts for this or for any of the proposed wetlands and forest disturbances.

<sup>25</sup> CREC application section 6.3.3.1 Permanent Impacts to Wetlands / Forested Wetland Conversion p.66 paragraph 1

- construction of a new switchyard;
- construction of a new gas line connection to the newly re-constructed compressor station owned by Spectra Energy;
- construction of a new facility access road;
- the construction of an underground pipe to a sewer main to the Burrillville Sewage Treatment Plant;
- the construction of an underground water main from well 3A in Pascoag, RI near the Pascoag Utility District;
- the expansion of an existing gas compressor station;
- and, the construction of a 6.8 mile new 345 kV line along an existing 17.7 mile ROW to the Sherman Road Substation in Burrillville, Rhode Island constructed by NationalGrid as part of the Interstate Reliability Project.

The BLT is suggesting that the impact from all these activities is well over 200 acres. This amount of land in rural northwestern Rhode Island is not being looked at from a holistic point of view and there is no one federal or state agency that is looking at the Project with this lens.

There is state and federal legal precedent looking at projects of this nature from a project point of view.

One example is an ongoing project that started many years ago.

The ANE Project illustrates the complexity that local and state regulatory agencies face when issuing permits. In regards to the “Algonquin” Incremental Market (AIM) Project, the Atlantic Bridge Project and the Access Northeast Project. These gas pipeline upgrade projects were proposed by Spectra Energy and their subsidiaries many years ago. The first two of those projects were officially filed with the Federal Energy Regulatory Commission (FERC), with the third having been publicly announced by Spectra.

The AIM and Atlantic Bridge project proposals call for pipeline construction in some of the identical geographic regions of New York and Connecticut - and even construction on two of the same compressor stations along the Spectra pipeline route. All three projects were part of one central plan to bring more gas into New England along the same pipeline route, and ultimately create the capacity to export gas out of LNG export terminals in Massachusetts and in Canada.

Initially the impact of these three proposals were not considered cumulatively. A Final Environmental Impact Statement for the AIM Project was written without the benefit of using the “insubmissible segmentation” legal challenge as a means of looking at the three projects as one project that fell under one impact statement.

Federal court rulings and federal law provide some guidance to regulatory agencies looking for a means to look at the totality of a project broken into segments. Federal court rulings and federal law are clear on this issue. Beginning with the Supreme Court:

*“proposals for . . . actions that will have cumulative or synergistic environmental impact upon a region. . . pending concurrently before an agency. . . must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action.”* *The U.S. Supreme Court in Kleppe v. Sierra Club, 427 U.S. 390, 410 (1976)*<sup>26</sup>.

Another legal precedent setting example comes from a court case involving FERC and the Delaware Riverkeeper Network. FERC lost a court case on the matter of impermissible segmentation in Delaware Riverkeeper Network v. Federal Energy Regulatory Commission (2014)<sup>27</sup>. The court ruled in this case that FERC failed to provide a cumulative impact analysis for a series of upgrades to the Tennessee Gas Pipeline system. The court defined such an analysis in this way:

*“A meaningful cumulative impact analysis must identify (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions—past, present, and proposed, and reasonably foreseeable—that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.”* *Grand Canyon Trust v. FAA, 290 F.3d 339, 345 (D.C. Cir. 2002)*.

Similarly, FERC, at the time, failed to carry out a meaningful cumulative impact analysis for the three planned Spectra pipeline upgrades. At the time, these projects fell into the category of “other actions—past, present, and proposed, and reasonably foreseeable—that have had or are expected to have impacts in the same area”.

FERC’s assertion at the time was that “although the same region of influence would be affected, the temporal scale of the projects was different. The AIM Project would be constructed in 2015 and 2016. The earliest the Atlantic Bridge Project would be placed into service would be November 2017”

That assumption failed to stand up to legal precedent and the argument failed with the court. For example in Riverkeeper Network v. Federal Energy Regulatory Commission, the projects that the Court ruled should be measured cumulatively were constructed over a three year period.

Under the National Environmental Policy Act (NEPA), when producing an environmental impact statement FERC and others must consider connected, cumulative and similar actions.

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<sup>26</sup> <https://supreme.justia.com/cases/federal/us/427/390/case.html>

<sup>27</sup> [https://www.cadc.uscourts.gov/internet/opinions.nsf/30B6F48600A85C1E85257CEF004E34F1/\\$file/13-1015-1496336.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/30B6F48600A85C1E85257CEF004E34F1/$file/13-1015-1496336.pdf)

These actions are defined as:

*(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they: (iii) Are interdependent parts of a larger action and depend on the larger action for their justification. (2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement. (3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences.*<sup>28</sup>

The BLT is requesting that all agencies - local, state and federal agencies coordinate their reports and findings to determine cumulative impacts regarding the Project. NEPA also makes clear that “while the statute does not demand forecasting that is ‘not meaningfully possible,’ an agency must fulfill its duties to “the fullest extent possible<sup>29</sup>.”

Under this definition, it was clear that at the time, the Spectra upgrade proposal was submitted, impacts regarding that project should have been defined as a series of connected, cumulative and at the very least similar actions. It is also clear that FERC failed - at that time - to fulfill its scoping duties “to the fullest extent possible”.

We believe that the Project and components are similar and should be looked at in its entirety to avoid potential legal challenges in not fulfilling the agencies duties “to the fullest extent possible.”

We are gravely concerned that the PUC in their advisory opinion, FERC, the FAA, the EPA, RIDEM, and multiple states and their different departments - all charged with separate permitting, licensing and regulatory authority - might be looking at separate permitting and licensing requirements on a project by project basis, but not looking at the Project and associated projects as one project.

We are also concerned that if these agencies rely on current regulatory authority for issuing permits, they could be subject to legal action for failing to fulfill their duties and in failing to provide a complete report as to the impact of this one project. The PUC, FERC, the FAA, RIDEM and other agencies must not be allowed to dismiss federal court and federal law in its analysis of the Project construction and the many other components associated with Project.

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<sup>28</sup> <https://www.law.cornell.edu/cfr/text/40/1508.25>

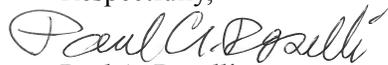
<sup>29</sup> <http://caselaw.findlaw.com/us-dc-circuit/1669208.html>

## **X. Conclusion**

The Burrillville Land Trust believes that there is no-one in local or state government authorized to make these connections and analyze the impacts of the Project. We hope that the PUC in their advisory opinion asks the state and the federal agencies to conduct an EIS as part of the permitting for this Project as demanded by NEPA.

Finally, the Burrillville Land Trust needs help as many state and local agencies are pushing for and in favor of permitting with no one at the local or state level who is acting on behalf of the birds, the trees, and all the life in this area. We are asking that the PUC issue a call for an Environmental Impact Statement to help give the natural world moral, ethical and legal standing.

Respectfully,



Paul A. Roselli  
President - Burrillville Land Trust  
PO Box 506  
Harrisville, Rhode Island 02830  
proselli@cox.net  
(401) 447-1560

cc. Burrillville Land Trust Board members