

November 8, 2017

Via Electronic Mail and Federal Express

Todd Anthony Bianco, PhD, EFSB Coordinator
RI Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, RI 02888

**Re: *Invenergy Thermal Development LLC's Application to Construct and Operate the
Clear River Energy Center in Burrillville, Rhode Island
Docket No.: SB-2015-16***

Dear Dr. Bianco:

On behalf of Invenergy Thermal Development LLC and the Clear River Energy Center Project ("Invenergy"), please find enclosed an original and three (3) copies of Invenergy's Objection to the Conservation Law Foundation's November 3, 2017 Motion.

Please let me know if you have any questions.

Very truly yours,



ALAN M. SHOER
ashoer@apslaw.com

Enclosures

cc: Service List

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

In re: Invenergy Thermal Development LLC : SB-2015-06
Application to Construct the Clear River :
Energy Center in Burrillville, R.I. :

**INVENERGY THERMAL DEVELOPMENT LLC’S OBJECTION AND
RESPONSE TO THE CONSERVATION LAW FOUNDATION’S MOTION
FOR SUPPLEMENTAL ADVISORY OPINIONS AND FOR LEAVE TO
TAKE DISCOVERY AND FILE SUPPLEMENTAL EXPERT TESTIMONY**

Now comes Invenergy Thermal Development LLC (“Invenergy”) and hereby objects and responds to the Conservation Law Foundation’s (“CLF’s”) November 3, 2017 Motion, requesting the Rhode Island Energy Facility Siting Board (“EFSB” or “Board”) seek supplemental advisory opinions from the Division of Statewide Planning (“Division of Planning”) and Office of Energy Resources (“OER”), grant CLF leave to take additional limited discovery and grant CLF leave to file supplemental expert testimony based on Invenergy’s November 1, 2017 informational filing regarding ISO-NE’s recent determination disqualifying the Clear River Energy Center (“CREC”) Unit 2 from participating in the upcoming Forward Capacity Auction (“FCA”). *See* CLF’s Motion, dated Nov. 3, 2017 (“CLF Mot.”). Subsequently, the Town of Burrillville (“Town”) filed a response joining and supporting CLF’s Motion. *See* Town’s Response, dated Nov. 3, 2017 (“Town Resp.”).

As discussed further below, Invenergy objects to the request for supplemental advisory opinions and objects to the request for limited discovery. Supplemental advisory opinions from the Division of Planning and OER are unnecessary because the material facts relied upon by both agencies in their previously filed advisory opinions have not changed, notwithstanding the recent determination made by ISO-NE. Moreover, as it has done many times before, CLF once again seeks to reargue determinations that the Board has previously made. Likewise, limited discovery

is unnecessary because Invenenergy supplied the Board and the parties with the relevant information and back-up data and analysis regarding ISO-NE's recent determination and if the parties have questions regarding the information Invenenergy filed, the parties can ask these questions during final hearings. Invenenergy does not object to the Board allowing the parties to submit limited supplemental expert testimony, related solely to the ISO-NE's recent determination. Invenenergy respectfully requests the Board allow the parties to submit limited supplemental testimony prior to the commencement of final hearings.

I. BACKGROUND

When Invenenergy filed its Application with the EFSB on October 29, 2015, Invenenergy had not yet obtained a Capacity Supply Obligation ("CSO") for CREC Unit 1 or Unit 2. At that time, Invenenergy indicated to the Board that it planned to participate in upcoming FCA's in order to obtain a CSO for Unit 1 and Unit 2. *See* Invenenergy Application, dated Oct. 29, 2015, at 116. In February of 2016, in FCA 10, CREC Unit 1 received a CSO; CREC Unit 2 had not yet obtained a CSO.

On September 12, 2016, the Division of Planning and OER submitted advisory opinions in this docket.¹ When the Division of Planning and OER submitted their original advisory opinions, Unit 2 had yet to receive a CSO. On April 13, 2017, the Board requested the Division of Planning render a supplemental advisory opinion to address Invenenergy's revised Water Supply Plan, which was filed with the Board on January 11, 2017 and to address additional elements of the State Guide Plans. *See* Order No. 110, dated and effective Apr. 13, 2017. The Board

¹ The Division of Planning and OER's advisory opinions relied upon and supported and/or agreed with the analysis conducted by PA Consulting Group. *See* Division of Planning Advisory Opinion, dated Sept. 12, 2016, at 6-13; OER Advisory Opinion, dated Sept. 12, 2016, at 7, 10-28, 34.

declined to request a supplemental advisory opinion from OER. *Id.* When the Board requested a supplemental advisory opinion from the Division of Planning and declined to request a supplemental advisory opinion from OER, Unit 2 had yet to receive a CSO, and Invenenergy had recently learned and informed the Board (and the parties) that Invenenergy did not receive a CSO in FCA 11. The Board did not request the Division of Planning (or OER) supplement its advisory opinion to analyze any purported impacts of Unit 2 not receiving a CSO in FCA 11. *See id.*²

On November 1, 2017, Invenenergy filed an informational filing with the Board, which attached a letter from John Niland, informing the Board that ISO-NE determined that, due to permitting and scheduling delays, CREC's Unit 2 is not qualified to participate in FCA 12. *See* Invenenergy Informational Filing, filed with the Board on Nov. 1, 2017. Invenenergy also attached a Memorandum prepared by PA Consulting Group ("PA"), updating its analysis "assuming a one-year postponement in CREC Unit 2's online date." *Id.* PA stated that "[t]here were no other assumption changes made to the analysis presented in Ryan Hardy's Pre-Filed Direct Testimony submitted to the Energy Facility Siting Board[.]" *Id.* PA determined that "the impact of assuming a one-year delay in CREC Unit 2's participation in the FCA is relatively minor" and "does not significantly alter the analysis and related findings." *Id.* PA concluded that the updated analysis "confirms" its conclusions, which "remain unchanged." *Id.*

Because PA's conclusions remain unchanged; because Invenenergy provided the Board (and the parties) with sufficient information regarding the ISO-NE's recent determination; and

² Similarly, on September 12, 2016, the Rhode Island Public Utilities Commission ("PUC") submitted an advisory opinion. When the PUC submitted its advisory opinion, Invenenergy had not secured a CSO for Unit 2. After FCA 11, when Invenenergy still had not secured a CSO for Unit 2, the Board declined to grant CLF's request for the PUC to render an additional supplemental advisory opinion. *Id.*

because the Board has previously addressed the issue of any need for supplemental advisory opinions regarding the absence of a CSO for Unit 2, supplemental advisory opinions from the Division of Planning and OER and additional discovery are unnecessary.

II. ADDITIONAL DISCOVERY

CLF and the Town seek the opportunity to “take limited additional discovery” pertaining to ISO-NE’s recent determination. *See* CLF Mot., at 3; Town Resp., at 1. Invenergy objects as it has provided CLF and the Town, as well as all parties in this proceeding, with all the relevant data and PA analysis required as a result of ISO-NE’s determination. Additional discovery is, therefore, unnecessary. If the parties have questions regarding the information and supporting information that Invenergy filed, the appropriate forum to ask those questions is during final hearings, not through additional discovery. Accordingly, Invenergy objects to CLF and the Town’s request for additional discovery.

III. SUPPLEMENTAL ADVISORY OPINIONS

CLF and the Town request that the Board order the Division of Planning and OER to render supplemental advisory opinions to “properly take into account the new information.” *See* CLF Mot., at 3; Town Resp., at 1.³ CLF suggests that ISO-NE’s recent determination “changes

³ CLF also notes in a footnote that it “has pending a motion that the EFSB request a Supplemental Advisory Opinion from the Department of Environmental Management[.]” CLF Mot., at 3 n.1. CLF never filed a motion requesting the Board seek a supplemental advisory opinion from the Rhode Island Department of Environmental Management (“RIDEM”). In a footnote in its motion for oral argument and a formal ruling on Invenergy’s request for a public comment hearing in the host community, the Town of Burrillville and in a footnote in its response to the Town’s Motion to Dismiss, CLF notes that it believes RIDEM “*should be asked* for an Advisory Opinion on the effects of the contract with the Narragansetts on Charlestown’s sole source water aquifer.” CLF’s Oct. 23, 2017 Motion, at 8 n.1 (emphasis added); *see also* CLF’s Oct. 31, 2017 Response, at 1 n.1. CLF does not have “pending a motion that the EFSB request a Supplemental Advisory Opinion” from RIDEM. Nevertheless, because the Narragansett Indian Tribe (“NIT”) is not Invenergy’s primary water supplier, but is only one of other additional contingent/redundant water supply source (“back-up to the back-up”), a

the fundamental basis of Invenenergy’s entire application” and that the Board, therefore, should request a supplemental advisory opinion from the Division of Planning and OER. *Id.* at 2.

Invenenergy submits that the advisory opinions rendered previously by the Division of Planning and OER are complete and that the proper time to discuss the issues raised in CLF’s Motion is during final hearings.⁴

First, CLF’s hyperbole notwithstanding, the ISO-NE’s recent determination *does not* change “the fundamental basis of Invenenergy’s entire application.” When Invenenergy filed its Application, it had not yet secured a CSO for Unit 1 or Unit 2. Invenenergy’s Application noted that it planned to participate in upcoming FCA’s to secure a CSO for both units. To date, Invenenergy has secured a CSO for Unit 1, but has not yet secured a CSO for Unit 2. In the information filing Invenenergy submitted to the Board on November 1, 2017, Invenenergy stated that the ISO-NE’s determination “does not have an impact on CREC’s ability to participate in future FCA’s (e.g. FCA 13 or beyond).” *See* Invenenergy’s Informational Filing, filed with the Board on Nov. 1, 2017. Accordingly, CLF’s statement that ISO-NE’s recent determination changes the “fundamental basis” of Invenenergy’s application is untrue.

The fact that Invenenergy will not be able to participate in FCA 12 due to permitting delays and, therefore, will not secure a CSO for Unit 2 in FCA 12 does not warrant the Division of Planning or OER rendering supplemental advisory opinions. An examination of the alleged “new” information merely repeats the same arguments made on essentially the same material

supplemental advisory opinion from RIDEM is unnecessary and would serve solely to unnecessarily delay this process.

⁴ It should be noted that the Board previously denied CLF and the Town’s request for supplemental advisory opinions from OER, stating “there was no need to request supplemental” advisory opinion from OER and holding that “any new information could be presented to the Board at the final hearings.” *See* Order No. 110, dated and effective Apr. 13, 2017, at 4.

facts that existed at the time the Division of Planning and OER rendered their previous advisory and supplemental advisory opinions. CREC Unit 2 did not have a second CSO at the time the Division of Planning and OER rendered its original and, as applicable, supplemental advisory opinions. The Division of Planning and OER have already analyzed CREC, even though CREC Unit 2 has not yet secured a CSO from the ISO-NE.⁵ These material facts remain the same, even after ISO-NE's recent determination regarding (only) FCA 12.

Importantly, PA analyzed what, if any impact, ISO-NE's determination would have on its previous analysis and determined that Ryan Hardy's market analysis findings "remain unchanged." *See* PA Consulting Group's Memorandum, dated Oct. 26, 2017, attached to Invenenergy's Nov. 1, 2017 Informational Filing, at 4. Both the Division of Planning and OER utilized PA's analysis when rendering their advisory opinions. *See* Division of Planning Advisory Opinion, dated Sept. 12, 2016, at 6-13; OER Advisory Opinion, dated Sept. 12, 2016, at 7, 10-28, 34; Division of Planning Supplemental Advisory Opinion, dated Aug. 10, 2017, at 3-9. Because ISO-NE's determination has not changed PA's findings, the Division of Planning and OER's advisory opinions are complete and supplemental advisory opinions are therefore unwarranted.

Because none of the material facts have changed since the Division of Planning and OER rendered previous advisory opinions, the ISO-NE's recent determination is not likely to change the conclusions made in the Division of Planning and OER's previous advisory opinions. As the

⁵ The Division of Planning rendered its original advisory opinion on September 12, 2016 and its supplemental advisory opinion on August 10, 2017. OER rendered its advisory opinion on September 12, 2016, and the Board did not request that it render a supplemental advisory opinion. When the original advisory opinions were rendered, CREC Unit 2 had yet to receive a CSO. When the Division of Planning rendered its supplemental advisory opinion and when the Board declined to request a supplemental advisory opinion from OER, CREC Unit 2 had not received a CSO in FCA 11.

PA analysis shows, the change in timing caused by the ISO-NE determination *insignificantly* alters the projected ratepayer savings, emissions reductions and economic output. The Division of Planning and OER have already completely and fully answered the questions previously asked and ordered by the Board. Both agencies will be available to answer questions at the final hearings, if these issues need to be explored further.

Accordingly, the previously rendered Division of Planning and OER advisory opinions are complete and do not require any further supplemental filings.

IV. SUPPLEMENTAL EXPERT TESTIMONY

Invenergy does not object to the Board allowing the parties an opportunity to submit limited supplemental expert testimony, related solely to the ISO-NE's determination to disqualify Unit 2 from participating in FCA 12 due to permitting delays. Invenergy respectfully requests the Board allow all the parties to submit limited supplemental testimony prior to the commencement of final hearings. Because the issues of "cost" and "need" are scheduled to be heard during the latter portion of final hearings, submitting limited supplemental testimony related to ISO-NE's recent determination prior to the start of final hearings should not prejudice any party.

V. CONCLUSION

For the reasons discussed above, the Board should deny CLF's and the Town's request for supplemental advisory opinions and additional discovery.

Respectfully submitted,
Invenergy Thermal Development LLC
By its attorneys,

/s/ Alan M. Shoer
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Dated: November 8, 2017

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2017, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer