

November 14, 2017

Via Electronic Mail and Federal Express

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

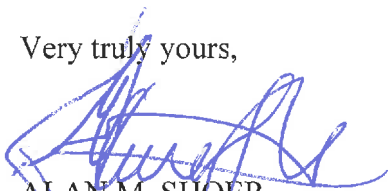
**Re: *Invenergy Thermal Development LLC's Application to Construct and Operate the
Clear River Energy Center in Burrillville, Rhode Island
Docket No.: SB-2015-16***

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 Town of Burrillville's Supplemental Memorandum to its October 27, 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’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 THE TOWN OF BURRILLVILLE’S SUPPLEMENTAL
MEMORANDUM TO ITS OCTOBER 27, 2017 MOTION TO DISMISS**

Now comes Invenergy Thermal Development LLC (“Invenergy”) and hereby objects to the Town of Burrillville’s (“Town’s”) Supplemental Memorandum in support of its October 27, 2017 Motion, requesting the Rhode Island Energy Facility Siting Board (“EFSB” or “Board”) dismiss Invenergy’s EFSB Application (“Town’s Supplemental Memorandum” or “Town’s Memorandum”). For the reasons stated below, and in Invenergy’s November 6, 2017 Objection, the Town’s Motion to Dismiss should be denied, regardless of the distortions offered by the Town in its Supplemental Memorandum.

The basis for the Town’s Motion to Dismiss and its Supplemental Memorandum is its assertion that Invenergy allegedly “[f]ail[ed] to [c]omply with an Order of the EFSB and EFSB Rules” by purportedly “fail[ing] to disclose essential information in this docket.” *See* Town’s Nov. 7, 2017 Supplemental Memorandum (“Supp. Mem.”), 1; *see also* Town’s Oct. 27, 2017 Motion (“Town Mot.”), 1. In its Supplemental Memorandum, the Town now argues that Invenergy withheld information that the ISO-NE disqualified Clear River Energy Center (“CREC”) Unit 2 from participating in the forward capacity auction 12 (“FCA 12”), stating that Invenergy “should have” provided notice of ISO-NE’s determination “immediately,” before requesting that PA Consulting Group (“PA”) update its analysis. *See* Supp. Mem., at 1, 3. The Town also contends that “Invenergy further withheld relevant information when it failed to

disclose its funding of the public relations work being done on its behalf by a pro-CREC group called Rhode Islanders for Affordable Energy, and its related website, in its supplemental response to EFSB Data Request No. 3-1.” *Id.* at 2. Once again, like the claims raised in the Town’s October 27, 2017 Motion to Dismiss, and as it has done so many times in this proceeding, the Town distorts and misrepresents the facts in order to create and perpetuate false impressions with the Board, merely to support its opposition to the CREC Project.

The Town’s argument fails for the following reasons: (1) Invenergy appropriately informed the EFSB, the parties and the public that ISO-NE disqualified CREC Unit 2 from participating in FCA 12 in its informational filing, dated November 1, 2017; (2) Invenergy did not “improperly with[o]ld relevant information” when it filed its Supplemental Data Response to EFSB Data Request, No. 1-3; and (3) the Town’s claim that Invenergy “failed to disclose its funding” of a statewide advocacy group is blatantly false.

First, Invenergy has not “failed to inform” the EFSB, the parties or the public that ISO-NE disqualified CREC Unit 2 from participating in FCA 12. Invenergy’s November 1, 2017 informational filing did exactly that, by providing the Board and the parties with timely updates along with the relevant information and data analysis regarding ISO-NE’s determination.

In addition, despite these patently false assertions, the Town’s Supplemental Memorandum fails to provide any legal support for its claim that Invenergy “should have” provided notice of ISO-NE’s determination “immediately,” before requesting that PA update its analysis. *Id.* at 3. The Town neither cites nor references a Board Rule or statute to support its unfounded claim. Invenergy provided the Board, the parties and the public with the relevant information and data analysis regarding ISO-NE’s determination as soon as it could be prepared. By doing so, Invenergy has proactively and expeditiously provided the Board and the parties

with the opportunity to evaluate the relatively minor changes¹ to the data input and projections that support the testimony and data previously provided by Invenergy's expert consultants from PA.

Inexplicably, however, the Town criticizes Invenergy for being proactive and supplying this updated information as soon as it could be prepared so that the Board, the parties and the agencies would have as much time as possible to review and respond as necessary.² What the Town fails to appreciate is that the ISO-NE's determination is very sensitive information that was only very recently disclosed in a confidential filing by ISO-NE, in its required filings with the Federal Energy Regulatory Commission ("the FERC") that was made on November 7, 2017.³ Indeed, Invenergy proactively filed its informational filing with the Board on November 1, 2017, *approximately one week before* the actual ISO-NE's filing with the FERC. Invenergy therefore timely updated the Board, the parties and the public regarding ISO-NE's determination.

Second, Invenergy did not "improperly with[o]ld relevant information" when it filed its Supplemental Data Response to EFSB Data Request, No. 1-3. Once again, the Town completely

¹ This is an overarching point that bears mentioning. In typical "mountain out of a molehill" fashion, the Town attempts to turn a matter of extremely limited scope and impact, CREC Unit 2's inability to participate only in FCA 12, and falsely convert it into a cataclysmic event that warrants dismissal.

² Had Invenergy not supplied the necessary updates to the previous analysis filed with the Board in response to data requests, the Town would have criticized Invenergy. In any event, Invenergy has suggested that the Board allow all parties the opportunity to supplement testimony as it relates to the ISO-NE's recent determination. *See* Invenergy's Objection and Response, filed on Nov. 8, 2017.

³ ISO-NE made this required information filing to FERC on November 7, 2017 to inform FERC for the first time publicly (and where required in a confidential document) of ISO-NE's determinations regarding entities that submitted qualification requests for the FCA 12. https://www.iso-ne.com/static-assets/documents/2017/11/public_info_filing_fca_12.pdf This filing is required pursuant to Section III.13.8.1 of the ISO-NE Transmission, Markets and Services Tariff.

mischaracterizes and distorts the information requested in the underlying data request. The EFSB Data Request, No. 1-3 states: “Please describe the *community outreach* that has been employed by Invenergy Thermal Development LLC and include copies of all materials circulated to individuals and media. Included in this response, please detail future plans for *community outreach* during this application process and, if the application is approved, for during construction and operation.” (Emphasis added.) The information that the Town claims Invenergy should have noted in its supplemental response is not information prepared by Invenergy for “community outreach” with the residents of the Town of Burrillville. The organization that the Town complains about, “Rhode Islanders for Affordable Energy,” is a statewide business advocacy group that supports the worthy goals of lowering energy costs and increasing economic development opportunities in the state. This statewide advocacy group does not, to Invenergy’s knowledge, engage in door-to-door, local open house meetings, or other well understood local town “community outreach” efforts to the residents of the Town of Burrillville with regard to the proposed CREC. Notwithstanding that the existence of this statewide advocacy group is not responsive to this data request, there is also no separate legal requirement that Invenergy inform the Board (or the Town) about the organizations to which it financially contributes – this is certainly not part of the criteria that Invenergy must meet under R.I. Gen. Laws §42-98-11.⁴

Third, the Town’s claim that Invenergy “failed to disclose its funding” of this statewide advocacy group is patently false. Invenergy has not “hid” the fact that Invenergy contributes financially to “Rhode Islanders for Affordable Energy,” as even the Town reluctantly admits in its own Supplemental Memorandum. *See* Supp. Mem., at 5 (stating that the “Rhode Islanders for

⁴ The Town never issued a data request for this type of information and cannot attempt to cure its failure by mischaracterizing the EFSB’s data request.

Affordable Energy” website notes that it is paid for by Invenergy). Invenergy, therefore, did not “hid[e] the ball[,]” as the Town’s Memorandum falsely states in its ongoing attempt to fabricate an issue before the Board. *See id.* at 4. The website cited by the Town shows that Invenergy has told the world that Invenergy is a funding source for this organization.

While the Town’s most recent filing is entitled “Supplemental Memorandum in Support of the Town of Burrillville’s Motion for Dismissal or Denial of Invenergy’s Application *for Failure to Comply with an Order of the EFSB and EFSB Rules[,]*” the Town’s Supplemental Memorandum fails to cite to a single EFSB Rule or EFSB Order to support its claims that Invenergy has done anything that would warrant dismissal. *Id.* at 1 (emphasis added). The Town’s Supplemental Memorandum is the latest example of the Town submitting a filing that completely lacks legal substance and serves solely to attack and berate Invenergy by making false statements that blatantly disregard the truth. Similar to the Town’s Motion to Dismiss, this Supplemental Memorandum is meritless.

Accordingly, the Town’s Motion to Dismiss should be denied.

Respectfully submitted,
INVENERGY THERMAL DEVELOPMENT LLC
By Its Attorneys:

/s/ Alan M. Shoer
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Dated: November 14, 2017

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2017, I delivered a true copy of the foregoing document to the Energy Facilities Siting Board via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer_____