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November 20, 2017

Todd A. Bianco
Coordinator
Rhode Island Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, RI 02888

Re: Invenenergy Thermal Development LLC – Clear River Energy Center
Docket No. SB-2015-06

Dear Dr. Bianco:


As you know, this office represents the Town of Burrillville in this docket.

Enclosed please find an original and three (3) copies of the Town's (1) Reply to the Rhode Island Building and Construction Trades Council's ("RIBCTC") Objection to the Town's Motion for Dismissal or Denial of Invenenergy's Application for Failure to Comply with and Order of the EFSB and EFSB Rules, and Conservation Law Foundation's Motion for Supplemental Advisory Opinions, Discovery, and Supplemental Expert Testimony, and (2) Objection to the RIBCTC's Request Under Superior Court Rule 11.

Electronic copies of the Town's Reply have been sent to the service list.

If you need any further information, please do not hesitate to contact me.

Very truly yours,


Michael R. McElroy

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 Clear River Energy : Docket No. SB-2015-06
Center in Burrillville, Rhode Island :

**THE TOWN OF BURRILLVILLE'S
(1) REPLY TO THE RHODE ISLAND BUILDING AND CONSTRUCTION TRADES
COUNCIL'S ("RIBCTC") OBJECTION TO THE TOWN'S MOTION FOR DISMISSAL
OR DENIAL OF INVENERGY'S APPLICATION FOR FAILURE TO COMPLY WITH
AN ORDER OF THE EFSB AND EFSB RULES, AND CONSERVATION LAW
FOUNDATION'S MOTION FOR SUPPLEMENTAL ADVISORY OPINIONS,
DISCOVERY, AND SUPPLEMENTAL EXPERT TESTIMONY, AND
(2) OBJECTION TO THE RIBCTC'S REQUEST UNDER SUPERIOR COURT RULE 11**

The Town of Burrillville ("Town") hereby files this (1) Reply to the Rhode Island Building and Construction Trades Council's ("RIBCTC") Objection to the Town's Motion for Dismissal or Denial of Invenergy Thermal Development LLC's ("Invenergy") Application for Failure to Comply with an Order of the EFSB and EFSB Rules ("Town's Motion") and Conservation Law Foundation's ("CLF") Motion for Supplemental Advisory Opinions, Discovery, and Supplemental Expert Testimony ("RIBCTC Objection"), and (2) Objection to the RIBCTC's Request Under Superior Court Rule 11.

I. DISCUSSION

A. RIBCTC's Objection to the Town's Motion

RIBCTC seeks the denial of the Town's Motion by joining in Invenergy's filed Objection to the Town's Motion. *See* RIBCTC Objection, at 1. The Town's Reply (1) to Invenergy's Objection to the Town's Motion, and (2) to Invenergy's Objection to the Town's Supplemental Memorandum in Support of the Town's Motion is hereby incorporated by reference as though fully set forth herein. The Town respectfully requests that Invenergy's application be dismissed or denied with prejudice and this docket closed.

B. RIBCTC's Objection to CLF's Motion

RIBCTC also seeks the denial of CLF's Motion for Supplemental Advisory Opinions, Discovery, and Supplemental Expert Testimony ("CLF's Motion") by joining in Invenergy's filed Objection to CLF's Motion. *See* RIBCTC Objection, at 1. The Town's Reply Joining in CLF's Reply to Invenergy's Objection to CLF's Motion, and Joining in CLF's New Motion for Appointment of an Independent Financial Analyst is hereby incorporated by reference as though fully set forth herein. The Town respectfully requests that, if Invenergy's application is neither dismissed nor denied under the Town's Motion, that the EFSB grant CLF's Motion.

C. RIBCTC's request under Superior Court Rule 11 should be denied.

RIBCTC claims that the Town is "doing everything possible" to harass, unnecessarily delay, or needlessly increase the cost of this administrative process. *See* RIBCTC Objection, at 3. RIBCTC "urges" the EFSB to "appropriately sanction any party for submitting any filings not in compliance with R.I. Super. Ct. Rule Civ. Pro. 11." *See* RIBCTC Objection, at 4. RIBCTC's request under Rule 11 of the R.I. Superior Court Rules ("Superior Court Rule 11") fails for numerous reasons.

First, Superior Court Rule 11 is not applicable in this matter. Proceedings before the EFSB are guided by Energy Facility Siting Act ("EFS Act") and the EFSB Rules of Practice and Procedure ("EFSB Rules"). *See* R.I.G.L. § 42-98-1, *et seq.* When the EFS Act or EFSB Rules intend to incorporate other legislation or court rules, they do so explicitly.¹ Neither the EFS Act nor the EFSB Rules refer to or incorporate Superior Court Rule 11.

¹ The EFS Act provides that EFSB proceedings shall comply with the requirements of the Administrative Procedures Act. *See* R.I.G.L. § 42-98-7(e). The EFSB Rules incorporate Rule 26 of the Superior Court Rules of Civil Procedure for discovery matters, and the Superior Court Rules of Evidence for evidentiary matters. *See* EFSB Rules 1.27(b) and 1.29(a).

Second, even if Superior Court Rule 11 applied in this context, RIBCTC fails to meet the burden of proof necessary to demonstrate that the Town violated Superior Court Rule 11.² RIBCTC sets forth bare legal conclusions that certain motions filed by the Town (and CLF) “are not with any factual or legal basis,” “appear to be duplicative and redundant,” and were “unnecessary.” *See* RIBCTC Objection, at 1-3. However, other than a list of motions filed by the Town (and CLF), RIBCTC offers no factual support for its contentions.³

Third, RIBCTC contends that the Town (and CLF) “are also denying the applicant due process.” *See* RIBCTC Objection, at 3. However, RIBCTC cannot rest its claim on Invenergy’s due process rights. *See Sprint Comm. Co., L.P. v. APCC Services, Inc.*, 554 U.S. 269, 290 (2008) (*citing Warth v. Seldin*, 422 U.S. 490, 499 (1975) (“...the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.”)).

Consequently, we respectfully submit that RIBCTC’s request under Superior Court Rule 11 should be denied.


II. CONCLUSION

Therefore, the Town respectfully requests (A) that Invenergy’s application be dismissed or denied with prejudice and this docket closed, (B) that CLF’s Motion be granted if Invenergy’s application is neither dismissed nor denied pursuant to the Town’s Motion, and (C) that RIBCTC’s Superior Court Rule 11 request be denied.

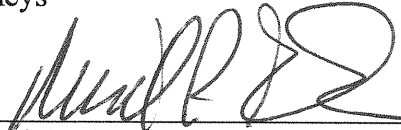
² “[A] judge should resort to [Rule 11 sanctions] only when reasonably necessary—and then with due circumspection.” *U.S. v. Figueroa-Arenas*, 292 F.3d 276, 279 (1st Cir. 2002) (*citing Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991)).

³ Ironically, RIBCTC’s motion fails to offer any factual or legal basis to support its claim that the Town allegedly filed motions without any factual or legal basis.

Respectfully submitted,
Town of Burrillville
By its attorneys



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Date: November 20, 2017

CERTIFICATE OF SERVICE

I certify that the original and three (3) photocopies of this Reply were filed by U.S. Mail, postage prepared, with the Coordinator of the EFSB, 89 Jefferson Boulevard, Warwick, RI 02888. In addition, electronic copies of this Reply were served via email on the service list for this docket. I certify that all of the foregoing was done on November 20, 2017.



Theresa Gallo

SB-2015-06 Invenergy CREC Service List as of 11/20/2017

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