

December 22, 2017

Energy Facility Siting Board  
89 Jefferson Blvd.  
Warwick, RI 02888

To the Energy Facility Siting Board

Re: Invenergy Application, Docket SB 2015-06

On December 11, 2017, Conservation Law Foundation (CLF) and the Town of Burrillville (Town) jointly wrote to the Energy Facility Siting Board (EFSB) to advise the EFSB of the pendency of two lawsuits at the Federal Energy Regulatory Commission (FERC): cases ER18-349 and EL18-31. We refer herein to that previous letter as the December 11 Letter. Our December 11 Letter asked the EFSB to schedule a hearing at which Invenergy would be obligated to show cause why this EFSB Docket 2015-06 should not be suspended pending the resolution of the two cases at FERC.

On December 12, 2017, the next day, the EFSB voted unanimously to schedule the Show Cause Hearing. That hearing is now scheduled for Tuesday, January 30, 2018.

CLF and the Town now write to request that the EFSB take administrative notice of a third, newly filed lawsuit pending at FERC which poses yet an additional, potentially mortal, threat to Invenergy's star-crossed plan to build a new fossil-fuel power plant in Burrillville. See Veranda Beach Club v. Western Surety Co., 936 F.2d 1364, 1369 (1st Cir. 1991) (per Selya, J., discussing "details of this star-crossed transaction . . .").

The newly filed lawsuit at FERC is Calpine Corporation and LS Power Associates, L.P., v. ISO New England Inc., FERC Docket EL18-53 (the Calpine Lawsuit). It was filed yesterday.

### Background

The two earlier-filed FERC lawsuits (ER 18-349 and EL 18-31) are two sides of the same coin, because the issues involved in both lawsuits are the same. Both lawsuits pertain to how to

allocate hundreds of millions of dollars in costs to interconnect Invenergy's proposed power plant to the New England electricity grid operated by ISO-NE. The ISO's FERC-approved Tariff – the Tariff that has long applied to every power generator in New England – requires Invenergy to pay those interconnection costs.

In both lawsuits, Invenergy seeks to violate the long-standing, FERC-approved Tariff applicable to every other power plant owner in New England and transfer hundreds of millions of dollars of interconnection expenses to ratepayers.

Not surprisingly, the two earlier-filed FERC lawsuits have brought in a wide array of parties opposing Invenergy. Connecticut's statutory consumer advocate, the Office of Consumer Counsel (Connecticut OCC), and the New England States Committee on Electricity (NESCOE) have both intervened to oppose Invenergy's efforts to transfer costs to ratepayers. The ISO-NE, which runs the electricity grid, and the New England Power Pool (NEPOOL), both concerned with operating fair markets, oppose Invenergy. The Maine Public Utilities Commission and the Massachusetts Department of Public Utilities have intervened to oppose Invenergy. The biggest owners of generation resources in New England (Dominion Energy Services, NextEra Energy Resources LLC, NRG Power Marketing) have all intervened to oppose Invenergy's efforts to evade the ISO's Tariff provisions that applies to all other power companies.

In our December 11, 2017 Letter, referring to the two FERC lawsuits, we stated: "If Invenergy wins, interconnection costs of as much as \$164 million would be shifted to ratepayers." (December 11 Letter, at 6.) "If Invenergy loses, it would be responsible for posting Financial Assurance of perhaps as much as \$88 million. Invenergy's ability or willingness to post the Financial Assurance may be of interest to the EFSB." (December 11 Letter, at 7.)

One more important point was addressed in our December 11, 2017 Letter. Invenergy has told the EFSB that its (Invenergy's) Turbine One will be operational on June 1, 2021. We pointed out that this is impossible, because – in order for Turbine One to be operational in June 2021 – Invenergy would have had to have signed the Large Generator Interconnection Agreement (LGIA) no later than December 1, 2017. Invenergy did not do that; instead it sued the ISO at FERC, seeking to transfer interconnection costs to ratepayers and to change the December 1, 2017 deadline for entering into the LGIA.

### The New Lawsuit at FERC

The Calpine Lawsuit asks FERC to order ISO-NE to not treat Invenergy's Turbine One as an Existing Capacity Resource in the upcoming Forward Capacity Auction 12 (FCA-12), to be conducted on February 5, 2018, because "the unit [Invenergy's Turbine One] cannot reasonably be expected to be operational before the 2021-2022 Capacity Commitment Period." Calpine Lawsuit, at 2, lines 3-4.

ISO's Tariff Section III.13.1.1.2.2.2 permits the ISO to involuntarily terminate the 485 MW Capacity Supply Obligation (CSO) that Invenergy obtained in FCA-10; however, the ISO will not be able to do that until June 2018, when Invenergy has been a Non-Commercial Resource for two consecutive years.

Calpine's Lawsuit asks FERC to force ISO to act sooner, and to involuntarily terminate Invenergy's 485 MW CSO on Turbine One now, before the ISO conducts its next FCA on February 5, 2018. Calpine's reasoning is simple. Invenergy's Turbine One cannot be built by 2021; thus the 485 phantom megawatts of power from Turbine One should not be allowed to distort the outcome of FCA-12. Referring to Invenergy's CSO for the 2021-2022 Capacity Commitment Period, Calpine states that Invenergy's Turbine One "*will not exist*" in 2021-2022. (Calpine Lawsuit, at 13, boldface emphasis and italics, as in original.)

Calpine provides two bases for its view that Invenergy's Turbine One "*will not exist*" in 2021-2022.

First, Invenergy "has decided not to execute a Large Generator Interconnection Agreement (LGIA) for the project" (Calpine Lawsuit, at 7) and because the LGIA was not executed by December 1, 2017, "any chance of the Clear River Project achieving even the newly 'targeted' commercial operation date of June 1, 2021 would appear to be out the window." Calpine Lawsuit, at 9-10. These facts are not news to this EFSB, because (as we noted above) CLF and Burrillville presented the same facts to the EFSB in our December 11 Letter.

However, Calpine's second argument may be new to the EFSB. The ISO has already disqualified Invenergy's Turbine Two from even participating in FCA-12 because the ISO has determined that Turbine Two cannot and will not be operational by June 2021. However, Calpine says, Turbines One and Two "face identical permitting delays" and have identical development and construction schedules. Calpine Lawsuit, at 11. Thus, Calpine argues, the ISO must act now to involuntarily terminate Invenergy's 485 MW CSO on Turbine One – for the exact same reason that the ISO has already disqualified Invenergy's Turbine Two from FCA-12.

That is, the ISO has already disqualified Invenergy's Turbine Two from participating in FCA-12 because the ISO recognized, correctly, that Turbine Two cannot and will not be operational in 2021-2022. Calpine is asking FERC to direct the ISO not to allow the 485 MW of phantom power to distort the results of the same auction, because Turbine One will not exist in 2021-2022 either.

### The Implications for This Case

In our December 11 Letter, we concluded this way: “No one in the world knows how these two FERC cases will end. However, it is clear that the results will have a profound effect on this EFSB Docket 2015-06.” December 11 Letter, at 7.

Similarly, no one in the world knows how the newly filed Calpine Lawsuit will end. But this much is now clear: Invenergy faces a growing number of lawsuits at FERC, against a daunting array of utilities commissions, ratepayer advocates, power plant owners, and even NEPOOL and the ISO itself.

For these reasons, CLF and the Town respectfully request that the EFSB take administrative notice of the Calpine Lawsuit (EL18-53) in making its ruling on January 30, 2018. As stated in our December 11, 2017 Letter, CLF and the Town ask that this Docket 2015-06 be suspended indefinitely pending: (1) resolution of all lawsuits at FERC pertaining to Invenergy; and (2) receipt of evidence from Invenergy that it can and will proceed with its proposed project in Burrillville in light of whatever FERC orders are issued.

Respectfully submitted,



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Certificate of Service

I certify that an original, plus three hard copies, were mailed by first class mail, postage prepaid, to the EFSB; I further certify that electronic copies were served on the entire service list in this Docket. I certify that the foregoing was done on December 22, 2017.

A handwritten signature in blue ink, appearing to read "Jeremy Bu", is written over a horizontal line.