

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

IN RE: Application of : **Docket No. SB 20 15-06**
Invenergy Thermal Development LLC 's :
Proposal for Clear River Energy Center :

**MOTION FOR INTERVENTION OF THE TRIBAL COUNCIL
OF THE NARRAGANSETT INDIAN TRIBE**

I. INTRODUCTION

Now comes the Tribal Council of the Narragansett Indian Tribe (hereafter “Tribal Council”) and pursuant to Rule 1.10(b)(2) of the Rules of Practice and Procedure of the Energy Facilities Siting Board (hereafter “EFSB”), respectfully files this Motion for Intervention in the above-captioned docket. This Docket was opened in November, 2015, yet the directly affected interest of the Tribal Council was only revealed when media outlets reported on September 28, 2017 that Invenergy Thermal Development LLC had reached an agreement to purchase water from the Narragansett Indian Tribe (hereafter “NIT”).

Thus, after due diligence in its attempt to evaluate this purported agreement, and only after those efforts have proven insufficient in meeting its goal and duty to protect its interest, the Tribal Council has determined that its only recourse is to file this motion. Should the EFSB determine it appropriate, the Tribal Council is amenable to being granted intervenor status that limits its participation to the issue of the Water Supply Plan for the proposed facility.

II. THE INTERVENOR

The Tribal Council is a body of nine (9) members empowered by the NIT Constitution to

“act as an executive board on matters pertaining to tribal affairs.” A majority of the current members have determined to seek intervenor status.¹

The Narragansett Indian Tribe holds lands encompassing more than 1,900 acres surrounded by the Town of Charlestown, Rhode Island, and codified under the Rhode Island Indian Claims Settlement Act, 25 U.S.C. §§ 1701-1716. These lands, often referred to as “the reservation” by tribal members in conversation, are nourished by a body of water known as the Lower Wood River Aquifer, which is part of the Pawcatuck River Basin.

While Tribal Council members have not received a copy of the purported agreement between Invenergy and the Tribe, generally speaking formal contracts that may be implied or expressly created in this type of agreement require a tribal resolution, signed by the Chief or First Councilman. Such a resolution requires a special tribal meeting and a vote by the body. No tribal meeting or vote has occurred regarding a proposed agreement to sell tribal water to Invenergy.

III. STANDARD FOR DETERMINING INTERVENTION

Rule 1.10 of the Rules of Practice and Procedure of the Energy Facilities Siting Board governs the standard for determining intervenor status. Intervention is “necessary or appropriate” if a party's interest is “directly affected” and “not adequately represented by existing parties and as to which petitioners may be bound by the Board's action in the proceeding.” Rules of Practice and Procedure, 1.10(b)(2).

¹ There currently exists an internal dispute as to the representation of the elected leadership of the Narragansett Indian Tribe. While some aspects of this dispute have been a matter of public record (see e.g. <http://www.providencejournal.com/news/20161227/its-over-occupiers-of-narragansett-building-claim-victory> (last viewed 10.20.17)), the Tribal Council will not address additional details of the dispute in this filing, as its goal in this Motion is simply to protect its interest regarding the potential impact of any agreements involving the water supply on tribal lands, and not to vet issues of internal governance in this forum.

IV. THE INTEREST OF THE NARRAGANSETT INDIAN TRIBE TRIBAL COUNCIL

Intervention by the Tribal Council more than meets the prescribed criteria, as its interest is directly affected at a fundamental level, that of the most precious resource available to its future generations, i.e. the water supply of the Narragansett people on Narragansett land. Furthermore, no existing intervenor even purports to represent much less is capable of adequately representing the interests of the Tribal Council.

A. The Tribal Council's Interest in Protecting the Water Supply is Directly Affected by the Proposed Clear River Energy Center.

“Water is life” has become a familiar maxim to Native and non-Native peoples throughout the Americas in recent times, much of it due to concerns regarding the impact of contested development projects on water supply in Indian Country. Here, the actual site proposed for the Clear River Energy Center in Burrillville is roughly fifty miles from Narragansett tribal lands, a distance considered “far” by Rhode Island standards. Yet the proposed purchase by Invenergy of water from tribal lands brings the issue as close to home physically, economically, and culturally as possible. The effort by many, many people over the years to secure a tribal homeland for the Narragansett Indian Tribe is far too complex to summarize within the pages of this motion. *See generally, Narragansett Indian Tribe v. State of Rhode Island* 449 F.3d 16, 18-20 (1st Cir., 2006). What is clear is that the members of the Tribe have a profoundly important interest in protecting and preserving the water that belongs to the Tribe. Members of the Tribal Council, beyond an interest, have a Constitutional obligation as elected representatives of the tribal membership to protect their water supply.

The *Water Supply Plan - Supplement* submitted by Invenergy and dated September 28,

2017 states that “CREC has also secured a commitment from the Narragansett Indian Tribe (“the Tribe”) to supply process makeup water to the Facility as an additional back-up or contingent water supply.” Without having direct knowledge of the specific content of the agreement (since the Appendix I referenced in the document is fully redacted) the text of this supplemental plan makes it clear that Invenergy plans to draw water from the Lower Wood River Aquifer, ostensibly using existing tribal well infrastructure. This water source and supply system, as the report acknowledges, provides the public water supply needs associated with tribal land. The outcome of the EFSB's decision, should it precipitate or allow for the sale of any of the Tribe's water, even on a contingent basis, could potentially bind Narragansett Tribal Members and the Tribal Council charged with representing them, for generations to come.

B. The Tribal Council's Interest in Protecting the Water Supply is Not Adequately Represented by Existing Parties.

None of the current intervenors is capable of representing the interests of the Tribal Council in this docket, even should they be so inclined. Other parties are charged with representing a specific population and geographic area (e.g. Town of Burrillville), a broad environmental perspective (e.g. Conservation Law Foundation) or the specific interest of their membership in securing employment (e.g. Rhode Island Building and Construction Trades Council).

Although the Town of Charlestown was recently granted status as an Intervenor, the Petitioner submits that the Town of Charlestown is wholly incapable of representing the interests of the Tribal Council, and to expect it to do so would be patently unfair to both the Tribal Council and the Town. That the Town and the NIT share a single sole-source aquifer

does not bind their interest in this matter; instead it creates the potential for them to be adverse actors competing for the same limited resource. Charlestown must represent the interests of a specific population: its residents. The Tribal Council must represent the interests of a *distinct* population: its members. While there may be and one can certainly hope for occasions where these interests align, it would be foolish and short-sighted for anyone to assume that the Town of Charlestown can represent the interests of the Tribal Council. This divergence of interests is clear without even beginning to recount any of the historic and sometimes recurring tensions that arise between the municipality and the Tribe.

V. THIS MOTION IS TIMELY

Any perceived delay in the timing of this Motion cannot be attributed to the Tribal Council. The purported agreement between Invenergy and the Narragansett Indian Tribe was only revealed to the Tribal Council through media reports after the proposal was announced in the Water Supply Plan – Supplement submitted by Invenergy on September 28, 2017. Before that time, the Tribal Council was simply a disinterested party with no reason to consider seeking intervenor status.

When media reports revealed the proposed sale of water belonging to the Narragansett Indian Tribe, Tribal Council members immediately sought to learn more about the proposal and to discuss possible responses. Members attempted to learn about the completely new terrain of the EFSB and its permitting process, reviewed what background information they could quickly find about the project, and explored the possibility of retaining counsel to represent them. Even as late as October 19, the Tribal Council, through its attorney, attempted

to communicate with Invergy through its attorneys to obtain a copy of the purported agreement. Invergy's attorneys declined to provide one.

VI. CONCLUSION

WHEREFORE, for the aforementioned reasons, the Tribal Council respectfully requests that it be granted intervenor status in this docket.

Respectfully submitted,

**TRIBAL COUNCIL OF THE
NARRAGANSETT INDIAN TRIBE**
By and Through Its Attorney,

/s/ Shannah Kurland
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Dated: October 20, 2017

CERTIFICATION

I, the undersigned, do hereby certify that I did forward a copy of the within Motion to Intervene via e-mail to all on the following service list on the 20th day of October, 2017.

/s/ Shannah Kurland

SB-2015-06 Invenergy CREC Service List as of 10/12/2017

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