

**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 :

**REPLY TO OBJECTION BY INVENERGY TO THE MOTION FOR INTERVENTION OF THE
TRIBAL COUNCIL OF THE NARRAGANSETT INDIAN TRIBE**

Now comes the Tribal Council of the Narragansett Indian Tribe (hereafter “Tribal Council”) and replies to the Objection by Invenergy to the Tribal Council's Motion for Intervention in the above-captioned docket. Invenergy's objection reflects a sudden and convenient interest in a long-standing, complex internal governance dispute which frankly, is not within the energy company's purview and which they should have discovered and taken into account before attempting to create an agreement to purchase Tribal water.

While the Tribal Council's Motion to Intervene did not discuss internal tribal disputes in any depth, this Reply will address two key points regarding which Invenergy appears to be uninformed. First, the Tribal Court referenced in the Opposition and its attachments is not a functioning Tribal Court. In fact, it was suspended by the Tribal Body and Tribal Government in 2013. *See* EXHIBIT A, Affidavit of Chief Sachem Matthew Thomas. There has been no formal action to re-establish the Court since. Thus, while any supposed order by a Court that no longer exists, along with a couple of dollars might purchase a cup of coffee, it cannot serve as a legal basis for rejecting the right of the Tribal Council to protect their water supply in this government forum.

Rather than present a more full and balanced account of the legal terrain surrounding this internal governance dispute, Invenergy simply regurgitates the mischaracterizations of federal court decisions that counsel to certain individual Tribal members has set forth. Specifically, the Objection uses the circular reasoning that because the body claiming to be the Tribal Court says that these Tribal Council members are not legitimate, the issue is settled. What Invenergy and the author of their source documents fail to grasp is that the case law they reference, specifically *Narragansett Indian Tribe Tribal Council v. Matthew Thomas*, 1:16-cv-622 (D.R.I. 2016) and *Narragansett Indian Tribe v. Rhode Island*, 449 F. 3d 16 (1st Cir. 2006) in no way shape or form confer validity on the entity nor the individual presently purporting to function as a Tribal Court. Those decisions simply confirm the importance of sovereignty in the particular questions before each court, and have no application to attempts by certain Tribal members to enter into secret agreements to sell Tribal resources without informing much less seeking approval from the elected Tribal Council or the Tribal Body.

Council members who submitted the Motion to Intervene in this docket were duly elected by Tribal members in 2014, despite numerous attempts to subvert the democratic process, and the “appointment” of alternative Council Members in 2016. It is unfortunate that Invenergy did not attempt to research and reach a deeper understanding of the complex and difficult situation which the Tribal Council is working to resolve; however the company's vested interest in seeing the Energy Facilities Siting Board choose a side in this dispute, and its thinly veiled threat that the Board would “embroil” itself in litigation unless it chose the side Invenergy happens to favor, demonstrates exactly how necessary it is that the Tribal Council be allowed to speak for itself in these proceedings.

WHEREFORE, for the aforementioned reasons, the Tribal Council respectfully requests that its Motion to Intervene be granted.

Respectfully submitted,

**TRIBAL COUNCIL OF THE
NARRAGANSETT INDIAN TRIBE
First Councilman Domingo Talldog Monroe
Second Councilman Adam Jennings
Councilwoman Chastity Ann Machado
Councilman Randy Noka
Councilwoman Ollie Best
By and Through Its Attorney,**

/s/ Shannah Kurland

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Dated: October 27, 2017

CERTIFICATION

I, the undersigned, do hereby certify that I did forward a copy of the within Reply to Invenergy's Opposition to the Tribal Council's Motion to Intervene via e-mail to all on the following service list on the 27th day of October, 2017.

/s/ Shannah Kurland

EXHIBIT A

UNITED STATES DEPARTMENT OF INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS

KIM HAZARD

v.

Docket No IBIA 12-069

**EASTERN REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS**

AFFIDAVIT OF CHIEF SACHEM MATTHEW THOMAS

Now comes Chief Sachem Matthew Thomas and after being sworn, hereby deposes and states:

1. I am the Chief Sachem of the Narragansett Indian Tribe and make this affidavit in good faith and except as otherwise indicated, on the basis of personal knowledge of the facts set forth herein.
2. The Narragansett Indian Tribe is a federally acknowledged and recognized tribe of Indians with inherent privileges and immunities. (48 Fed. Reg. 6177-78).
3. I have been the Chief Sachem of the Narragansett Indian Tribe since 1997.
4. I am familiar with the allegations in the above captioned action.
5. I have read the "2014 General Election Notice" of the Narragansett Indian Tribal Court entered on November 6, 2014.
6. The Tribal Court, except for a singular and unrelated issue, had been suspended in 2013 by action the Tribal Assembly and the Tribal Government and thus lacked the lawful authority to act upon or issue the "2014 General Election Notice".

CHIEF SACHEM MATTHEW THOMAS



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

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