

January 31, 2017

*Via Electronic Mail and Federal Express*

Todd Anthony Bianco, 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 Mr. Bianco:

On behalf of Invenergy Thermal Development LLC and the Clear River Energy Project  
("Invenergy"), please find enclosed an original and ten (10) copies of Invenergy's Objection to  
the Town of Burrillville's Motion to Postpone the February 6, 2017 EFSB Hearing.

Please let me know if you have any questions.

Very truly yours,



ALAN M. SHOER  
[ashoer@apslaw.com](mailto: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 MOTION  
TO POSTPONE THE FEBRUARY 6, 2017 EFSB HEARING**

Now comes Invenergy Thermal Development LLC (“Invenergy”) and hereby objects to the Town of Burrillville’s (“Town’s”) Motion to Postpone the February 6, 2017 Energy Facility Siting Board (“EFSB” or “Board”) Hearing. As discussed more thoroughly below, the Board should deny the Town’s Motion.

**I.     BACKGROUND**

On September 13, 2016, the Town filed a Motion to Dismiss Invenergy’s EFSB Application, asserting Invenergy’s lack of water supply as grounds for dismissal. *See* Town’s Motion to Dismiss, filed with the Board on September 13, 2016, 3. Subsequently, Invenergy filed an Objection to the Town’s Motion to Dismiss.<sup>1</sup>

On October 13, 2016, the Board held a Show Cause hearing, suspended the EFSB proceedings and gave Invenergy ninety (90) days to file a water supply plan. In advance of the Show Cause hearing, the Town submitted a letter requesting that Invenergy include ten (10) items in any revised water supply plan. *See* October 5, 2016 letter. During that hearing, the Board stated that the water supply plan was to include the ten (10) items listed in the Town’s October 5, 2016 letter. The Board also determined that it would hear oral argument on the

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<sup>1</sup> The Conservation Law Foundation (“CLF”) also filed a Motion to Dismiss, and Invenergy filed an Objection to that Motion as well. *See* CLF’s Motion to Dismiss, filed with the Board on September 16, 2016; Invenergy’s Objection to CLF’s Motion to Dismiss, filed with the Board on September 26, 2016.

Town's Motion to Dismiss after the ninety (90) day suspension.

On January 11, 2017, Invenenergy submitted a revised water supply plan to the Board. The water supply plan included all ten (10) items identified in the Town's October 5, 2016 letter. After Invenenergy submitted its revised water supply plan, the suspension lifted.

Accordingly, the Board scheduled a hearing on the Town's Motion to Dismiss for February 6, 2017.<sup>2</sup>

## II. ARGUMENT

The Town requests an extension "in order to have adequate time to have its experts meaningfully review, evaluate and provide input to the EFSB on the revised [w]ater [s]upply [p]lan . . . filed by Invenenergy on January 11, 2017." *See* Town's Motion to Postpone the February 6, 2017 EFSB Hearing ("Town's Motion to Postpone"), filed on January 30, 2017, 1. The Town cites the Rhode Island Supreme Court as grounds for its request for an extension, noting that "due process in administrative procedures requires the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 3 (citing *Millett v. Hoisting Engineers' Licensing Division of Dept. of Labor*, 377 A.2d 229, 236 (R.I. 1977)).

The Town's Motion to Postpone should be denied because an extension is unwarranted. The hearing scheduled for February 6, 2017 is for the purpose of arguments on the Town's Motion to Dismiss the application for *lack* of a water supply plan, not for the purpose of evaluating each and every aspect of the *design details* contained within the water supply plan. Invenenergy agrees that the Town should have a period of time to review the details of the water supply plan. However, the issue before the Board on the pending Motion to Dismiss is whether the water supply plan cured the deficiency that existed without a water supply plan, *so as to*

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<sup>2</sup> CLF's Motion to Dismiss and Invenenergy's Objection to CLF's Motion to Dismiss will also be heard on February 6, 2017.

*allow for further proceedings to continue.*

The Town's Motion to Dismiss centered on its belief that because Invenergy's EFSB Application ("Invenergy's Application" or the "Application") did not contain information regarding a proposed water source, the Application could not be "be evaluated in a meaningful way." Town's Motion to Dismiss, at 3. As is now evident, Invenergy filed its revised water supply plan—which specifically included the ten (10) items that the Town requested be included in a revised water plan—on January 11, 2017.

Additionally, the Town will have ample opportunity for its experts to "meaningfully review, evaluate and provide input" to the EFSB during any further administrative process and before the Board in the final hearing process.<sup>3</sup> Specifically, the Town can also present comments to any agency that the Board believes should review and advise as to the new water supply plan and can offer testimony, after reviewing responses to data requests, during final hearings and provide expert witnesses (if appropriate) to appear before the Board regarding the revised water supply plan. *See* EFSB Rule 1.23(a)(4) (stating "Parties shall have the right of presentation of evidence, cross-examination, objection, motion and argument" during final hearings).

The Town's experts may have a different view regarding the merits of the revised plan and the technicalities of the plan. Those differences, if any, can be presented and evaluated, with further proceedings as appropriate, including during final hearings. The only issue pending before the Board with regard to the Town's Motion to Dismiss is whether the water supply plan contains sufficient detail to provide adequate notice to the parties and the Board as to the substance of that plan so that it can be evaluated. Invenergy submits that the water supply plan, with the data included and the exhibits provided, provide the requisite level of detail to allow for

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<sup>3</sup> The Town has already issued more than fifty (50) follow up data requests. *See* Town's 22<sup>nd</sup> Set of Data Requests, filed with the Board on January 30, 2017.

further proceedings to continue to evaluate the water supply plan that is now part of this Application.

**III. CONCLUSION**

For the foregoing reasons, Invenergy respectfully requests that the Board deny the Town's Motion to Postpone the February 6, 2017 EFSB Hearing.

Respectfully submitted,

INVENERGY THERMAL DEVELOPMENT LLC

By Its Attorneys:

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Dated: January 31, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 2017, I delivered a true copy of the foregoing responses to the Energy Facilities Siting Board via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer

**SB-2015-06 Invenergy CREC Service List as of 01/27/2017**

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