

September 11, 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 Center Project ("Invenergy"), please find enclosed an original and three (3) copies of Invenergy's Response to the Conservation Law Foundation's and the Town of Burrillville's Objection to the Rhode Island Building and Construction Trades Council's rebuttal testimony.

Please let me know if you have any questions.

Very truly yours,



ALAN M. SHOER
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)**

**INVENERGY THERMAL DEVELOPMENT LLC’S RESPONSE TO
THE CONSERVATION LAW FOUNDATION’S AND THE TOWN OF
BURRILLVILLE’S OBJECTION TO THE RHODE ISLAND BUILDING AND
CONSTRUCTION TRADES COUNCIL’S REBUTTAL TESTIMONY**

Now comes Invenergy Thermal Development LLC (“Invenergy”) and hereby responds to the Conservation Law Foundation’s (“CLF’s”) and the Town of Burrillville’s (“Town’s”) Objection to the Rhode Island Building and Construction Trades Council’s (“RIBCTC’s”) Motion to Provide Witness Rebuttal Testimony. For the reasons explained below, Invenergy supports RIBCTC’s Motion to provide the rebuttal testimony of Mr. Marc Vatter.

On September 1, 2017, the RIBCTC filed the rebuttal testimony of Mr. Vatter, an expert economist, who received his Ph.D. and M.A. in economics from Brown University. Both CLF and the Town objected to this rebuttal testimony, asserting that because this rebuttal testimony does not relate solely to the Clear River Energy Center’s (“CREC’s”) job creation, the testimony should be excluded. *See* CLF’s Sept. 5, 2017 Objection, at 2; *see also* Town’s Sept. 5, 2017 Objection (collectively “CLF and Town’s Obj.”). Similarly, CLF and the Town contend that had they known RIBCTC’s testimony would not be limited solely to jobs, they may have objected to RIBCTC’s previous intervention motion. CLF and Town’s Obj., at 2. Lastly, CLF and the Town select one line in the Rhode Island Energy Facility Siting Board’s (“EFSB’s” or “Board’s”) Order granting RIBCTC’s intervention and exclude other relevant language in that Order to suggest that this rebuttal testimony is somehow contrary to that Order. *Id.*

When the Board granted RIBCTC limited intervention regarding “issues affecting employment opportunities,” the Order also stated that if RIBCTC wishes to present witnesses or evidence related to *any* issues other than those related to employment, it can seek permission from the Board to do so. *See* Docket SB-2015-01, Order No. 80, dated Mar. 30, 2016 (effective Jan. 12, 2016), at 1. RIBCTC did exactly that in seeking to present the rebuttal testimony of Mr. Vatter. *See id.* The Order further states that “[p]ermission will be liberally granted when, in the opinion of the Board, such testimony and evidence will assist the Board in its decision.” *Id.* (emphasis added). Because Mr. Vatter’s rebuttal testimony relates to issues affecting CREC’s employment opportunities and will assist the Board in making a final decision in this proceeding, the Board should grant RIBCTC’s Motion to provide the rebuttal testimony of Mr. Vatter.

Invenergy agrees with RIBCTC that Mr. Vatter’s rebuttal testimony is generally related to employment opportunities, as the economic forecasting in the industry support the development of the Clear River Energy Center (“CREC” or “Project” or “Facility”), and the employment opportunities associated with it. Mr. Vatter’s expert analysis focuses on economic forecasts in the energy industry that rebut testimony offered by CLF and the Town. These are important factors that ultimately will determine both the need for the Project as well as the anticipated employment opportunities. Because there is a link between employment opportunities associated with the demands and needs of the energy industry, in the context of the economics of the energy industry at a macro level, the analysis supplied by Mr. Vatter is relevant also to the employment opportunity analysis that is related to the scope of RIBCTC’s intervention.

To the extent the Board believes Mr. Vatter’s rebuttal testimony is tailored towards the issues of need, cost and supporting renewable energy development, good cause also exists to

allow this rebuttal testimony. The Board invited RIBCTC to provide additional testimony and evidence if, “in the opinion of the Board, *such evidence will assist the Board in its decision.*” *Id.* (emphasis added). Pursuant to the EFSB Statute, the Board must determine, among other factors, whether CREC is “necessary to meet the needs of the state and/or region[,]” as well as whether CREC will “enhance the socio-economic fabric of the state.” R.I. Gen. Laws § 42-89-11(b)(1 & 3); Docket SB-2015-01, Order No. 86 (Preliminary Decision and Order), at 9-10. Mr. Vatter’s expert rebuttal testimony directly addresses these issues and questions the underlying assumptions relied upon in certain testimonies submitted by CLF and the Town. Because Mr. Vatter’s rebuttal testimony will aid the Board in its determination of the validity of the economic and energy market factual assumptions that are relied upon by the Parties, it will undeniably assist the Board in its final decision and should be allowed.

Finally, neither CLF nor the Town are prejudiced by Mr. Vatter’s rebuttal testimony and their assertion that RIBCTC’s Motion amounts to “trial by ambush” is nonsense. The testimony RIBCTC would like the Board to consider is written and pre-filed, with supporting written data and analysis. The testimony was filed almost two months before hearings and in accordance with the Board’s June 1, 2017 Procedural Schedule, which provides both CLF and the Town, at minimum, with twenty-six (26) days to review and respond to Mr. Vatter’s pre-filed rebuttal testimony in the form of pre-filed surrebuttal testimony.

For all these reasons, Invenergy respectfully contends that the EFSB should allow the RIBCTC the ability to present the pre-filed rebuttal testimony of Mr. Vatter.

Respectfully submitted,

INVENERGY THERMAL DEVELOPMENT LLC

By Its Attorneys:

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Dated: September 11, 2017

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2017, I delivered a true copy of the foregoing document to the Energy Facilities Siting Board via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer