

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

**IN RE: Application of
Invenergy Thermal Development LLC's
Proposal for Clear River Energy Center**

Docket No. SB 2015-06

**INVENERGY THERMAL DEVELOPMENT LLC'S RESPONSE AND OBJECTION
TO THE CONSERVATION LAW FOUNDATION'S MOTION TO COMPEL**

Now comes Invenergy Thermal Development LLC's ("Invenergy") Response and Objection to the Conservation Law Foundation's ("CLF") Motion to Compel ("Motion to Compel"), filed on April 8, 2016.

INTRODUCTION

On April 6, 2016, CLF informed counsel for Invenergy that CLF wanted more detail on Invenergy's previously provided responses to CLF's First Set of Data Request No. 1.3, suggesting that Invenergy's response was incomplete. This request was made several weeks after Invenergy responded to CLF's First Set of Data Requests on January 28, 2016. CLF waited until April 6, 2016 to inform Invenergy that it wanted more information regarding this particular question. Accordingly, it is not accurate for CLF to assert that Invenergy was not responsive to requests from CLF for further information.

Moreover, after reviewing CLF's concerns with Invenergy's consultant, PA Consulting Group, Inc. ("PA Consulting"), Invenergy informed CLF that, notwithstanding Invenergy's belief that the responses were fully responsive, it would nevertheless assist CLF with supplemental information. Invenergy requested a reasonably brief period of time to prepare additional data for CLF. In response to Invenergy's reasonable suggestion, CLF filed this Motion to Compel. The Energy Facility Siting Board ("EFSB" or "the Board") should deny

CLF's Motion to Compel, as Invenenergy has agreed to work with CLF to accommodate its request.

In addition, Invenenergy submits that CLF's Motion to Compel should be referred to the Public Utilities Commission ("PUC"), as the information requested refers to one of the subjects that the EFSB Board tasked the PUC to address in its advisory opinion (cost savings and ratepayer savings). Invenenergy is presently putting together testimony to submit in the PUC proceeding. This testimony will provide updated and supplemental information to account for the recent results from the ISO-New England ("ISO-NE") FCA-10 auction and will provide CLF with even more updated information regarding Invenenergy's opinion that the Clear River Energy Project ("the Project") will produce significant ratepayer savings.

Therefore, as discussed more thoroughly below, the Board should deny CLF's Motion to Compel.

ARGUMENT

In CLF's Motion to Compel, it asserts the following: (1) that Invenenergy's Objection to CLF's First Set of Data Requests was untimely; (2) that Invenenergy's objections to CLF's First Set of Data Requests were not specific; and (3) that Invenenergy's responses to CLF's First Set of Data Request No. 1.3 were not responsive. CLF is mistaken and incorrect. Invenenergy respectfully requests that the Board deny CLF's Motion to Compel.

I. Invenenergy's Objection to CLF's First Set of Data Requests Was Timely.

CLF incorrectly asserts that Invenenergy's Objection to CLF's First Set of Data Requests was untimely. *See* CLF Motion to Compel, 1.

Pursuant to Rhode Island EFSB Rule 1.27(b)(3), titled "Data Requests," an "[o]bjection to a data request . . . shall be made by motion filed as soon as practicable and in no event later

than five (5) days after service of the request.” EFSB Rule 1.18(a), titled “Computation of Time,” states: “in computing any period of time prescribed or allowed by any rule, regulation, or order of the Board, or by any applicable statute, the day of the act, event, or default from or after which the designated period of time begins to run shall not be included, but the last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday in Rhode Island, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or holiday.”

On January 13, 2016, CLF submitted its First Set of Data Requests to Invenergy. January 13, 2016, was a Wednesday. Five days from the 13th was Monday, January 18, 2016, a Rhode Island holiday, Dr. Martin Luther King Junior’s Birthday. *See* Rhode Island Department of Secretary of State, “Rhode Island State Holidays, <http://sos.ri.gov/divisions/Civics-And-Education/ri-state-holidays> (last visited April 10, 2016). In accordance with Rule 1.18(a), Invenergy properly filed its objection by “the end of the next day which [was] *not* a Saturday, Sunday, or *holiday*,” Tuesday, January 19, 2016. (Emphasis Added.)

Therefore, CLF is wrong when it asserts that Invenergy did not file or serve its Objection within the five day time period.

II. Invenergy’s Objections to CLF’s First Set of Data Requests Were Specific.

CLF incorrectly asserts that Invenergy made general and boilerplate objections with respect to Invenergy’s objections to Data Request No. 1.3. *See* CLF Motion to Compel, 2.

Here are Invenergy’s complete objections to CLF’s Data Request No. 1.3:

Invenergy generally objects to responding to the questions identified within CLF 1-3 sub parts (b), (c), (d) and (f) on the grounds that these data requests are vague, overbroad and unduly burdensome, and potentially seeks information and data that is protected as trade secret, confidential and/or proprietary and not subject to public disclosure.

For example, in sub-part (b), CLF seeks details on how PA Consulting Group, Inc. (“PA”) derived its calculations and supporting information. PA has explained some of the market assumptions in documents that Invenergy filed with the Rhode Island Energy Facility Siting Board (“Board”) in support of the application. The Board granted Invenergy's request for confidential treatment of portions of these PA documents. To the extent that PA and/or Invenergy relied on any of this confidential information in its calculations that information has been granted protected status by the Board, as confidential and not subject to further public disclosure.

With regard to “the questions in sub-parts (c) and (d), CLF never defines the term “input” or what it means by the term “input.” Accordingly, this term is too vague, overbroad and confusing that Invenergy is unsure what CLF is specifically requesting. Also, to the extent that any of the “assumptions” used by PA or Invenergy are derived from the analysis that the Board has deemed protected as “confidential,” Invenergy objects to providing this information to CLF. Similarly, to the extent that any of the “assumptions” used by PA are derived from commercially sensitive, confidential or proprietary information, Invenergy notes this objection as well.

Finally, with regard to the question in sub-part (f), where CLF seeks information on additional persons “involved” in certain calculations, the term “involved” is vague, overbroad and confusing and in no way defined by CLF. Therefore, Invenergy notes this general objection as well and is unsure how identifying specific individuals and what their role was for the Clear River analysis is in any way germane to data presented in CREC's evaluation. For these reasons, Invenergy generally objects to responding to this question because the request as being overbroad and unduly burdensome.

Invenergy listed specific reasons why CLF’s Data Request No. 1.3 was overbroad and unduly burdensome. Invenergy identified certain subsections of Request No. 1.3 that were problematic. Specifically, Invenergy noted that CLF never defined the term “input” and specifically requested the CLF provide Invenergy with clarification regarding that term because it is unclear, vague, overbroad and confusing. Invenergy also identified other explicit terms in CLF’s Data Request No. 1.3 that were objectionable.

As seen from the language cited above, the notion that Invenergy's objections to CLF's Data Request No. 1.3 were broad and boilerplate is unfounded. Moreover, when CLF's counsel met with Invenergy's counsel on March 17, 2016, about six weeks after Invenergy responded to the data request, with pages of responses and spreadsheets (without waiving the specific objections noted above), counsel for CLF never even mentioned its belief that the response was incomplete. Invenergy asserts that the response to Request No. 1.3 was fully responsive.

III. Invenergy Thoroughly Responded to CLF Data Request No. 1.3.

CLF asserts that Invenergy failed to provide responsive answers to Data Request No.1.3. *See* CLF Motion to Compel, 2. In its Motion to Compel, CLF neglected to include Invenergy's entire responses to the data requests for which Invenergy allegedly did not provide responsive answers. However, without including Invenergy's entire responses in its Motion to Compel, CLF relies on three purported examples of Invenergy's allegedly unresponsive answers. *Id.* at 2. To assist the Board, Invenergy has included its complete answers below. CLF may not like the answers given, but that does not mean Invenergy's answers were incomplete.

In its Motion to Compel, CLF states that Request No. 1.3(b) asks for "all work papers" and that Invenergy provided only two summary sheets. *See id.* at 2. CLF also claims that 1.3(b) asks Invenergy to "explain in detail how the \$280 [sic] figure was derived and that Invenergy provided "no explanation whatever of how the figures were derived." *Id.* However, CLF failed to include Invenergy's entire response to Request No. 1.3 (b). In response to CLF's Data Request No. 1.3, Invenergy stated the following:

(b) Invenergy retained PA Consulting Group, Inc. ("PA") to complete the market analysis associated with Clear River. The ratepayer savings analysis is explained in the EFSB Application, in Section 5.0 (Project Benefits) and in Section 7.0 (Need)(Section 7.2.3 of the EFSB Application -- Analysis of Need — Rhode Island Ratepayer Cost Impact).

The \$280 million represents the difference in total capacity and energy costs to Rhode Island-only load resulting from the Clear River capacity addition, as measured by comparing cost results from capacity and energy modeling cases (a) with Clear River starting in 2019; and (b) without Clear River.

- Capacity costs to Rhode Island-only load are allocated by ISO-NE based on the capacity auction clearing price and Rhode Island's share of the system-wide peak demand. Rhode Island's share of the system-wide peak demand is calculated by multiplying Rhode Island's peak demand by $(1 + \text{Actual Reserve Margin})$. This accounts for the excess capacity that ISO-NE procures in the Forward Capacity Market (“FCM”) in order to ensure peak demand is met even if outages occur. To calculate any capacity cost savings under ISO-NE's capacity cost allocation methodology, PA started by comparing the annual projected FCM Rest of Pool (“ROP”) clearing prices from the “With Clear River” and “Without Clear River” scenarios for auctions starting with FCA 10 (the 2019/2020 delivery year). The difference in clearing prices between the two scenarios in each delivery year was then multiplied by Rhode Island's share of the system-wide peak demand to determine the savings to Rhode Island-only load as a result of Clear River.
- The energy cost to Rhode Island-only load for each case was calculated using projected Rhode Island-area energy prices from PA's fundamental production cost analysis (utilizing the AURORA^{xmp}2 software and PA's underlying market assumptions) for the two analyzed cases (i.e., “With Clear River” and “Without Clear River”).
- Please see the accompanying worksheet calculations.

Invenergy attached two worksheets that PA Consulting prepared to show the arithmetic utilized by PA Consulting to derive the ratepayer cost savings regarding the information requested in Request No. 1.3(b). As is evident from reading the complete response above, and its specific references to sections in the application that describe the savings, Invenergy provided a complete response to CLF's Data Request No. 1.3(b). See Invenergy EFSB Application, Section 5.0, “Project Benefits,” pages 21-28, Section 7.0, “Assessment of Need,” pages 115-120. To suggest that Invenergy provided a mere one line answer (as CLF asserts) is utterly misleading.

CLF also objects to Invenergy's response to Data Request No. 1.3(c), stating that it asked Invenergy to "identify all inputs into these calculations" and that Invenergy allegedly only replied that "the universe of inputs cannot easily be divulged." CLF again mischaracterizes Invenergy's response. Invenergy's complete response to Data Request No. 1.3(c) was as follows:

(c) PA employs a wide range of public and proprietary data to keep its various market models up to date, such that the universe of inputs cannot be easily divulged.

The inputs used by PA are described in the EFSB Application, Section 5.0 (Project Benefits) and in Section 7.0 (Need) (Section 7.2.3 -- Analysis of Need — Rhode Island Ratepayer Cost Impact) and in the documents prepared by PA Consulting and filed with the EFSB.

Key input drivers include the following:

- Peak Energy and Load: "2015-2024 Forecast Report of Capacity, Energy, Loads, and Transmission" ("2015 CELT Report") from ISO-NE;
- Auction Parameters: ISO-NE FCA 10 auction parameters (sourced from ISO-NE website);
- Natural Gas Prices: PA's base case forecast for delivered natural gas prices. Algonquin Citygate pricing is approximately \$5.50/MMBtu in 2019, escalating to approximately \$7.25/MMBtu by the 2022 timeframe (all figures in nominal dollars, assuming 2.2% per annum inflation rate); and
- RGGI CO2 Prices: PA's base case forecast assumes RGGI pricing averaging approximately \$6-7/short ton in the 2019-2021 period (all figures in nominal dollars, assuming 2.2% per annum inflation rate).

Invenergy has answered the question and explained the "key inputs" used by PA Consulting to derive its opinion, including peak energy and load, auction parameters, natural gas prices and RGGI CO2. To suggest that Invenergy did not explain any of the key inputs is both wrong and misleading. Additionally, Invenergy had objected to the use of the term "input" and was not provided with any clarification from CLF. Invenergy did its best to respond to CLF's non-specific question.

Moreover, in response to the statement that “the universe of inputs cannot easily be divulged,” PA Consulting prepared a spreadsheet with the information relied upon by PA Consulting (attached as Exhibit A). PA Consulting also explained the math that went into answering CLF’s data requests. Furthermore, Invenenergy informed CLF’s counsel that the information requested was derived from a computer model, called an Aurora Model, which is a proprietary software model that Invenenergy informed CLF it could not share with CLF. CLF informed Invenenergy’s counsel that it was not going to insist on seeing the model. If CLF meant “input” to mean access to the proprietary model, that model is proprietary and confidential. If CLF meant “input” to mean key input drivers, Invenenergy gave CLF the inputs.

Invenenergy’s response identified peak energy and load, auction parameters, natural gas prices and RGGI C02 as four key inputs. The response also referred to specific sections in Invenenergy’s EFSB Application and incorporated those sections by reference. See Invenenergy EFSB Application, Section 5.0, “Project Benefits,” pages 21-28, Section 7.0, “Assessment of Need,” pages 115-120. Accordingly, Invenenergy submits that its answers to CLF’s Data Request No. 1.3 were responsive and complete. CLF may not like Invenenergy’s answer; however, that does not mean that Invenenergy did not adequately respond.¹ Nor is it fair to suggest that Invenenergy write responses the way CLF wants them written.

In addition, the information, analysis and worksheets provided on January 28, 2006 were before the ISO-NE concluded the FCA-10 auction. PA Consulting is currently preparing updated information to provide to the PUC and the Board to account for the results from FCA-10. Invenenergy is willing to supplement its response to this particular CLF question with an

¹ Invenenergy is committed to providing timely responses to each and every other Party, including CLF, (CLF is not the only Party sending data requests) with reasonable cooperation to accommodate scheduling, other litigation, and travel of counsel and witnesses.

updated analysis so as to reflect the most current data available. It will be prepared and submitted as part of the testimony to be filed with the PUC on April 22, 2016.

CONCLUSION

For all the reasons discussed above, Invenergy objects to CLF's Motion to Compel and respectfully requests that the Board deny CLF's Motion.

INVENERGY THERMAL ENERGY, LLC
By its Attorneys,

/s/ Nicole M. Verdi

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2016, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.

/s/ Nicole M. Verdi