



Burrillville Land Trust

Protecting our open space and rural character
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By Hand Delivery

December 22, 2015

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Todd Anthony Bianco, Coordinator
RI Energy Facility Siting Board

RE: Invenergy Thermal Development LLC - Clear River Energy Center Docket No. SB-2015-06

Dear Mr. Bianco:

The Burrillville Land Trust, a private non-profit land trust in the Town of Burrillville (known here as the Town), pursuant to the Energy Facility Siting Board Rule of Practice and Procedure 1.10(b)(3), respectfully files its Motion of Intervention for Docket Number SB-2015.06 (known here as the Project).

The Burrillville Land Trust is filing its Motion to Intervene for the following:

- the Burrillville Land trust (known here as BLT) is concerned that the construction and operation of the Project will impact the mission of the BLT;
- the BLT is concerned with the lifecycle of the Project in context with past industrial and abandoned commercial facilities in the Town;
- the Project and construction of a new transmission line connection *may* impact existing wetlands and as such *may* be subject to Section 404 of the Clean Water Act;
- two gas fired power plants in close proximity to each other would continue to change the rural character of the Town; and,
- increase and dependence on fossil fuels to generate electricity in an era when globally, regionally and municipalities within Rhode Island are lessening their use.

Enclosed for filing in this matter is an original and ten (10) copies of the Motion to Intervene along with attached background information. Copies have been served on the December 21, 2015 service list and to parties interested in this matter.

If you need further information, please do not hesitate to contact me.

Sincerely,


Marc Gertsacov, Esq., Law Offices of Ronald C. Markoff
Representing the Burrillville Land Trust

cc: Burrillville Land Trust Board members
Service List

The Burrillville Land Trust is a private non-profit land trust in the Town of Burrillville. Our mission is to preserve and protect the rural character of the Town of Burrillville.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

RE: Application of Invenergy Thermal
Development LLC's proposal for
Clear River Energy Center

DocketNo. SB-2015-06

MOTION FOR INTERVENTION OF BURRILLVILLE LAND TRUST

I. Introduction

The Burrillville Land Trust (BLT), a non-profit private land trust in the Town of Burrillville respectively files its Motion for Intervention in Docket No. SB-2015-06 pursuant to the Energy Facility Siting Board Rule of Practice and Procedure 1.10(b)(3).

On November 17, 2015, the EFSB opened Docket No. SB-2015-06 Clear River Energy Center, regarding the proposal of Invenergy Thermal Development LLC (known here as Invenergy) to site a 900 megawatt (MW) gas-fired combined-cycle electricity generating facility (known here as the Project) just off of Wallum Lake Road, near the northwest corner of the Town of Burrillville, Rhode Island. The Burrillville Land Trust respectfully files a Motion to Intervene in hearings and proceedings for this Docket for the following areas of concern: 1)The Project when fully operational would have an impact on the mission of the Burrillville Land Trust in its quest to preserve and protect the rural characteristics of the Town of Burrillville (known here as the Town); 2)The proposed power plant generating system, because it would be fired by fossil fuels of natural gas and/or #2 fuel oil, would emit atmospheric carbon and would consequently have a negative impact on Rhode Island and global climate; 3) This Project, in close proximity to an already existing gas fired power plant - Ocean State Power owned by TransCanada OSP Holdings Ltd - would continue to dramatically change the rural character of the Town; and, 4) The Town has a multitude of abandoned "industrial" sites that harken back to the 1800s. Many of these properties are no longer available for commercial or recreational use because of the lack of environmental safeguards placed on them during the early days of their construction and operation. Much of the information regarding environmental concerns was just not available during the beginning of these industrial projects. The BLT files its Motion to Intervene on all these items listed above.

II. Background

The BLT is a private non-profit land trust in the Town of Burrillville. While the Burrillville Land Trust bears the name of the Town, we are not connected with the Town or Town government. That said, the BLT has had a very good working relationship with the Town and many departments within the Town government. Our good working relationship has included working with the Burrillville Town Council to secure and protect natural resources of forested and wetland property, coordinating and revising Town Comprehensive Plans to include historic, cultural and scenic properties that typify a rural New England landscape and advising matters of the economic benefits of open space.

The BLT was incorporated in March 2000 by members of the community who wanted a means to preserve much of the rural landscape of the Town. Since that time, the BLT has secured through acquisitions over 214.51 acres. Our acquisitions have come from donations, purchases and transfers of property.

The BLT is funded by grants, board member and member donations and fund raising activities.

The BLT holds over 20 public engagement events each year that includes hiking on BLT properties, plant and animal identification walks, walks through history, snowshoeing hikes, pot luck suppers, movie nights and more. Our events are attended by people from all over Rhode Island and elsewhere. While our mission is primarily focused in the Town in which we serve, the BLT has successfully worked with and on behalf of other land trusts, preservation and watershed groups in Rhode Island and elsewhere.

Over the years, the BLT has worked with the following organizations:

- The Town of Burrillville
- The Audubon Society of Rhode Island
- The Nature Conservancy of Rhode Island
- The Rhode Island Department of Environmental Management
- The Blackstone River Watershed Council/Friends of the Blackstone BRWC/FOB
- Environmental Council of Rhode Island
- Rhode Island Non-point Education for Municipal Officials
- The Northwest Rhode Island Supporters of Open Space
- The Land Trust Alliance

- NationalGrid
- The Rhode Island Land Trust Council
- The Rhode Island Association of Conservation Commissions (RIACC)
- Bryant University
- The Rhode Island House and Senate committees
- ecoRI
- Rhode Island Food Policy Council
- and others.

As a leader in grass roots organizing, we have worked with these organizations on projects that include:

- Rule 2 for the BRWC/FOB - responsibility for the Blackstone River in Rhode Island
- Rhode Island wetland set-back and buffer rules
- Steep slopes legislation
- A change in focus for the Big River Reservoir project
- RhodeMap Rhode Island and the Rhode Island Economic Development Plan
- forming a Northwest Rhode Island Land Trust association
- Mapping special features in northern Rhode Island
- Cesspool phaseout legislation
- Increasing the recreational use and clean up of the Clear River and Branch River
- Water quality testing of the Clear River
- additions and modifications to the Town's Comprehensive Plan
- energy, clean water and land management issues
- farmers' markets in RI - the BLT started the Burrillville Farmers' Market and worked on developing three other farmers' markets in RI
- estate planning, conservation easements and open space proposals
- and others.

While the BLT board members have appeared before government agencies, boards and commissions representing our own interest and fulfilling our own mission, the BLT has also served the interests of other land trusts, conservation and watershed organizations. The BLT has given testimony and support for a host of proposals and rules before a number of entities that include:

- The Rhode Island House and Senate committees

- Workshop planner and presenter at the Land and Water Summit
- The Burrillville Town Council
- RhodeMap Rhode Island
- RIACC regional workshops and conferences on municipal protection of open space, recycling and trash
- members of the general public on the Clear and Branch River
- conducted an Urban Agriculture tour for the 2014 Land Trust Alliance Rally
- and more.

Our focus for all these interests and with all these groups has been to maintain our mission with the intersection of land use policy and land preservation, and conservation of our natural resources. Since air and water pollution and the misuse of natural resources knows no boundary, the BLT has at times looked beyond the borders of its own Town to a wider world and wider concern of the health and safety of everyone in our region and state.

III. EFSB Rule Governing this Motion

Intervention in this Docket and EFSB proceedings is governed by EFSB Rule 1.10. The BLT does not claim to have a right to intervene based on EFSB Rule Section 1.10(b)(1) conferred by statute, nor is the BLT filing its Motion to Intervene based on Section 1.10(b)(2): “An interest which may be directly affected and which is not adequately represented by existing parties and as to which petitioners may be bound by the Board's action in the proceeding.”

We are filing a Motion of Intervention under EFSB Rule 1.10(b)(1) which states that a party may intervene where “Any other interest of such nature that petitioner's participation may be in the public interest.”

IV. Position of the “Movant”

The BLT has not taken a public position for this Docket. Our interest with this motion is to fulfill our mission and to preserve the interest of the other organizations that we work with by participating during the application phase and hearings of this process.

V. BLT's interest in these proceedings

The BLT owns properties near the boundary of the Invenergy's construction, building and operation footprint for the Project. All of the BLT properties lie within the watershed, rivers, streams and ponds within the Invenergy's construction, building and operation footprint for the Project. Some of these same properties have access points and right of ways along roads near or leading to the Invenergy's construction, building and operation footprint.

For the benefit of the EFSB in determining the proximity of our properties to the Invenergy's construction, building and operation footprint and in helping to make a decision for this Motion, the BLT properties in question as found in the Burrillville Tax Assessor's Plat and Lot ID are listed here:

Slone Preserve

Tax Assessor's Plat & Lot ID - 172/002

Acreage – 34.5

Interior property along Jackson Schoolhouse Road, Pascoag, RI.

Property on South Shore Road near Wallum Lake

Tax Assessor's Plat & Lot ID - 034/028

Acreage – 18.26

Property on South Shore Road opposite Wallum Lake

Grace Note Farm

Conservation Easement owned by the Burrillville Land Trust

Tax Assessor's Plat & Lot ID - 206/010

Acreage – 11

Book & Page – 619/42

Property on Jackson Schoolhouse Road, Pascoag, RI

Edward D. Vock Conservation Area

Tax Assessor's Plat & Lot ID - 188/003, 188/007, 188/010

Acreage – 86.0206

Property on Jackson Schoolhouse Road, Pascoag, RI

Saletnik parcel

Tax Assessor's Plat & Lot ID - 188/002

Acreage – .51

Property on Jackson Schoolhouse Road, Pascoag, RI

Former Brown University Property

Tax assessor's Plat and Lot ID – 189/001
Acreage: 54.70708

Clear River Property

Tax assessor's Plat and Lot ID – 103/001
Acreage: 20.51889
Property on Wallum Lake Road, Pascoag, RI

The BLT also has a responsibility and vested interest concerning the Invenergy's construction, building and operation of the Project within the watershed and surrounding wetlands within and adjacent to the BLT properties and how our properties are impacted during all phases of the Project. As in other construction projects where wetland disturbances take place, this Project *may* include what the EPA and the U. S. Army Corps of Engineers term an “unavoidable impact” to or near the surrounding existing wetlands. According to Section 404 of the Clean Water Act revised in 2008, the EPA and the U.S. Army Corps of Engineers jointly promulgated regulations that clarified requirements regarding compensatory mitigation... “be required to replace the loss of wetland and aquatic resource functions in the watershed.” According to these regulations, “compensatory mitigation means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of wetlands, streams and other aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.”¹

Also, during the construction of a new transmission line connection, existing wetland disturbances *may* also fall within Section 404 of the Clean Water Act as described above.

¹ Section 404(b)(1) Guidelines. In 1980, EPA finalized regulations that constitute the substantive environmental criteria used in evaluating activities regulated under Section 404 of the Clean Water Act.

Compensatory Mitigation for Losses of Aquatic Resources; Final Rule. In 2008, EPA and the U.S. Army Corps of Engineers, through a joint rulemaking, expanded the Section 404(b)(1) Guidelines to include comprehensive standards for all three mechanisms for providing compensatory mitigation.

1990 Memorandum Of Agreement (MOA) Between The Department of the Army and The Environmental Protection Agency. This MOA contains the policy and procedures to be used in determining the type and level of mitigation necessary to demonstrate compliance with the Section 404(b)(1) Guidelines. (Portions of this MOA that concern the type and location of compensatory mitigation are superseded by the above 2008 rule.)

During NationalGrid's construction of the Interstate Reliability Project in the Town of Burrillville, the BLT worked with NationalGrid in finding properties as part of Section 404 of the Clean Water Act.

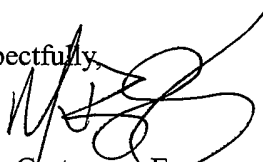
BLT is requesting that this process take place during the proceedings between the EFSB and the Invenergy regarding the Project.

As the BLT provides services to a statewide audience with its properties and advocacy, the BLT is requesting that the "public interest" part of the EFSB Rules of Practice and Procedure Rule 1.10(b)(3) apply given the information listed above.

VI. Conclusion

Wherefore, for the foregoing reasons, the Burrillville Land Trust respectfully requests that our motion to intervene in this Docket be granted.

Respectfully,



Marc Gertsacov, Esq.
Law Offices of Ronald C. Markoff
On behalf of the Burrillville Land Trust

cc. Burrillville Land Trust Board members
Service List

Certificate of Service

I certify that the original and ten copies of this Motion was filed with the Rhode Island Energy Facility Siting Board for this Docket. In addition, a PDF version of this Motion and accompanying Motion information was served electronically to the service list of this Docket, as the list was provided on December 21, 2015. I certify that all of the foregoing was done on December 22, 2015.

