

**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 DAVID B. HARRIS’ MOTION FOR INTERVENTION**

Now comes Invenergy Thermal Development LLC (“Invenergy”) and hereby objects to David B. Harris’ (“Mr. Harris”) Motion for Intervention. As seen by the recently submitted “Supplemental Motion for Intervention,” filed on behalf of Lyle and Erin Walker, individual residents of the Town of Burrillville (“the Town”) are seeking to intervene with the Rhode Island Energy Facility Siting Board (“RI EFSB” or “the Board”), all with the same stated “property” interests. These interests are being represented by others, and the Town will be filing an Advisory Opinion on the issue of property impacts, if any, caused by the CREC Project. Continuous interventions of individual residents should not be allowed. Accordingly, Invenergy respectfully requests that the Board consider this late filed Objection to Mr. Harris’ Motion for Intervention.

As with the objection to Lyle and Erin Walker’s intervention request, Mr. Harris’ Motion for Intervention should be denied because (1) he does not have a statutory right to intervene; (2) Mr. Harris’ asserted interests as a resident of Wallum Lake Road are adequately represented by existing Parties; and (3) Mr. Harris has failed to demonstrate good cause as to why his motion for intervention should be accepted. Invenergy respectfully requests that Mr. Harris’ Motion for Intervention also be Denied.

I. BACKGROUND

Pursuant to the Energy Facilities Siting Act, Chapter 42-98 of the General Laws of Rhode Island, as amended (“Act”), and the Rules of Practice and Procedure (“Rules”) of the RI EFSB, Invenergy filed an application to seek the approval of the RI EFSB to site and construct the Clear River Energy Center, an approximately 850-1000 MW combined cycle electric generating facility on Wallum Lake Road in Burrillville, R.I. (“CREC” or “Project”).

In accordance with the Act and the Rules, the RI EFSB held a Preliminary Hearing on January 12, 2016 to consider the application and the required elements as set forth in the Act and the Rules. On March 31, 2016, the RI EFSB held an open meeting and took public comment for four hours. There will be further opportunity for public comment on May 10, 2016 and May 23, 2016, in separate open forums before the Town of Burrillville. The Act (R.I. Gen. Laws 42-98-9) and the Rules (Rule 1.9) are quite specific with regard to the issues that RI EFSB will evaluate in this proceeding.

II. LEGAL STANDARD FOR INTERVENTION

The legal standard for intervention as a Party is well established. Pursuant to Rule 1.10(b) “any person claiming a right to intervene or an interest of such a nature that intervention is necessary or appropriate may intervene in any proceeding” where such a “right or interest” may be: (1) a right conferred by statute; (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; (3) any other interest of such a nature that petitioner’s participation may be in the public interest. Rule 1.10(d)(3) provides that the Board may, for good cause, authorize the filing of a late notice of intervention or motion to intervene.

Intervention as full Parties should be limited to Parties that have either statutory rights to intervene, directly affected interests that will not be adequately represented by other Parties, or special public interests that compel intervention as a Party. *See, e.g., In Re: Application of R.I. Fast Ferry, Inc. for Water Carrier Authority*, Docket D-13-51, Order No. 21170 (9/24/2013), at pp 15-20. *See also Public Service Co. of New Hampshire v. Patch*, 136 F.3rd 197, 205 (1st Cir. 1998) (“It is settled beyond peradventure, however, that an undifferentiated, generalized interest in the outcome of an ongoing action is too porous a foundation on which to premise intervention as of right . . .”).

III. DISCUSSION

A Motion for Intervention was filed on behalf of Mr. Harris on April 12, 2016.

Mr. Harris resides on property purportedly in the vicinity of the CREC, and he generally asserts that his property rights will be impacted by the Project. After receiving another filing regarding another Motion for Intervention on May 5, 2016, asserting essentially the same rationale as argued in Mr. Harris’ Motion, Invenenergy respectfully requests that the RI EFSB grant its late Objection to Mr. Harris’ Motion for Intervention.

Mr. Harris’ Motion for Intervention should be denied because he also does not have a statutory right to intervene. Questions regarding property interests and associated concerns are adequately represented by other Parties (i.e., the Bolducs and the Shermans) to this proceeding. Similarly, several other Parties to this proceeding will be representing the overall economic and environmental impacts (and benefits) associated with the Project, including the issues of concern to Mr. Harris, namely the impact of the Project on the environment and any construction, traffic and economic concerns. Moreover, the Board has requested an advisory opinion from the Town’s tax assessor on any impact the Project may have on the Town’s property values.

The Board should prohibit each individual property owner from intervening as a full Party. Allowing each individual property owner to intervene can easily lead this process to become unmanageable and overly burdensome for the Board and all other Parties. It is simply not in the public interest to allow each and every property owner or resident who lives within the Town, or even in the vicinity of the Project, to intervene as a full Party to this proceeding, particularly where the responsible government agencies will be active participants to the proceeding.

As the Board has explained, there will be ample opportunity for the Mr. Harris and the other concerned members of the Town, including all property owners, to provide comments, views, oppositions and data, in the form of public comment, in writing or in public testimony, so that the Board may hear the concerns and positions of these property owners with regard to the Project. The Board has already held one public meeting and has scheduled two more opportunities for specific public comments from residents of the Town.

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CONCLUSION

For the reasons set forth herein, Invenergy hereby requests that the RI EFSB deny Mr. Harris' Motion for Intervention.

Respectfully submitted,

INVENERGY THERMAL DEVELOPMENT, LLC

By Its Attorneys:

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Dated: May 9, 2016

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2016, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer