

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

MOTION FOR INTERVENTION
OF CONSERVATION LAW FOUNDATION

I. Introduction

The Conservation Law Foundation (CLF), pursuant to Energy Facility Siting Board (EFSB or the Board) Rule of Practice and Procedure 1.10(b)(3), respectfully files its Motion for Intervention in this Docket.

On November 17, 2015, the EFSB opened Docket # SB2015-06, regarding the proposal of Invenergy to site a 900 megawatt (MW) gas-fired combined-cycle electricity generating facility in Burrillville, Rhode Island. The proposed power plant, because it would be fired by a fossil fuel, would emit atmospheric carbon and would consequently have an impact on Rhode Island and global climate.

CLF's participation in this proceeding will be in the public interest within the meaning of EFSB Rule 1.10(b)(3).

II. The Intervenor

CLF is New England's leading environmental advocacy organization. Since 1966, CLF has worked to protect New England's people, natural resources and communities.

CLF is a nonprofit, member-supported organization with offices throughout New England. The Rhode Island CLF office is located at 55 Dorrance Street, Providence.

CLF promotes clean, renewable and efficient energy production throughout New England and has an unparalleled record of advocacy on behalf of the region's environmental resources. As part of its 40-year legacy, CLF was a party in the landmark case in which the U.S. Supreme Court ruled that the U.S. Environmental Protection Agency has an obligation under the Clean Air Act to consider regulating tailpipe emissions that contribute to global warming, Massachusetts v. E.P.A., 127 S. Ct. 1438 (2007); CLF obtained an injunction to stop drilling for oil and gas on the environmentally sensitive Georges Bank, Conservation Law Foundation v. Sec'y of the Interior, 790 F.2d 965 (1st Cir. 1986); litigated to ensure enforcement of an earlier settlement agreement in a case stemming from the Big Dig, which settlement agreement required 20 public transit projects in and around Boston including construction of additional subway and rail lines, Conservation Law Foundation v. Romney, 421 F. Supp.2d 344 (D. Mass. 2006); and successfully advanced legal strategies to restore groundfish to the Gulf of Maine and southern New England waters. Conservation Law Foundation v. Evans, 211 F. Supp.2d 55 (D.D.C. 2002).

III. The Standard Governing this Motion

Intervention in EFSB proceedings is governed by EFSB Rule 1.10. CLF does not claim a right to intervene conferred by statute (Section 1.10(b)(1)), nor any direct pecuniary interest (Section 1.10(b)(2)). Instead, CLF bases its motion on the provisions of

Rule 1.10(b), which states that a party may intervene where “appropriate” if the party has “any . . . interest of such a nature that petitioner’s participation may be in the public interest.”

IV. CLF’s Interest in This Proceeding

CLF has extensive experience in the operation of New England’s wholesale gas and electricity markets, and the multiple, often complex, ways in which those markets affect each other and affect the cost of electricity that must ultimately be borne by ratepayers. CLF has long been a Market Participant in the New England Power Pool (NEPOOL), the stakeholder entity legally sanctioned by the Federal Energy Regulatory Commission (FERC) that works with ISO-New England (ISO-NE), the entity that runs the New England electricity grid and operates the New England wholesale electricity markets.

The Invenergy application before the EFSB explains that Rhode Island lies within an import-constrained zone designated by ISO-NE and called “SENE,” and that, as such, Rhode Island needs “locally sited resources . . . without which reliability within the SENE capacity zone . . . may be compromised under certain scenarios.” Invenergy Application, October 28, 2015, at § 7.2.2, at page 18.¹ CLF attorneys sit on both the NEPOOL Reliability Committee and the ISO-NE’s Participants Advisory Committee (PAC) that are responsible for making recommendations and determinations concerning such zonal carve-

¹ Unfortunately, Invenergy uses the wrong nomenclature when referring to certain matters pertaining to ISO-NE. For example, resources that clear in the ISO-NE’s Forward Capacity Auction acquire a Capacity Supply Obligation (CSO) not a Forward Capacity Obligation (FCO), as Invenergy incorrectly states. Invenergy Cover Letter to EFSB, October 28, 2015, at page 3, ¶ 2.

outs within ISO-NE's Forward Capacity Market (FCM). CLF staff attorneys also sit on the NEPOOL Markets Committee that advises the ISO-NE on potential changes in market rules that affect (and effect) separate pricing methodologies using different price-demand curves for such separate zones in the FCM. As such, CLF anticipates being able to present factual evidence and background information that will be directly relevant to this proceeding, useful to the EFSB, and in the interest of the public and of all electricity ratepayers in Rhode Island.

In considering the proposal for a new 900 MW fossil-fuel generator, the Board will need to apply the provisions of the Resilient Rhode Island Act (P.L. 2014, ch. 39 § 1, et seq.; R.I. Gen. Laws 42-6.2-1, et seq.) This statute sets carbon-emission-reduction targets for Rhode Island of 10% below 1990 levels by 2020; 45% below 1990 levels by 2035; and 80% below 1990 levels by 2050.² Both supporters and opponents of the new Invenergy facility agree that the proposed plant, if built, will have important implications for carbon emissions.³

Rhode Island's Resilient Rhode Island Act is a rough analogue of the Global Warming Solutions Act (GWSA) enacted in 2008 in neighboring Massachusetts. After CLF successfully litigated to close down the Salem Harbor, Massachusetts, coal-fired power plant, there was a proposal to replace the closed coal plant with a 674 MW gas-fired

² Section 8 of the Resilient Rhode Island Act confers the power and the duty on the Board to consider the climate change implications of the proposed gas-fired power plant. R.I. Gen. Laws § 42-6.2-8.

³ For example, Invenergy states that its proposed facility "will be a major source" of carbon dioxide emissions. Invenergy Application, October 28, 2015, at pages 31-32.

combined-cycle plant similar in design to the plant at issue in this case. In Massachusetts, the gas-fired plant was proposed by Footprint Power Salem Harbor LP (Footprint). Between 2012 and 2014, CLF was the lead participant in a lawsuit based on the GWSA that led to a precedent-making settlement whereby the Footprint plant would receive (Massachusetts) EFSB approval; however, in compliance with the GWSA, the Footprint plant would be required to reduce its carbon emissions annually, and that the plant would be fully closed down no later than 2050. The Footprint settlement in Massachusetts was endorsed by an extraordinarily broad range of stakeholders, including the Administration of Governor Deval Patrick. The experience of CLF's lawyers in the Footprint case in neighboring Massachusetts may be helpful in informing the work of the EFSB in this analogous proceeding.

The Rhode Island Energy Facility Siting Act, the organic statute that created the Board, states that:

Before approving the construction, operation and/or alteration of major energy facilities, the board shall determine whether cost effective efficiency and conservation opportunities provide an appropriate alternative to the proposed facility.

R.I. Gen. Laws 42-98-2(7). CLF has long experience in proceedings before the Rhode Island Public Utilities Commission (PUC) on matters pertaining to cost effective energy efficiency. CLF participated as a party in PUC Docket # 3931 in 2008, which docket first established energy efficiency rules for the Energy Efficiency Resources and Management Council (EERMC) and then adopted the EERMC's first-ever three-year procurement plan

for cost-effective energy efficiency. Similarly, CLF participated in PUC docket # 4295, in which the PUC considered and adopted the EERMC's plan for procurement of cost-effective energy efficiency resources for 2012.

Although CLF has not previously appeared before the EFSB, CLF has participated, without objection from any party, in many dockets before the PUC. These include Docket # 3659 (setting Rules pursuant to R. I. Gen. Laws § 39-26-1, et seq., the state's Renewable Energy Standard, or RES); Docket # 3765 (considering Grid's 2007 RES compliance procurement); Docket # 3901 (considering Grid's 2008 RES procurement); Docket # 4012 (considering Grid's 2009 RES procurement); Docket # 3943 (gas distribution rate case); and Docket # 4065 (electricity distribution rate case).

As a result of this history, both in Rhode Island and in the rest of New England, CLF can play a constructive and helpful role in this Docket.

Moreover, the participation in this proceeding of a public-interest organization such as CLF will serve the public interest. See, generally, John E. Bonine, Public Interest Environmental Lawyers: Global Examples and Personal Reflections, 10 Widener L. Rev. 451 (2004) (emphasizing the constructive and salutary role of public-interest environmental lawyers in a wide range of legislative, judicial, and regulatory fora).

V. Conclusion

WHEREFORE, for the foregoing reasons, CLF respectfully requests that its motion to intervene in this Docket be granted.

CONSERVATION LAW FOUNDATION,
by its Attorneys,



Jerry Elmer (#4394)

Max Greene (#7921)

CONSERVATION LAW FOUNDATION

55 Dorrance Street

Providence, RI 02903

Telephone: (401) 228-1904

Facsimile: (401) 351-1130

E-Mail: JElmer@CLF.org

E-Mail: MGreene@CLF.org

CERTIFICATE OF SERVICE

I certify that the original and nine copies of this Motion was filed with the Energy Facility Siting Board. In addition, a PDF version of this Motion was served electronically on the service list of this Docket, as that list was provided by the EFSB on November 17, 2015. I certify that all of the foregoing was done on November 18, 2015.

