

**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
THE TOWN OF BURRILLVILLE’S SHOW CAUSE STATEMENT**

I. INTRODUCTION

Now comes Invenergy Thermal Development LLC (“Invenergy”) and hereby objects to the Town of Burrillville’s (“Town’s”) “Statement Regarding Show Cause Hearing” (hereinafter “Town’s Show Cause Statement”).

Invenergy objects to the Town’s Show Cause Statement that reargues its pending Motion to Dismiss for the following reasons: (1) Rule 1.15 of the Energy Facility Siting Board’s Rules of Practice and Procedure (“EFSB Rules”), titled “Suspension of Proceedings and Suspension or Revocation of Board License,” provides that *only* the applicant is entitled to show cause why the licensing proceedings should be suspended or why the proceedings should not be suspended; (2) the Town’s Show Cause Statement is inconsistent with its October 5, 2016 filing with the Energy Facility Siting Board (“EFSB” or “the Board”), where the Town agreed to ten (10) conditions that were necessary in order for the Town to “meaningfully evaluate any water proposal from Invenergy”; and (3) the Town’s Show Cause Statement is an attempt to argue its Motion to Dismiss, which the Town had agreed to postpone until after the Show Cause Hearing.

Accordingly, the Town’s Show Cause Statement should not be addressed on October 13, 2016.

II. ARGUMENT

A. The EFSB Rules Do Not Permit The Town To Submit A Show Cause Statement.

Pursuant to EFSB Rule 1.15(a)(2), titled, “Suspension Hearings,” “[p]rior to the suspension of licensing proceedings the Board shall issue a written ‘Show Cause’ order setting a date on which *the applicant* must appear before the Board to show cause why the licensing proceedings should not be suspended.” (Emphasis added.) Rule 1.15(a)(2) specifically states that the *applicant* is the only party that must appear before the Board to show cause why the licensing proceeding should or should not be suspended. Nothing in the rule provides that another party can argue against a stay of the proceedings.

In the Town’s Show Cause Statement, it argues that “it has an absolute right to be heard at a show cause hearing.” *See* Town’s Show Cause Statement, at 6. The Town then cites the Rhode Island Supreme Court’s decision in *Millett v. Hoisting Engineers’ Licensing Division of Dept. of Labor* for the proposition that “due process in administrative procedures requires the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” 377 A.3d 229, 236 (R.I. 1977). However, the Town’s due process rights are not violated if only the applicant argues at a Show Cause Hearing, as the Show Cause Hearing is designed specifically to provide the applicant with an opportunity to “show cause why” the licensing proceeding should or should not be suspended, because it is the applicant that is harmed from the issuance of a stay of the proceedings, not the intervening parties.

Invenergy appreciates that the fundamental requisite of due process is the opportunity to be heard at a meaningful time and in a meaningful manner which is why Invenergy is not objecting to a suspension of the proceedings and why Invenergy requested an extension of the remaining procedural schedule, with the intent to allow all parties, including the Town, the requisite notice of an alternative water supply plan, with a sufficient opportunity to present witnesses and evidence at Final Hearings. *See* Invenergy’s Notification Letter to the EFSB, dated

August 22, 2016; Invenergy's Motion For Extension, filed with the EFSB on September 9, 2016. This process will afford the Town and all parties with the required due process.

B. The Town's Show Cause Statement Is Inconsistent With Its October 5, 2016 Filing.

On October 5, 2016, the Town filed a letter with the Board stating, "In advance of the October 13, 2016 Show Cause hearing, please let the Energy Facility Siting Board members know that the Town of Burrillville, the Conservation Law Foundation, and Invenergy have all agreed that in order to *meaningfully evaluate any water proposal from Invenergy, the following items will be provided by Invenergy[.]*" (Emphasis added.) The Town's last minute Show Cause Statement is completely inconsistent with its October 5, 2016 Filing.

C. The Town's Show Cause Statement Is An Improper Attempt To Argue Its Motion To Dismiss, Which the Town Agreed To Postpone In Its October 4, 2016 E-Mail To The Board.

Additionally, the Town's Show Cause Statement is an obvious "back door" attempt to argue the arguments raised in its Motion to Dismiss at the Show Cause Hearing. However, the Town agreed to postpone the hearing on its Motion to Dismiss until after the Show Cause Hearing. On October 4, 2016, the Town e-mailed the entire EFSB service list and stated the following: "The Town of Burrillville also has no objection to its Motion to Dismiss, originally scheduled for hearing on Thursday, October 13, 2016, not being heard on that date, but being set down for hearing at a later time due to Mr. Beretta's unavailability on October 13." *See* E-mail From Town's Attorney, Michael McElory, to the EFSB Service List, dated October 4, 2016.

III. CONCLUSION

Accordingly, Invenergy strongly objects to the Town's Show Cause Statement as it is not allowed in EFSB Rule 1.15(a)(2) and is completely inconsistent with the Town's October 5, 2016 Filing and October 4, 2016 e-mail to the EFSB Service list.

Respectfully submitted,

INVENERGY THERMAL DEVELOPMENT LLC

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Dated: October 13, 2016

CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2016, I delivered a true copy of the foregoing responses to the Energy Facilities Siting Board via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer