



For a thriving New England

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February 21, 2017

Energy Facility Siting Board  
99 Jefferson Blvd.  
Warwick, RI 02888

To the EFSB:

Re: Invenergy Proposal, SB 2015-06

Conservation Law Foundation (CLF) respectfully requests that the Energy Facility Siting Board (EFSB) permit CLF to bring back its expert witness Robert Fagan, who testified before the Public Utilities Commission (PUC) in Docket # 4609, as to whether or not the proposed Invenergy power plant is needed for system reliability of the New England electricity grid. CLF bases this request on the existence of major new evidence pertaining to the issue of need, which evidence was not available at the time of the PUC hearing in July 2016.

At the PUC hearing Mr. Fagan testified that the Invenergy plant is not needed. See, e.g., PUC Advisory Opinion, page 12, line 15 to page 13, line 11. Witness Seth Parker, called for the Division of Public Utilities and Carriers, testified that the Invenergy plant is needed. See, e.g., PUC Advisory Opinion, page 13, lines 14 to 18. The PUC, after hearing the evidence, sided with Parker, and rendered an Advisory Opinion stating that the Invenergy plant “is needed in order to meet the electric generation reliability needs of Southeastern New England . . . .” PUC Advisory Opinion Conclusion, at 22.

New evidence, not available at the time of the PUC hearing, demonstrates that on multiple salient points on which witnesses Fagan and Parker disagreed, Fagan was correct and Parker was incorrect. New evidence includes, but is not limited to: the results of an ISO-run Reconfiguration Auction, the results of ISO-run Forward Capacity Auction-11 (FCA-11, conducted February 6, 2017), and Invenergy’s failure to clear its second turbine in FCA-11.

While CLF is certainly willing to present Mr. Fagan’s testimony here in the EFSB, CLF respectfully suggests that the matter be remanded to the PUC for further consideration, as the PUC was the agency that first addressed the issue of need.

In the event that Mr. Fagan returns as an expert witness, CLF would, of course, not object to other parties being permitted to have experts address the same issue; CLF is quite confident of what the new evidence shows.

However, Invenergy should not be heard to object to this new evidence being presented. The EFSB has already determined that the issue of need is an important one in this case; in its March 10, 2016 Preliminary Decision and Order, the EFSB listed the question of whether the proposed plant is needed as the very first issue to be considered at final hearing. EFSB Preliminary Decision and Order, at 9. Indeed, if Invenergy were to interpose an objection to CLF presenting this new evidence, CLF would argue that the EFSB should draw an adverse inference from Invenergy's objection. See, e.g., Belanger v. Cross, 488 And 410, 412-413 (R.I. 1985) (collecting cases for the adverse inference rule).

CONSERVATION LAW FOUNDATION,  
by its Attorneys,



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### CERTIFICATE OF SERVICE

I certify that an original and 10 copies of this letter were filed by hand with the Energy Facility Siting Board, 99 Jefferson Blvd., Warwick, RI 02888. I certify that electronic copies of this letter were served on the entire service list of this Docket. I certify that both of these things were done on February 21, 2017.

