

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD**

IN RE: Application of : **Docket No. SB 20 15-06**
Invenergy Thermal Development LLC 's :
Proposal for Clear River Energy Center :

**MOTION FOR INTERVENTION BY
NARRAGANSETT INDIAN TRIBE MEMBER KOURTNIE AILERU**

I. INTRODUCTION

Now comes Kourtnie Aileru, (hereafter “Ms. Aileru,”), a member of the Narragansett Indian Tribe (hereafter “the Tribe”) and pursuant to Rule 1.10(b)(2) of the Rules of Practice and Procedure of the Energy Facilities Siting Board (hereafter “EFSB”), respectfully files this Motion for Intervention in the above-captioned docket. This Docket was opened in November, 2015, yet the directly affected interest of Ms. Aileru was only revealed when media outlets reported on September 28, 2017 that Invenergy Thermal Development LLC had reached an agreement to purchase water from the Narragansett Indian Tribe.

With no means by which to view or evaluate this purported agreement much less to fully participate in the EFSB's decision making process, Ms. Aileru has determined that her only recourse is to file this motion. Should the EFSB determine it appropriate, Ms. Aileru is amenable to being granted Intervenor status that limits her participation to the issue of the Water Supply for the proposed facility.

II. THE INTERVENOR

Kourtnie Aileru is a member of the Narragansett Indian Tribe. The Tribe includes

approximately 2,600 formally recognized members.

The Narragansett Indian Tribe holds lands encompassing more than 1,900 acres surrounded by the Town of Charlestown, Rhode Island, and codified under the Rhode Island Indian Claims Settlement Act, 25 U.S.C. §§ 1701-1716. These lands are nourished by a body of water known as the Lower Wood River Aquifer, which is part of the Pawcatuck River Basin.

Ms. Aileru has not seen the purported contract between Invenergy and the Tribe, much less had an opportunity to comment or vote on it. From the little bit of information that has been made public, it is clear that the water supply impacting tribal lands could be significantly affected, for some period of time which Ms. Aileru is unable to determine. However, such an agreement or contract must be approved by Tribal Members via tribal resolution at a special tribal meeting and must be approved with a two-thirds vote of the Tribal Assembly. No tribal meeting or vote has occurred regarding a proposed agreement to sell tribal water to Invenergy, and any alleged agreement is illegal. Thus, Ms. Aileru, like other Tribal members, requires Intervenor status to view the contract that proposes selling their water. Only then can Ms. Aileru determine if this purported contract with Invenergy has any potential binding effect, and if so, protect her interest.

III. STANDARD FOR DETERMINING INTERVENTION

Rule 1.10 of the Rules of Practice and Procedure of the Energy Facilities Siting Board governs the standard for determining Intervenor status. Intervention is “necessary or appropriate” if a party's interest is “directly affected” and “not adequately represented by existing parties and as to which petitioners may be bound by the Board's action in the proceeding.” Rules of Practice and Procedure, 1.10(b)(2).

IV. THE INTEREST OF NARRAGANSETT INDIAN TRIBAL MEMBER KOURTNIE AILERU

Intervention by Ms. Aileru more than meets the prescribed criteria, as her interest is directly affected at a fundamental level, that of the most precious resource available to future generations, i.e. the water supply of the Narragansett people on Narragansett land.

Furthermore, no existing Intervenor even purports to represent much less is capable of adequately representing the interests of Ms. Aileru or any other Tribal member.

A. Kourtnie Aileru's Interest in Protecting the Tribal Water Supply is Directly Affected by the Proposed Clear River Energy Center.

“Water is life” has become a familiar maxim to Native and non-Native peoples throughout the Americas in recent times, much of it due to concerns regarding the impact of contested development projects on water supply in Indian Country. Here, the actual site proposed for the Clear River Energy Center in Burrillville is roughly fifty miles from Narragansett tribal lands, a distance considered “far” by Rhode Island standards. Yet the proposed purchase by Invenergy of water from tribal lands brings the issue as close to home physically, economically, and culturally as possible. The effort by many people over the years to restore a portion of the Narragansett Indian Tribe's land is far too complex to summarize within the pages of this motion. *See generally, Narragansett Indian Tribe v. State of Rhode Island* 449 F.3d 16, 18-20 (1st Cir., 2006). What is clear is that the members of the Tribe have a profoundly important interest in protecting and preserving the water that belongs to the Tribe.

The *Water Supply Plan – Supplement* submitted by Invenergy and dated September 28, 2017 states that “CREC has also secured a commitment from the Narragansett Indian Tribe

("the Tribe") to supply process makeup water to the Facility as an additional back-up or contingent water supply." Without having direct knowledge of the specific content of the agreement (since the Appendix I referenced in the document is fully redacted) the text of this supplemental plan suggests that Invenenergy plans to draw water from the Lower Wood River Aquifer, ostensibly using existing tribal well infrastructure. This water source and supply system, as the report acknowledges, provides the public water supply needs associated with tribal land. The outcome of the EFSB's decision, should it precipitate or allow for the sale of any of the Tribe's water, even on a contingent basis, could potentially bind Narragansett Tribal members for generations to come.

B. Ms. Aileru's Interest in Protecting the Water Supply is Not Adequately Represented by Existing Parties.

None of the current Intervenors is capable of representing the interests of Tribal Members in this docket, even should they be so inclined. Other parties are charged with representing a specific population and geographic area (e.g. Town of Burrillville), a broad environmental perspective (e.g. Conservation Law Foundation) or the specific interest of their membership in securing employment (e.g. Rhode Island Building and Construction Trades Council).

Although the Town of Charlestown was granted status as an Intervenor, the Petitioner submits that the Town of Charlestown is wholly incapable of representing the interests of any Tribal Member, and to expect it to do so would be patently unfair to both the Tribal Member and the Town. That the Town and the NIT share a single sole-source aquifer does not bind their interest in this matter; instead it creates the potential for them to be adverse actors competing for the same limited resource. Charlestown must represent the interests of a

specific population: its residents. Tribal members must represent their own individual and collective interests as a *distinct* population and part of a sovereign nation. While there may be and one can certainly hope for occasions where these interests align, it would be irrational and short-sighted for anyone to assume that the Town of Charlestown can represent the interests of Tribal Members or the Tribe. This divergence of interests is clear without even beginning to recount any of the historic and sometimes recurring tensions that arise between the municipality and the Tribe.

V. THIS MOTION IS TIMELY

Any perceived delay in the timing of this Motion cannot be attributed to Ms. Aileru. The purported agreement between Invenergy and the Narragansett Indian Tribe was only revealed to Tribal Members through media reports after the proposal was announced in the Water Supply Plan – Supplement submitted by Invenergy on September 28, 2017. Before that time, Ms. Aileru was simply a disinterested party with no reason to consider seeking Intervenor status. Since then, the Tribal Council of the Narragansett Indian Tribe filed a Motion to Intervene; on November 27, 2017 the Board voted to deny that motion, thus necessitating this motion to intervene. Regardless, this Motion is timely because it is filed more than twenty (20) days before the final hearing begins, pursuant to Rule 1.10(d)(1).

VI. CONCLUSION

WHEREFORE, for the aforementioned reasons, the Petitioner respectfully requests that she be granted Intervenor status in this docket.

Respectfully submitted,

Kourtnie F. Aileru, Member
NARRAGANSETT INDIAN TRIBE
By and Through her Attorney,

/s/ Shannah Kurland
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Dated: December 18, 2017

CERTIFICATION

I, the undersigned, do hereby certify that I did forward a copy of the within Motion to Intervene via e-mail to all on the following service list on the 18th day of December, 2017, and caused to be hand-delivered four (4) hard copies of same to the EFSB, 89 Jefferson Blvd, Warwick, Rhode Island.

/s/ Shannah Kurland

SSB-2015-06 Invenenergy CREC Service List as of 11/20/2017

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