

October 16, 2017

Via Federal Express/Electronic Mail

Todd Anthony Bianco, EFSB Coordinator
RI Energy Facilities Siting Board
89 Jefferson Blvd.
Warwick, RI 02888

Re: *Invenergy Docket No. SB-2015-06*

Dear Mr. Bianco:

On behalf of Invenergy Thermal Development LLC and the Clear River Energy Center Project (“Invenergy”), enclosed please find an original and three (3) copies of Invenergy’s Objection to the Town of Charlestown’s Intervention Motion.

Please let me know if you have any questions.

Very truly yours,



ALAN M. SHOER
ashoer@apslaw.com

Enclosures

cc: Service List

**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 CHARLESTOWN’S MOTION FOR INTERVENTION**

Now comes Invenergy Thermal Development LLC (“Invenergy”) and hereby objects to the Town of Charlestown’s (“Charlestown’s”) Motion for Intervention, filed with the Rhode Island Energy Facility Siting Board (“EFSB” or “Board”) on October 11, 2017 (“Intervention Motion” or “Motion”). The concerns raised in Charlestown’s Intervention Motion neither warrant nor satisfy the legal standard for intervention as a full party. Because it failed to demonstrate an interest that would be directly affected by the siting of the Clear River Energy Center (“CREC”) and because it failed to demonstrate that its intervention is in the public interest, its Intervention Motion should be denied. To the extent that Charlestown’s Motion is a means to seek further information concerning the proposed *additional* contingent/redundant water source, Invenergy will supply Charlestown with further analysis performed regarding the Lower Wood River Aquifer.

Accordingly, Invenergy respectfully requests that Charlestown’s Motion be denied.

I. BACKGROUND

On September 28, 2017, Invenergy filed a supplement to its Water Supply Plan, identifying the Narragansett Indian Tribe (“the NIT”) as its *additional* contingent/redundant water supply source (“back-up to a back-up”).¹ On October 11, 2017, Charlestown filed an

¹ The Town of Johnston is (and will be) the primary water supply source for CREC. *See* Invenergy’s Revised Water Supply Plan, filed with the Board on January 11, 2017. Benn Water

Intervention Motion asserting that it has an alleged directly affected interest in this EFSB proceeding because it is “concerned that the proposed use of the NIT’s well(s) may cause a large draw on the Lower Wood River Aquifer, . . . which may exacerbate current water supply issues within Charlestown.” Charlestown’s Motion for Intervention, dated Oct. 11, 2017 (“Charlestown Mot.”), at 3. Charlestown stated that “[w]ithout knowing the full extent of the agreement between Invenergy and NIT, Charlestown cannot gauge the severity of the effect of the agreement on the citizens of the town.” *Id.*

As discussed further below, although Charlestown is adjacent to the location of Invenergy’s *additional* contingent/redundant water source (the NIT), being adjacent to an *additional* contingent/redundant water source does not satisfy the legal standard for intervention as a full party. Charlestown’s Motion should therefore be denied.

II. LEGAL STANDARD FOR INTERVENTION

The legal standard for intervention as a party is well established. Pursuant to Rule 1.10(b) of the EFSB Rules of Practice and Procedure (“EFSB Rules” or “Board Rules”), “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.

While this Rule is intended to “ensure that the interests of interested parties are met

and Heavy Transport Corp. is Invenergy’s contingent/redundant water supply source. *Id.* The NIT is Invenergy’s *additional* contingent/redundant water supply source. *See* Invenergy’s Supplement to the Revised Water Supply Plan, filed with the Board on September 28, 2017.

through the adversarial process,”² the Board’s Rule 1.10(b) on necessary and appropriate interventions should not allow persons or entities to intervene whose interests are only indirectly affected or where their interests are adequately represented by other parties or where there is insufficient compelling public interest to warrant intervention as a full party. *See, e.g., In Re: Island Hi Speed Form of Regulation and Review of Rates*, PUC Docket 3495 (Order issued May 9, 2003)(citing *In re Island Hi-Speed Ferry, LLC*, 746 A.2d at 1245-46 (questioning the wisdom of the Commission’s decision allowing intervention to Parties with indirect interests in the outcome)).

In deciding whether the “public interest” demands the participation of an entity, the EFSB “must logically find that their individual interests warrant recognition and protection in furtherance of the general welfare of the public.” *See In Re: Joint Petition for Purchase & Sale of Assets by the Narragansett Elec. Co. & the S. Union Co.*, D-06-13, 2006 WL 1487796 (May 4, 2006).³ When considering this issue, the EFSB must “also balance several related factors, specifically, whether the [EFSB] ultimately has the authority to grant the relief requested, whether the Movants may more effectively pursue their respective interests in other forums, and whether the intervention(s) would unduly delay or prejudice the adjudication of the rights of the Petitioners and other parties.” *Id.*

Thus, intervention as a full Party should be limited to those entities 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:*

² *In re Island Hi-Speed Ferry, LLC.*, 746 A.2d 1240, 1245 (R.I. 2000).

³ Although this decision was rendered with the Rhode Island Division of Public Utilities and Carriers (“Division”), the intervention standard for the Division and the Rhode Island Public Utilities Commission is substantially the same as the intervention standard for the EFSB.

Application of R.I. Fast Ferry, Inc. for Water Carrier Authority, Docket D-13-51, Order No. 21170 (Order issued Sept. 24, 2013), at 15-20.

III. ARGUMENT

Because Charlestown does not have a statutory right to intervene,⁴ is not directly affected by the siting of the proposed CREC and a special public interest does not compel intervention, Charlestown's Intervention Motion should be denied.

1. Charlestown is Not Directly Affected by the Siting of the Proposed CREC.

Charlestown's Intervention Motion asserts that it has an alleged directly affected interest in this EFSB proceeding because Invenergy has an agreement with the NIT whereby the NIT will be an *additional* contingent/redundant water source for the proposed CREC. Charlestown's Motion states that it is "concerned that the proposed use of the NIT's well(s) may cause a large draw on the Lower Wood River Aquifer, . . . which may exacerbate current water supply issues within Charlestown." Charlestown Mot., at 3. Accordingly, Charlestown contends that its "interest is 'directly affected' by the proposed construction and operation" of CREC. *Id.*

Although neither the Act nor the EFSB Rules define a directly affected interest, the Board previously provided insight regarding what constitutes a directly affected interest. On February 21, 2017, the Town of Burrillville ("Town") filed a motion seeking new advisory opinions from the Towns of Johnston, Smithfield and Glocester. Docket SB-2015-06, Order No. 110, dated Apr. 13, 2017. The Town argued that because Invenergy's Revised Water Supply Plan showed that the water truck routes traversed these Towns, they should be asked to render an advisory opinion regarding any impact that the Revised Water Supply Plan may have (or not have) on these Towns. *Id.* at 1-2. The Board denied the Town's motion, stating that "because

⁴ It is undisputed that Charlestown does not have a statutory right to intervene.

the Towns of Johnston, Smithfield, and Gloucester are *not directly affected* by the siting of the Invenergy facility, advisory opinions from those Towns are not necessary.” *Id.* at 4-5 (emphasis added).

Like the Towns of Johnston, Smithfield and Gloucester, Charlestown is also not directly affected by the siting of the Invenergy facility. If the Town of Johnston—Invenergy’s primary water source—was not deemed a directly affected town, Charlestown cannot be deemed a directly affected town. Invenergy is not proposing to retrieve water from the Town of Charlestown. Invenergy is proposing to retrieve water from the NIT, which is adjacent to Charlestown, as an *additional* contingent/redundant supply source.

Simply because Charlestown has a resource that is adjacent to CREC’s *additional* contingent/redundant water supply source does not equate to Charlestown having a direct interest in this proceeding. At most, Charlestown has an indirect interest in the proceeding and an indirect interest alone is not sufficient to satisfy the EFSB’s intervention standard and allow Charlestown to be deemed a full party. *See, e.g., In Re: Island Hi Speed Form of Regulation and Review of Rates*, PUC Docket 3495 (Order issued May 9, 2003).

2. *Charlestown Does Not Have a Specific Public Interest and to the Extent Charlestown’s Motion is a Means to Seek Further Information, Invenergy Has Agreed to Supply This Information.*

Additionally, Charlestown contends that intervention is in the “public interest” because the Lower Wood River Aquifer is the “supplier of water for both public drinking and firefighting purposes serving the majority of the Town of Charlestown. . . . Consequently, the Application directly impacts the public health, safety and welfare of residents of the Town of Charlestown.” Charlestown Mot., at 4. Charlestown’s interest in the Lower Wood River Aquifer is not “of such nature that petitioner’s participation may be in the public interest.” *See* EFSB Rule 1.10(b)(3).

Charlestown does not seek to intervene in order to participate in the EFSB proceeding or the final hearings, rather it appears Charlestown seeks to intervene in order to better understand what, if any, impact CREC's agreement with the NIT as an *additional* contingent/redundant source to the proposed CREC may have on the Lower Wood River Aquifer. *See* Charlestown Mot., at 3 & 4 (stating “[w]ithout knowing the full extent of the agreement between Invenergy and NIT, Charlestown cannot gauge the severity of the effect of the agreement on the citizens of the town”). In fact, Charlestown's Motion specifically states, “*Charlestown must be granted intervenor status so as to gain access to an un-redacted version of the Supplement[.]*” *Id.* at 4 (emphasis added).

The Board's rules do not allow entities to seek intervention as a means for obtaining information. Likewise, seeking intervention as a means of obtaining information is not in the public interest. However, in an effort to address Charlestown's concerns as articulated in its Motion, Invenergy's counsel has spoken with Charlestown's solicitor and has agreed to provide Charlestown with an engineering impact analysis so that it can have its own experts review to better understand whether the water obtained from the NIT will impact the Lower Wood River Aquifer. Intervention is therefore not needed for Charlestown to receive the requested information.

Accordingly, because Charlestown is not directly affected by the siting of CREC, because Charlestown's intervention is not in the public interest and because Invenergy will provide Charlestown with access to the information requested, its Intervention Motion should be denied.

IV. CONCLUSION

For the reasons set forth herein, Invenergy hereby requests that the EFSB deny Charlestown's Motion.

Respectfully submitted,

INVENERGY THERMAL DEVELOPMENT, LLC

By Its Attorneys:

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Dated: October 16, 2017

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2017, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer