

December 22, 2017

Via Federal Express/Electronic Mail

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

Re: Invenergy Docket No. SB-2015-06

Dear Dr. Bianco:

On behalf of Invenergy Thermal Development LLC and the Clear River Energy Center Project (“Invenergy”), please find enclosed an original and three (3) copies of Invenergy’s Objection to the December 18, 2017 Motions for Intervention.

Please let me know if you have any questions.

Very truly yours,



ALAN M. SHOGER
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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 DECEMBER 18, 2017 MOTIONS FOR INTERVENTION**

Now comes Invenergy Thermal Development LLC (“Invenergy”) and hereby objects to the Motions for Intervention, filed with the Rhode Island Energy Facility Siting Board (“EFSB” or “Board”) on December 18, 2017 (“Intervention Motions” or “Motions”) on behalf of Angelita Beltran, Anthony Soares, Chastity Machado, Darlene Monroe, Domingo Monroe, Kourtnie Aileru and Randy Noka (“the Intervenors”). The concerns raised in the Intervention Motions neither warrant nor satisfy the legal standard for intervention as a full party. Allowing individual members or citizens of the Narragansett Indian Tribe (“NIT”) to intervene as full parties due to generalized objections to the Clear River Energy Center (“CREC” or “the Project”) could easily lead to an opening of floodgates resulting in an unmanageable process before the Board.

Because the Intervention Motions fail to demonstrate sufficient asserted interests that would be directly affected by the siting of CREC, and because the general interests in the protection of water resources in the aquifer are adequately represented by existing parties (the Town of Charlestown), the Intervention Motions should be denied. Allowing these individual NIT members intervention status would also, again, embroil the Board in internal tribal matters, as pitting individual claims of objection against the support of the representatives of the NIT that signed a water supply agreement with Invenergy, and would circumvent the recent NIT Tribal Court Injunction prohibiting these individuals from taking what is essentially a collective action purportedly on behalf of the NIT. This Board has already ruled that it would not allow this

internal tribal dispute to be litigated within this EFSB process.

I. 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 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.

The Board’s Rules of Practice and Procedure (“Board’s Rules”) allow for intervention by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate. *See* Board Rule 1.10(b). While this Rule is intended to “ensure that the interests of interested parties are met through the adversarial process,”¹ the Board’s Rule 1.10(b) on necessary and appropriate interventions do not allow for intervention by persons or entities 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 Public Utilities Commission’s (“PUC’s”) decision allowing intervention to parties with indirect interests in the outcome)).

¹ *In re Island Hi-Speed Ferry, LLC*, 746 A.2d 1240, 1245 (R.I. 2000).

Thus, intervention as full parties should be limited to parties that have either statutory rights to intervene, sufficiently impacted 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: Application of R.I. Fast Ferry, Inc. for Water Carrier Authority*, Docket D-13-51, Order No. 21170, dated September 24, 2013, at pp 15-20; *see also Public Service Co. of New Hampshire v. Patch*, 136 F.3d 197, 205 (1st Cir. 1998) (“It is settled beyond peradventure, however, that an undifferentiated, generalized interest in the outcome of an ongoing action is too porous a foundation on which to premise intervention as of right .”).

Because the Intervenors do not have a statutory right to intervene,² are not directly affected by the siting of the proposed CREC and are adequately represented by existing parties, the Intervention Motions should be denied.

II. ARGUMENT

The Intervention Motions’ allege that, because the Intervenors are individual members of the NIT, and because the NIT agreed to be an *additional* contingent water source for the proposed CREC, the individual members have a directly affected interest that is purportedly not adequately represented by any other party. Intervenors Motion, at 2-4. Specifically, the Intervention Motions’ assert that “the members of the Tribe have a profoundly important interest in protecting and preserving the water that belongs to the Tribe.” *Id.* at 3. The Motions note that Invenergy’s Supplemental Water Supply Plan (“Supplemental Water Supply Plan”), filed with the Board on September 28, 2017, “suggests that Invenergy plans to draw water from the Lower Wood River Aquifer, ostensibly using existing tribal well infrastructure.” *Id.* at 4. The Intervention Motions’ allege that, therefore, the outcome of the EFSB’s decision “could

² It is undisputed that the Intervenors do not have a statutory right to intervene.

potentially bind [NIT] members for generations to come.” *Id.*

Contrary to the Intervenor’s claims, being a member of the NIT, by itself, does not satisfy the intervention standard and does not equate to a sufficiently stated direct interest in the CREC to warrant intervention as a party. *See In re Island Hi-Speed Ferry, LLC*, 746 A.2d at 1245-46 (questioning the wisdom of the PUC’s decision allowing intervention to parties with indirect interests in the outcome). The Intervenor’s assert a general interest in protecting the Lower River Wood Aquifer and contend that the general interest in protecting the Lower Wood River Aquifer is also sufficient to warrant intervention as a full party.³ “It is settled beyond peradventure, however, that an undifferentiated, generalized interest in the outcome of an ongoing action is too porous a foundation on which to premise intervention as of right.” *See Public Service Co. of New Hampshire*, 136 F.3d at 205. Because the Intervenor’s assert no more than a general interest in protecting the Lower Wood River Aquifer, they do not possess a directly affected interest sufficient to warrant intervention as a full party.

Moreover, the Intervenor’s interest in protecting the Lower Wood River Aquifer is the same type of interest asserted by the Town of Charlestown (“Charlestown”), which was granted limited intervenor status regarding “issues related to the supplemental water supply plan submitted on September 28, 2017.” *See* October 17, 2017 Transcript, at 87:5-8. Because the Intervenor’s asserted interest in protecting the Lower River Wood Aquifer is being evaluated and

³ The Intervention Motions also state that “[t]ribal members must represent their own individual and *collective* interests as a distinct population and part of a sovereign nation.” Intervention Motion, at 5 (emphasis added). To the extent that the Intervention Motions seek intervention to represent a “collective” interest of the NIT, the Board already denied a motion previously filed on behalf of members of the NIT in their purported capacity as the NIT Tribal Council. *See* October 20, 2017 Intervention Motion. (Some of the Intervenor’s here were signatories to the motion previously filed.) On November 27, 2017, the Board dismissed the intervention motion on behalf of purported Tribal Council.

will be adequately addressed by an existing party (Charlestown), intervention of these additional individual members of the NIT (and any number of others that may also be thinking of seeking intervention) is unwarranted.

The Board should, therefore, prohibit each individual NIT member from intervening as a full party. Allowing each individual member to intervene can easily result in an unmanageable and overly burdensome process for the Board and all other parties. It would also create the wrong precedent, as it would allow any individual citizen of the region to assert “rights” to intervene based on generalized opposition to a project and concern about a resource that will already be carefully evaluated by existing parties to the process and by the Board. It is simply not in the public interest to allow each and every NIT member to intervene as a full party to this proceeding, particularly where a responsible government agency will be an active participant to the proceeding regarding issues associated with the *additional* contingent water source that might draw water from the Lower Wood River Aquifer.

Accordingly, because the Intervenors do not have a statutory right to intervene; because the Intervenors are not directly affected by the siting of the proposed CREC; and because Intervenors’ claimed interests are adequately represented by existing parties, the Intervention Motions should be denied.

III. CONCLUSION

For the reasons set forth herein, Invenergy respectfully requests the Board deny the Intervention Motions.

Respectfully submitted,

INVENERGY THERMAL DEVELOPMENT, LLC

By Its Attorneys:

/s/ Alan M. Shoer

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Dated: December 22, 2017

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 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