

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 DOMINGO MONROE

I. INTRODUCTION

Now comes Domingo Monroe, (hereafter “Mr. Monroe,”), 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 Mr. Monroe 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, Mr. Monroe has determined that his only recourse is to file this motion. Should the EFSB determine it appropriate, Mr. Monroe is amenable to being granted Intervenor status that limits his participation to the issue of the Water Supply for the proposed facility.

II. THE INTERVENOR

Domingo Monroe 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.

Mr. Monroe 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 Mr. Monroe 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, Mr. Monroe, like other Tribal members, requires Intervenor status to view the contract that proposes selling their water. Only then can Mr. Monroe determine if this purported contract with Invenergy has any potential binding effect, and if so, protect his 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 DOMINGO MONROE

Intervention by Mr. Monroe more than meets the prescribed criteria, as his 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 Mr. Monroe or any other Tribal member.

A. Domingo Monroe'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. Mr. Monroe'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 Mr. Monroe. 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, Mr. Monroe 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 he be granted Intervenor status in this docket.

Respectfully submitted,

Domingo Monroe, Member
NARRAGANSETT INDIAN TRIBE
By and Through his Attorney,

/s/ Shannah Kurland
Shannah Kurland, Esq. (#9186)
149 Lenox Avenue
Providence, RI 02907
401-439-0518
skurland.esq@gmail.com

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

Name/Address	E-mail	Phone/FAX
<p>File an original and 10 copies with EFSB: Todd Bianco, Coordinator Energy Facility Siting Board 89 Jefferson Boulevard Warwick, RI 02888</p> <p>Margaret Curran, Chairperson Janet Coit, Board Member Assoc. Dir., Div. of Planning Parag Agrawal Patti Lucarelli Esq., Board Counsel Susan Forcier Esq., Counsel Rayna Maguire, Asst. to the Director DEM Catherine Pitassi, Asst. to. Assoc. Dir. Plann. Margaret Hogan, Sr. Legal Counsel</p>	Todd.Bianco@puc.ri.gov ;	401-780-2106
	Kathleen.Mignanelli@puc.ri.gov ;	
	Patricia.lucarelli@puc.ri.gov ;	
	Margaret.Curran@puc.ri.gov ;	
	janet.coit@dem.ri.gov ;	
	Catherine.Pitassi@doa.ri.gov ;	
	Margaret.hogan@puc.ri.gov ;	
	susan.forcier@dem.ri.gov ;	
	rayna.maguire@dem.ri.gov ;	
	Parag.Agrawal@doa.ri.gov ;	
<p>Parties (Electronic Service Only, Unless by Request)</p>		
<p>Invenenergy Thermal Development LLC Alan Shoer, Esq. Richard Beretta, Esq. Elizabeth Noonan, Esq. Nicole Verdi, Esq. Adler, Pollock & Sheehan One Citizens Plaza, 8th Floor Providence, RI 02903</p>	ashoer@apslaw.com ;	401-274-7200
	rberetta@apslaw.com ;	
	enoonan@apslaw.com ;	
	nverdi@apslaw.com ;	
	jniland@invenenergyllc.com ;	
<p>John Niland, Dir. Of Business Development Tyrone Thomas, Esq., Asst. General Counsel Mike Blazer, Esq., Chief Legal Officer Invenenergy Thermal Development LLC One South Wacker Drive, Suite 1900 Chicago, IL 60600</p>	jniland@invenenergyllc.com ;	312-224-1400
	Tthomas@invenenergyllc.com ;	
	mblazer@invenenergyllc.com ;	
	generalcounsel@invenenergyllc.com ;	
<p>Town of Burrillville Michael McElroy, Esq., Special Counsel Leah Donaldson, Esq., Special Counsel Schacht & McElroy PO Box 6721 Providence, RI 02940-6721</p>	Michael@mcelroylawoffice.com ;	401-351-4100
	leah@mcelroylawoffice.com ;	
	dimitrilaw@icloud.com ;	
<p>William Dimitri, Esq., Acting Town Solicitor</p>		401-273-9092
<p>Conservation Law Foundation</p>	Jelmer@clf.org ;	401-351-1102

<p>Jerry Elmer, Esq. Max Greene, Esq. 235 Promenade Street Suite 560, Mailbox 28 Providence RI, 02908</p>	<p>Mgreene@clf.org;</p>	
<p>Ms. Bess B. Gorman, Esq. Assistant General Counsel and Director Legal Department, National Grid 40 Sylvan Road Waltham, MA 02451 Mark Rielly, Esq. Senior Counsel</p>	<p>Bess.Gorman@nationalgrid.com;</p>	<p>781-907-1834</p>
	<p>Mark.rielly@nationalgrid.com;</p>	
<p>Office of Energy Resources Andrew Marcaccio, Esq. Nick Ucci, Chief of Staff Chris Kearns, Chief Program Development One Capitol Hill Providence, RI 02908 Ellen Cool Levitan & Associates</p>	<p>Andrew.Marcaccio@doa.ri.gov;</p>	<p>401-222-3417</p>
	<p>Nicholas.Ucci@energy.ri.gov;</p>	<p>401-574-9100</p>
	<p>Christopher.Kearns@energy.ri.gov; egc@levitan.com;</p>	
	<p>Brenna.McCabe@doa.ri.gov;</p>	
<p>Rhode Island Building and Construction Trades Council Gregory Mancini, Esq. Sinapi Law Associates, Ltd. 2374 Post Road, Suite 201 Warwick, RI 02886</p>	<p>gmancinilaw@gmail.com;</p>	<p>401-739-9690</p>
<p>Residents of Wallum Lake Road, Pascoag, RI Dennis Sherman and Kathryn Sherman Christian Capizzo, Esq. Partridge Snow & Hahn, LLP 40 Westminster St., Suite 1100 Providence, RI 02903</p>	<p>cfc@psh.com;</p>	<p>401-861-8200</p>
	<p>kags8943@gmail.com;</p>	
<p>Residents of Wallum Lake Road, Pascoag, RI Paul Bolduc and Mary Bolduc Joseph Keough Jr., Esq. 41 Mendon Avenue Pawtucket, RI 02861 Paul and Mary Bolduc 915 Wallum Lake Road Pascoag, RI 02859</p>	<p>jkeoughjr@keoughsweeney.com;</p>	<p>401-724-3600</p>
	<p>oatyss1@verizon.net;</p>	<p>401-529-0367</p>

Abutter David B. Harris Michael Sendley, Esq. 600 Putnam Pike, St. 13 Greenville, RI 02828	msendley@cox.net ;	401-349-4405
Town of Charleston Peter Ruggiero, Esq., Town Solicitor David Petrarca, Esq., Asst. Town Solicitor Ruggiero Brochu & Petrarca 20 Centerville Road Warwick, RI 02886	peter@rubroc.com ;	401-737-8700
	david@rubroc.com ;	
Entities with Pending Intervention (Electronic Service Only)		
Tribal Council of the Narragansett Indian Tribe Shannah Kurland, Esq. 149 Lenox Avenue Providence, RI 02907	Skurland.esq@gmail.com ;	401-439-0518
Interested Persons (Electronic Service Only)		
Harrisville Fire District Richard Sinapi, Esq. Joshua Xavier, Esq. 2347 Post Road, Suite 201 Warwick, RI 02886	ras@sinapilaw.com ;	401-739-9690
	jdx@sinapilaw.com ;	
Residents of 945 Wallum Lake Road, Pascoag, RI (Walkers) Nicholas Gorham, Esq. P.O. Box 46 North Scituate, RI 02857	nickgorham@gorhamlaw.com ;	401-647-1400
	edaigle4@gmail.com ;	
Peter Nightingale, member Fossil Free Rhode Island 52 Nichols Road Kingston, RI 02881	divest@fossilfreeri.org ;	401-789-7649
Sister Mary Pendergast, RSM 99 Fillmore Street Pawtucket, RI 02860	mpendergast@mercayne.org ;	401-724-2237
Patricia J. Fontes, member Occupy Providence 57 Lawton Foster Road South Hopkinton, RI 02833	Patfontes167@gmail.com ;	401-516-7678

Burrillville Land Trust Marc Gertsacov, Esq. Law Offices of Ronald C. Markoff 144 Medway Street Providence, RI 02906	marc@ronmarkoff.com ;	401-272-9330
Paul Roselli, President Burrillville Land Trust PO Box 506 Harrisville, RI 02830	proselli@cox.net ;	401-447-1560
Rhode Island Progressive Democrats of America Andrew Aleman, Esq. 168 Elmgrove Avenue Providence, RI 02906	andrew@andrewaleman.com ;	401-429-6779
Fighting Against Natural Gas and Burrillville Against Spectra Expansion Jillian Dubois, Esq. The Law Office of Jillian Dubois 91 Friendship Street, 4 th Floor Providence, RI 02903	jillian.dubois.esq@gmail.com ;	401-274-4591
Burrillville Town Council c/o Louise Phaneuf, Town Clerk 105 Harrisville Main Street Harrisville, RI 02830	lphaneuf@burrillville.org ;	401-568-4300
Christine Langlois, Deputy Planner Town of Burrillville 144 Harrisville Main Street Harrisville, RI 02830	clanglois@burrillville.org ;	401-568-4300
Joseph Raymond, Building Official	jraymond@burrillville.org ;	
Michael C. Wood, Town Manager Town of Burrillville 105 Harrisville Main Street Harrisville, RI 02830	mcwood@burrillville.org ;	401-568-4300 ext. 115
Mr. Leo Wold, Esq. Department of Attorney General 150 South Main Street Providence, RI 02903	LWold@riag.ri.gov ;	401-274-4400
Public Utilities Commission	Cynthia.Wilsonfrias@puc.ri.gov ;	401-941-4500

Cynthia Wilson Frias, Esq., Dep. Chief of Legal Alan Nault, Rate Analyst	Alan.nault@puc.ri.gov ;	
Division of Public Utilities and Carriers John J. Spirito, Esq., Chief of Legal Steve Scialabba, Chief Accountant Tom Kogut, Chief of Information	john.spirito@dpuc.ri.gov ; steve.scialabba@dpuc.ri.gov ; thomas.kogut@dpuc.ri.gov ;	401-941-4500
Matthew Jerzyk, Deputy Legal Counsel Office of the Speaker of the House State House, Room 302 Providence RI, 02903	mjerzyk@rilin.state.ri.us ;	401-222-2466
Hon. Cale Keable, Esq., Representative of Burrillville and Glocester	Cale.keable@gmail.com ;	401-222-2258
Nick Katkevich	nkatkevich@gmail.com ;	
Avory Brookins	abrookins@ripr.org ;	
Joseph Bucci, Acting Administrator Highway and Bridge Maintenance Operations RI Department of Transportation	joseph.bucci@dot.ri.gov ;	
Kevin Nelson, Supervising Planner Statewide Planning Program	kevin.nelson@doa.ri.gov ;	
Jennifer Sternick Chief of Legal Services RI Department of Administration	Jennifer.sternick@doa.ri.gov ;	
Doug Gablinske, Executive Director TEC-RI	doug@tecri.org ;	
Tim Faulkner ecoRI News 111 Hope Street Providence, RI 02906	tim@ecori.org ;	401-330-6276
Sally Mendzela	salgapal@hotmail.com ;	
Keep Burrillville Beautiful Paul LeFebvre	paul@acumenriskgroup.com ;	401-714-4493
Mark Baumer	everydayyeah@gmail.com ;	
Nisha Swinton Food & Water Watch New England	nswinton@fwwatch.org ;	
Kaitlin Kelliher	Kaitlin.kelliher@yahoo.com ;	
Joe Piconi, Jr.	jiggzy@hotmail.com ;	

Hon. Aaron Regunberg Representative of Providence, District 4	Aaron.regunberg@gmail.com ;	
Paul Ernest	paulwernest@gmail.com ;	
Skip Carlson	scarlson@metrocast.net ;	
Kathryn Scaramella	kscaramella@outlook.com ;	
Diana Razzano	Dlrazzano13@verizon.net ;	
David Goldstein	tmdgroup@yahoo.com ;	
Douglas Jobling	djobling@cox.net ;	
Claudia Gorman	corkyhg@gmail.com ;	
Curt Nordgaard	Curt.nordgaard@gmail.com ;	
Colleen Joubert	Colleenj1@cox.net ;	
Matt Smith Food & Water Watch	msmith@fwwatch.org ;	
Christina Hoefsmit, Esq. Senior Legal Counsel RI Department of Environmental Management	Christina.hoefsmit@dem.ri.gov ;	
Steven Ahlquist, RIFuture	atomicsteve@gmail.com ;	
Pascoag Utility District William Bernstein, Esq. Michael Kirkwood, General Manager Robert Ferrari, Northeast Water Solutions, Inc.	mkirkwood@pud-ri.org ;	
	Wlblaw7@gmail.com ;	
	rferrari@nwsri.net ;	
Russ Olivo Woonsocket Call	rolivo232@gmail.com ;	
Suzanne Enser	svetromile@gmail.com ;	
Rhode Island Student Climate Coalition	risc@brown.edu ;	
Tom Kravitz	tkravitz@nsmithfieldri.org ;	
Barry Craig	barrycraig1@gmail.com ;	
Joanne Sutcliffe	Josut321@cox.net	