STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

IN RE: Application of
Invenergy Thermal Development LLC
for Clear River Energy Center

Docket No. SB 2015-06

JOINT MOTION OF CONSERVATION LAW FOUNDATION AND TOWN OF BURRILLVILLE FOR A STAY PENDING OUTCOME OF FERC LAWSUIT

Introduction

Conservation Law Foundation (CLF) and the Town of Burrillville (Town) respectfully request that the Energy Facility Siting Board (EFSB) – after notice and a hearing at which all parties may be heard – stay this Docket pending the outcome of the case ISO-New England, Inc., ER18-349, currently pending before the Federal Energy Regulatory Commission (FERC). We refer to that case herein as the ISO Lawsuit.

CLF and the Town respectfully request that the Show-Cause Hearing being requested be closed to the public as may be needed in order to allow review and discussion of protected Confidential Electricity Infrastructure Information (CEII) materials.

Facts

Invenergy's current testimony in this case pertains to a 1,000 MW power plant with a Commercial Operation Date (COD) of June 1, 2021. Pre-Filed Supplemental Testimony of John Niland, December 13, 2017, at 3, lines 12-14.

Invenergy has filed no testimony supporting construction of a power plant with a COD of June 2022 or later. There is today no evidence of any kind before the EFSB pertaining to any hypothetical power plant with a COD of June 2022 or later.

Issues Pending Before FERC in the ISO Lawsuit

One of the issues in the ISO Lawsuit is what entity is going to build Invenergy's interconnection tie line to the ISO-run electricity grid. The ISO is asking FERC to order that National Grid be the entity to build the interconnection tie line (Line 3052), as required in the ISO's Tariff. ISO's November 29, 2017 Filing Letter in ER18-349, at 10-14. The ISO cites critical reliability concerns in support of its request to FERC. Id., at 12-14. In contrast, Invenergy asks FERC to allow Invenergy to self-build the interconnection tie line. Invenergy's December 20, 2017 Motion To Intervene and Protest, Section B, at 16-27.

A second issue in the ISO Lawsuit pertains to the posting of required Financial Assurance (FA) when Invenergy instructs National Grid to commence the process of planning, designing, and constructing the interconnection by issuing a Notice To Proceed (NTP). The ISO is asking FERC to require Invenergy to post the required FA as required by the Tariff: "The ISO's approach to cost responsibility for the Clear River Project's Interconnection Facilities and Network upgrades is straightforward and appropriate: to comply with the specific terms of the Tariff." ISO's November 29 Filing Letter, at 14.

In contrast, Invenergy wants FERC to allow Invenergy to post its FA for the interconnection costs only after it has received all major permits, which is significantly later than the December 1, 2017 date required by the ISO Tariff. Indeed, Invenergy told FERC, in a

pleading signed by Invenergy's counsel, that it (Invenergy) is not willing to comply with the Tariff requirements, even if ordered to do so by FERC: "Clear River – as would be true of any other reasonable developer – is unwilling to commit to spending up to $88 million in advance of securing permits required to construct the project." Invenergy's Motion To Intervene and Protest, at 6, lines 7-9.

This brings us to the third issue in the ISO Lawsuit, which is probably the most crucial to the electricity ratepayers of Rhode Island and New England: Invenergy's attempt, in the still-pending ISO Lawsuit, to shift significant cost risks to ratepayers. This is the way National Grid explained the matter:

> Adopting "Clear River's timeline" would contravene the Interconnecting Transmission Owner's right under Article 11.5 of the [Federal Energy Regulatory] Commission-approved *pro forma* LGIA [Large Generator Interconnection Agreement], to request reasonably acceptable financial security, and effectively force National Grid to incur substantial costs to facilitate the Clear River interconnection well before Clear River would provide security or other financial support for the interconnection. This would shift project development risk for Clear River's project to National Grid's captive ratepayers, undermining the purpose of the restructured electric industry in New England where generation developers assume the risks of their own projects. The Commission [FERC] should not mandate such an inequitable result.

Motion for Leave To Answer and Answer of New England Power Company [National Grid], at 11 (emphasis supplied). (We refer to this document as National Grid's Answer.)

There is yet a fourth issue before FERC in the ISO Lawsuit. Invenergy has no right of way rights for the proposed interconnection. In a section of National Grid's Answer entitled "National Grid has no obligation to provide Clear River with use of six miles of its right-of-way," National Grid puts the matter this way:

> Clear River argues that it should be allowed to build facilities within National Grid's right-of-way next to multiple energized 345 kV transmission lines notwithstanding National Grid's reliability and safety concerns. This argument is misleading in numerous respects. First, it wrongly assumes that Clear River has a contractual right to exercise an option to build under the facts of this case. Next, Clear River falsely claims that National Grid has already agreed to allow construction of the Transmission Owner Interconnection Facilities within its right-of-way. Clear River and National Grid have reached no such agreement. Any such agreement would need to be in the form of a contract signed by the National Grid USA subsidiary that owns the right-of-way. No such contract exists.

National Grid's Answer, at 14 (emphasis supplied).

The ISO Lawsuit was filed by the ISO pursuant to Section 205 of the Federal Power Act (FPA). ISO's November 29, 2017 Filing Letter, at 1. This makes ISO's request a so-called "Compliance Filing" under the FPA of the type that FERC routinely approves.

The Interconnection Impact Study

On September 12, 2016, Invenergy obtained its Steady State Interconnection Impact Study Report (Interconnection Impact Report). This document is required by the ISO Tariff, Schedule 22, Section 7.

[redacted] CLF and the Town attach the cover page and the first three pages of the Interconnection Impact Study. (Note: This is CEII protected information, so it is being provided to the EFSB and certain parties, but not to the entire service list.)

If the ISO prevails at FERC in the ISO Lawsuit, National Grid will construct the interconnection line. In that event, [redacted] That is, even if Invenergy could wave a magic wand today, and have the planning and

design work for the interconnection line start immediately, the plant would be unlikely to meet its projected COD of June 2021.

Discussion

CLF and Burrillville respectfully submit that the EFSB (as well as all the parties to this proceeding) want and need to know the outcome of the ISO Lawsuit at FERC before this case proceeds to a Final Hearing – because that outcome will affect this proceeding in several meaningful ways.

First, and of perhaps greatest importance, is Invenergy's continuing effort to shift cost risks onto Rhode Island and New England ratepayers. The EFSB was rightly concerned with this issue in the case of a second lawsuit at FERC, EL18-31; the problem of Invenergy's attempt to shift cost risks to ratepayers is also present in the ISO Lawsuit, which is still pending at FERC.

There is an unfortunate pattern here in Invenergy's behavior. Invenergy did not inform the EFSB of its cost-shifting efforts in EL18-31; indeed Invenergy did not even inform the EFSB about the existence of that lawsuit until after CLF and the Town had done so. And Invenergy only withdrew EL18-31 when it was forced to do so as a result of the public outcry that resulted from the disclosure of the facts by CLF and the Town.

Respectfully, the EFSB should be equally concerned with Invenergy's improper attempt at cost risk shifting in the ISO Lawsuit, which is still pending before FERC.

Second, if/when FERC approves the ISO's Section 205 Compliance Filing, it will be confirming the requirement of the Tariff that National Grid build the interconnection line. This

makes it virtually impossible that the plant will have a COD date of June 2021, given National Grid's projections. Yet Invenergy has no proposal before the EFSB for a plant with a later COD.

Moreover, Invenergy's current, hoped-for COD is already its third. Invenergy's original proposal was for a plant with a COD of 2019. Invenergy's next proposal was for a plant with a COD for June 2020. Now Invenergy proposes a third COD, June 2021, but we know that if/when the ISO prevails in the ISO Lawsuit, even that will be virtually impossible given National Grid's time projections.

Third, Invenergy told FERC that it is unwilling to proceed with the project if FERC upholds the current requirements of the ISO Tariff that apply to all power plant developers in New England. This was not a casual statement by Invenergy. It was in a filed legal pleading, signed by counsel, under the FERC analogue of Rule 11 in Federal Courts. FERC Rule 2101(c), 18 CFR 385.2101(c).

Invenergy can, of course, argue that if/when it loses the ISO Lawsuit, it will nevertheless post the FA and issue the Notice To Proceed (NTP), despite having averred repeatedly that it is unwilling to do so. However, any such assertion would merely shows why a stay is needed in this Docket until the FERC lawsuit is resolved – so that the EFSB can see what Invenergy actually does, not what its public relations spokesperson asserts it might do.

Finally, the outcome of the FERC lawsuit may result in bringing clarity to the question of whether Invenergy will be able to interconnect to the ISO-run electricity grid. While there is a separate EFSB docket pending on the interconnection issue (SB 2017-1), that question also has obvious relevance here. If there is no interconnection, there is no power plant.

The EFSB, CLF, Burrillville, and all the parties need to know whether (or not) Invenergy will be allowed to get away with its attempt to shift cost risks to ratepayers. We have a right to know this before the Final Hearing.

The EFSB, CLF, Burrillville, and all the parties need to know whether (or not) Invenergy's power plant can be operational in June 2021 – because that is the only evidence pending before the EFSB.

The EFSB, CLF, Burrillville, and all the parties need to know whether Invenergy will keep its promise to abandon the project (as any reasonable developer would) if it is forced to follow the requirements of the ISO Tariff – or if Invenergy will keep its other promise, to proceed with the Project (as no reasonable developer would, according to Invenergy).

Conclusion

For these reasons, CLF and Burrillville respectfully request that the EFSB issue a stay of this Docket – after notice and a full hearing – until the ISO Lawsuit is resolved.

Respectfully submitted,

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Certificate of Service

I certify that one original and three hard copies of this Motion in unredacted form (with the Exhibit) were sent to the EFSB by first class mail postage prepaid. I certify that one original and three hard copies of this Motion in redacted form (without the Exhibit) were sent to the EFSB by first class mail postage prepaid. I certify that a PDF of the redacted document (without the Exhibit) was served on the entire service list of this docket. I certify that all of the foregoing was done on January 26, 2018.