

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

In re: Invenergy Thermal Development LLC : SB-2015-06
Application to Construct the Clear River :
Energy Center in Burrillville, R.I. :

**INVENERGY THERMAL DEVELOPMENT LLC’S OBJECTION TO THE
CONSERVATION LAW FOUNDATION’S REPLY IN SUPPORT OF ITS
MOTION FOR SUPPLEMENTAL ADVISORY OPINIONS AND FOR LEAVE
TO TAKE DISCOVERY AND FILE SUPPLEMENTAL EXPERT TESTIMONY**

Now comes Invenergy Thermal Development LLC (“Invenergy”) and hereby objects to the Conservation Law Foundation’s (“CLF’s”) November 14, 2017 Reply to Invenergy’s November 8, 2017 Objection to CLF’s Motion, requesting the Rhode Island Energy Facility Siting Board (“EFSB” or “Board”) seek supplemental advisory opinions from the Division of Statewide Planning (“Division of Planning”) and Office of Energy Resources (“OER”), grant CLF leave to take additional limited discovery and grant CLF leave to file supplemental expert testimony based on Invenergy’s November 1, 2017 informational filing regarding ISO-NE’s determination disqualifying the Clear River Energy Center (“CREC”) Unit 2 from participating in the upcoming Forward Capacity Auction (“FCA”). *See* CLF’s Reply, dated Nov. 14, 2017 (“CLF Reply”); *see also* CLF’s Motion, dated Nov. 3, 2017. Additionally, CLF requests the Board hire an independent financial analyst to analyze any impact ISO-NE’s recent determination may have on CREC’s financing. *Id.* at 8. Subsequently, the Town of Burrillville (“Town”) filed a response joining and supporting CLF’s Reply. *See* Town’s Response, dated Nov. 14, 2017 (“Town Resp.”).

CLF’s Reply claims that ISO-NE’s determination constitutes “a change in ‘the fundamental basis’” of Invenergy’s Application, allegedly warranting supplemental advisory opinions, additional discovery and the hiring of a financial analyst. CLF Reply, at 4.

Specifically, CLF raises issues regarding ISO-NE's ability to terminate Invenergy's capacity supply obligation ("CSO") for Unit 1. *Id.* at 2-4. CLF contends that it is "inconceivable" that Invenergy will be able to achieve certain Critical Path Scheduling ("CPS") "milestones" of which CLF argues are necessary in order to avoid ISO-NE involuntarily terminating CREC Unit 1's CSO. *Id.* at 3. Because none of the claims asserted by either CLF (or the Town) in their latest filings alter Invenergy's EFSB Application, the Board should deny CLF and the Town's request for supplemental advisory opinions, request for leave to take additional discovery and request the Board hire a financial analyst.

As discussed in the Supplemental Testimony of John Niland, filed with the Board on November 20, 2017, although ISO-NE has the right to terminate, it is not obligated to terminate Invenergy's CSO for Unit 1. The ISO-NE Tariff states: "(c) If the Project Sponsor fails to comply with the requirements of Sections III.13.3.2 or III.13.3.3, or if the Capacity Supply Obligation is not covered as described in Sections III.13.3.4(a) and III.13.3.4(b), or if the Project Sponsor covers the Capacity Supply Obligation for two Capacity Commitment Periods, then the ISO, after consultation with the Project Sponsor, *shall have the right*, through a filing with the Commission, to terminate the resource's Capacity Supply Obligation for any future Capacity Commitment Periods[.]" (Emphasis added.) This language in the Tariff is discretionary, not mandatory. The language in the Tariff clearly allows ISO-NE the discretion to evaluate the progress of the Project Sponsor's efforts to implement the CSO, which will of course be reviewed on a Project specific basis (with "consultation with the Project Sponsor") and will necessarily involve review of the progress of the Project.

Additionally, as long as Invenergy continues to make progress on the Project, which ISO-NE will monitor very closely, Invenergy anticipates that the Unit 1 CSO will remain with

Invenergy. Therefore, because ISO-NE's determination does not fundamentally change the basis of Invenergy's Application, neither supplemental advisory opinions, additional discovery nor a financial analyst are necessary to evaluate Invenergy's Application.

As stated in Invenergy's November 8, 2017 Objection, because the material facts relied upon by OER and the Division of Planning in their previously filed advisory opinions have not changed, notwithstanding the recent determination made by ISO-NE, supplemental advisory opinions from these agencies are unnecessary. Likewise, limited discovery is unnecessary because Invenergy supplied the Board and the parties with the relevant information and back-up data and analysis regarding ISO-NE's recent determination and if the parties have questions regarding the information Invenergy filed, the parties can ask these questions during final hearings.¹

Invenergy also objects to CLF and the Town's "additional" request that the Board hire an expert to analyze ISO-NE's disqualification of CREC Unit 2 and whether the disqualification will have an impact on Invenergy's ability to secure financing for CREC Unit 1. It is the Board's decision, not the Town's nor CLF's decision, whether it is appropriate and/or necessary for the Board to hire experts. Additionally, an independent analysis regarding a project's financing is not an issue that the Board typically would, or should, delve into for a privately financed project and is not within the Board's purview under R.I. Gen. Laws § 42-98, et. seq. As explained in the Application, Invenergy is a very well recognized energy development company that has successful projects constructed, and financed, throughout the United States and in other

¹ Invenergy supplied additional information in and attached to the Supplemental Testimony of John Niland, filed with the Board on November 20, 2017. Because Mr. Niland is not scheduled to testify until the latter portion of final hearings, submitting limited supplemental testimony related to ISO-NE's recent determination prior to the start of final hearings should not prejudice any party.

countries. This Project does not require ratepayer funding and so the financial costs associated with financing this Project will be incurred by Invenergy, not the ratepayers. All these facts counsel against the need for the Board to retain any further “financial” experts.

The issues raised in CLF’s Reply (and the Town’s response) are issues that should and can be addressed during final hearings, but do not warrant supplemental advisory opinions, additional discovery or the hiring of a financial analyst. Accordingly, for the reasons discussed above, as well as the reasons articulated in Invenergy’s November 8, 2017 Objection, the Board should deny CLF’s and the Town’s request for supplemental advisory opinions, additional discovery and a financial analyst.

Respectfully submitted,
Invenergy Thermal Development LLC
By its attorneys,

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Dated: November 20, 2017

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 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