



For a thriving New England

CLF Rhode Island 235 Promenade Street
Suite 560, Mailbox 28
Providence, RI 02908
P: 401.351.1102
F: 401.351.1130
www.clf.org

December 20, 2017

Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, RI 02888

To the Energy Facility Siting Board:

Re: Invenergy Application, Docket SB 2015-06

In a joint letter from the Conservation Law Foundation (CLF) and the Town of Burrillville (Town) dated December 11, 2017 to the Energy Facility Siting Board (EFSB), CLF and the Town asked the EFSB to issue an Order directing Invenergy to show cause why this docket should not be suspended pending the outcome of two Federal Energy Regulatory Commission (FERC) cases concerning Invenergy.

At an open meeting of the EFSB on December 12, 2017, the EFSB granted the joint request of CLF and the Town and issued a show cause Order (No. 117). The Order required Invenergy to appear on December 18, 2017 to show cause:

(1) whether the Supplemental Water Supply Plan with the NIT, as submitted, contains sufficient detail for the Board to evaluate and/or whether the Supplemental Water Supply Plan should not be dismissed from the pending application and (2) whether the application, as submitted, under the Board Rules 1.5 and 1.6 would be sufficiently changed as to the cost impact on ratepayers so as to require suspension during the pendency of the action before FERC.

On December 13, 2017 at 10:41 AM, Invenergy sent CLF and the Town a draft Motion requesting an extension of the show cause hearing date. Invenergy's draft motion was prepared as a Motion assented to by CLF and the Town because CLF and the Town had informed Invenergy orally that they had no objection to a reasonable extension of the show cause hearing date. However, in the draft Motion sent to CLF and the Town, a copy of which is attached hereto as Exhibit A, Invenergy stated that "additional time is necessary to ensure witness attendance and sufficient time for preparation." This was the first time that CLF and the Town learned that Invenergy might be presenting witnesses at the show cause hearing.

On December 13, 2017, at 10:58 AM, CLF wrote¹ to Invenergy stating that CLF "has no objection to Invenergy requesting additional time to prepare for the show-cause hearing."

¹ All of the emails referenced herein are attached as collective Exhibit B (and are provided in chronological order).



However, CLF explained that it was surprised that Invenergy was planning to present witnesses. CLF stated that it had no objection to Invenergy presenting witnesses, "but we do request to have written copies of the pre-filed direct testimony two weeks in advance of the hearing date so that we, too, can prepare properly. This should be included in the Order."

On December 13, 2017, at 11:14 AM, the Town notified Invenergy that it also had no objection to Invenergy's requested extension and agreed with CLF that the intervenors should have time to review Invenergy's pre-filed witness testimony and prepare for the show cause hearing.

Invenergy rejected the request of CLF and the Town, and in an email on December 13, 2017, at 11:53 AM, stated that it was "not in a position to add any more language to this motion."

CLF and the Town responded on December 13, 2017, at 2:19 PM, jointly stating as follows:

I have discussed this with Mike, and this is a shared response on behalf of both Burrillville and CLF. We are not trying to be difficult here, and we are also not suggesting that the show-cause be pushed further into the future than Invenergy wishes. Whether or not Invenergy chooses to present witnesses is entirely Invenergy's call. All we are saying here is that if you present witnesses, we get time in advance to review the direct testimony. If Invenergy believes that two weeks is not appropriate, we could live with 10 days.

We are prepared to agree to Invenergy's requested postponement. We are prepared to agree to the length of postponement you requested. We have no objection to your taking time to present witnesses. We are only looking here for fair play; if you get time to prepare witnesses, we ought to get similar (even if not identical) time to prepare for cross-examination.

On that same day, Invenergy responded "we are discussing internally and hopefully filing something tomorrow."

On December 14, 2017, at 3:17 PM, without any further discussion with CLF or the Town, Invenergy filed a modified Motion for an extension, eliminating any reference to assent by CLF and the Town. Invenergy's Motion also said nothing about the pre-filing of witness testimony.

On December 14, 2017, at 3:42 PM, 25 minutes after the Motion was filed, and before CLF or the Town could file a response, Chairperson Curran granted Invenergy's request for the extension and tentatively set the matter down for a show cause hearing on January 30, 2018.

The purpose of this letter is to respectfully request that the Board require that all parties that present witness testimony at the January 30, 2018 show cause hearing, pre-file that testimony no



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later than Monday, January 19, 2018. This would allow all other parties to review the pre-filed testimony and prepare appropriate cross examination.

CLF and the Town had no objection to Invenenergy’s request for additional time to prepare witnesses. But it would not be fair to allow witnesses to testify without also allowing adverse parties to prepare cross-examination. Allowing all parties to properly prepare will also make for a shorter and more orderly hearing.

Requiring the parties to go forward with the show cause hearing without having the opportunity to review pre-filed testimony would be “trial by ambush” and would be a violation of procedural due process. In addition, it would be a violation of EFSB Rule 1.12(c), which requires that all direct testimony shall be prepared in writing and submitted not later than 10 days prior to the hearing.

Accordingly, CLF and the Town jointly request that the EFSB require that the direct testimony of all parties at the January 30 show cause hearing be pre-filed no later than January 19, 2018.

Respectfully submitted,

Jerry Elmer, Esq. (#4394)
Max Greene, Esq. (#7921)
Conservation Law Foundation
235 Promenade Street
Suite 560, Mail Box 28
Providence, RI 02908
Tel: (401) 351-1102
E-mail: jelmer@clf.org
E-mail: mgreene@clf.org

Michael R. McElroy, Esq. (#2627)
Leah J. Donaldson, Esq. (#7711)
Special Counsel
Town of Burrillville
21 Dryden Lane
P.O. Box 6721
Providence, RI 02940-6721
Tel: (401) 351-4100
Fax: (401) 421-5696
E-mail: Michael@McElroyLawOffice.com
E-mail: Leah@McElroyLawOffice.com



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Certificate of Service

I certify that an original, plus three hard copies, were hand delivered to the EFSB; I further certify that electronic copies were served on the entire service list in this Docket. I certify that the foregoing was done on December 20, 2017.

A handwritten signature in black ink is written over a horizontal line. The signature is cursive and appears to read 'J. L. ...'.

Tab A

**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. :

ASSENTED TO MOTION FOR EXTENSION

Invenergy Thermal Development LLC (“Invenergy”), with the assent of the Town of Burrillville (“Town”) and the Conservation Law Foundation (“CLF”), respectfully moves for at least a thirty (30) day extension of the December 18, 2017 Show Cause hearing, ordered by the Board on December 12, 2017. As grounds for this motion, Invenergy states that additional time is necessary to ensure witness attendance and sufficient time for preparation. Accordingly, Invenergy respectfully requests an extension of the December 18, 2017 Show Cause hearing date by at least thirty (30) days.

Respectfully submitted,
INVENERGY THERMAL DEVELOPMENT LLC
By its attorneys,

/s/ Alan M. Shoer
Alan M. Shoer, Esq. (#3248)
Richard R. Beretta, Esq. (#4313)
Elizabeth M. Noonan, Esq. (#4226)
Nicole M. Verdi, Esq. (#9370)
Adler Pollock & Sheehan P.C.
One Citizens Plaza, 8th Floor
Providence, Rhode Island 02903
(401) 274-7200 (Telephone)
(401) 351-4607 (Facsimile)

Dated: December 13, 2017

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2017, I delivered a true copy of the foregoing Motion via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer

Tab B

Jerry Elmer

From: Jerry Elmer
Sent: Wednesday, December 13, 2017 10:58 AM
To: Verdi, Nicole; 'Michael McElroy'
Cc: Shoer, Alan
Subject: RE: Draft Assented to Motion

Nicole:

Thank you for sending the draft. Yes, you are correct that CLF has no objection to Invenergy requesting additional time to prepare for the show-cause hearing. I am surprised to see that you are planning to present witnesses. CLF has no objection to your presenting witnesses, but we do request to have written copies of the pre-filed direct testimony two weeks in advance of the hearing date so that we, too, can prepare properly. This should be included in the Order.

Many thanks.

Jerry

Jerry Elmer
Senior Attorney
Conservation Law Foundation

235 Promenade Street
Suite 560, Mailbox 28
Providence, RI 02908

P: 401-228-1904
E: jelmer@clf.org



From: Verdi, Nicole [mailto:NVerdi@apslaw.com]
Sent: Wednesday, December 13, 2017 10:41 AM
To: 'Michael McElroy' <Michael@mcelroylawoffice.com>; Jerry Elmer <jelmer@clf.org>
Cc: Shoer, Alan <AShoer@apslaw.com>
Subject: Draft Assented to Motion

Hi Mike and Jerry,

Attached is the draft motion requesting the extension. Please let us know as soon as possible if you have any objections with us filing this today.

Thank you,
Nicole

NICOLE M. VERDI, ESQ. | ATTORNEY

[V-CARD](#) | [BIO](#) | [WEBSITE](#) | NVerdi@APSLAW.COM

One Citizens Plaza, 8th Floor, Providence RI 02903

401.274.7200 | fax 401.351.4607

ADLER POLLOCK & SHEEHAN P.C.

PROVIDENCE - BOSTON - NEWPORT - NEW HAMPSHIRE



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From: mcelroymik@gmail.com on behalf of Michael McElroy
<Michael@mcelroylawoffice.com>
Sent: Wednesday, December 13, 2017 11:14 AM
To: Jerry Elmer
Cc: Verdi, Nicole; Shoer, Alan
Subject: Re: Draft Assented to Motion

Nicole, the Town has no objection to Invenergy's extension request, and the Town agrees with CLF that the intervenors should have 2 weeks to review Invenergy's witness testimony and prepare for the show cause hearing.

Jerry Elmer

From: Verdi, Nicole <NVerdi@apslaw.com>
Sent: Wednesday, December 13, 2017 11:53 AM
To: Jerry Elmer, 'Michael McElroy'
Cc: Shoer, Alan
Subject: RE: Draft Assented to Motion
Attachments: Assented to Motion.DOCX

Hi Mike and Jerry,

At this time, Invenergy is evaluating how it will address the show cause order. At this point, all we are looking for is a thirty (30) day extension. We are not in a position to add any more language to this motion. Please let us know if you are still assenting to this motion.

Thank you,
Nicole

From: mcelroymik@gmail.com [mailto:mcelroymik@gmail.com] **On Behalf Of** Michael McElroy
Sent: Wednesday, December 13, 2017 11:14 AM
To: Jerry Elmer <jelmer@clf.org>
Cc: Verdi, Nicole <NVerdi@apslaw.com>; Shoer, Alan <AShoer@apslaw.com>
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Michael R. McElroy | Managing Partner | **Schacht & McElroy**
21 Dryden Lane, P.O. Box 6721, Providence, Rhode Island 02940-6721
o: [401.351.4100](tel:401.351.4100) | c: [401.749.2612](tel:401.749.2612) | f: [401.421.5696](tel:401.421.5696)
www.McElroyLawOffice.com

On Wed, Dec 13, 2017 at 10:58 AM, Jerry Elmer <jelmer@clf.org> wrote:

Nicole:

Thank you for sending the draft. Yes, you are correct that CLF has no objection to Invenergy requesting additional time to prepare for the show-cause hearing. I am surprised to see that you are planning to present witnesses. CLF has no objection to your presenting witnesses, but we do request to have written copies of the pre-filed direct testimony two weeks in advance of the hearing date so that we, too, can prepare properly. This should be included in the Order.

Jerry Elmer

From: Jerry Elmer
Sent: Wednesday, December 13, 2017 2:20 PM
To: Verdi, Nicole
Cc: Shoer, Alan; 'Michael McElroy'; Max Greene
Subject: FW: Draft Assented to Motion
Attachments: Assented to Motion.DOCX

Nicole (et al.):

I have discussed this with Mike, and this is a shared response on behalf of both Burrillville and CLF. We are not trying to be difficult here, and we are also not suggesting that the show-cause hearing be pushed further into the future than Invenergy wishes. Whether or not Invenergy chooses to present witnesses is entirely Invenergy's call. All we are saying here is that if you present witnesses, we get time in advance to review the direct testimony. If Invenergy believes that two weeks is not appropriate, we could live with 10 days.

We are prepared to agree to Invenergy's requested postponement. We are prepared to agree to the length of postponement you requested. We have no objection to your taking time to present witnesses. We are only looking here for fair play; if you get time to prepare witnesses, we ought to get similar (even if not identical) time to prepare for cross-examination. (For instance, if the EFSB set Tuesday, Jan. 16 for the show-cause hearing [Monday is MLK Day], we would ask for the written, direct testimony by, say, Friday, January 5.)

Jerry

From: Verdi, Nicole [mailto:NVerdi@apslaw.com]
Sent: Wednesday, December 13, 2017 11:53 AM
To: Jerry Elmer <jelmer@clf.org>; 'Michael McElroy' <Michael@mcelroylawoffice.com>
Cc: Shoer, Alan <AShoer@apslaw.com>
Subject: RE: Draft Assented to Motion

Hi Mike and Jerry,

At this time, Invenergy is evaluating how it will address the show cause order. At this point, all we are looking for is a thirty (30) day extension. We are not in a position to add any more language to this motion. Please let us know if you are still assenting to this motion.

Thank you,
Nicole

From: mcelroymik@gmail.com [mailto:mcelroymik@gmail.com] **On Behalf Of** Michael McElroy
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