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January 26, 2018

Todd A. Bianco, Ph.D.
Coordinator
Rhode Island Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, RI 02888

Re: Invenenergy Thermal Development LLC – Clear River Energy Center
Docket No. SB-2015-06

Dear Dr. Bianco:

Enclosed for filing in this matter are an original and three copies of the Town of Burrillville and Conservation Law Foundation's Joint Objection to EFSB Order No. 124 Vacating the Show Cause Order Issued on December 12, 2017. Electronic copies have been sent to the service list.

If you need any further information, please do not hesitate to contact me.

Very truly yours,


Leah J. Donaldson

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 CLEAR RIVER : DOCKET No. SB-2015-06
ENERGY CENTER IN BURRILLVILLE, RHODE ISLAND :

**THE TOWN OF BURRILLVILLE AND CONSERVATION LAW FOUNDATION'S
JOINT OBJECTION TO EFSB ORDER NO. 124 VACATING THE SHOW CAUSE
ORDER ISSUED ON DECEMBER 12, 2017**

The Town of Burrillville ("Town") and Conservation Law Foundation ("CLF") respectfully object to EFSB Order No. 124 issued on January 24, 2018 ("Order No. 124") wherein the EFSB vacated Order No. 117 issued on December 12, 2017 ("Show Cause Order").

A. Background

On October 29, 2015, Invenenergy filed its Application to construct a natural gas/oil-fired electric generating facility of up to 1,000 MW in Burrillville, Rhode Island.

On November 17, 2017, Clear River Energy LLC ("Clear River") filed a complaint with Federal Energy Regulatory Commission ("FERC") in Docket No. EL18-31 seeking to have certain financial obligations with respect to operation and maintenance costs of its interconnection shifted to ratepayers.

On November 29, 2017, FERC Docket No. ER18-349 was opened by ISO-NE and National Grid because Clear River disagrees with various aspects of the standard Large Generator Interconnection Agreement ("LGIA"). ISO-NE and National Grid have asked FERC to accept the LGIA as filed, and Clear River has asked FERC to direct ISO-NE and National Grid to make certain changes to the LGIA. FERC Docket No. ER18-349 remains an active docket before FERC as of the date of this filing.

On December 12, 2018, a Show Cause Order was issued and a show cause hearing was scheduled for December 18, 2017. The show cause hearing was later postponed to January 30, 2018 following a Motion for Extension filed by Invenergy.

The Town and CLF filed Motions to be Heard at the January 30, 2018 Show Cause Hearing in order to confirm that they would have the opportunity to respond and present evidence and argument on all issues involved. The EFSB granted the motions as confirmed via email on January 19, 2018.

On January 23, 2018, Clear River filed a Withdrawal of Complaint in FERC Docket No. EL18-31. The earliest Clear River's Withdrawal could be effective would be February 7, 2018 at the end of the 15-day opposition period.¹ Therefore, FERC Docket No. EL18-31 remains an active docket before FERC as of the date of this filing.

On January 24, 2018, Invenergy advised the EFSB of the existence of Clear River's Withdrawal as described above.²

Also, on January 24, 2018, the EFSB issued Order No. 124 vacating the Show Cause Order as moot.³ This determination was based solely on the withdrawal notice provided by Invenergy and without providing any other party an opportunity to respond to Invenergy's filing or address the issue of whether the withdrawal by Clear River of one of the two pending FERC proceedings rendered the Show Cause Order moot.

¹ Under FERC's Rules of Practice and Procedure, a withdrawal is effective at the end of 15 days from the date of the filing of a notice of withdrawal if (1) no motions opposing the withdrawal are filed within the period, and (2) FERC does not issue an order disallowing the withdrawal within the period. *See* FERC Rule 216 (b)(1). However, if a motion opposing Clear River's Withdrawal is filed within the 15-day period, then the Withdrawal is only effective once FERC issues an order accepting Clear River's Withdrawal. *See* FERC Rule 216 (b)(2). In this case, the 15-day period ends on February 7, 2018.

² The email to the EFSB containing Invenergy's informational filing was sent at approximately 9:35AM.

³ The email from the EFSB containing Order No. 124 was sent at approximately 2:05PM.

B. All parties have a right to respond and present evidence and argument on all issues

The Town and CLF respectfully submit that they have a constitutional, statutory, and regulatory right to be heard on all issues in this docket. This includes the right to be heard regarding whether or not Invenergy's recent submission rendered the Show Cause Order moot, as well as all other related issues.

It is well settled in Rhode Island "that due process in administrative procedures requires the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Millett v. Hoisting Engineers' Licensing Division of Dept. of Labor*, 377 A.2d 229, 236 (R.I. 1977) (quoting *Raper v. Lucey*, 488 F.2d 748, 753 (1st Cir. 1973)).

R.I.G.L. § 42-98-7(e) of the Energy Facility Siting Act requires that "the siting board's proceedings shall in all respects comply with the requirements of the Administrative Procedures Act, Chapter 35 of this title, except where otherwise explicitly provided."

The Administrative Procedures Act (APA), R.I.G.L. § 42-35-9(c), mandates that in any contested case, "Opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved."

C. Invenergy's recent submission does not render the Show Cause Order moot

The EFSB vacated the Show Cause Order as moot based solely on a withdrawal notice provided by Invenergy via letter. If Invenergy had presented this information to the EFSB as a motion, all parties would have had five days from the service of the motion to file an objection thereto. *See* EFSB Rule 1.17(c).

Invenergy informed the EFSB of Clear River's Withdrawal at approximately 9:35AM on January 24, 2018. Less than five hours later, the EFSB issued Order No. 124. The EFSB did not

provide an opportunity for all parties to respond or present evidence or argument on whether or not Invenergy's submission rendered the Show Cause Order moot.

The Town and CLF expect to have the opportunity to be heard on all issues in this docket. If the EFSB had given the Town and CLF an opportunity to be heard prior to issuing Order No. 124, the Town and CLF would have brought several points to the EFSB's attention. For example, Clear River's Withdrawal will not be effective until at least February 7, 2018, and possibly longer if any party files opposition papers during the 15-day period, which is now ongoing.

Had they been given a chance to be heard, the Town and CLF would also have argued that Clear River's withdrawal is without prejudice. This give Clear River the opportunity to refile an identical complaint at FERC at any time in the future, including after Invenergy receives a possible EFSB permit.

The Town and CLF would have also argued that, in FERC Docket No. ER18-349, Invenergy is, among other things, attempting to shift cost risks to Rhode Island ratepayers. As explained by National Grid in its Answer, if FERC accepts Clear River's proposal, it would "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." *See* Motion for Leave to Answer and Answer of New England Power Company [National Grid], at 11.

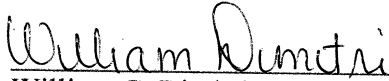

D. Conclusion

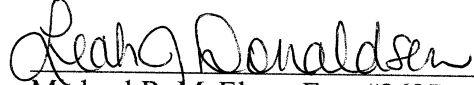
The parties were improperly given no opportunity to present argument to the EFSB on these and other issues prior to the issuance of Order No. 124. Therefore, the Town and CLF respectfully object to Order No. 124 and preserve all appellate rights in this regard.

Respectfully submitted,

Town of Burrillville



By its attorneys

 
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Conservation Law Foundation


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Date: January 26, 2018

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of January, 2018, I sent a copy of the foregoing to the attached service list.


Leah J. Donaldson