



March 31, 2016

Todd Bianco
Energy Facility Siting Board
89 Jefferson Blvd.
Warwick, RI 02888

Andrew S. Marcaccio
Counsel to OER
One Capitol Hill, 4th floor
Providence, RI 02908-5890

Dear Messrs. Bianco and Marcaccio:

Re: EFSB Docket SB 2015-06
Invenergy Proposal

Reference is made to our letter to you dated January 29, 2016, in which we stated that, in this proceeding, CLF will offer at least one witness on the subject of carbon emissions, climate impacts, and the application of the Resilient Rhode Island Act. In that Jan. 29 letter, we posed a simple question: “[T]o which agency the testimony of this/these witnesses is properly directed: to the EFSB or to the OER?”

By letter dated February 8, 2016, Mr. Marcaccio replied to our letter, stating that “we believe any formal testimony should be filed with the EFSB unless otherwise directed.”

Following our own review of relevant statutes and rules, as well as the EFSB’s Preliminary Decision and Order dated March 10, 2016 (Order), we are not fully satisfied that filing testimony solely with the EFSB will adequately protect CLF’s right to present evidence in this proceeding. First, we note that the Order states (at page 17) that “[t]he Rhode Island Office of Energy Resources . . . shall render an advisory opinion as to: (i) the impacts of the Facility on anticipated greenhouse gas emissions that would result from the proposed Facility and the cumulative impact over the life of the project and (ii) whether the Facility will conform to the requirements and provisions of the Resilient Rhode Island Act . . . and state energy policies.”

Second, we note that EFSB Rule 1.12(d)(1) states that “parties shall have the obligation to present all relevant testimony and evidence and to fully participate in designated agency proceedings” (Emphasis supplied.)

Therefore, today, we are pre-filing, in written form, the testimony of Dr. J. Timmons Roberts, an expert witness on the issue of carbon emissions, climate impacts, and the application of the Resilient Rhode Island Act. (CLF may present additional witness(es) on this subject.) We file this testimony duplicatively with the EFSB and OER in order to ensure that the OER takes full account of this evidence in arriving at its advisory opinion, even if Dr. Roberts’s appearance and cross-examination are to occur later at the EFSB, as Mr. Marcaccio’s Feb. 8 letter suggests.



conservation law foundation

CLF emphasizes that a full hearing on the broad issue of carbon emissions, climate impacts, and the application of the Resilient Rhode Island Act is required both by the statute (the Energy Facility Siting Act) and the Rhode Island and United States Constitutions (in their respective due process clauses). That full hearing must be open to the public, on the record, with evidence presented, and witnesses under oath and subject to cross-examination. The EFSB's Order acknowledges this fact: "The purpose of the [EFSB's] final hearing is not to rehear evidence presented in hearings before designated agencies providing advisory opinions, but rather to provide the parties the opportunity to address – in a single forum and from a consolidated, statewide perspective – the issues reviewed and the recommendations made by such agencies." Order, Page 8, ¶ 2, (emphasis supplied).

CLF looks forward to participating actively in the upcoming public hearing on the record addressing the carbon and climate impacts of the proposed Invenenergy fossil-fuel plant.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jerry Elmer", written in a cursive style.

Jerry Elmer

A handwritten signature in blue ink, appearing to read "Max Greene", written in a cursive style.

Max Greene

CERTIFICATE OF SERVICE

I certify that an original copy of this letter, plus 10 photocopies, were hand delivered to the Energy Facility Siting Board (EFSB), 89 Jefferson Blvd., Warwick, RI, along with 10 hard copies of the referenced Direct Testimony of Dr. Roberts. I further certify that three photocopies of this letter and three hard copies of the referenced Direct Testimony of Dr. Roberts were hand delivered to the Office of Energy Resources, One Capitol Hill, fourth floor, Providence, RI. In addition, electronic copies of this letter and the referenced Direct Testimony of Dr. Roberts (with all exhibits) were served by e-mail on the entire service list of EFSB Docket 2015-06. Service was made on the service list in the form of four separate PDFs, as follows: (1) this letter; (2) Dr. Timmons's Direct Testimony; (3) Exhibits A and B; (4) Exhibits C through E. I certify that all of the foregoing was done on Thursday, March 31, 2016.

A handwritten signature in black ink, appearing to read "J. Timmons", written over a horizontal line.