

**CONSERVATION LAW FOUNDATION, INC., :**

Plaintiff :

v. :

P.C. No. 2017-\_\_\_\_\_

**CLEAR RIVER ENERGY, LLC, and :**

**TOWN OF JOHNSTON, RHODE ISLAND, :**

Defendants. :

**COMPLAINT**

**Introduction**

1. This action seeks a declaration of the plain meaning of a Rhode Island Public Law that was enacted over a century ago.
2. This Honorable Court has subject-matter jurisdiction pursuant to the Uniform Declaratory Judgments Act, Rhode Island General Laws § 9-30-1, *et seq.*
3. Venue in Providence County is appropriate under Rhode Island General Laws § 9-4-4.

**Parties**

4. Plaintiff Conservation Law Foundation, Inc. (“CLF”) is a nonprofit, member-supported organization incorporated under the laws of Massachusetts, with an office at 55 Dorrance Street, Providence, Rhode Island 02903, and a principal place of business at 62 Summer Street, Boston, Massachusetts 02110. CLF is a regional organization with about 4,000 members throughout New England including about 200 members in Rhode Island. CLF has a long history of working to reduce harmful air emissions including by opposing the construction and operation of fossil-fuel power plants throughout New England.
5. Plaintiff Conservation Law Foundation has incurred and continues to incur substantial costs opposing on behalf of itself and its members a power plant proposed by Defendant

Clear River Energy, LLC in proceedings before the Rhode Island Energy Facility Siting Board, the Public Utilities Commission, and elsewhere.

6. Defendant Clear River Energy, LLC (“Invenergy”) is a foreign limited liability company organized under the laws of the state of Delaware, having a principal place of business at 1 South Wacker Drive, Suite 1800, Chicago, Illinois 60606, and registered to do business in the state of Rhode Island.
7. Defendant Town of Johnston (“Johnston”) is a municipal corporation established under the laws of the State of Rhode Island.
8. On information and belief, the Town of Burrillville, a municipal corporation established under the laws of the State of Rhode Island, has an interest in the requested declaration and is commencing a separate action seeking the same relief. CLF respectfully requests consolidation of these actions.

#### **Factual Allegations**

9. On or about January 6, 2017, Defendants Invenergy and Johnston executed a “Water Supply and Economic Development Agreement” (“the Water Contract”). The Water Contract is attached to this Complaint as Exhibit A.
10. The Water Contract provides that Johnston will re-sell Providence water to Invenergy for Invenergy to truck to its proposed power plant in Burrillville, Rhode Island.
11. There is no contract in force between Providence and Johnston that creates a legal obligation for Providence to supply water to Johnston.
12. Thus, any legal obligation for Providence to supply water to Johnston would have to arise under law.

13. The applicable law is P.L. 1915, ch. 1278, as amended from time to time by the General Assembly (“the 1915 Act”).
14. The current version of the 1915 Act provides that certain cities and towns, including the Town of Johnston, “shall have the right to take and receive water ... for use for domestic, fire and other ordinary municipal water supply purposes.” 1915 Act § 18; *see also R & R Assoc. v. City of Providence Water Supply Bd.*, 724 A.2d 432, 434 (R.I. 1999).
15. Johnston’s selling water to Invenergy for Invenergy to use at a power plant located in Burrillville is not a use by Johnston “for domestic, fire, or ordinary municipal water supply purposes.”
16. Johnston therefore has no legal right to purchase water from the Providence for resale to Invenergy.

**COUNT ONE**  
**Uniform Declaratory Judgments Act**  
**Rhode Island General Laws § 9-30-1 et seq.**

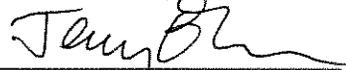
17. CLF hereby realleges and reincorporates the allegations set forth in paragraphs one through sixteen above.
18. CLF’s rights, status, and legal relations are affected by the 1915 Act.
19. CLF therefore seeks a declaration that Johnston has no legal right under the 1915 Act to obtain water from Providence for resale to Invenergy.

WHEREFORE, CLF prays that this honorable Court:

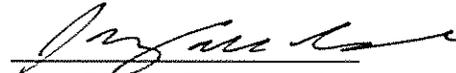
1. Issue a Declaratory Judgment declaring that Johnston has no legal right under the 1915 Act to obtain water from Providence for resale to Invenergy for Invenergy to use in its proposed power plant located in Burrillville.
2. Order such other relief as the Court deems just and proper.

DATED: March 6, 2017

Plaintiff,  
By its attorneys



Jerry Elmer, Esq. (# 4394)



Max Greene, Esq. (# 7921)

CONSERVATION LAW FOUNDATION

55 Dorrance Street

Providence, RI 02903

Tel. (401) 351-1102

Fax (401) 351-1130

[jelmer@clf.org](mailto:jelmer@clf.org)

[mgreene@clf.org](mailto:mgreene@clf.org)