

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

In Re: Invenergy Thermal Development LLC's :
Application to Construct the Clear River Energy : Docket No. SB-2015-06
Center in Burrillville, Rhode Island :

**THE TOWN OF BURRILLVILLE'S
MOTION TO DISMISS**

The Town of Burrillville ("Town"), an intervenor as of right in this docket, hereby respectfully requests that the Energy Facility Siting Board ("EFSB") enter an Order dismissing Invenergy Thermal Development LLC's ("Invenergy") Application to Construct the Clear River Energy Center ("Application") and closing the docket.

I. BACKGROUND

On October 29, 2015, Invenergy filed its Application before the EFSB to construct a natural gas/oil-fired electric generating facility of up to 1,000 MW in Burrillville, Rhode Island. The EFSB requested that several entities in the Town render advisory opinions as to the proposed facility's impact on the Town, its residents, and its environment.¹ Since that time, the Town has spent significant time evaluating Invenergy's Application, as well as great sums of money on consultants to do likewise. The deadline for filing all of the Advisory Opinions was September 12, 2016, and the Town has met that deadline.

An electric generating facility cannot operate without a sufficient water supply. Invenergy's Application originally envisioned the use of water from MTBE polluted Well 3A of

¹ In its Preliminary Decision and Order, the EFSB directed the following Town entities to render advisory opinions regarding Invenergy's Application: (a) Burrillville Zoning Board of Review, (b) Burrillville Building Inspector, (c) Burrillville Planning Board, and (d) Burrillville Tax Assessor (collectively "Entities").

the Pascoag Utility District (PUD).² However, on August 19, 2016, the PUD's Board of Utility Commissioners voted not to supply the project with water and terminated its Letter of Intent with Invenergy, closing the door on Invenergy's planned use of Well 3A. Invenergy thereafter informed the EFSB that it would not be using the PUD well, and that it would provide the EFSB with a new proposal for a water source. To date, Invenergy has failed to do so.

II. LEGAL STANDARD

EFSB Rule 1.17(a) provides that "any application to the board to take any action or to enter any order after commencement of a proceeding ... shall be made in writing, shall be filed with the Coordinator, shall specifically state the grounds therefor, shall set forth the action or order sought, and shall be served upon all persons entitled thereto under these rules."

EFSB Rule 1.6(b)(11) requires all applications filed with the EFSB to include "[w]here applicable, required support facilities, e.g. road, gas, electric, *water*, telephone, and an *analysis of the availability of the facilities and/or resources to the project.*" (Emphasis added.)³

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)). Further, in order for an opportunity to be heard to be meaningful, the parties must timely receive adequate information so that the parties may meaningfully respond. *See Raper v. Lucey*, 488 F.2d 748, 753 (1st Cir. 1973) ("Although plaintiff [...] would have the opportunity to be heard by the Board, we are at a loss to

² In its letter to the EFSB Commissioners dated October 28, 2015, Invenergy stated: "The water supply for the Facility will be provided by the Pascoag Utility District through a dedicated pipeline to be installed from an existing PUD well to the Facility."

³ Moreover, R.I.G.L. §42-98-2(8)(iii) of the Energy Facility Siting Act ("Act") requires the EFSB to review water supply information for any energy generation project in order to determine whether certain criteria are met.

comprehend how such a hearing could be said to be “meaningful” if prior thereto the plaintiff was unaware of the grounds for the Registrar’s decision.”)

III. ARGUMENT

Invenergy has either refused or is unable to provide timely information regarding its proposed water supply and its Application should therefore be dismissed.

Invenergy’s failure to timely provide the EFSB, the Town and its Entities with requested information regarding its proposed water supply renders its Application incomplete. Under the EFSB rules and the Act, Invenergy’s Application must include information regarding all required support facilities, including water resources. Invenergy’s Application currently contains no information at all about a proposed water source. The Application therefore cannot be evaluated in a meaningful way without this information.

The Town itself and two other Entities, the Burrillville Planning Board and the Burrillville Zoning Board of Review, have formally requested information regarding Invenergy’s water source on multiple occasions during the Town’s evaluation period.⁴ Invenergy repeatedly promised to provide such information, but to date has refused to do so. In fact, in a Motion for Extension filed by Invenergy last Friday, Invenergy stated that it “expects” to have a water source “within the coming weeks.” This is uselessly vague.

Therefore, due to a lack of information regarding Invenergy’s proposed water source, the rights of the Town, its Entities and its residents have been infringed upon. Under Rhode Island law, it is well settled that, in an administrative forum such as this, due process requires an opportunity to be heard “at a meaningful time and in a meaningful manner.” Without the water

⁴ For example, the Town issued a data request to Invenergy on August 10, 2016, which stated “Please identify in detail all water supplies for the proposed facility that you currently have under consideration and the development status of each one.” In its response, dated August 25, 2016, Invenergy refused to provide any details related to its proposed water source. Similar responses were given to the Planning and Zoning Boards.

information, the Town and its Entities have been denied a meaningful opportunity to fully evaluate and be heard on Invenergy's Application and its impact on the Town's residents and the Town's environment, especially water quality and quantity issues, and any projected impacts the aquifer that serves the Town's wells.

This incomplete Application should therefore be dismissed and the docket closed.

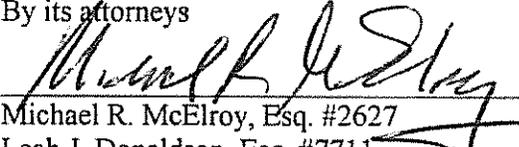
IV. CONCLUSION

WHEREFORE, the Town respectfully requests that the EFSB dismiss Invenergy's Application to Construct the Clear River Energy Center and close this docket.

Dated: September 13, 2016

TOWN OF BURRILLVILLE

By its attorneys


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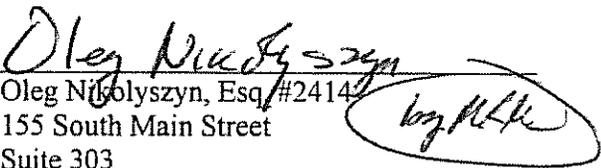
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Dated: September 13, 2016


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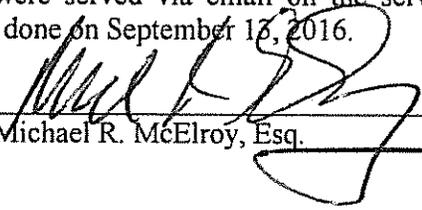
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CERTIFICATE OF SERVICE

I certify that the original and ten photocopies of this Motion were filed by U.S. Mail, postage prepared, with the Coordinator of the EFSB, 89 Jefferson Boulevard, Warwick, RI 02888. In addition, electronic copies of this Motion were served via email on the service list for this docket. I certify that all of the foregoing was done on September 18, 2016.



Michael R. McElroy, Esq.