

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc. Resource	:	
Termination – Clear River Unit 1	:	Docket No. ER18-2457
	:	

**MOTION FOR LEAVE TO RESPOND AND RESPONSE OF THE TOWN OF
BURRILLVILLE TO THE PROTEST OF CLEAR RIVER ENERGY, LLC AND
INVENERGY ENERGY MANAGEMENT LLC**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, the Town of Burrillville, Rhode Island (“Town”) submits this Motion for Leave to Respond and Response to the Protest of Clear River Energy LLC and Invenergy Energy Management LLC (collectively “CREC”).

CREC has asked the Commission not to approve ISO-NE’s proposed termination of CREC’s Capacity Supply Obligation (“CSO”) for Unit 1 of its proposed Clear River Energy Center (“Clear River”) in Burrillville, Rhode Island. Contrary to CREC’s Protest, the delays in the permitting process before the Rhode Island Energy Facility Siting Board (“EFSB”) have been caused by events within CREC’s control, including the way CREC has mishandled the permitting process itself.

In support of this Motion and Response, the Town states as follows:

I. MOTION FOR LEAVE TO RESPOND

The Town respectfully moves to respond to CREC’s Protest and requests the Commission grant this Motion for good cause under the Commission’s Rules of Practice and Procedure. 18 C.F.R. § 385.212. The Town’s Response is designed to assist the Commissioners in their decision-making process. Accordingly, the Town respectfully requests that the Commission accept this Response.

II. RESPONSE

A. *Contrary to claims made in CREC's Protest, CREC has caused multiple and substantial delays in the permitting process.*

In its September 20, 2018 termination filing, ISO-NE explains that CREC “has not made sufficient progress to achieve Clear River Unit 1’s critical path schedule milestones and the commercial operation date for Clear River Unit 1 is more than two years beyond June 1, 2019, which is the start of the Capacity Commitment Period in which the resource first obtained a CSO.”

CREC has represented on multiple occasions that delays in the permitting process are not attributable to CREC.¹ CREC’s repeated claims that Rhode Island permitting delays were “for reasons entirely beyond [CREC]’s reasonable control” are untrue, as shown by the following examples:

1. CREC has improperly blamed others for its own failures during the permitting process.

CREC’s attempts to shift responsibility for delays in the permitting process are not new. CREC made similar claims to the EFSB. When such claims were made on November 27, 2017, EFSB Member Janet Coit unequivocally placed responsibility for the delays at the feet of CREC:²

MS. COIT: Since you just brought it up, Mr. Shoer [counsel for CREC], I would like to say that I actually do not -- I think the delays in the permitting process are in relation to the way it’s been handled. It was a full year after the application was submitted that we ended up, without your objection, suspending or -- let me think of the timing. We suspended this process because you didn’t have a water plan.

¹ For example, CREC makes the following claims to the Commission in its Protest:

- CREC claims that the EFSB and related licensing proceedings “. . . have been delayed extensively and for reasons entirely beyond Clear River’s reasonable control.” CREC Protest, at 3.
- CREC alleges that “. . . the timing of major permits is for the most part (and here was entirely) beyond the control of the developer.” CREC Protest, at 10.
- CREC claims “Importantly, most permitting process delays are outside of a resource’s reasonable control. Certainly, the delays relevant here were beyond Clear River’s control.” CREC Protest, at 13.
- CREC states that “the issue in this case is whether a delay attributable solely to the state permitting process over which Clear River has no control -- should be the basis for terminating Clear River’s CSO.” CREC Protest, at 18.

² EFSB Member Coit is also the Director of the Rhode Island Department of Environmental Management (“RIDEM”) and is one of only three EFSB Board members.

We waited for that water plan. When you supplemented that water plan you brought in issues that involved the motion by the Tribe today and Charlestown.

So just for the record, I do not think that the delays in the permitting process are about the way the Board has handled things but are about the way that you've handled things.

November 27, 2017 Hearing Transcript, at 91 (emphasis added) (attached hereto as Exhibit 1).

2. CREC failed to secure a firm water contract for Clear River, which resulted in a 90-day suspension of the EFSB docket.

On October 13, 2016, a year after the EFSB docket was opened, the EFSB suspended the docket for 90 days so that CREC could try to obtain a satisfactory water plan. EFSB Order 103 (Attached hereto as Exhibit 2). The reason for the suspension was that CREC initially elected to file an EFSB licensing application before it had a firm water contract in place. CREC elected to enter into a non-binding letter of intent with regard to its preferred water source. That letter of intent later fell through. Had that letter of intent been a binding contract, CREC would presumably not have had this problem.

3. CREC's inability (or unwillingness) to provide complete and accurate information to governmental agencies caused additional delays.

CREC's refusal or inability to provide the appropriate governmental agencies with the information needed to review its licensing and permitting applications has been a hallmark of this entire permitting process.

For example, the wetlands permitting delays have been solely caused by CREC's inability (or unwillingness) to provide RIDEM with complete and accurate information. Attached as Exhibit 3 is a November 10, 2017 letter regarding CREC's RIDEM wetlands permit application. This letter was sent more than six months after the wetlands permit application was filed. It stated

that RIDEM “is unable to complete a review of your application” and enclosed a listing of over 50 items that “must be revised and/or provided so that we may continue to process your application.”³

On July 30, 2018, Chuck Horbert, the Program Supervisor for RIDEM’s Office of Water Resources, Freshwater Wetlands Program, wrote an email noting that “We don’t want to send a project out for public Notice and comment that is incomplete, incorrect, misleading, or missing key information.” He further stated that “DEM has so far not actually evaluated the merits of this wetlands application,” explaining that “In this case, it has taken multiple requests to get all of the information we need [from CREC], many times requesting the exact same thing multiple times . . . and at this time I am still not sure if they have adequately responded even now (I am awaiting the results of our latest review.” (A copy of this email is attached as Exhibit 4).

CREC similarly withheld necessary information from Town entities that were tasked with reviewing the Clear River application and issuing an advisory opinion to the EFSB. For example:

- The Town’s Planning Board issued an Advisory Opinion to the EFSB stating in part that “many of the data responses we received from Invenergy were incomplete and at times evasive.”
- The Town’s Building Inspector issued an Advisory Opinion to the EFSB stating in part “from the beginning, I have been unable to get pertinent information needed to make the advisory opinions.” For example, on October 14, 2016, CREC submitted information to the Town’s Building Inspector that included a partial set of plans for a different project in Pennsylvania.
- The Town’s Zoning Board issued an Advisory Opinion to the EFSB stating in part that “Invenergy has refused to provide information.”

³ CREC eventually responded to the 50 items.

CREC's inability (or unwillingness) to provide necessary information to Town entities is set forth in more detail in the EFSB hearing transcript excerpt attached hereto as Exhibit 1 (pages 111–122).

4. CREC delayed notifying the EFSB and the parties when it was disqualified from participating in FCA-12.

On September 29, 2017, CREC was notified by ISO-NE that Unit 2 had been disqualified from participating in Forward Capacity Auction (“FCA”) 12. However, CREC delayed notifying the EFSB and the parties of this until November 1, 2017. More importantly, when CREC did notify EFSB and the parties of the disqualification of Unit 2, it provided only three of the five pages of the Qualification Determination Notice (“QDN”). (The two additional pages were provided only after this was brought to the attention of the EFSB.) A substantial delay resulted as the parties were required to make various filings with the EFSB addressing the effect of this disqualification.

5. CREC delayed notifying the EFSB and the parties about complaints filed at FERC related to the Clear River project.

On November 17, 2017, CREC filed a complaint at FERC against ISO-NE and others (FERC Docket No. EL18-31-000). CREC asked FERC to order ISO-NE to eliminate certain provisions related to the required transmission line upgrade.

On November 29, 2017, ISO-NE and National Grid filed an unexecuted Large Generation Interconnection Agreement (“LGIA”) among ISO-NE, National Grid, and CREC with FERC (FERC Docket No. ER18-349). The Agreement was filed in unexecuted form because the parties were unable to agree on a number of issues and CREC wanted FERC to order ISO and Grid to take certain actions. CREC filed a Protest seeking various forms of relief.⁴

⁴ Clear River was unsuccessful in all of its claims with one exception. It was successful in moving the effective date of the LGIA to January 29, 2018, instead of November 27, 2017. (See FERC decision dated January 26, 2018).

CREC did not notify the EFSB of either these FERC suits until December 1, 2017.

On December 12, 2017, after learning about the FERC suits, the EFSB ordered CREC to appear on January 30, 2018 for a Show Cause hearing regarding the effect of these FERC suits on the EFSB proceedings. (See Exhibit 5.) Eventually, on January 23, 2018, CREC withdrew its FERC complaint in EL18-31-000. As a result, the EFSB Show Cause Order was vacated. However, these FERC suits resulted in delays in the EFSB licensing process and these delays were caused solely by CREC.

B. CREC has mishandled the Clear River project and its related permitting process from the beginning.

As legal counsel for the Town told the EFSB at a hearing on November 27, 2017:

“We believe that this matter has been mishandled by [CREC] from Day One. It filed when it was not ready. It didn’t have its act together and it has been scrambling ever since, and part of that, unfortunately, has been the withholding of evidence, the furnishing of partial evidence or incomplete evidence, or protesting that it did not have to provide the evidence when this Board knows that all evidence relevant to the issues must be provided. The Town has had to fight for everything that it has been looking for. [CREC] has been objecting at every turn. We believe enough is enough.” (at 121-22).

Accordingly, the Town of Burrillville respectfully submits to this Commission that CREC’s attempt to excuse the permitting delays by claiming that CREC is entirely without fault for those delays is simply not correct.

III. CONCLUSION

WHEREFORE, the Town respectfully requests that the Commission (1) grant this Motion for Leave to Respond; (2) reject CREC’s request to allow Clear River’s Unit One CSO to be maintained; (3) reject CREC’s request for a waiver of the Tariff; (4) accept ISO-NE’s termination of Clear River’s Unit One CSO, and (5) grant such other and further relief as the Commission deems appropriate.

Respectfully submitted,
Town of Burrillville
By its attorneys

/s/ William C. Dimitri

William C. Dimitri, Esq. #2414
Town Solicitor
462 Broadway
Providence, RI 02909-1626
Tel: (401) 474-4370
Fax: (401) 273-5290
Fax: (401) 273-5290
bill@dimitrilaw.com

/s/ Michael R. McElroy

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

Dated: October 17, 2018

CERTIFICATE OF SERVICE

I, Leah J. Donaldson, hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated in Providence, RI this 17th day of October, 2018.

/s/ Leah J. Donaldson

Leah J. Donaldson, Esq.
Schacht & McElroy
21 Dryden Lane
P.O. Box 6721
Providence, RI 02940-6721
Tel: (401) 351-4100
Leah@McElroyLawOffice.com

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

HEARING IN RE:

INVENERGY THERMAL DEVELOPMENT,
LLC'S APPLICATION TO CONSTRUCT
THE CLEAR RIVER ENERGY CENTER
IN BURRILLVILLE, RHODE ISLAND

DOCKET NO. SB-2015-06

NOVEMBER 27, 2017
9:30 A.M.
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND

BEFORE THE BOARD:

MARGARET E. CURRAN, CHAIRPERSON
JANET COIT, BOARD MEMBER

PATRICIA LUCARELLI, LEGAL COUNSEL
SUSAN FORCIER, LEGAL COUNSEL
MARGARET HOGAN, LEGAL COUNSEL
TODD BIANCO, COORDINATOR
KATHLEEN MIGNANELLI, COORDINATOR

APPEARANCES:

FOR THE TRIBAL COUNCIL/NARRAGANSETT INDIAN
TRIBE:

SHANNAH KURLAND, ESQ.

APPEARANCES:

FOR INVENERGY:

ADLER, POLLOCK & SHEEHAN
BY: ALAN SHOER, ESQ.
ELIZABETH NOONAN, ESQ.
NICOLE VERDI, ESQ.
RICHARD BERETTA, ESQ.

FOR THE CONSERVATION LAW FOUNDATION:
JERRY ELMER, ESQ.
MAX GREENE, ESQ.

FOR THE TOWN OF BURRILLVILLE:

SCHACHT & McELROY
BY: MICHAEL McELROY, ESQ.

FOR THE RHODE ISLAND BUILDING TRADES:
SINAPI LAW ASSOCIATES
BY: GREGORY MANCINI, ESQ.

FOR THE OFFICE OF ENERGY RESOURCES:

ANDREW MARCACCIO, ESQ.

FOR THE TOWN OF CHARLESTOWN:

RUGGIERO, BROCHU & PETRARCA
BY: PETER RUGGIERO, ESQ.
DAVID PETRARCA, ESQ.

(COMMENCED AT 10:21 A.M.)

THE CHAIRPERSON: Okay. Good
morning. We're here for hearings in
SB-2015-06.

PERSON IN AUDIENCE: We can't hear
you.

THE CHAIRPERSON: Well, I'm
speaking into the microphone. We're here
for the hearings on the pending motions that
are included in the Board's November 15th,
2017 notice. First, could the parties all
introduce themselves for the record?

MR. SHOER: Good morning,
chairwoman Curran and Board Member Coit. On
behalf of Invenergy, Alan Shoer. With me
from our firm, Adler, Pollock & Sheehan, to
my right Nicole Verdi, Elizabeth Noonan,
Richard Beretta, and John Niland, Project
Development, from Invenergy.

MR. MANCINI: Greg Mancini from the
Rhode Island Building Trades.

PERSON IN AUDIENCE: We can't hear
you.

MS. KURLAND: Shannah Kurland

1 filing of their prefiled testimony
2 initially. In other words, we did not have
3 the second unit qualify at the time of the
4 advisory opinion process. It was not -- I'm
5 sorry.

6 THE CHAIRPERSON: Right, but it had
7 not been told by ISO that it was
8 disqualified and would not be allowed to
9 participate in the auction.

10 MR. SHOER: Right, only for FCA-12.
11 It was only with regard to FCA-12. So the
12 -- I should say the FCA-11 process where
13 Invenergy was unable to obtain an
14 obligation, a security obligation for the
15 unit, that information was already before
16 the Boards -- the agencies at the time of
17 their advisory opinions.

18 And with regard to the notice of
19 notification, as we indicated and as shown
20 in the redacted filing that we made
21 publicly, the first paragraph does describe
22 that the delays in permitting were a concern
23 for the ISO New England and did not go into
24 the issue of need for the power and the

1 expertise in the power energy business on
2 behalf of the parties. They are available
3 to answer any questions that you may have
4 with regard to financing for energy
5 projects.

6 MS. COIT: Since you just brought
7 it up, Mr. Shoer, I would like to say that I
8 actually do not -- I think the delays in the
9 permitting process are in relation to the
10 way it's been handled. It was a full year
11 after the application was submitted that we
12 ended up, without your objection, suspending
13 or -- let me think of the timing. We
14 suspended this process because you didn't
15 have a water plan. We waited for that water
16 plan. When you supplemented that water plan
17 you brought in issues that involved the
18 motion by the Tribe today and Charlestown.

19 So just for the record, I do not
20 think that the delays in the permitting
21 process are about the way the Board has
22 handled things but about the way that you've
23 handled things. I don't know if you're
24 done. Are you done with your comments on

1 generation for the specific timeframe with
2 which that FCA-12 was forecasted.

3 Also I should point out that the
4 ability of Invenergy to finance the project
5 is not -- was not even an issue established
6 by the Board in its preliminary order, in
7 its preliminary decision. It is not among
8 the relevant issues listed in the statute
9 that go to need, go to compliance with other
10 laws and regulations or environmental
11 issues. Invenergy is a well-established
12 energy development company that has operated
13 projects throughout in the United States and
14 other parts of the world. There's no
15 question they have the ability to finance a
16 project.

17 I should also point that this is
18 not a ratepayer subsidized project. It is
19 not a project that you'll be asking
20 ratepayers to incur the financing for which
21 might suggest the need to have further -- a
22 further evaluation about project financing.

23 And last, you're going to be
24 hearing from many experts that have

1 this?

2 MR. SHOER: No. Just one last
3 comment. We were not by any means trying to
4 assert that any of the delays were the fault
5 of the Board. I want to make that point
6 clear.

7 MS. COIT: Okay. Fair enough.

8 MR. SHOER: That's absolutely the
9 case. We also -- we also believe that -- I
10 should also point out in remarks by CLF they
11 mentioned about the annual reconfiguration,
12 they mentioned March. My information is
13 that the annual reconfiguration auctions are
14 held in June of each year, not March. So
15 just for a correction on the record. Thank
16 you.

17 MR. ELMER: Madam Chair, may I
18 respond briefly?

19 THE CHAIRPERSON: Hold on just a
20 second. So does Invenergy's not objecting
21 to CLF and joined by the Town of
22 Burrillville leave to file additional expert
23 testimony, are you still opposing the
24 opportunity for additional discovery?

1 half the time we normally provide, but the
2 supplement to the advisory opinions within
3 90 days, and then I think we have time for
4 the experts to respond to the discovery
5 requests in that time period as well. So we
6 can clarify the exact timing in our order.

7 THE CHAIRPERSON: Is that clear,
8 and everybody believes that that's
9 sufficient time?

10 MR. ELMER: Yes. Thank you.

11 MS. COIT: I was just looking at
12 our order, but we don't have any end time,
13 so let's proceed to the last motion.

14 THE CHAIRPERSON: Let's take ten
15 minutes.

16 (RECESS)

17 MR. McELROY: Madam Chair, could I
18 make a suggestion?

19 THE CHAIRPERSON: We're not
20 starting yet. Could you just hold on?

21 MR. McELROY: But it's procedural.

22 THE CHAIRPERSON: Yes.

23 MR. McELROY: This is the Town's
24 motion to dismiss. It is a dispositive

1 go forward.

2 MR. McELROY: Then I will if now is
3 the appropriate time. All set? Thank you,
4 Madam Chair. This is the Town's motion to
5 dismiss for Invenergy's failure to comply
6 with the EFSB rules and an order of the
7 EFSB. I believe the following timeline will
8 demonstrate that Invenergy has shown
9 repeated and consistent disregard for this
10 Board's rules, it's orders and the parties
11 and the public. I apologize in advance.
12 The timeline does repeat some of the dates
13 that were discussed earlier in the advisory
14 opinion and discovery motions, but I believe
15 putting the timeline in context in a
16 chronological fashion is the best way to
17 demonstrate why the Town believes that the
18 time is now to dismiss this application.

19 On October 29th, 2015 Invenergy
20 filed its application. It filed it without
21 a firm water source and without a capacity
22 supply obligation for either Unit I or Unit
23 II of this 1,000 megawatt energy facility.

24 On August 31st, 2016 the Town's

1 motion. The Board also has at this time, as
2 far as I can tell, three additional motions
3 pending before it where response time has
4 not yet run, and so an additional motion day
5 will need to be scheduled. There are two
6 motions for the Town of Charlestown, there's
7 another motion from the Town regarding an
8 environmental impact document. I'm going to
9 suggest, but, of course, abide by whatever
10 the Board rules and I'm prepared to do
11 whatever the Board rules, that we hold the
12 Town's motion to dismiss until the next
13 motion day when we have Mr. Agrawal
14 available to us.

15 MS. NOONAN: On behalf of the
16 applicant, it's been marked up already for
17 hearing on this matter and we see no reason
18 why it should be postponed from today.

19 MS. COIT: At some point we need
20 talk about scheduling. We don't have
21 anything else in terms of an open meeting on
22 the record. I'm prepared to go forward
23 today. I'd leave it up to you.

24 THE CHAIRPERSON: I think we should

1 Planning Board issued its advisory opinion
2 to this Board stating in part, "Many of the
3 data responses we received from Invenergy
4 were incomplete and at times evasive." On
5 September 9th, 2016, the Town's Building
6 Inspector issued an advisory opinion to this
7 Board stating in part, "From the beginning
8 I've been unable to get pertinent
9 information needed to make the advisory
10 opinions." On September 12, 2016 the Zoning
11 Board of the Town issued an advisory opinion
12 stating in part, "Invenergy has refused to
13 provide information." On October 5th, 2016
14 the Town and Invenergy agreed in writing in
15 a document filed with the Board that a
16 contingent water source was important and
17 needed to be identified as part of any water
18 plan. On October 13th, 2016 this Board
19 suspended Invenergy's application because it
20 was incomplete due to the lack of a water
21 source.

22 Moving into 2017. January 11th. A
23 revised water supply plan was filed by
24 Invenergy identifying Johnston as the

1 primary supplier and Benn Water as a
 2 contingent supplier. On August 9th, 2017
 3 Invenergy answered Town Data Request 32-9
 4 stating that Invenergy was continuing to
 5 explore "additional contingent water
 6 sources". On August 11, 2017 -- and all of
 7 the dates from now on will be 2017. We're
 8 moving into the more recent filings -- the
 9 Town asked Invenergy to provide "any and all
 10 additional possible sources of water".
 11 August 15th Invenergy objected to that
 12 request. August 17th, two days later, the
 13 Fall River Water Board approved a contract
 14 that specifically identified Fall River as a
 15 designated alternate water supplier for the
 16 Clear River Energy Center. August 17th. On
 17 August 21, without knowing that the Fall
 18 River contract was in existence, the Town
 19 moved to compel a response to the data
 20 request regarding alternate water suppliers.
 21 On September 8th, without informing the
 22 Board that the Fall River contract was in
 23 existence, Invenergy objected to
 24 Burrillville's motion to compel and

1 affirmatively stated in its objecting papers
 2 that there was no agreement with any other
 3 water supplier. Invenergy also promised
 4 that if an additional contingent water
 5 supplier agreement was entered into, that
 6 Invenergy would supplement its water plan.
 7 On September 15th at oral argument,
 8 which took place again without this Board
 9 and the parties being aware of the Fall
 10 River agreement, Invenergy claimed that
 11 there was no agreement with any other
 12 contingent water supplier for the Clear
 13 River Energy Center. It also said that it
 14 would provide this Board with any such
 15 agreements that were entered into.
 16 I'll quote from the transcript,
 17 Page 83. "If there is another alternate
 18 water supply agreement that agrees to
 19 provide water, you will see that agreement.
 20 We will provide that to you." On that same
 21 day, September 15th, this Board, therefore,
 22 relying on this representation, denied the
 23 Town's motion to compel stating, and I
 24 quote, "If there were an additional

1 agreement reached with any other entity for
 2 another water supply plan, then that
 3 certainly would have to come before the
 4 Board." That's in the transcript, Page 95.

5 September 28th. Invenergy for the
 6 first time filed a redacted supplement to
 7 its water plan that confidentially disclosed
 8 Fall River as an alternate was source, but
 9 importantly, did not provide the agreement.
 10 The next day on September 29th, as we know,
 11 Invenergy was notified by ISO that it had
 12 been disqualified from FCA-12 in 2018 for
 13 Unit II. This means that Unit II has not
 14 been successful for three consecutive years
 15 in attempting to obtain a CSO for that unit.
 16 On October 19th this Board issued Order 116
 17 requiring that, "If Invenergy had entered
 18 into another water supply agreement, that
 19 agreement would have to be presented to the
 20 Board." That's at Page 3.

21 On October 20 the Town for the
 22 first time received the Fall River agreement
 23 but received it not from Invenergy but from
 24 a Burrillville resident who obtained it

1 through a public access request. The Town
 2 was shocked to find out that this agreement
 3 had been in effect for over two months and
 4 that the agreement was in effect during oral
 5 argument on the motion to compel a month
 6 earlier when Invenergy represented to this
 7 Board that no such agreement existed.

8 October 24th the Fall River City
 9 Council passes a resolution noting that the
 10 Fall River water agreement was passed
 11 without prior knowledge of the City Council
 12 and that this was contrary to the Council's
 13 regular practice. On November 1, five weeks
 14 after learning of their disqualification
 15 from FCA-12, Invenergy discloses for the
 16 first time that it was disqualified from
 17 FCA-12 but did not at that time provide the
 18 disqualification memo or any other related
 19 documents to this Board or the parties.

20 November 3rd, Invenergy supplements
 21 its response to this Board's Data Request
 22 1-3 regarding identification of all
 23 community outreach materials, but it did not
 24 disclose in that supplemental response that

1 it was funding a pro-CREC organization known
2 as Rhode Islanders for Affordable Energy.
3 On that same day CLF moved to take
4 additional discovery regarding the
5 disqualification from FCA-12. On that same
6 day the Town joined in that motion and
7 earlier in this hearing today you ruled on
8 that motion.

9 On November 8th, 2017 Invenergy
10 objected to the request from CLF and the
11 Town to take discovery on FCA-12 claiming
12 that, "Invenergy supplied the Board and the
13 parties with the relevant information and
14 backup data." As this Board has already
15 made clear, it is not up to Invenergy to
16 determine what information is relevant. On
17 November 10th, DEM notified Invenergy that
18 its wetlands application was deficient in
19 over 50 ways and that it was suspending
20 consideration of its wetlands application
21 until those 50 matters were addressed and
22 that the Invenergy had one year to make that
23 filing. If they did not make the filing,
24 the application would be closed at DEM.

1 This letter from DEM was never furnished by
2 Invenergy to this Board or to the parties.

3 On November 14th CLF and the Town
4 made a filing stating that Invenergy had not
5 provided sufficient information from ISO for
6 the parties to analyze the effect of FCA-12.
7 On November 20th Invenergy filed testimony
8 from John Niland that for the first time
9 disclosed the September 29th memo from ISO
10 disqualifying them from FCA-12 on Unit II,
11 but, as we pointed out, provided only three
12 of the five pages. The additional missing
13 two pages are apparently the appendix. My
14 brother has mentioned earlier that he did
15 not think that the appendix was important.
16 I beg to differ. My brother has -- although
17 I have not seen it, my brother has handed up
18 to you the confidential document, which I
19 cannot quote from, but I can point out that
20 my brother has highlighted on both the first
21 page, the second page and the third page
22 where that memorandum/letter specifically
23 refers to that appendix and incorporates it
24 into the letter.

1 In the November 20th filing by Mr.
2 Niland it was disclosed for the first time
3 that no interconnection agreement had been
4 reached with National Grid. Invenergy also
5 disclosed that if it wants to re-qualify
6 Unit II to bid in a future forward capacity
7 auction, that it will have to perform a new
8 system impact study with ISO and that
9 Invenergy does not know what the outcome of
10 such a study would, in fact, be. In that
11 November 20th filing Mr. Niland also
12 disclosed that Invenergy had been filing for
13 some unknown period of time 30-day status
14 reports with ISO New England setting forth
15 the reasons for delays in the permits, the
16 reasons for delays in the ordering of the
17 equipment and the reasons for the delays in
18 the building and permitting of the
19 interconnection. Yet none of these 30-day
20 status reports were ever filed with this
21 Board or with the parties.

22 We respectfully submit that the
23 above timeline shows that Invenergy has
24 demonstrated over a two-year history that it

1 is withholding important information and/or
2 providing incomplete, vague or misleading
3 information to this Board and the parties.
4 We believe that Invenergy has intentionally
5 and consistently worked to prevent a public,
6 transparent and complete application
7 licensing process. For example, Invenergy
8 has failed to fully and timely disclose
9 information to the Planning Board,
10 information to the Building Inspector,
11 information to the Zoning Board, the Fall
12 River water agreement, its funding of the
13 Rhode Islanders for Affordable Energy group,
14 DEM's letter regarding the 50 deficiencies,
15 DEM's memorandum -- I'm sorry -- the
16 disqualification memorandum of September
17 29th and various other matters that I
18 outlined in my timeline.

19 The burden of proof in this matter
20 rests solely on the shoulders of Invenergy.
21 That's set forth in RIGL 42-98-11(b). Under
22 RIGL 42-98-16, and I quote, "The failure to
23 comply with any promulgated Board rule,
24 regulation, requirement or procedure for the

1 licensing of energy facilities shall
 2 constitute grounds for suspension or
 3 dismissal with or without prejudice," all,
 4 of course, in this Board's discretion.
 5 Under EFSB Rule 1.15(a)(a)(8) this Board has
 6 full authority "to issue orders to remedy
 7 non-compliance with these rules, the Act or
 8 orders of the Board". Finally, RIGL
 9 42-98-10(d) provides that "failure or
 10 refusal of the applicant to provide
 11 requested information may be considered as
 12 grounds for recommending denial".

13 We believe that this matter has
 14 been mishandled by Invenergy from Day One.
 15 It filed when it was not ready. It didn't
 16 have its act together and it has been
 17 scrambling ever since, and part of that,
 18 unfortunately, has been the withholding of
 19 evidence, the furnishing of partial evidence
 20 or incomplete evidence, or protesting that
 21 it did not have to provide the evidence when
 22 this Board knows that all evidence relevant
 23 to the issues must be provided. The Town
 24 has had to fight for everything that it has

1 been looking for. Invenergy has been
 2 objecting at every turn. We believe enough
 3 is enough. The time has come to dismiss the
 4 application for Invenergy's failure to
 5 comply with the Energy Facility Siting Act
 6 and this Board's rules. We believe the
 7 application should be dismissed with
 8 prejudice, however, if the Board elects to
 9 do so, as the Act provides, it could make an
 10 election to dismiss it without prejudice and
 11 give Invenergy, if it chooses to do so, an
 12 opportunity to get its act together and
 13 re-file it at some point in the future if it
 14 chooses to do so. Thank you.

15 THE CHAIRPERSON: Conservation Law
 16 Foundation.

17 MR. ELMER: Thank you. Madam
 18 Chairperson, and may it please the Board,
 19 CLF, as you know, supports Burrillville's
 20 motion to dismiss. I'd like to add one
 21 reason for dismissal to what Mr. McElroy
 22 said and that's affirmative
 23 misrepresentations by Invenergy to this
 24 Board and to the public, and I'll give three

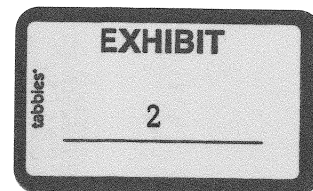
1 examples of that. I want to be very clear
 2 what I am and am not saying.

3 Let's start with the October 29th,
 4 2015 application that was filed with the
 5 Board that did not have any firm contract or
 6 source for water. That is not grounds for
 7 dismissal. It's quite surprising that an
 8 energy developer would file a permitting
 9 application without having a source of
 10 water. It's very, very unusual, but it's
 11 not grounds for dismissal.

12 However, Invenergy went beyond that
 13 and said to the Board in its application on
 14 Page 46 that water "will" come from the
 15 Pascoag Utility District. On January 12th,
 16 2016 Invenergy again told the EFSB on Slide
 17 12 of its Power Point presentation that
 18 water will come from the Pascoag Utility
 19 District. And on March 31st, 2016 at the
 20 public hearing at Burrillville High School
 21 Invenergy again said, Page 16, Line 18 to
 22 Page 17, Line 16, "Water will come from the
 23 Pascoag Utility District." It's not
 24 wrongful for a power plant operator to file

1 an application without a contract for water,
 2 and there was a very simple, truthful,
 3 accurate way for Invenergy to explain the
 4 situation. Invenergy could have said, "We
 5 have a non-binding letter of intent with the
 6 Pascoag Utility District which we hope in
 7 the future to reduce to a contract." But
 8 they didn't say that. They misrepresented.
 9 And it was almost a year after this docket
 10 was opened that it had to be suspended when
 11 it became clear that there was no water
 12 source.

13 Second example. Again, the
 14 Burrillville High School, Thursday evening,
 15 March 31st, 2016. Remember the preliminary
 16 hearing in this room on January 12th Ryan
 17 Hardy testified that he believed he expected
 18 that there would be ratepayer savings from
 19 Invenergy of \$280 million. And then the
 20 forward capacity auction was held in
 21 February of 2016. Of course, Mr. Hardy's
 22 guesses, estimates were based on two
 23 turbines clearing which didn't happen, based
 24 on a high clear clearing price that didn't



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

**IN RE: INVENERGY THERMAL DEVELOPMENT LLC :
 APPLICATION TO CONSTRUCT AND :
 OPERATE THE CLEAR RIVER ENERGY : SB-2015-06
 CENTER, BURRILLVILLE, RHODE ISLAND :**

ORDER

On October 13, 2016, Invenergy Thermal Development LLC (Invenergy) appeared before the Energy Facility Siting Board (Board) pursuant to a Show Cause Order issued on October 3, 2016. Invenergy was ordered to show cause why its application proceedings should not be suspended due to an incomplete application caused by the absence of a water supply plan. On August 22, 2016, the applicant had notified the Board of the Pascoag Utility District's decision that it was not willing to supply water to Invenergy. The lack of information regarding Invenergy's water source rendered its application incomplete and therefore not in compliance with Rule 1.6(b)(4) of the Rules of Practice and Procedure (Rules).

At the hearing, Invenergy argued in favor of a suspension of the proceedings. Both the Conservation Law Foundation and the Town of Burrillville argued that the proceedings should be dismissed rather than suspended. The Board held that pursuant to R.I. Gen. Laws §42-98-16(a), the proceedings shall be suspended for ninety days allowing time for Invenergy to remedy the incomplete application. The Board also ordered Invenergy to provide the Board with a written status update in sixty days.

Accordingly, it is hereby

(103) ORDERED:

1. The application proceedings in this docket shall be suspended for ninety days.

2. Invenenergy Thermal Development LLC shall file a written status update with the Energy Facility Siting Board within sixty days.

EFFECTIVE AT WARWICK, RHODE ISLAND, OCTOBER 13, 2016. WRITTEN ORDER
ISSUED OCTOBER 20, 2016.

ENERGY FACILITY SITING BOARD



Margaret E. Curran

Margaret E. Curran, Chairperson

Janet Coit

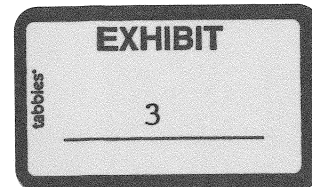
Janet Coit, Member

Parag Agrawal

Parag Agrawal, Member



RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF WATER RESOURCES
235 Promenade Street
Providence, Rhode Island 02908



November 10, 2017

Algonquin Gas Transmission, LLC and
Narragansett Electric Company d/b/a National Grid
c/o Clear River Energy, LLC
Attn: Bryan Schueler, Exec. Vice President
1 South Wacker Drive Suite 1800
Chicago, IL 60606

Re: Application No. 17-0079 in reference to the location below:

Approximately 200 feet westerly of Wallum Lake Road, approximately 2200 feet southeast of its intersection with Algonquin Lane, Assessor's Plat 135, Lot 002, Assessor's Plat 137, Lot 002, Assessor's Plat 137, Lot 003, Assessor's Plat 137, Lot 021, Assessor's Plat 153, Lot 001, and Assessor's Plat 153, Lot 002, as well as along a Narragansett Right-of-Way from a point approximately 1090 feet east of the intersection of Deer Run Dr. and Doe Crossing Drive, north and east to "Sherman Road Switching Station east of Sherman Farm Road, Burrillville, R.I.

Dear Mr Schueler:

Kindly be advised that the Department of Environmental Management's Freshwater Wetlands Program ("Program") is unable to complete our review of your application at this time. The enclosed review comments indicate what must be revised and/or provided so that we may continue to process your application. Please provide this information as soon as possible. You must provide this information within (1) one year of the date of this letter. Please be advised that if we do not receive the requested information within the applicable time frame, your application will be closed pursuant to the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act.

Please reference the application number provided above in all communications regarding your application. If you have any questions or require clarification of any enclosed comments, please call the staff person identified (including contact information) at the conclusion of the enclosed comments.

Please note that this letter should not be interpreted as a permit to alter wetlands, or as any indication that a permit for a project will ultimately be granted. The enclosed comments are intended to obtain additional information so that we are able to complete our review of your application.

Thank you in advance for your anticipated cooperation in addressing the enclosed review comments.

Sincerely,



Charles A. Horbert, Program Supervisor
Office of Water Resources
Freshwater Wetlands Program
CAH/NLF/cah

Enclosure: Review comments

- xc: Michael F. Ryan, Vice President, Narragansett Electric Co.
Richard Paglia, Vice President, Spectra Algonquin Management, LLC
- ec: Eric Beck, PE, Chief of Groundwater & Wetlands Protection
Alexander Kostra, U.S. Army Corps of Engineers, New England District
John Niland, Invenergy, LLC
Craig Wood, ESS Group, Inc.
Jamie Durand, POWER Engineers
Chad Jacobs, HDR, Inc.

RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF WATER RESOURCES
FRESHWATER WETLANDS PROGRAM

Technical Review Comments of Documents Received by RI DEM on September 19, 2017

APPLICANT: Algonquin Gas Transmission, LLC (c/o Clear River Energy, LLC)

APPLICATION NO: 17-0079

DATE: November 10, 2017

The following items must be addressed before your application can continue to be processed.

BIOLOGIST REVIEW COMMENTS (Nancy Freeman 401-222-6820, extension 7408):

1. To eliminate unnecessary sheets and reduce duplication in sheets, please remove the following sheets from the power plant site plan set: all "Overall Site Arrangement" plans; all "Layout Plans" (or these could be combined with the Grading Plans); all drainage and water quality plan sheets (except Sheet 01C400); and all "SESC Plan" sheets excepting necessary detail sheets (01C922 through 01C926). All of these plan sheets can be submitted separately as supporting documentation rather than included as part of the project site plan set.
2. As previously requested, site plan sheets must be numbered sequentially. You may retain the current drawing number, but also include basic numbering (e.g. Sheet No 1 of x through x of x) and label in the index on the cover sheet next to the corresponding drawing number, if retained.
3. All work must be shown on the subject plans with the corresponding symbol in the site plan legend without reference to any sheets in the SESC. If there are details in the SESC that need to be shown in the overall site plan set (such as details of proper erosion control installation, or standard construction sequencing, silt management, and SESC implementation and maintenance notes), then include them accordingly.
4. Please provide sufficient typical cross sections along the proposed road to which shows the retaining walls, dimensions, elevations, roadway pavement and shoulder widths, and associated adjacent Limit of disturbance (LOD). Provide at least some corresponding details and labeling on the proposed grading plans (e.g. retaining wall, elevations of the top of wall, toe of slope etc.). At least one cross section should include the proposed ramped portion leading to and from the roadway. Reference Rule 7.03(L)(2).
5. It appears that the proposed grading formerly associated with a proposed OWTS is still depicted within portions of the perimeter wetland, but the revised plans now do not show any proposed OWTS. The response to comments indicates that it has been relocated, but it is not clear where. Please depict and label the proposed OWTS. As previously suggested, the OWTS should be located entirely outside of the perimeter wetland. Grading plans will need to be revised if grading is no longer proposed in the area of the previously proposed OWTS.
6. As previously requested, the gas line connection to Spectra Energy needs to be shown in its entirety at an appropriate scale in the site plan set since it is an integral component of the project. The Limit of Disturbance will need to be revised accordingly.

7. The Roadway Plan and Profile plans do not depict any proposed utilities (e.g. the water line from the supply well, electric power from the roadway into the site, sewer connections if applicable). Please provide details as applicable. In the case of any electric utilities, please specify whether connections will be underground conduit or overhead wires (in which case utility poles will need to be depicted);
8. The Limit of Disturbance (LOD) needs to be revised along the western side of the site to accommodate the proposed lines that will connect the proposed switching station to the "Burrillville Interconnection Site (BIP)" and need to be depicted in the exact locations of that corresponding plan set for the "BIP".
9. The "Flood Plain Mitigation Area" needs to be better labeled. There is currently no corresponding symbol in the legend for it, and the call-out and arrow on the Grading Plan points to the road shoulder, not to the mitigation area.
10. It is unclear at this time what the project's source of industrial cooling water will be. Options appear (at least) to be 1) obtaining water from the Town of Johnston; 2) obtaining water from the Narragansett Indian Tribe, and 3) obtaining water from the City of Fall River, MA. At least 2 of these three options may potentially impact freshwater wetlands in RI, and further details are required since this water source is an integral part of this project proposal. In the case of the Town of Johnston, you must either demonstrate that an existing water outlet will be utilized by water transportation trucks (meaning that no new facility is proposed) or site plans must provide details of any facility construction or improvements that will be needed to fill transportation trucks, including any potential wetland alterations may be needed to implement such improvements. In the case of the Narragansett Indian Tribe, it is our understanding that no facility currently exists, and that water withdrawals will directly impact wetland resources. Please update site plans, your impact avoidance and minimization statement and overall project evaluations to include all details related to off-site water withdrawal and associated wetland impacts. You must address Rule 10.02E(4)(d) with regards to proposed impacts to Groundwater and Surface Water supplies and specifically (i) Drainage Characteristics; (ii) Wetland Functions and Values and (iii) Proposed Impacts. In addition, you must address 10.02E(4)(e) with regards to Water Quality impacts. Site plans and details must indicate water withdrawal methods, rates, access and egress routes and all supporting calculations. The 200-foot radius map and list of abutters would also need to be updated to reflect any additional wetland alterations from water withdrawals. Finally, for any related alterations on property in Rhode Island that is not owned by either of the current co-applicants, the subject property owners would also have to sign on as co-applicants for this application. No such details or documents are required if the project's only water source is proposed to be from Fall River, MA.
11. Informal communications with consultants inferred that there would be some changes in what is proposed for permanent vehicular access along the BIP portion of the project. Please update the site plans along the BIP portion of the project if necessary to show any revisions to permanent road improvements along the proposed CERC ROW as compared to the current plans, and update your Avoidance and Minimization documentation and Evaluation accordingly.
12. The size of the site plans, and the chosen match lines that split the project up on the site plans, makes review of the project difficult, particularly when trying view the overall project site. **While the site plans do meet our minimum requirements and no changes in plan size or layout is necessary,** we would like to suggest that, for the CREC portion of the project, 24x36 inch size plan sheets be considered. This may allow larger portions of the project to be displayed on one sheet, and myriad detail sheets to be combined into fewer sheets.

13. With the exception of swamp mats over a portion of swamp, and the proposed ramp, it does not appear any alterations are proposed in the proposed stockpile and laydown areas other than temporary clearing. Please clarify the nature of proposed alterations here, including whether grade changes are proposed, and specifying what portions are to be both cleared and grubbed. Note we assume that stockpiling soil will result in at least temporary grade changes and do not need to be reflected as proposed grade changes.
14. All site plan sheets must bear the stamp of a RI Registered Professional Engineer. Currently, most of the sheets in the BIP set of site plans do not have a PE stamp.
15. Please update your Impact Avoidance and Minimization documents and Evaluation to address impacts from the proposed new alterations to the laydown/stockpile area resulting from the newly verified wetland edges.
16. It is evident that the anticipated mitigation plan for the proposed project is not yet completed. It is recommended that this plan be finalized and that the component of your mitigation plan be incorporated into the project design and supporting documents prior to the project application being sent out to Public Notice. With respect to the statement at the end of Section 7.0, "Should resource agencies agree, the Applicant will develop design details for agency consideration as the overall mitigation plan is refined.", it is respectfully noted that any mitigation design and plan it's the responsibility of the applicant to design based on what is anticipated to be the projects impacts of concern. This agency is not in a position to come to an agreement on a mitigation plan for which it has a responsibility to issue a regulatory decision. If applicable, please update the site plans and supporting documentation to include any impacts to freshwater wetlands either on-site or off-site that are for proposed mitigation proposed by the applicant or as may be required by the U.S. Army Corps of Engineers.
17. Please better clarify on the site plans which areas are proposed for reforestation (e.g. label area codes, show polygons of proposed vegetation etc.). The line drawings on the reforestation plans are quite indistinct and difficult to review.
18. Regarding the Abutters List, please confirm the property owner for Lot 71-014 (on Abutters Map Sheet 19 of 30). It is currently listed as John F. Swart, III & Lucille Beauchamp. The Department recently reviewed an application for a Mr. Brizard on this plat and lot. Also, DEM internal plat maps show Plat/Lot 102-5 within the 200-foot radius (immediately East of Wallum Lake Road). However, it appears based on your maps that perhaps this lot is now part of 102-6 (Theodore Bertrand). Please clarify.
19. Although not required at this time, please be advised that prior to Public Notice, additional site work will be required along the BIP ROW (and National Grid ROW) to help facilitate our evaluation. Such work will likely include at least flagging the LOD within wetland clearing proposed along the Clear River (Sheet 17 of 63) and near Round Top Brook (Sheet 28 of 63) and along the wetland crossings along the new portion of the BIP connecting the CERC to the National Grid ROW.
20. Regarding the BIP, portions of the project limits proposed along the Clear River have been recently inundated by Beaver Activity. If any action or special measures are proposed, please update the site plans accordingly.

ENGINEER REVIEW COMMENTS: (Nicholas A. Pisani, PE 401-222-6820, extension 7423):

- (1) This reviewer has attempted to recommence review of this project but finds that the submitted node diagrams are poorly labeled. Please submit node/ drainage diagrams that are clearly labeled. Please note that labels for different nodes should not be labeled the same.
- (2) Please include a node / routing diagram that clearly labels and describes all nodes. Please provide this node diagram as a separate diagram, as opposed to placing it on the watershed map, to provide improved clarity.
- (3) The submitted node /drainage diagrams do not explain the design points. Please provide an explanation of each of the design / analysis points on the submitted node diagram.
- (4) Much of the information on the submitted routing diagram and subwatershed maps are too small to be adequately legible. Please provide a legible routing diagram and subwatershed maps.
- (5) Please clearly label the limits of proposed Dry Swales 1 through 4 on the proposed condition subwatershed map and on the plan.
- (6) The existing drainage area map (subwatershed map) does not appear to depict complete limits for existing condition subwatershed 1S, 3S, 5S, and 6S. Please clearly depict the complete limits of all existing condition subwatershed areas. There are similar issues for some of the larger subwatersheds on the proposed condition subwatershed map. Please ensure that all existing and proposed condition subwatersheds are represented by complete subwatershed limits.
- (7) The existing and proposed condition subwatershed maps are inadequate. Please refer to guidance in RISDISM Appendix K. Most notably, the subwatershed maps need to clearly depict topography and ground cover types.
- (8) This reviewer has attempted to recommence review of this project but finds that portions of the submittal have pages that have been numbered out of order. For example, in the 10-year proposed condition, pages are numbered 37, 36, 35, and so forth. Please revise the submittal of the drainage analysis book such that all pages are in proper order.
- (9) Please address in detail the magnitude of any impacts of not providing recharge with the proposed design revisions.
- (10) The submitted analysis has not adequately demonstrated that the total pre-project analysis area equals the total post-project analysis area. This reviewer is uncertain whether the absence of information for drainage area E is the reason for this inconsistency. Please provide complete revised existing and proposed condition analysis to fully address this matter.
- (11) With respect to the submitted CN analysis, most entries are stated in acres. However, some entries are in square feet. Please convert the entries that are given in square feet to acres, to provide consistency.
- (12) The submitted drainage report appears to include the downstream analysis materials within the typical proposed condition drainage analysis materials. If a downstream analysis is being presented, please provide all portions of the downstream analysis as a separate section of the drainage report. Also, please provide sufficient drainage narrative to fully describe what the submitted downstream analysis is intending to demonstrate.

- (13) Please explain why the Lag/CN method of time of concentration analysis was chosen over the more commonly utilized sheet flow / shallow concentrated flow / channel flow calculation of subwatershed time of concentration. Please include a comparison of the two methods. Please describe what advantages and disadvantages each method has, especially with respect to the choice made in the selection of the Lag/CN method. Also, if the use of the Lag/CN method can be adequately substantiated by technical justification, then please provide all pertinent calculations. Notably, provide specific calculations for the average slope used in the submitted analysis.
- (14) The submitted analysis includes existing and proposed Design Point E. However, the submitted analysis does not appear to include any analysis materials to substantiate the flows to existing and proposed design point E. Please provide all pertinent analysis materials pertaining to existing and proposed design Point E.
- (15) When analyzed alone, it appears that proposed Dry Swale 4 may not have enough surface area available to accomplish adequate water quality treatment of contributing subwatershed 34S. Please note that in the submitted analysis, the review of proposed Dry Swale 3 and 4 were accomplished together.
- (16) Please address this reviewer's concern that the proposed gravel inlet trench to proposed Detention Pond 2 will tend to clog with debris and will not allow for efficient conveyance of flow to proposed Detention Pond 2. Please address whether a design revision to provide a more clog-resistant design could be utilized in this location. Please address the use of a check dam to temporarily retain the depth of the water quality volume at this location. In any case, please indicate the size of the stone to be used in the proposed trench at this location.
- (17) With respect to proposed Pond 3P: Gravel WVTs outlet structure, please provide a more concise detail specifically showing each of outlet devices #2, #3, #4, and #5 and provide a narrative to further explain the flow paths. Please also include a detailed plan view of the proposed outlet structure.
- (18) Please provide complete footing details for all proposed culverts. Please clearly depict the limits of disturbance and all areas to remain protected and undisturbed during the culvert installation work.
- (19) Please correct the following labeling issues on the proposed condition subwatershed map and drainage/node diagrams:
0. Subwatershed 12S does not appear to be properly identified and labeled on the submitted node diagram / subwatershed map.
 1. Subwatershed 20S does not appear to be properly identified and labeled on the submitted node diagram / subwatershed map.
 2. Subwatershed 23S in the submitted analysis is mislabeled as 4S on the submitted node diagram / subwatershed map.
 3. Subwatershed 27S in the submitted analysis is mislabeled as 9S on the submitted node diagram / subwatershed map.
 4. Point B analysis point is labeled as 22L in the submitted analysis but is mislabeled as 21L on the submitted node diagram / subwatershed map.
 5. Subwatershed 19S is apparently mislabeled as 12S on the submitted node diagram / subwatershed map analysis.
 6. Proposed Dry Swale (Reach 18R) is mentioned on the subwatershed map, but does not have an identifying node.
 7. Please clearly identify Pond 23P of the submitted analysis as the end of Dry Swale 4

structure, if this is indeed what it represents.

- (20) With respect to the sharp-crested vee / trapezoidal weir that represents the secondary flow from Pond 23P (the end of Dry swale 4 structure), please clearly depict this detail on the site plan.
- (21) With respect to proposed condition subwatershed 19S please clearly identify the location of this subwatershed. Also, please clarify whether it contains any pavement area. This may be the case, given that it is proposed to flow to proposed Dry Swale 3.
- (22) With respect to the Pond 15 culvert at entrance plan detail, please clearly indicate on the plans:
 - 0. the inlet and outlet inverts of the 18' pipe culverts;
 - 1. the 3" high x 18" wide vertical orifice; and
 - 2. the 72" x 72" (6' x 6') inlet structure dimensions.
- (23) With respect to proposed Detention Pond 1, the submitted analysis indicates an 8" orifice at 558.0'. However, the submitted plans indicate a 9" office at this elevation. Please revise the plans and/or analysis to eliminate this inconsistency.
- (24) With respect to RISDISM Section 7.2.8 please provide adequate debris screens/ trash racks to prevent clogging of orifices. The area of each of these devices should be at least ten times the area of the orifice being protected.
- (25) With respect to proposed Detention basin 1 and Detention Basin 2, as well as the proposed Sediment Forebay and Gravel WVTs, please provide a typical slope treatment detail. Slopes need to be either loamed and seeded or riprapped. Please also include adequate temporary slope treatment (matting) during the construction phase, until final stabilization is established.
- (26) With respect to RISDISM section 7.2.11 please address whether the principal spillway opening of each detention basin will prevent access by small children.
- (27) With respect to the outlet of level spreader device for Detention Basin 1 will experience water levels higher than the 558.0' modeled tailwater elevation in the submitted analysis. Please provide monitoring results at this location during large storm events to demonstrate that no adverse tailwater conditions will occur except during perhaps extreme events. Please note that higher tailwater levels than the indicated 558.0' will likely decrease the efficiency of the proposed stormwater management practices and would need to be addressed by design changes. Please address this issue.
- (28) On "Proposed Drainage Map 2" a small area is labeled "drainage is collected and hauled offsite". Please provide complete details of the accommodations for this on the project plans. Include the details of any proposed holding tank structures as well as methods of collecting runoff from this area.
- (29) With respect to the submitted floodplain study and volumetric floodplain compensation analysis, the submittal does not provide an adequate level of detail to allow review. Please provide the following information:
 - 0. Provide overall watershed maps of each watershed studied in the submitted HEC-RAS analysis.
 - 1. The submitted HEC-RAS Model Geometry and Floodplain Delineation map is not

sufficiently legible to permit any level of review. Topographic detail is too lightly printed and at too small a scale to allow review. The river section locations are not adequately legible. Provide a plan with sufficient legibility and of an adequate scale to allow detailed review.

2. Please provide clear labeling of topography on the floodplain compensation plan.
 3. Specifically show where the proposed floodplain displacement is located, both in terms of plan location and elevation range.
 4. Unless this work is indicated as being done under the review of the engineer who stamped the drainage analysis, please provide an engineer's stamp on the submitted floodplain analysis.
- (30) With respect to any resubmittal of plans and analysis materials, please provide a detailed listing of what specific items have been changed and what materials have not been changed. Please address any other changes made to the plans and analysis besides those specifically addressing RI DEM review comments.

CONCLUDING COMMENTS:

1. Please submit three (3) sets of the revised site plans and any other revised supporting documents.
2. In order to facilitate the review of future revisions to your project, please address each of the above items in writing.
3. If you have any questions regarding this letter or the processing of your application, or with respect to any of the above-noted biological review comments, please contact Nancy Freeman at 401-222-6820, extension 7408.
4. If you have any questions with respect to the above engineering review comments, please contact Nicholas A. Pisani, PE at 401-222-6820, extension 7423.

Thank you for your anticipated cooperation in this matter.

From: chuck.horbert@dem.ri.gov
To: waterbug5745@aol.com
Sent: 7/30/2018 9:46:01 AM Eastern Standard Time
Subject: RE: [EXTERNAL] : Invenenergy's/National Grid's Application to Alter Freshwater Wetlands

Good morning, Ms. Sloman,

It is certainly no bother to contact me and I am happy to answer your questions. I'm sorry you had to wait so long for my reply; I was on vacation and out of the office all week last week.

There are no regulations that state that "DEM must help an industry", or any applicant, with their application. That isn't really what we are doing, at least not to the extent of helping anyone design their project. However, we are obligated to make sure that any Application to Alter is "complete" before we issue a public Notice. "Completeness" is further covered under Rules 7.07(E) and 7.08(C). We don't want to send a project out for public Notice and comment that is incomplete, incorrect, misleading, or missing key information. There are two primary reasons for this. First, the DEM needs to be sure that all information we need in order to complete our evaluation and make a decision has been provided to us. Second, since the project also needs to be thoroughly understood by members of the public who wish to review and comment on the project, it is important for us to be sure that the material we send out or available in the file makes sense and includes information on all wetland alterations being proposed.

In this case, it has taken multiple requests to get all the information we need, many times requesting the exact same thing multiple times...and at this time I am still not sure they have adequately responded even now (I am awaiting the results of our latest review). And while there is no provision requiring the DEM to help an applicant get it all right, there is also no provision requiring DEM to either reject an application for lack of information (unless the applicant takes over a year to respond) or to simply inform an applicant that their application is incomplete without specifying the reasons we came to that conclusion.

And to be very clear, DEM has so far not actually evaluated the merits of this wetland application; we are merely making sure that we have everything we need so that when we DO perform our evaluation of the merits of the application we will be able to complete it and arrive at a conclusion as to whether the applicant has met all of the review criteria in the Rules. This evaluation will be done once the Notice has been issued.

Thank you for your interest in the application. I hope my answer has clarified the nature of our review at this time. Feel free to contact me if you have other questions.

Chuck Horbert, Program Supervisor

RIDEM Office of Water Resources

Freshwater Wetlands Program

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

IN RE: INVENERGY THERMAL DEVELOPMENT LLC :
APPLICATION TO CONSTRUCT AND :
OPERATE THE CLEAR RIVER ENERGY : **SB-2015-06**
CENTER, BURRILLVILLE, RHODE ISLAND :

ORDER

On December 12, 2017, the Energy Facility Siting Board (Board) ordered Invenergy Thermal Development LLC (Invenergy) to appear before the Board on January 30, 2018 to show cause: (1) whether the Supplemental Water Supply Plan with the Narragansett Indian Tribe (Tribe), 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 Federal Energy Regulatory Commission (FERC) filed by Invenergy regarding an ISO-NE tariff.

On January 22, 2018, Invenergy filed an informational filing with the Board notifying the Board that its contract with the Tribe had been mutually terminated. On January 24, 2018, Invenergy provided the Board with a copy of its motion to withdraw its pending complaint with FERC. Since the issues that were the basis of the Show Cause Hearing no longer exist, the order requiring Invenergy to appear to show cause is vacated as moot.

Accordingly, it is hereby

(124) ORDERED:

The Show Cause Order issued on December 12, 2017 is vacated.

EFFECTIVE AT WARWICK, RHODE ISLAND, JANUARY 24, 2018. WRITTEN ORDER
ISSUED JANUARY 24, 2018.

ENERGY FACILITY SITING BOARD



Margaret E. Curran, Chairperson

