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Press Release

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AG Kilmartin Opposes Invenergy Power Plant Due to Recent Developments

Citing several concerns, Attorney General Peter F. Kilmartin today announced his opposition to the construction of the Invenergy power plant in Burrillville and his intention to seek permission from the Court to file an amicus brief in Rhode Island Superior Court challenging the plant's water-supply plan.

"A great deal has changed since the Invenergy power plant was proposed, and there is growing evidence that the power plant is neither needed nor a positive for our economy or our environment," said Attorney General Kilmartin. "In our role as the environmental advocate for the State of Rhode Island, I believe this power plant is not in the best interest of the State, the taxpayers, or our natural resources."

Kilmartin cited four specific areas of concern as the reasons for his opposition.

Specifically, Kilmartin believes that adding a fossil-fuel facility the size and scope of the proposed power plant will exacerbate climate change and undermine Rhode Island's ability to achieve greenhouse gas reduction goals set forth in the 2014 Resilient Rhode Island Act.

Kilmartin also cited the lack of need for the power plant as solar and wind power are increasingly coming on-line. When the power plant was first proposed in 2015, there was evidence that there was a need for the plant, but circumstances have changed with the increase of renewable energy sources, most notably solar which has nearly doubled in the time since the plant was proposed. Solar output now exceeds prior forecasts by an amount sufficient to nearly cover the power to be made available by the contested Invenergy plant.

“Climate change is a reality and rising sea level is already having an impact in Rhode Island. Under these circumstances, the State should not allow the building of another fossil-fuel power plant. Instead, we should focus on renewable energy to generate electricity, thereby decreasing our reliance on fossil fuels,” added Kilmartin.

Third, and the reason Kilmartin will ask the Court permission to file an amicus brief, is the legal uncertainty as to where Invenergy will get water it needs to cool the facility.

Invenergy claims it has a valid plan to obtain its water from the Town of Johnston based on an agreement made in January 2017. Attorney General Kilmartin disputes that claim because Johnston would be reselling water it buys from the Scituate Reservoir, and use of that water is restricted by statute for “domestic … municipal … purposes.” Extra-territorial shipment by Johnston does not constitute “municipal purposes.”

“The agreement to buy water from Johnston would be precedent setting, and in our legal opinion, in violation of state law,” Kilmartin noted. “Perhaps there is no greater or important natural resource than water, and the General Assembly foresaw a century ago the need to properly regulate how municipalities are able to purchase, use, and sell water,” Kilmartin concluded.

The two lawsuits in which Kilmartin will ask to file amici briefs, Conservation Law Foundation, Inc. v. Clear River Energy, LLC, et al., (CA No. 17-1037) and Town of Burrillville v. Clear River Energy, LLC, et al., (CA No. 17-1039) are pending before Superior Court Justice Michael A. Silverstein.

Finally, Kilmartin stated he is deeply troubled by Invenergy’s recently-revealed plan to have the ratepayers pay the bill for the installation of the transmission lines from the plant to the existing grid.

“Invenergy is attempting to have electric ratepayers pick up the tab for the more than $100 million transmission power line costs that the company had previously promised to absorb itself. It’s a classic bait and switch and the ratepayers should not be on the hook for it,” concluded Kilmartin.

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AG Kilmartin Statement opposing Invenergy Power Plant

Attorney General Peter F. Kilmartin makes this statement opposing Clear River Energy ("CRE") Plant proposed by Invenergy, LLC.:

I oppose the proposed fracked-gas and diesel-oil 900+ Mega-Watt power plant (estimated cost $700 million to $1 billion) in Burrillville, Rhode Island. As part of my opposition, I am, of this date, notifying the Superior Court of my intention to weigh in with respect to the lawsuit challenging the plant's water-supply plan.

In taking this stand, I am cognizant of the fact that we in New England need to add new, affordable energy resources to fill our energy needs. Nonetheless, four facts come together to form my position to end the project, the latter three of which are based on information not available at the time of the initial application:

First, the plant would undermine Rhode Island's efforts to adapt to, and mitigate against, climate change. As many environmental organizations have concluded, adding a fossil-fuel facility of this size would increase greenhouse-gases and exacerbate climate-change.

Second, there is no need for the plant as solar and wind are increasingly coming on-line.

Third, there are serious legal issues about water supply.

Fourth, it has come to light that Clear River Energy ("CRE") has filed a complaint at the Federal Energy Regulatory Commission (the Federal tribunal governing utilities) seeking a ruling relating to certain interconnection costs (expenses that are needed to allow CRE to use New England's power transmission lines). CRE seeks a ruling that such costs should not be borne by CRE but, rather, should ultimately be borne by ratepaying customers.

I detail these problems further:

Climate Change: The proposed Invenergy power plant would totally undermine Rhode Island's ability to achieve greenhouse gas reduction goals set forth in the 2014 Resilient Rhode Island Act.

Specifically, the Resilient Rhode Island Act of 2014 (which was passed overwhelmingly by the General Assembly) calls for the reduction of climate-change emissions by 10 percent below 1990 levels by 2025, 45 percent below 1990 levels by 2035, and 80 percent below 1990 levels by 2050. According to testimony presented to the Energy Facilities Siting Board (EFSB), building a new 900-megawatt gas-and-oil-fired power plant in Rhode Island will make it impossible for the state to achieve the carbon emission reduction goals set forth in the Resilient Rhode Island Act. The evidence produced at the EFSB proceeding proves that the power plant isn't necessary.

Moreover, the Act calls upon the Executive Climate Change Coordinating Council to develop a plan for achieving the greenhouse-gas reduction goals. The plan is supposed to examine opportunities for meeting energy demand through efficiency and expanded renewable energy.

This analysis should be completed *before* the state allows the building of the new Invenergy facility. Unfortunately, the Council has not produced a report yet.

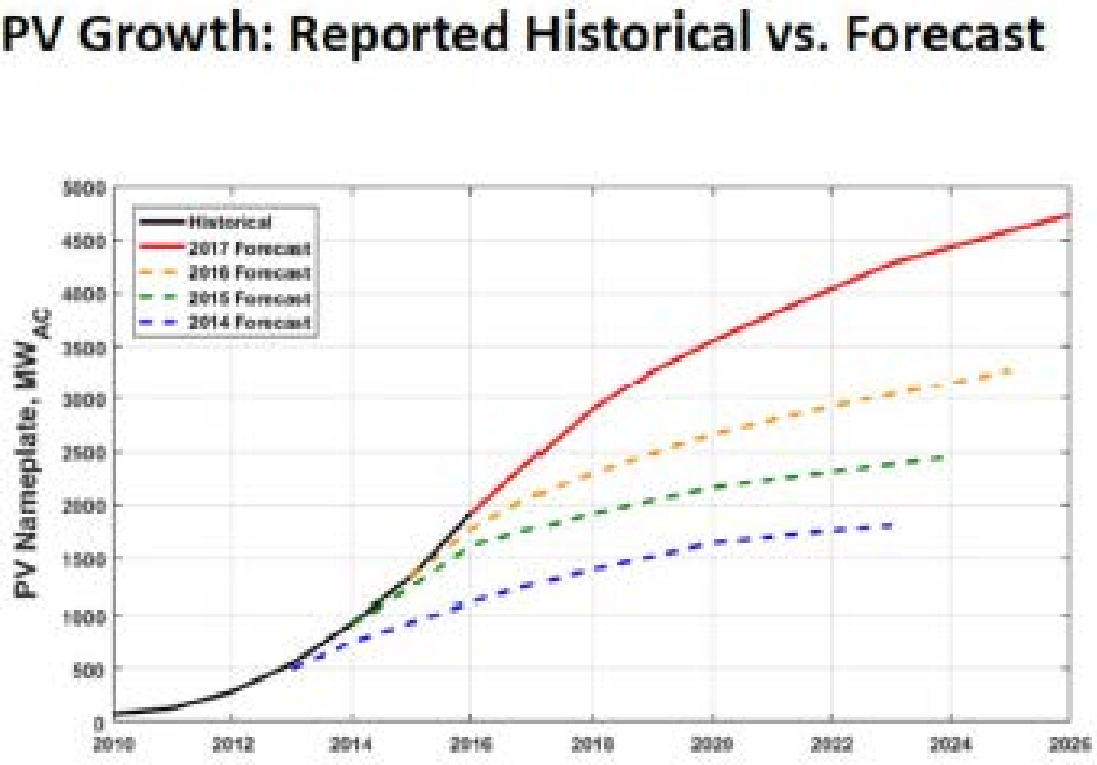
Climate change is a reality. Sea-level rise is already having a huge impact. In these circumstances, the State should not allow the building of another fossil-fuel power plant. Instead, we should be focused on using solar and wind to generate electricity and decreasing our reliance on fossil fuels.

In regard to carbon dioxide (CO_2), which is the primary cause of global warming, the proposed plant would, according to testimony at the EFSB, emit 7.2 billion pounds of CO_2 per year. In regard to conventional pollutants, it would, based on the same set of testimony, emit 546,000 pounds of nitrogen oxide per year, 446,000 pounds of carbon monoxide per year, and 156,000 pounds annually of volatile organic sulfur dioxide annually.

The lack of need. Admittedly, when Invenergy filed its original permit application with the Rhode Island Energy Facility Siting Board on October 29, 2015, there was evidence that there was a need for the plant.

Now, however, there are changed circumstances that establish that the power plant is not needed.

The surge in renewable power is the reason. Especially strong is the growth in solar panels known as photo-voltaic or PV capacity. The chart below illustrates that past forecasts have been low.



Source: ISO NE, Final 2017 PV Forecast, page 33. https://www.iso-ne.com/staticassets/documents/2017/05/2017_solar_forecast_details_final.pdf

As shown, the 2014 forecast predicted that there would be about 1,000 MW of installed solar capacity in New England by 2016 (once the electric current is converted from DC to AC). In fact, empirically, there were almost 2,000 AC MW by 2016. That figure is nearly double the prior estimate and constitutes a differential (an excess above prediction) of such amount that it is nearly enough to cover the power to be made available by the contested Invenergy plant. Current extrapolations of future solar power are even more favorable.

It is acknowledged that, in a 2016 case called PUC Docket 4609, the PUC made an Advisory Opinion to the EFSB. The recommendation said that, based on data available at that time, the Invenergy plant was needed.

But the PUC's past finding of need is now superseded by reality. It has been overtaken by events. Based on revised data, the plant is not needed.

Water Supply: There is legal uncertainty as to where the Chicago-based developer, Invenergy, will get water to cool the facility. I am prepared to go to court to make the legal argument against the project on the basis of the invalidity of its water-supply plan.

Invenergy claims it has a valid plan to obtain its water from the town of Johnston (based on an agreement made in January 2017). But I am prepared to challenge that arrangement in Rhode Island Superior Court because Johnston would be reselling water it buys from the Scituate Reservoir. Use of that water is restricted by statute. In doing so, I would be joining the Conservation Law Foundation (CLF) and the Town of Burrillville.

Superior Court Associate Justice Michael Silverstein is presiding over proceedings with respect to two cases: docket numbers PC-2017-1037 & PC-2017-1039. These concern the diversion of Situate Reservoir water to the plant (by the Town of Johnston). Johnston is limited by statute to use of the water for "domestic … municipal … purposes." Extra-territorial shipment by Johnston does not constitute "municipal purposes."

In particular, the applicable law is P.L. 1915, ch. 1278, as amended from time-to-time by the General Assembly ("the 1915 Act"). 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).

The litigation is proceeding and discovery is being conducted. With the Court's permission, I intend to involve my office in this case in the form of the filing of an *amicus* brief.

Cost to rate-payers. Two recently-disclosed proceedings pending at the Federal Energy Regulatory Commission (FERC) in Washington, DC, reveal the following new fact: CRE is now attempting to have electricity ratepayers charged over $100 million in transmission power-line (interconnection) costs that Invenergy had promised to absorb itself. In other words, Invenergy is

attempting to shift in excess of a hundred millions of dollars in costs onto Rhode Island (and other New England) electricity ratepayers.

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