

**In The Matter Of:**

*INVENERGY*

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*June 20, 2019*

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*A-1 COURT REPORTERS, INC.  
200 HEROUX BLVD., NO. 811  
CUMBERLAND, RI 02864  
(401) 439-6196*

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**Min-U-Script® with Word Index**

1 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
2 ENERGY FACILITY SITING BOARD

3  
4 OPEN MEETING IN RE:

5  
6 INVENERGY THERMAL DEVELOPMENT,  
7 LLC'S APPLICATION TO CONSTRUCT  
8 THE CLEAR RIVER ENERGY CENTER  
9 IN BURRILLVILLE, RHODE ISLAND

10 DOCKET NO. SB-2015-06

11 -----/

12  
13 JUNE 20, 2019  
14 10:00 A.M.

15 89 JEFFERSON BOULEVARD  
16 WARWICK, RHODE ISLAND

17 IN ATTENDANCE FOR THE BOARD:

18  
19 MARGARET E. CURRAN, CHAIRPERSON  
20 JANET COIT, BOARD MEMBER  
21 MEREDITH BRADY, BOARD MEMBER

22 PATRICIA LUCARELLI, LEGAL COUNSEL  
23 SUSAN FORCIER, LEGAL COUNSEL  
24 KATHLEEN MIGNANELLI, COORDINATOR  
TODD BIANCO, COORDINATOR

1 (COMMENCED AT 10:05 A.M.)

2 THE CHAIRPERSON: Good morning. We  
3 are, as you all no doubt know, here for  
4 SB-2015-06. This is an open meeting for the  
5 Board to discuss and/or vote on the matters  
6 covered by this docket. As indicated in the  
7 notice, because this open meeting is not a  
8 hearing, there's no public comment today, it  
9 will just be us finally getting to comment.

10 We have -- our schedule for today,  
11 just to get this out of the way, we'll break  
12 for lunch at 12:00 and we will go as late  
13 into the afternoon as we can.

14 Just by way of introduction, under  
15 the applicable law, the Energy Facility  
16 Siting Act, the Board will grant a license  
17 only if an applicant proves by a  
18 preponderance that the construction of the  
19 proposed facility is necessary to meet the  
20 needs of the state and/or region for energy  
21 of the type to be produced by the proposed  
22 facility, the proposed facility is cost  
23 justified and can be expected to produce  
24 energy at the lowest reasonable cost to the

1 consumer consistent with the objective of  
2 ensuring that the construction and operation  
3 of the proposed facility will be  
4 accomplished in compliance with all of the  
5 requirements of the laws, rules, regulations  
6 and ordinances under which, absent this  
7 chapter, a permit, license, variance or  
8 ascent would be required or the  
9 consideration of the public health, safety,  
10 welfare, security and need for the proposed  
11 facility justifies a waiver of some part of  
12 the requirements when compliance cannot be  
13 assured. The applicant must also prove that  
14 the proposed facility will not cause  
15 unacceptable harm to the environment and  
16 that the proposed facility will enhance the  
17 socioeconomic fabric of the state. The  
18 Board must also determine whether the  
19 construction of the facility is consistent  
20 with the State Guide Plan.

21 And, as the parties are aware, the  
22 Board asked Statewide Planning to provide an  
23 advisory opinion on and as to whether the  
24 facility would comply and conform to the

1 requirements and provisions of the Resilient  
2 Rhode Island Act and state energy policies  
3 which we also had opinion from the Office of  
4 Energy Resources.

5 Invenergy, as the applicant, has  
6 the burden throughout to prove by a  
7 preponderance that all of the elements set  
8 forth in the law are proven. Failure to  
9 prove one element will result in the Board  
10 denying the application for license.

11 This proceeding began in October of  
12 2015, and I think the parties would agree  
13 it's been a long and arduous process. We  
14 had eight public hearings.

15 DR. BIANCO: Seven.

16 THE CHAIRPERSON: Seven public  
17 hearings over the course of 21 months. We  
18 had 12 agencies providing 18 advisory  
19 opinions, some of which were supplemental to  
20 the original. We received hundreds of  
21 documents and written public comment. We  
22 had 30 days of hearings. For 28 of those we  
23 heard testimony from numerous expert  
24 witnesses.

1           In the course of our discussions  
2           and deliberations we are, or I'm certainly  
3           likely to refer to the applicant and/or the  
4           proposed facility interchangeably as  
5           Invenergy, Clear River Energy Center, the  
6           facility, the plant, the proposed generator,  
7           maybe other names, all meaning the same  
8           thing.

9           We know that many people have  
10          strong opinions about the plant, the  
11          application. I would ask that everyone  
12          please show the deference that they have  
13          been to the proceeding. Keep in mind that,  
14          as we emphasized starting at the beginning,  
15          under the open meeting laws we have not had  
16          an opportunity to discuss with each other  
17          the matters that we are deliberating on now.  
18          Should I do the timeline?

19                 DIRECTOR COIT: Sure.

20                 THE CHAIRPERSON: Just to orient  
21          everyone for the entirety of this  
22          proceeding, the application, as I noted, was  
23          filed on October 29th of 2015. It was  
24          docketed by the Coordinator on November

1 17th, 2015. On January 12th, 2016 we held a  
2 preliminary hearing. The Board determined  
3 intervention issues, determined the agencies  
4 designated to render advisory opinions and  
5 did other -- handled other scheduling docket  
6 issues at the open meeting that was held on  
7 January 29th of 2016. The preliminary order  
8 was issued on March 10th, 2016 that set the  
9 advisory opinion deadlines for September  
10 10th, 2016. The Board held public comment  
11 hearings in Burrillville on March 31st of  
12 2016, May 10th and May 23rd. On June 2nd of  
13 2016 the Board issued an order expanding the  
14 advisory opinion designation to the  
15 Department of Environmental Management.

16 On August 22nd of 2016 Invenergy  
17 notified the Board that the Pascoag Utility  
18 District had terminated its letter of intent  
19 to supply water from Well No. 3A to the  
20 Clear River Energy Center. On September  
21 9th, 2016 Invenergy filed a motion for an  
22 extension of the proceedings for 30 days as  
23 a result of that change in the water supply.  
24 On September 10th the advisory opinions were

1 filed.

2 The Board held another public  
3 comment hearing on September 21st, 2016 at  
4 Tollgate High School Auditorium. There was  
5 a public comment hearing scheduled for  
6 October 3rd at the Burrillville High School  
7 that was canceled, as was the October 13th,  
8 2016 commencement of the final hearing, or  
9 hearings. On October 3rd, 2016 the Board  
10 also had not received a water plan and met  
11 at an open meeting to discuss, among other  
12 things, the incompleteness of Invenergy's  
13 application. The Board issued a show cause  
14 order and ordered Invenergy to appear before  
15 the Board on October 13th. On October 13th  
16 the Board voted then to suspend the  
17 proceedings for 90 days.

18 Invenergy provided a 60-day status  
19 update on December 12th of 2016. Invenergy  
20 indicated it was pursuing a water supply  
21 plan with the City of Woonsocket, but at  
22 that time no water supply had been secured.  
23 On January 11, 2017 Invenergy provided a  
24 revised water plan to the Board indicating a



1 primary source of water with the Town of  
2 Johnston. In the spring of 2017 the Board  
3 heard a number of motions from the parties,  
4 and on March 21st the Board allowed four  
5 months for supplemental advisory opinions to  
6 be filed given the changed circumstances  
7 regarding the water supply.

8 On May 23rd, 2017 the Board  
9 conditionally accepted the parties' proposed  
10 procedural schedule. On June 1st, 2017 a  
11 procedural schedule set for testimony and  
12 discovery with the final hearing scheduled  
13 to occur on days between October 13th, 2017  
14 and at least through to January 17th of  
15 2018. The supplemental advisory opinions  
16 came in on August 15th, 2017. Written  
17 testimony and rebuttal also came in as per  
18 the schedule.

19 On September 28th, 2017, after  
20 surrebuttal was filed, Invenergy filed a  
21 supplement to the water supply plan which  
22 included a water supply agreement with the  
23 Narragansett Indian Tribe linked to water  
24 resources located in Charlestown. The Board

1 conducted a public comment hearing at the  
2 Burrillville High School Auditorium on  
3 October 10th, and on October 11th, 2017  
4 Charlestown filed for intervention. After  
5 granting intervention -- after the Board  
6 granted intervention, the parties met with  
7 Board staff to establish a procedural  
8 schedule, including a public comment hearing  
9 in Charlestown given the -- at that time  
10 that recent new wrinkle to the water supply  
11 plan. At a request from Invenergy, the  
12 Board scheduled an additional public comment  
13 hearing in Burrillville. The Board also  
14 held on December 5th, 2017 in Charlestown at  
15 the elementary school a public comment  
16 hearing and held the Burrillville public  
17 comment hearing on December 6th, of 2017 at  
18 the middle school.

19 The final hearing began on April  
20 11th of 2018. The hearing dates continued  
21 through the summer based on coordinating the  
22 availability of the parties and Board  
23 members. On September 20th, 2018 ISO New  
24 England filed with the Federal Energy

1 Regulatory Commission to terminate Clear  
2 River Energy Center's Unit 1 capacity supply  
3 obligation, and at a hearing that same day  
4 the parties agreed to meet and discuss the  
5 procedural schedule and supplemental  
6 testimony here. On September 26th, 2018 the  
7 parties presented an agreement to the Board  
8 that the proceedings be continued until FERC  
9 determined ISO New England's termination  
10 filing. The expected final or next  
11 accommodate was November 5th of 2018. FERC  
12 made no action on the filing and the  
13 hearings in this case reconvened on December  
14 5th, 2018 and went through April 2nd of  
15 2019. The parties were then allowed 45 days  
16 to file briefs, and on May 17th of 2019 the  
17 briefs were filed, or the post-hearing  
18 memoranda. For the additional four weeks  
19 the Board had the opportunity to review the  
20 entirety of the record, and deliberations  
21 are beginning today on June 20th, 2019.

22 This has been a long -- a long  
23 proceeding. The parties have spent a  
24 considerable amount of time working on all

1 of the matters, and I compliment them all  
2 for that. And now it's time for us. We had  
3 made clear at the outset and tried to  
4 reiterate that throughout, particularly at  
5 the public comment hearings, that our charge  
6 in this matter was to allow the applicant to  
7 put on its case. Having filed the  
8 application, it had the opportunity to then  
9 put on its case to prove to the Board by  
10 preponderance that it was entitled to a  
11 license for the proposed facility.

12 I think that my colleagues may also  
13 have some opening remarks before we begin  
14 the deliberations. So Director Coit?

15 DIRECTOR COIT: Sure. Good  
16 morning. And thank you, Chairperson. I  
17 wanted -- I don't want to repeat anything  
18 that you said, but similarly, I wanted to  
19 acknowledge that many good people have been  
20 involved and are watching closely the  
21 decisions we make, and that this has been a  
22 three-and-a-half-year process bringing us to  
23 this final phase of the proceedings.

24 I also want to acknowledge how much

1 hard work has gone into these proceedings.

2 I want to thank the parties, the attorneys,  
3 the experts, the witnesses, the public.

4 We've had hundreds, if not thousands, of  
5 public comments. I have great respect for

6 the attorneys. I want to thank the

7 attorneys and Susan Forcier on my team, and

8 I want to echo the call from the Chair that

9 people respect this process, this phase of

10 the process as I believe they have the other  
11 phases of the process.

12 I won't go over the details of the  
13 statute again because you went through  
14 those, Chairperson, perhaps with one  
15 exception just to reiterate, as everyone has  
16 in every post-hearing memo again and again,  
17 that the burden of proof is on the  
18 applicant, that it is the applicant that  
19 must convince this Board that they've met  
20 each of the elements identified under the  
21 Energy Facility Siting Act in order for a  
22 license to be granted.

23 And I'll just comment for myself,  
24 and I'm sure it's true of my colleagues,

1       that I've really listened intently. I've  
2       read and reread briefs and prefiled  
3       testimony, public comments, evaluated the  
4       evidence, evaluated the credibility of the  
5       various experts, listened to public comment,  
6       and, needless to say, it's been the  
7       consequential effort, really countless  
8       hours, and that all of the opinions I have  
9       and the findings of fact and the judgments  
10      of law I make are based on that evaluation  
11      and on all of the evidence in front of us on  
12      this docket.

13                I won't go through the chronology,  
14      but just to say it seems like a lot has  
15      changed since this was filed in October of  
16      2015 and docketed the beginning of November.  
17      And I think we'll probably -- we'll probably  
18      talk more about the orderly way you want to  
19      go through this, but I just wanted to  
20      mention that in their post-hearing memo  
21      Invenergy identified three topic areas that  
22      they deemed the most controversial which was  
23      need, environmental impact and credibility.  
24      And I think that was accurate.

1           And also while I -- you will soon  
2 see, I wrote out what I wanted to say for  
3 the most part because this is such a huge  
4 amount of material that we've been consuming  
5 and thinking about, and I will reference  
6 some specific testimony and some specific  
7 evidence, but I want to be clear that I'm  
8 not trying to be exhaustive in the things  
9 that I point to and that the conclusions,  
10 again, are related to everything that I  
11 heard. I may have mentioned it specifically  
12 for it to have influenced my thinking. So  
13 thank you, Chair, for allowing me to share  
14 some thoughts and look forward to  
15 discussion.

16           ASSOC. DIRECTOR BRADY: And again,  
17 thank you, everybody, for being here. I  
18 wanted to make clear that I really believe  
19 that everybody here has been instrumental in  
20 providing information. Thanks in particular  
21 to my colleagues who I know have taken an  
22 enormous amount of time and were at the  
23 table from the very beginning of this  
24 proceeding. I came a little late to the

1 table, but that doesn't mean that I haven't  
2 reviewed all of the records. I've watched  
3 the hearings. They were recorded. I have  
4 read through all of the volumes of  
5 information that have been provided. I  
6 don't have to tell you again, it's been a  
7 long and controversial process, and I've had  
8 to relive a lot of those proceedings going  
9 through all the iterations of the materials  
10 that needed to be filed and organized, all  
11 the recordings and transcripts. I've  
12 organized everything in my office and keep  
13 going back to a lot of the different  
14 documents to read over again because there's  
15 always some fine point to be made.

16 After all of that I've come to a  
17 conclusion that there's no real simple  
18 answer and we really are required to do a  
19 lot of careful thinking and consideration.  
20 We've been -- all been very careful not to  
21 talk about these matters behind closed  
22 doors, so when we leave here, we don't go  
23 back to another room and have a discussion.  
24 We're not allowed to do that. But more than



1       that, I think we feel that it's very  
2       important to keep this proceeding  
3       untarnished. We feel that it's very  
4       important to come to this table to discuss  
5       these matters today with the preponderance  
6       of evidence behind us, and, as Director Coit  
7       mentioned, even if we don't mention a piece  
8       of evidence, that doesn't mean it hasn't  
9       been given its due consideration.

10               As a professional planner, it seems  
11       to me that my training has armed me in a way  
12       that allows me to summarize information and  
13       evaluate arguments. As someone who has  
14       worked both in the private and public sector  
15       and as a regulator as well as on the  
16       development side, worked for a small  
17       business as well as working for a regional  
18       agency, I think I have the ability to bring  
19       a unique and balanced view to this process.  
20       I've done my very best to apply that  
21       background and training to the matters at  
22       hand. I know a lot more today than I ever  
23       thought I would know about the technology  
24       and requirements surrounding power in New

1 England, in particular Rhode Island. And  
2 even knowing all of the details, it's still  
3 been a herculean task to parse fact from  
4 rhetoric, beliefs from science and look at  
5 the weight of all of the evidence that's  
6 been presented to us. All the parties have  
7 done an admirable job of highlighting  
8 crucial facts, evidence, expert opinions,  
9 reports, and the advocates on both sides of  
10 the argument should really be commended for  
11 their strong convictions and their  
12 willingness and ability to communicate their  
13 positions.

14 So all the public testimony, again,  
15 I want to take the time to thank the people  
16 who took time to write that. I know that  
17 wasn't necessarily easy gathering all the  
18 evidence and facts behind that, so thank you  
19 all very much, and look forward to moving  
20 forward in discussion with my colleagues.

21 THE CHAIRPERSON: Thank you. All  
22 right. To start out our discussions, I will  
23 say I agree with Invenergy's identification  
24 of the most important items for decision,

1 the most contested points, two of the  
2 components of the applicant's burden of  
3 proof, those being need and whether there's  
4 unacceptable harm to the environment.

5 As I think all of our opening  
6 remarks have made clear and as everyone I  
7 think is abundantly clear on at this time,  
8 there are a number of other things in the  
9 statute that also need to be proved for the  
10 applicant to successfully obtain a license.  
11 I think that given the fact that the two  
12 areas that I mentioned and that the parties  
13 have highlighted are the most important, I  
14 think that's where we should start and I  
15 think that we should start with the issue of  
16 need.

17 I will make a motion and when the  
18 motion -- if the motion is seconded, we'll  
19 have a discussion. I move that the  
20 applicant has not proved that the facility  
21 is needed to meet the needs of the state  
22 and/or region for energy of the type to be  
23 produced by the proposed facility.

24 ASSOC. DIRECTOR BRADY: I will

1 second that motion for purposes of  
2 discussion.

3 THE CHAIRPERSON: Any discussion?

4 DIRECTOR COIT: I would be happy to  
5 start out. And as mentioned, I wrote out my  
6 thoughts on this and the elements that  
7 constitute the standards under the Act. So  
8 Chairperson, I think -- I'm not sure I want  
9 to do a monologue for the next  
10 hour-and-a-half, but if I read through --  
11 what I'd do is read through what I wrote,  
12 and if people -- if either of you would like  
13 to just stop and discuss a point, or, if you  
14 so choose, I'll read through everything and  
15 then we could hear from each of us and  
16 discuss. So I'll let you decide, but feel  
17 free to interject.

18 THE CHAIRPERSON: If I interject,  
19 that means I'm taking notes.

20 DIRECTOR COIT: And Jo Anne, since  
21 I wrote it out, I can certainly give it to  
22 you afterwards or print it. So yes, I agree  
23 it makes sense to review things sequentially  
24 but start with need and then environmental

1       harm. And just to review that this Board  
2       decided on October 31st, 2018 that the  
3       advisory opinion of the PUC was stale and  
4       we, therefore, rejected the advisory  
5       opinion. We have that responsibility under  
6       the Act to either reject, accept or modify  
7       advisory opinions and we rejected that one  
8       because so many things had changed since  
9       that one-person decision by the PUC.

10               So -- and again, you mentioned that  
11       we received advisory opinions from 12  
12       entities, including the PUC, and I just want  
13       to emphasize that it was the PUC that was  
14       asked to address need and they were asked to  
15       address need which is specified under the  
16       statute, and we also issued a preliminary  
17       order asking them to address need and to  
18       conduct an investigation. And in that  
19       hearing that they held -- and that whole  
20       record is part of our record -- they took  
21       comment and were advised by Statewide  
22       Planning and by the Office of Energy  
23       Resources and then they rendered an opinion.  
24       And as mentioned, we rejected that opinion,

1       so it's really our determination now, our  
2       independent determination on need in front  
3       of this Board.

4               I wanted to start by just talking a  
5       bit about the term or the phrase long-term.  
6       Invenergy's brief had a fairly lengthy  
7       section about long-term, and they did  
8       cross-examine some of the witnesses on the  
9       phrase long-term. But Chairperson, you read  
10      the standard under Section 11, and it's  
11      really Section 11 that has the dispositive  
12      standards that we need to think about and  
13      make a finding on in terms of whether this  
14      facility will be approved. And that  
15      standard is, again, construction of the  
16      proposed facility is necessary to meet the  
17      needs of the state and/or region for energy  
18      of the type to be produced by the proposed  
19      facility.

20             So long-term is a phrase that's in  
21      the declaration of policies in Section 2 of  
22      the Act and it talked about long-term in a  
23      context of the energy plan in the State  
24      Guide Plan, and that we need to make a

1 decision that's justified by a long-term  
2 forecast. But when I look at Section 11,  
3 which is really the controlling part, I'm  
4 just struck in terms of statutory  
5 construction that long-term is actually not  
6 in that standard, and that was in my mind as  
7 I was reading about the debate about what  
8 does long-term really mean.

9 In the proposed hearing memo the  
10 applicant also leaned heavily on the  
11 conclusions of the advisory opinion of the  
12 Statewide Planning program in making their  
13 argument in favor of need. And again, the  
14 Board didn't ask the Statewide Planning to  
15 advise us on need. So they were asked to  
16 advise us on several specific elements,  
17 socioeconomic impact, consistency with the  
18 State Guide Plan and an examination of the  
19 consistency with the State Energy Plan.  
20 There's nothing in our rules that asked  
21 Statewide Planning to be the expert on need.

22 So given that, to me, it kind of  
23 took the legs out of -- from beneath  
24 Invenergy's argument on that point because

1 in relying so heavily on Statewide Planning,  
2 that was an expert opinion on whether it  
3 conformed to the State Guide Plan on other  
4 elements, but it really wasn't our expert on  
5 need. And I thought their advisory opinion  
6 was a good one in terms of their conclusions  
7 on the State Guide Plan and the State Energy  
8 Plan.

9 So a little bit more on long-term.  
10 All of the witnesses who testified,  
11 including the experts from Invenergy, Mr.  
12 Highland and Mr. -- I'm just transposed  
13 that -- Mr. Hardy and Mr. Niland, agreed  
14 that when you look out past ten years, it's  
15 very, very uncertain, that it's difficult to  
16 forecast. They become -- and I think we've  
17 seen that looking back, but -- and then I  
18 was struck in the last hearing Mr. Niland  
19 acknowledged that it's just difficult to  
20 look beyond ten years, and ISO's forecast is  
21 ten years.

22 So just to kind of conclude on  
23 long-term, I didn't -- don't feel that this  
24 Board is required to look out 20 years in



1 terms of the standard under Section 11, and  
2 I think all of the witnesses agreed that  
3 that is very difficult and uncertain.

4 Examples of evidence about where  
5 forecasting made sense that was compelling  
6 to me were the CELT reports -- we're going  
7 to use a lot of acronyms today and I think  
8 everybody is familiar with them in this part  
9 of the proceeding.

10 THE CHAIRPERSON: We're going to  
11 try not to to the extent possible. I know  
12 it's not always possible.

13 DIRECTOR COIT: So that's the  
14 capacity energy loads and transmission  
15 reports and also the regional forecast of  
16 ISO New England. And those reports showed a  
17 declining demand over time, and I found  
18 those reports to be reliable and credible,  
19 and they were instructive in aiding my  
20 determination of need. I also didn't feel  
21 that that evidence was rebutted by  
22 Invenergy. It was more interpreted.

23 So I'll talk a little more about  
24 renewables later, but I was very struck that

1       since the 2016 advisory opinion of the PUC  
2       that there's been a tremendous uptick in  
3       renewables, and we had some discussion of  
4       offshore wind and, indeed, the PUC right in  
5       this room just earlier this spring approved  
6       a 400 megawatt project for Rhode Island  
7       which is a significant amount of the energy  
8       need in Rhode Island.

9               So I want to move on to -- so those  
10       are just kind of preliminary comments about  
11       the emphasis on long-term and Statewide  
12       Planning and --

13              THE CHAIRPERSON: I'd like to  
14       also -- if you're done with long-term.

15              DIRECTOR COIT: Yes.

16              THE CHAIRPERSON: Just another --

17              DIRECTOR COIT: And by the way, I  
18       find I'm not really reading this, so maybe  
19       I'll try to do that. It's hard to read and  
20       have a discussion.

21              THE CHAIRPERSON: Got it. On the  
22       issue of long-term, I think that we had a  
23       lot of both testimony and evidence about how  
24       ISO New England operates and how they plan

1       in the short-term for their auction, just  
2       setting it up. The auction, of course, as  
3       we know, the forward part of it, because  
4       it's three years in advance, I think that  
5       it's important to recognize that the whole  
6       way that the forward capacity market is set  
7       up, the way that ISO New England uses the  
8       curve in order to figure out who qualifies,  
9       who doesn't qualify for the bidders, I think  
10      that it's clear that long-term planning is  
11      really -- I'll use a cooking analogy --  
12      baked into the forward capacity market.  
13      While the results of any one particular  
14      year, the way that the market operates, I  
15      think that one shouldn't focus on just a  
16      single year, but looking at it in totality.  
17      That's one of the benefits that we've had in  
18      this case because it's gone on for so long.

19                We have a fairly broad expanse of  
20      the operation of the ISO New England forward  
21      capacity market system, and in all of the  
22      evidence and testimony we heard about that,  
23      the witnesses and evidence for the  
24      applicant's position came up short. The

1 witnesses and the evidence for the opposing  
2 parties I think hit it clearly on the head.  
3 We're slipping into baseball analogies now.

4 So I think to suggest that there's  
5 a problem -- there's any kind of a problem  
6 in what we have before us to look at that,  
7 there was not long-term planning behind all  
8 of the particular results or evidence,  
9 conclusions that were relied on. Clearly,  
10 long-term planning is involved in all of the  
11 things that we heard about. So I think  
12 that's just something that I would add to  
13 the remarks you made.

14 DIRECTOR COIT: Thanks. I agree,  
15 and I think that the CELT reports and the  
16 forecasts gave us good information on a  
17 long-term forecast in which we justify our  
18 decision.

19 THE CHAIRPERSON: It's important to  
20 keep in mind that the way that the operation  
21 then operates is that the bidders come in  
22 and then ISO New England measures all of the  
23 bids against the aforementioned curve, but  
24 those bidders themselves are experts in

1 long-term forecasting. Their entire  
2 livelihood is based on it. That's what they  
3 are thinking about when they're getting  
4 involved in the forward capacity auction.  
5 And so that's I think a clear indication  
6 that long-term planning is baked in,  
7 understanding that one has a capacity supply  
8 obligation for a certain amount of time  
9 means that you're going to be getting paid  
10 for that amount of time. But keep in mind,  
11 we're talking about independent generators,  
12 independent developers who are involved in  
13 thinking about how they are going to be able  
14 to benefit economically and bidding in for  
15 facilities just like the one proposed by  
16 Invenergy that will be operating for 20 or  
17 30 years into the future. And so they have  
18 to be making those considerations before  
19 they're even entering into the bids.

20 And so the way that things shake  
21 out as measured against the curve,  
22 particularly in the years that we've seen, I  
23 think fully support that all of that  
24 information is based on long-term planning,

1       whether or not it's required that we find  
2       that parts are based on long-term, whether  
3       that's greater than three years, greater  
4       than ten years, and there's clearly  
5       long-term planning involved in that, and  
6       it's the planning by the very people who are  
7       -- upon whom it's -- they're compelled to  
8       understand what the long-term forecast is  
9       for them or they're going to lose money. So  
10      --

11                 DIRECTOR COIT:  Yes.  I think  
12      that -- trying to sharpen our pens and  
13      decide whether it's a 20-year or 10-year  
14      long-term scope isn't really needed or  
15      valuable.

16                 THE CHAIRPERSON:  I agree, because  
17      it is in there.  If you want to -- if one  
18      wants to parse apart all of the individual  
19      pieces of testimony and evidence and say,  
20      "Oh, well, this shouldn't be looked at  
21      because" -- it's, like, all part of an  
22      organic hole and it certainly involves  
23      long-term planning.

24                 ASSOC. DIRECTOR BRADY:  I would

1       just say in terms of long-range planning  
2       that is done at the state level, the State  
3       Guide Plan elements and the long-range plans  
4       such as our energy plan are intended to be  
5       sort of the -- they're guides. They're  
6       general in nature. They're not the experts  
7       on the topic. So for anything that we have,  
8       for our historic element, our housing  
9       element, it doesn't tell us exactly how.  
10      It's not giving us a map. It's giving us a  
11      general overview that you're taking an  
12      aerial photo. You're not looking at the  
13      individual roads to get there.

14                What I see is the CELT reports and  
15      the ISO and all the forecasting that's done,  
16      it's a little bit like the state budget and  
17      the revenue estimating conference. Where  
18      revenue estimating really tells you where  
19      you're getting the funding from, the state  
20      budget looks at it as this is all in the  
21      general fund. The long-range plans we have  
22      are more the general fund as an example, and  
23      the very specific individual elements such  
24      as the proponent's proposed facility are the

1 individual elements, the individual revenues  
2 that we're seeing. So that our long-range  
3 planning that we're doing, whether it's 10  
4 years or 20 years, however long it is, is  
5 only giving us a general direction to go,  
6 not the specifics, whereas the forecasting I  
7 think was very telling when we looked at  
8 that.

9 DIRECTOR COIT: Would you say --  
10 because this is how I see it, but you're the  
11 planner. They really are so broad that  
12 being in conformance with a State Guide Plan  
13 element, it's not a fine point. I mean,  
14 they're intended -- I'm sort of paraphrasing  
15 what you said -- to be this framework in  
16 which decisions at a more fine level that  
17 need to be made based on the other  
18 considerations.

19 ASSOC. DIRECTOR BRADY: I think  
20 that's a very good way to put it. It's a  
21 decision framework for making very specific  
22 decisions on individual developments and  
23 individual -- so when we're looking, say, at  
24 growth centers or we're looking at something



1       that's recommended in our land use or our  
2       transportation plan, it might in general be,  
3       say, expansion of rail service. It doesn't  
4       tell us exactly how that's going to happen.  
5       So it's general framework to look at the  
6       overall picture.

7                 DIRECTOR COIT: So I think -- let  
8       me just kind of summarize my thinking on  
9       what we just discussed. So one is I think  
10      Invenergy's correct that this proposed  
11      facility conforms with the State Guide Plan,  
12      State Energy Plan. To me, that's not  
13      evidence on need. It's another element of  
14      the Act. I think you're right, and I'll say  
15      some more about this later, Chairperson,  
16      that because this went on for so long, we  
17      got to have a sense of whose opinion, expert  
18      opinions played out and not a sense of -- we  
19      saw whose played out and whose didn't and  
20      that certainly affected credibility. And --  
21      so I'm not -- and I think even if we did  
22      look out 20 years, it seems like the trends  
23      are for decreasing demand, and so it wasn't  
24      the compelling point anyway, but it wasn't a

1 driver for me.

2 THE CHAIRPERSON: Excellent point.

3 I like that.

4 DIRECTOR COIT: So if you -- so I  
5 wanted to turn to -- when I was thinking  
6 about how to organize my analysis on whether  
7 the plant was necessary to meet state and/or  
8 regional needs, I looked at Invenergy's  
9 experts' testimony, and I think that was  
10 informed also by the advisory opinion of the  
11 PUC, and at least once, but I found in Mr.  
12 Hardy's December 17th, 2018 prefiled  
13 testimony that he went over four factors  
14 that he stated on behalf of the applicant  
15 demonstrated the need for the facility. And  
16 let me -- so what I plan to do is list those  
17 out, what Mr. Hardy said, and then I plan to  
18 go through them one by one, so we may want  
19 to pause after each one, and then I had some  
20 other thoughts about other considerations  
21 upon which I made my judgment.

22 So Mr. Hardy laid out -- and again,  
23 this was in 2018 -- that Unit 1 cleared the  
24 forward capacity auction, which we've been

1 referring to as the FCA, and that it  
2 obtained a capacity supply obligation, CSO.  
3 So that was one.

4 Two. He thought that announced and  
5 at-risk plant retirements created a system  
6 reliability gap. He noted that Rhode Island  
7 is located in an import constrained zone  
8 and, therefore, needs additional generation  
9 capacity. And then four -- we talked a lot  
10 about this -- that in his judgment capacity  
11 above the net installed capacity  
12 requirement, NICR, is still needed for  
13 system reliability. So if you will, I'm  
14 going to go through the four of those.

15 So first was the capacity supply  
16 obligation, or the CSO. There was a lot of  
17 testimony about this in front of the PUC,  
18 and I think we all went back and read that  
19 opinion multiple times. Seth Parker was the  
20 expert that I think the PUC opinion relied  
21 heavily on, and he said at that time  
22 "capacity that clears the FCA is, by  
23 definition, needed". That was something  
24 that Mr. Hardy said in a variety of ways as

1 well, including that if CREC fails to get a  
2 CSO, it will not be needed. That's  
3 something -- a position that changed over  
4 time, but kind of -- and a lot of things  
5 have changed over time since that -- PUC  
6 rendered that opinion. You mentioned,  
7 though, Chair, and I think this really  
8 influenced me a lot, that Mr. Hardy  
9 predicted throughout the pendency of those  
10 proceedings and our proceedings that Unit 2  
11 would obtain a CSO. In his prefiled  
12 testimony in 2017 he disagreed with Mr.  
13 Walker who claimed that Unit 2 would not  
14 clear.

15 THE CHAIRPERSON: Is that direct or  
16 --

17 DIRECTOR COIT: That was his  
18 prefiled testimony in front of us. I'm not  
19 sure what you just asked. I can find --

20 THE CHAIRPERSON: Keep going.

21 DIRECTOR COIT: I can find a  
22 citation. Okay. And in that instance Mr.  
23 Walker was right. Unit 2 did not clear in  
24 FCA 12 and it was disqualified in FCA 13,

1 and it has never cleared a forward capacity  
2 auction. And both units were disqualified  
3 in FCA 13. We all know and we discussed  
4 that Unit 1 was -- that the ISO New England  
5 made a discretionary filing with FERC to  
6 terminate the CSO for Unit 1 and,  
7 ultimately, that was terminated. And  
8 then -- I think I just said this, but both  
9 of the units were disqualified from  
10 participating in FCA 13. So to the extent  
11 that having a CSO denotes need, CREC does  
12 not have a CSO and so it lacks that element.  
13 It lacks that security and that commitment.

14 We discussed why was the CSO for  
15 Unit 1 terminated, and Mr. Hardy asserted  
16 that it was terminated not because the  
17 facility wasn't needed, but because of the  
18 length of our process. And I think Mr.  
19 Hardy's perfectly accurate, that FERC made  
20 it clear that their disqualification was not  
21 a determination on need. I think at the  
22 time the length of the process, which was  
23 contributing to the determination, was  
24 mischaracterized as being something wholly

1 the responsibility of this Board when you  
2 just went through a chronology where many  
3 times the delays and the length of the  
4 process were a result of decisions made by  
5 the applicant or suspending of the process.  
6 But nonetheless, the process was taking a  
7 long time and that determination occurred.  
8 It is without question that that was an  
9 extraordinary decision by the ISO New  
10 England and by FERC, and we had evidence  
11 here that ISO's never taken before a similar  
12 action that was involuntary for the facility  
13 and perfectly discretionary for ISO New  
14 England.

15 So on that point Mr. Walker for the  
16 town, Mr. Fagan for CLF both testified that  
17 one, that the inability to clear an FCA or  
18 obtain a CSO for Unit 2 was indicative of a  
19 lack of need, and that the unilateral  
20 termination of Unit 1 was also indicative of  
21 a lack of need.

22 I'll just keep going on my CSO part  
23 because I'm covering a lot here.

24 THE CHAIRPERSON: Yes. And I would

1 say that you can't have it both ways. If  
2 you want to say that if you get a CSO, that  
3 means you're needed, I don't think you can  
4 then state the opposite opinion which is and  
5 if you don't get it, then you're not needed.

6 DIRECTOR COIT: Well, I guess I  
7 agree with Mr. Hardy when he said it's not  
8 the sole determination of need.

9 THE CHAIRPERSON: Right.

10 DIRECTOR COIT: So you're getting  
11 into logic here, but --

12 THE CHAIRPERSON: But if it's not  
13 the sole determination when you don't get  
14 it, it's not the sole determination if you  
15 do.

16 DIRECTOR COIT: Agreed. Agreed.  
17 Mr. Walker also testified that the fact that  
18 Invenergy was able to cover its CSO  
19 obligation without the construction of the  
20 facility was another proof point that the  
21 facility is not needed due to the relative  
22 ease with which they found substitute  
23 resources, and we discussed a bit the profit  
24 on that.

1           And we talked about -- I don't plan  
2           to get into it, but the annual  
3           reconfiguration auction, we talked quite a  
4           bit about that, and Invenergy selling the  
5           obligation and how that indicated there is  
6           capacity available in the market to pick up  
7           that obligation that Invenergy was  
8           responsible but unable to cover.

9           Another point, and maybe this isn't  
10          a large point, but Mr. Hardy did say in his  
11          prefiled rebuttal testimony as well again  
12          when he testified here in January of this  
13          year that the capacity that cleared in an  
14          FCA is a package that can't be broken up. I  
15          think he may have also discussed that in  
16          front of the PUC. But I don't find that  
17          convincing because these resources are  
18          bought and sold in the ARA, the annual  
19          reconfiguration auction, and ISO New England  
20          did unilaterally terminate the Unit 1 of the  
21          CSO sort of further breaking up that package  
22          of resources.

23          Then I just wanted to -- I thought  
24          on this point Mr. Walker was the most



1 credible of the witnesses, and that doesn't  
2 mean the other experts didn't know what they  
3 were talking about, but it's just that over  
4 time both his points that he made in his  
5 prefiled testimony and here when he was  
6 questioned and cross-examined held up. And  
7 I'll just quickly run through the points  
8 that he made.

9 THE CHAIRPERSON: Yes. I agree.

10 DIRECTOR COIT: So Mr. Walker in  
11 support of the town's position, he concluded  
12 that termination of the CSO for Unit 1  
13 showed no need and then that the lack of  
14 clearing of Unit 2, which never had a CSO,  
15 also indicated there wasn't a need. And  
16 then he cited and we discussed that  
17 Connecticut Killingly decision where they  
18 rejected a 550 megawatt dual-fuel combined  
19 cycle facility because it lacked a current  
20 CSO. I want to talk later about the SENE  
21 zone, the Southeastern New England zone, but  
22 Mr. Walker said that termination of the CSO  
23 would not result in a shortage of resources  
24 in the SENE zone because it was reasonably

1 replaced in the last FCA demonstrating that  
2 there was or is sufficient resources without  
3 CREC.

4 And then he also made a point that  
5 ISO is responsible for developing long-term  
6 goals and regional energy needs, and his  
7 conclusion that ISO New England would not  
8 have terminated the CSO for Unit 1 if its  
9 planning criteria indicated that that  
10 facility was really needed. I'm almost done  
11 here with what I wrote down.

12 So in conclusion, for me, kind of  
13 what you were saying, while having a CSO  
14 certainly demonstrates need, it's not the  
15 sole determinant, but in this case, clear  
16 finding of fact that there is no CSO. And I  
17 think the weight of the evidence on this  
18 point presented compelling support for a  
19 lack of need. The termination of Unit 1's  
20 CSO, Unit 2's failure to ever obtain a CSO,  
21 Invenergy's ability to shed its Unit 1 CSO  
22 for two auctions, and then the procurement  
23 by ISO New England of surplus in the past  
24 four auctions, all of that together with

1           what happened in this circuitous route with  
2           the CSO to me provided strong evidence that  
3           the facility is not needed.

4                   THE CHAIRPERSON:  Yes.  And I agree  
5           with those points.  Absolutely.  Well  
6           detailed.

7                   ASSOC. DIRECTOR BRADY:  I should  
8           probably say I have nothing specific to add  
9           to that.  It was very clear, and it followed  
10          a similar line of thinking to what I used in  
11          my arguments as well.  Thank you.

12                   DIRECTOR COIT:  The perils of going  
13          first here.  If you'd like, then, and,  
14          again, I expect we can discuss all of this  
15          later, but I'll just keep moving along.

16                   The next point that Mr. Hardy made  
17          was about retirements, and he made clear --  
18          so again, his assertion was that announced  
19          and at-risk facilities -- at-risk facility  
20          retirements would create a gap and that that  
21          would contribute to the need of having the  
22          new 1,000 megawatt -- almost 1,000 megawatt  
23          facility.  And he made clear that there's  
24          significant uncertainty related to

1 retirements, and I don't think anyone would  
2 dispute that. I think that's true.

3 Mr. Hardy's prefiled testimony, he  
4 tracked the ISO New England regional  
5 estimates, he looked specifically at those  
6 and testified on those, and he noted the  
7 economic factors involved and the decisions  
8 for the private entities that owned the  
9 facilities. He stated that there are  
10 approximately 8,000 megawatts of units at  
11 risk for requirement, and he agreed with  
12 other experts, and I think Mr. Walker made  
13 this point, that it is unlikely that all the  
14 capacity labeled at-risk would ever retire  
15 all at once. There was agreement on that.

16 So in looking at all the experts on  
17 retirements, I thought that Mr. Fagan's  
18 prefiled testimony was particularly on point  
19 and useful. So let me just make a few  
20 points that the witness, Mr. Fagan, made,  
21 and then I'll kind of give you my thoughts  
22 on them.

23 So he weighed in against the  
24 arguments that Mr. Hardy made. He said that

1 going into FCA 13 there were more than 8,000  
2 megawatts of new entry that were qualified  
3 to participate over and above the net  
4 installed capacity requirement which is  
5 really the minimum required. And that was  
6 more than double the volume of the resources  
7 seeking to retire. He went on to explain  
8 that there's an existing capacity surplus in  
9 the region -- and I do want to talk more  
10 about that -- which prompted ISO New England  
11 to seek approval from FERC to amend its  
12 dynamic de-list threshold because the  
13 existing capacity has increased each year  
14 since FCA 9 while the net ICR has  
15 consistently decreased, and that was, again,  
16 in his prefiled testimony and he was  
17 questioned on that. Declining peak load and  
18 surplus capacity as well as the additions of  
19 renewables and energy efficiency measures  
20 mitigate the risk of retirements of older  
21 plants, the risk of retirements leading to  
22 reliability issues. And then he said that  
23 in some cases retirements can be made, and I  
24 put in quotes here, to take a little longer

1       which I take it meant that they could be put  
2       off or delayed if necessary to allow more  
3       time for renewables to come online or for  
4       storage technology to improve. And as I was  
5       going through the record, and I think this  
6       point was made, it seems to me that the  
7       ISO's actions with regard to retaining  
8       Mystic provide evidence of Mr. Fagan's point  
9       on putting off retirements. I think there  
10      was a press release included on that, but  
11      ISO New England, just to review, they  
12      decided to retain the Mystic units which  
13      total I think 2,000 megawatts by paying  
14      compensation, and that was approved by FERC  
15      last year. And that showed me that ISO has  
16      tools at hand to prevent planned  
17      retirements, and we talked a bit about the  
18      de-list process and those tools. So to me,  
19      that undercut the argument about the concern  
20      of Mr. Hardy's. It weakens the argument  
21      about his concern about the possible  
22      retirements affecting negatively reliability  
23      and, in particular, say, with the Mystic  
24      generation plants, they've been extended

1 through the time when we expect some of  
2 these major offshore wind facilities to be  
3 in commercial operation.

4 There was an exchange. Mr. Walker  
5 refuted Hardy's assertions that due to the  
6 small size of the New England market,  
7 relatively small changes in supply can have  
8 a material impact, and Mr. Walker stated  
9 that there was little in the way of future  
10 retirements that he felt would really change  
11 that supply and demand relationship here in  
12 New England.

13 And so I guess to conclude on that  
14 point, and I think that was an area where  
15 there was a lot of good agreement and a lot  
16 of debate, the argument that Mr. Hardy made  
17 about uncertainty, in looking at what's  
18 actually happened, it seemed like a lot of  
19 uncertainty was headed toward some options  
20 of keeping some plants online longer, and we  
21 talked about the Millstone nuclear plant as  
22 well. And so in any case, all of that  
23 saying when I reviewed the record I thought  
24 Mr. Fagan's testimony, particularly his

1 prefilled testimony, was the most credible  
2 and persuasive to me, and I did not think --  
3 I wasn't convinced that the plant was needed  
4 because retirements will cause reliability  
5 problems in the ISO New England region.

6 THE CHAIRPERSON: I agree with that  
7 as well on your assessment of Fagan's  
8 testimony.

9 ASSOC. DIRECTOR BRADY: I will add  
10 to that just by saying that I think that one  
11 of the big points that I've taken away from  
12 his testimony and what's followed and also  
13 your discussion just now is that while we  
14 had a lot of uncertainty in the region,  
15 there is a lot less uncertainty. This is  
16 the part about as time as marched on, things  
17 have changed, and we're looking forward to  
18 see that we will have resources at the point  
19 at which this becomes another discussion  
20 point. So Millstone is definitely --  
21 there's an agreement that's going to be kept  
22 open. There are other facilities that had  
23 sought -- had considered or were at risk of  
24 retirement that the risk is no longer the



1 same level of risk as it was when we started  
2 having this discussion. So I felt that Mr.  
3 Fagan's testimony helped to clarify where  
4 some of that risk existed and where it no  
5 longer exists. So I would again agree with  
6 your discussion points.

7 DIRECTOR COIT: The next issue that  
8 Mr. Hardy had raised was about the SENE --  
9 the Southeastern New England, SENE, zone  
10 being import constrained, and we heard  
11 testimony from all the parties on that and  
12 how ISO models the SENE zone as import  
13 constrained, and I think that the word model  
14 is a key word in that sentence.

15 So again, the reason Mr. Hardy  
16 emphasized that was the fact that ISO labels  
17 our zone as import constrained to him was a  
18 piece of evidence supporting that CREC is  
19 needed in this zone in order to alleviate  
20 that constraint. He described, Mr. Hardy  
21 that is, import constraint as a physical  
22 limitation on the transmission capacity into  
23 the zone, and he stated that ISO New England  
24 models SENE in this way because there's

1 simply not enough transmission capacity to  
2 import high volumes of energy into the zone.  
3 So for that reason he advocated or presented  
4 evidence that building CREC within the SENE  
5 zone would reduce the need to import power  
6 and thus help to eliminate an import  
7 constraint. Paraphrasing a lot of testimony  
8 here.

9 In contrast, we heard from Mr.  
10 Walker and Mr. Fagan, and they were fairly  
11 aligned in their thinking that while it was  
12 modeled as -- while SENE is modeled as an  
13 import constrained zone, that it's not  
14 acting that way in practice, and that the  
15 FCA prices in the auction in the SENE zone  
16 would be higher they would break out from  
17 the other prices and be higher than the rest  
18 of the region and reflecting a premium on  
19 power generated here if it were truly  
20 constrained and not just modeled as  
21 constrained, and that has not been the case  
22 since FCA 9 in 2015, kind of reflecting this  
23 theme of change since 2015. In fact, the  
24 evidence demonstrated that prices in the

1 past few auctions have been consistent  
2 across the region with no separation  
3 observed for the SENE zone. So to me, this  
4 indicates that while it's modeled as an  
5 import constrained zone as explained by Mr.  
6 Hardy, there is sufficient generating  
7 capacity to allow the prices in the zone to  
8 remain consistent across the region.

9 And again, on that particular issue  
10 I found Mr. Walker's testimony to be the  
11 most credible and that the totality of what  
12 was said to me supported that there is  
13 sufficient generating capacity in the SENE  
14 zone that -- demonstrated by prices  
15 remaining constant across the region since  
16 FCA 9. So it didn't, again -- it wasn't a  
17 compelling point for me. I wasn't persuaded  
18 by Mr. Hardy.

19 THE CHAIRPERSON: Well stated. I'm  
20 very impressed by your marshalling of those  
21 details and comparing them. That's -- yes.  
22 I think that's absolutely correct.

23 ASSOC. DIRECTOR BRADY: Once again  
24 I'm feeling a little bit like a broken

1 record. I would echo your comments, but I  
2 think that distinction between the modeling  
3 and behavior of the region in terms of being  
4 import constrained is very important and  
5 that there were credible witnesses to that  
6 particular effect.

7 THE CHAIRPERSON: And I think that  
8 the fact that we keep essentially saying we  
9 echo your conclusions and findings about the  
10 particular evidence and testimony, given  
11 that we haven't been discussing this case, I  
12 think it speaks strongly to what the record  
13 has demonstrated, that it seems so clear  
14 that it's not surprising I think that we are  
15 coming out in agreement on the points that  
16 you've raised, particularly the detailed  
17 assessment you provided on the testimony.

18 DIRECTOR COIT: I think that's a  
19 good point. I didn't know where you would  
20 come out, but I -- in reading and rereading  
21 and thinking about this and looking at where  
22 the evidence falls and what it points to,  
23 things did come into focus over the course  
24 of this proceeding and over the last several

1 months.

2 So the next issue, I have quite a  
3 few pages of notes and it kind of -- I've  
4 kind of aggregated the net installed  
5 capacity requirements, so that was the last  
6 of Mr. Hardy's four points was the need for  
7 capacity beyond the NICR. And in all of  
8 that there was then a discussion about  
9 surplus. I decided to talk a little bit  
10 about some of the discussion about supply  
11 and demand because it's all relevant to this  
12 discussion and some of the curves that you  
13 described and the way the auction is handled  
14 and the way that ISO New England functions,  
15 and again, our standard is state or regional  
16 -- and/or regional, and we look at this in a  
17 regional context.

18 So on the NICR. So we talked about  
19 what that is which is the minimum capacity.  
20 Someone said the minimum capacity required  
21 to keep the lights on. And again, we went  
22 over ISO New England's role and we talked  
23 about one of the key aspects of that is  
24 ensuring system reliability, and there were

1 exhibits around the reliability plans, and  
2 that was the subject of some discussion. We  
3 also discussed that there's no set amount.  
4 We talked about a social surplus. There's  
5 no set amount that ISO New England is  
6 obligated to have as a surplus. So that is  
7 discretionary.

8 And then we had quite a bit of  
9 evidence from all parties and discussion  
10 about some of the -- what's actually  
11 happened now as we look back and what's  
12 forecast. And since this proceeding has  
13 gone on since the fall of 2015, we get to  
14 see what actually happened. So I think  
15 maybe that's the silver lining.

16 THE CHAIRPERSON: Just what I was  
17 thinking. Silver lining.

18 DIRECTOR COIT: So the evidence  
19 demonstrates that the NICR has gone down  
20 consistently since it peaked in FCA 9 in  
21 2015. So it was a really different picture  
22 back then when the applicant put their  
23 project forward. In FCA 10 and through FCA  
24 13 ISO New England had well over 1,000

1 megawatts of qualified capacity exceeding  
2 the NICR available to bid -- available to  
3 bid.

4 Mr. Fagan presented evidence  
5 demonstrating that in addition to the  
6 existing qualified capacity in FCA 13 ISO  
7 qualified more than 8,000 megawatts of new  
8 resources to bid. So with those together,  
9 there were over 8,000 megawatts of total  
10 qualified resources above the NICR available  
11 to bid into the auction. So the ISO had  
12 significantly more qualified resources in  
13 the NICR without CREC being involved in that  
14 auction at all. And that's strikingly  
15 different from 2015.

16 We heard evidence and saw that in  
17 the past few FCAs in excess of 1,000  
18 megawatts of surplus capacity over and above  
19 the NICR has cleared which was pointed out  
20 is more than the capacity of both the CREC  
21 units. Neither unit participated in the  
22 most recent FCA and over 1,000 megawatts of  
23 surplus was procured. So clearly, ISO New  
24 England was able to procure the megawatts

1           necessary in FCA 13 plus a surplus amounting  
2           to more than the capacity of the CREC  
3           facility without either unit entering the  
4           auction. So that's kind of the first point  
5           which I think undercuts the validity of Mr.  
6           Hardy's argument.

7                         Further supporting that, and we had  
8           Ryan Hardy's metric chart that we looked at  
9           quite a bit, but were the capacity prices  
10          and the fact that since FCA 9, which was in  
11          February of 2015, the capacity prices have  
12          consistently decreased every year from  
13          \$17.73 per kilowatt month in 2015 to \$3.80  
14          per kilowatt month in 2019 in FCA 13. So in  
15          addition to the decrease in the clearing  
16          price each auction since then has had a  
17          surplus capacity in excess of 1,000  
18          megawatts.

19                        Mr. Hardy talked about the dramatic  
20          decrease in the clearing price and  
21          attributed that, in part at least, to the  
22          fact that CREC had entered the market by  
23          participating in FCA 10, the same year that  
24          the prices dropped. And that may be valid



1 and probably played a role in that dramatic  
2 drop, but the evidence shows that the NICR  
3 has been declining for the past few years  
4 and will likely continue to decline for the  
5 foreseeable future. We looked at those  
6 trend lines, and they were exhibits. So the  
7 fact that the NICR has been declining and is  
8 forecast to decline together with evidence  
9 regarding the surplus capacity has combined  
10 to drive the price down. And as you said, I  
11 have synthesized all this. I'm trying to be  
12 really clear in explaining my thinking. And  
13 I think nobody debated, and Mr. Hardy, I  
14 asked him this and he said it on the record  
15 several times in terms of those trend lines,  
16 that supply is increasing and demand has  
17 decreased. And those are direct quotes from  
18 Mr. Hardy from January 16th perhaps in  
19 response to my question. I can't recall.  
20 So that combined, Mr. Fagan testified about  
21 how peak load is declining. We saw that how  
22 the forecast predicts that it will continue  
23 to decline and that was credible evidence  
24 supported by what happened, supported by the

1 record.

2 We talked before about the CELT  
3 reports, the regional energy forecasts.  
4 Both of those have demonstrated that demand  
5 for energy in the region has decreased  
6 markedly in the past couple years, and we  
7 did discuss that is despite economic growth  
8 in the region and it's forecast to continue  
9 in the foreseeable future.

10 Mr. Walker -- that was I believe  
11 when we had the testimony on the ABB Power  
12 Reference Case and Northeast Reports and we  
13 looked at the projection of negative peak  
14 demand growth. So I'm sure you recall Mr.  
15 Walker talked about the diminishing benefits  
16 from a facility like CREC because of the  
17 continued surplus of capacity and the lower  
18 peak loads. His prefiled testimony and his  
19 earlier statements on forecasting of  
20 decreasing demand were proven to be true  
21 over the course of this  
22 three-and-a-half-year process. Mr. Walker  
23 testified regarding the LEI report from the  
24 New England Clean Energy Connect Project

1           which indicates that no new thermal would be  
2           needed in the region during their forecast  
3           period which looked all the way out to 2037.  
4           He was cross-examined on that, significantly  
5           questioned, but I thought his points held  
6           up, and the way I reviewed the bar graph and  
7           information that he presented, I agreed with  
8           his conclusions.

9                         THE CHAIRPERSON: I agree as well.

10                        DIRECTOR COIT: I'll just finish  
11           reading this because I'm almost done, but I  
12           think it may be getting a little bit  
13           repetitive.

14                        Again, I thought Mr. Walker was  
15           actually the most compelling of the  
16           witnesses on this particular point. He --  
17           there was quite an exchange, as you recall,  
18           both in terms of the prefiled rebuttals and  
19           when the witnesses were questioned about the  
20           different points of view of Mr. Walker and  
21           Mr. Hardy, and Mr. Walker disputed Mr.  
22           Hardy's claims that the ISO's change in the  
23           ICR methodology from 200 to 700 megawatt  
24           system reserves assumption and the increased

1 penetration of electric vehicles and  
2 electric heating showed the need for CREC.  
3 The -- Mr. Walker stated that even with the  
4 increases to the system reserves, the ICR  
5 was only 25 megawatts higher for FCA 13 than  
6 it was for FCA 12, and that that 25 megawatt  
7 differential did not show a need for CREC  
8 especially given the surplus capacity in the  
9 region.

10 I found that the evidence in the  
11 record relating to the NICR and supply and  
12 demand, including Mr. Fagan's on the new  
13 entry capacity qualified to participate in  
14 the FCAs and the existing surplus capacity  
15 to be credible and the fact that existing  
16 capacity is increased while the NICR, the  
17 minimum amount that the ISO New England  
18 needs, has continually decreased all to me  
19 was compelling demonstrating that that point  
20 made by Mr. Hardy was not strong evidence of  
21 need.

22 THE CHAIRPERSON: Agree with that,  
23 too.

24 ASSOC. DIRECTOR BRADY: You've

1 walked through a lot of the testimony on  
2 this particular topic and have hit on I  
3 think all of the major resilient points. I  
4 would add that in particular I felt that the  
5 discussion on the thermal issue was a little  
6 bit of a detour. That's not been a primary  
7 source to be -- that we're concerned about  
8 at this point going forward. It was very  
9 clear that there was nothing in the forecast  
10 well beyond the 20-year threshold, and  
11 that's where we were talking earlier about  
12 are we looking at 10 years, are we looking  
13 at 20 and how technical do we want to get.  
14 So there was some very good technical  
15 analysis and statistics. I thought what was  
16 provided in the forecast and in the results  
17 of the auctions and the numbers that we're  
18 seeing in terms of the continued decline in  
19 demand, I thought that was very telling and  
20 felt that you've just walked us through that  
21 surplus capacity issue very clearly.

22 DIRECTOR COIT: Thank you. Like  
23 you, I have an extra benefit of learning a  
24 lot during this process. So I want to make

1           -- so those were the points -- I just  
2           reviewed the four points that Mr. Hardy,  
3           Invenergy's expert, thought all added up in  
4           total, first heavily depending on the CSO  
5           argument and later emphasizing other  
6           arguments, but there was a lot of other  
7           testimony, and some of it which I thought  
8           was compelling and convincing in regard to  
9           whether or not the facility is needed.

10                        So I wanted to say a little bit  
11           more about renewables. They were kind of  
12           tucked into these other things that we  
13           talked about, and the evidence was strong to  
14           show that significant additional capacity of  
15           clean energy is becoming available in the  
16           state and in the region. I was struck by  
17           that when I reviewed the 2016 PUC advisory  
18           opinion, again, which is part of our record,  
19           but how much it changed even in a couple  
20           years since that opinion was completed.  
21           Again, we rejected that opinion in part  
22           because it was out of date, or in total  
23           because it was out of date, and found that  
24           -- and see that circumstances had changed,

1 but the change in renewables was  
2 particularly noteworthy to me.

3 I mentioned that this Board just  
4 approved 400 megawatts of offshore wind and  
5 that generates approximately one quarter --

6 THE CHAIRPERSON: That Board  
7 meaning --

8 DIRECTOR COIT: Sorry. Your other  
9 Board. Your other Board. You were probably  
10 sitting right there.

11 THE CHAIRPERSON: I was indeed.

12 DIRECTOR COIT: So as Chair of the  
13 PUC. So that represents approximately one  
14 quarter of all electricity used by Rhode  
15 Islanders annually, and Massachusetts has  
16 similar and larger projects. I think I have  
17 an earlier version of this front of me  
18 because I have some more details. But there  
19 are lots of large procurements. We talked  
20 about that. There was testimony on that and  
21 we discussed it when the witnesses were  
22 here.

23 Mr. Fagan noted that in addition to  
24 these large projects, energy efficiency

1 where in Rhode Island and Massachusetts are  
2 among the tops in the nation and small scale  
3 solar have dramatically reduced the need for  
4 new capacity, new thermal capacity. And in  
5 his testimony Mr. Fagan noted that in 2019  
6 over 4,000 megawatts of energy efficiency  
7 and demand response measures were part of  
8 the package that cleared FCA 13 and 654  
9 megawatts of those were new.

10 Again, as a point that was made by  
11 Mr. Walker on a previous section is just  
12 that the estimated benefits from CREC have  
13 diminished as each year has passed because  
14 new renewables are reducing the summer peak  
15 load and providing energy to the system.

16 There was a debate, and I'm not  
17 sure it's worth elaborating on here, but Mr.  
18 Hardy claimed that the facility would help  
19 meet our decarbonization goals in Rhode  
20 Island because it's one of the -- a very  
21 efficient plant. But in that respect, Mr.  
22 Walker provided testimony about how Rhode  
23 Island's pursuing -- aggressively pursuing  
24 clean energy to try to meet those policies



1 of decarbonizing all of our sectors, but the  
2 electric sector in this case. So again,  
3 there's -- I didn't add up, but we have  
4 capacity of over 6,000 megawatts of new,  
5 clean power, the behind-the-meter systems,  
6 Mr. Fagan mentioned, are providing  
7 approximately 2,900 megawatts of combined  
8 nameplate generating capacity that's further  
9 reducing the demand that ISO New England is  
10 addressing. There was testimony on the  
11 transmission for I believe it's close to  
12 2,000 megawatts of hydro power which is part  
13 of the base load renewables from Canada.

14 And so all of these thousands of  
15 megawatts coming online in imported  
16 hydroelectric capacity, large scale  
17 off-shore wind, on-land wind in Maine,  
18 behind-the-meter solar systems, that all  
19 adds up to providing significant capacity  
20 that is part of my thinking around need and  
21 that is part of why we're seeing some of  
22 these trends. And so I just think it beared  
23 -- it was something that beared further  
24 discussion as we took a look at this in

1 terms of Rhode Island's goals and Rhode  
2 Island's needs and what's happening at a  
3 regional level.

4 THE CHAIRPERSON: Yes. I think  
5 you're absolutely correct, and I think that  
6 what you indicated about the growth I think  
7 has surprised virtually everyone for the  
8 installation of renewable resources, and I  
9 think we have also seen that ISO New England  
10 has not properly modeled for that in the  
11 past but has continued to increase the  
12 acknowledgment of renewable participation in  
13 the forward capacity market. So I think  
14 that it has been a striking growth.

15 DIRECTOR COIT: I was just looking  
16 for -- there was most recent -- ISO's most  
17 recent reliability study does make a point  
18 about the large scale renewables coming  
19 online and how that affects their  
20 conclusions. I can't find the citation  
21 right this second. But I think you're  
22 right. It's demonstrated it's been  
23 undercounted, and that is something that's  
24 changed significantly in Rhode Island and in

1 New England over the last few years,  
2 particularly in regards -- well, I shouldn't  
3 say -- definitely in regards to offshore  
4 wind in terms of very large scale projects.

5 I'll keep moving, and we can come  
6 back to any of these. I just wanted to  
7 mention because I think it's significant  
8 that Section 11(b)(2) -- excuse me (b)(1),  
9 the section that we're looking at now of the  
10 Energy Facility Siting Act does compel to us  
11 look at need specific to the type proposed  
12 by the facility, and that's something we may  
13 want to discuss more because all of the  
14 experts agreed that there is a need for  
15 dual-fuel, fast-start facilities such as  
16 CREC. So that was a discussion point that I  
17 just wanted to raise for the two of you.

18 The experts from the town and from  
19 CLF, namely, Mr. Walker and Mr. Fagan, each  
20 pointed out that there are a number of such  
21 facilities in the region that are now  
22 capable of supplying the type of energy  
23 proposed to be produced by CREC. Mr. Walker  
24 specifically said that the fact that CREC

1 had fast-start ramping does not the  
2 specifically support need because there are  
3 six other facilities with those  
4 characteristics in the ISO, that it's not a  
5 typical fast-start unit and is being built  
6 as a base load unit. He further said that  
7 the market has readily satisfied over the  
8 last 10 to 15 years by facilities that could  
9 supply the megawatts that Invenergy's  
10 facility could supply in two minutes using  
11 both turbines. That is more a reflection of  
12 the discussion that was had, and I don't  
13 plan to get into that, but I think it's an  
14 element of need that I wanted to raise. And  
15 if you have more comments on that now, I'll  
16 stop, but -- hearing none, I'll keep moving.

17 So those were the major things. I  
18 went through what -- some of the points that  
19 I thought Invenergy brought to the table in  
20 their post-hearing memo that hadn't been  
21 particularly flushed out or elaborated on  
22 throughout the whole long proceedings and  
23 that was about the State Plan, State Guide  
24 Plan and a fine point on what long-term

1 means. I went through Mr. Hardy's four  
2 points and then I discussed a couple of the  
3 other aspects that were particularly  
4 noteworthy to me.

5 So I'll conclude my thoughts and  
6 respond to any of you on need, but I wanted  
7 to say a couple other things. One is just  
8 on credibility. I made a point of saying  
9 who I thought was more credible, but I want  
10 to be clear that I don't believe that any of  
11 the witnesses were lying or were not  
12 credible. I'm making a judgment about who's  
13 more credible. There were a few instances  
14 where I felt that Invenergy was misleading  
15 or not as forthcoming as I would like, and  
16 those included some of the filings to FERC,  
17 the forward capacity tracking system  
18 reports, the e-mail interaction with the  
19 Nature Conservancy, comments on the  
20 disqualification. CLF introduced evidence  
21 and cross-examined Mr. Niland on these FCTS  
22 reports and there were clear discrepancies.  
23 I was not convinced that Mr. Niland himself  
24 was intentionally misleading, and I wasn't

1 even certain that Mr. Niland himself had  
2 even produced the data himself in those  
3 reports, so I didn't conclude that he was  
4 lying to us, but there were times that in  
5 making credibility determinations I felt  
6 that in particular on this issue of need Mr.  
7 Walker was the most credible.

8 THE CHAIRPERSON: And for the  
9 particular matters that you referenced,  
10 while there were accusations of that  
11 Invenergy was deliberating trying to  
12 mislead, it seemed when we heard more from  
13 Mr. Niland and looked at the other testimony  
14 and the evidence that was presented that it  
15 was in some respects more a case of the  
16 right hand not knowing what the left hand  
17 was doing. The different parts of the  
18 company were dealing with the federal  
19 matters and then down here on the  
20 distribution level the kinds of things that  
21 the applicant and generators were looking at  
22 were just different, and so there was what  
23 looked like some contradictory material made  
24 sense in that some of the explanations about

1           what Mr. Niland and this particular facility  
2           was knowledgeable about.

3                       ASSOC. DIRECTOR BRADY: I'll add to  
4           that. I actually had written down earlier  
5           the whole right hand and left hand not being  
6           coordinated. I actually had used that same  
7           phrase in what I had written previously and  
8           felt that there was no intent to deceive  
9           this Board in that respect in terms of the  
10          witnesses, and would also reinforce a couple  
11          other points.

12                      One, again, we have not talked  
13          about this behind closed doors, so the fact  
14          that we're all coming to very similar  
15          conclusions and that we have a lot of the  
16          same evidence presented to us means that  
17          people were very clear and gave very good  
18          explanations of what they were talking  
19          about, but in some cases based on the data  
20          that we have in front of us, the types of  
21          analysis, the types of modeling, some  
22          witnesses provided more detail and more  
23          believable details than others in terms of  
24          how that relates to the evidence being

1           presented. That's what we need to find is  
2           that there is a preponderance of evidence  
3           that there is or is not need, and then the  
4           applicant needs to prove to us that there  
5           is, in fact, need. And there are witnesses  
6           to that that are more or less believable in  
7           terms of proving the point.

8                         So in this case in particular,  
9           again, Mr. Walker, Mr. Fagan also provided a  
10          lot of very clear information, a lot of data  
11          that supported the arguments, and I also had  
12          found them to be the more believable, but  
13          that doesn't mean that everybody else was  
14          trying to pull the wool over our eyes or  
15          didn't give us facts. It just wasn't the  
16          same level of information that weighed on  
17          the decision.

18                        DIRECTOR COIT: Well said. And I  
19          also had absolutely that feeling sometimes,  
20          particularly when Mr. Niland testified the  
21          last day that sometimes he was on the spot  
22          for things that we all know you're making  
23          the case in different fora, you may be  
24          emphasizing different things. So I felt



1           that sometimes he was on the spot for things  
2           that probably were outside of his control.  
3           And I don't question the professionalism of  
4           anyone and -- nor really the expertise.  
5           It's just they were kind of value judgments.  
6           I did feel -- I felt like -- I'll say a  
7           couple more things about a couple of the key  
8           witnesses.

9                         I thought during cross-examination  
10           Mr. Walker was very direct. He didn't evade  
11           answers and I thought that when attempts  
12           were made to discredit him, his explanations  
13           were satisfactory and convincing. And I  
14           think while it's the applicant's case to  
15           make, some of the points made by the other  
16           parties weren't effectively rebutted by the  
17           applicant, and in particular Mr. Walker and  
18           Mr. Fagan's assertions about peak load  
19           declining, about the increase in renewable  
20           capacity, increase in energy efficiency  
21           measures, the pace of retirements. And Mr.  
22           Hardy confirmed many of the facts provided  
23           by Mr. Walker and Mr. Fagan. He  
24           acknowledged the tempered load growth was

1       caused in part because of solar and energy  
2       efficiency in terms of the -- so I'm talking  
3       about the load growth. He acknowledged that  
4       peak demand forecast is negative in New  
5       England. He stated that there was a  
6       downward trend in the forecast for summer  
7       peak over the last several years. He  
8       acknowledged the downward trend in prices  
9       over the last few FCAs and attributed that  
10      to increased supply and decreased demand in  
11      the region. So in a lot of areas the  
12      experts agreed.

13                At various times I found Mr. Hardy  
14      to feel a bit more like an advocate than an  
15      expert, and there were a few times on the  
16      record where he seemed to be somewhat  
17      evasive when being put on the spot to say  
18      something that wasn't necessarily supportive  
19      of his conclusions. So all of that, I think  
20      the credibility of the experts is factored  
21      into our bigger picture. But in this case I  
22      think we were all evaluating them against  
23      one another. And those are my conclusions.  
24      So -- go ahead, Chair.

1           THE CHAIRPERSON: I was going to  
2 say and it certainly was a problem for him  
3 that consistently his estimates or  
4 predictions for the future were shot down  
5 again and again, and he was really confident  
6 about them, and he was wrong.

7           DIRECTOR COIT: Yes. Well, he made  
8 a prediction in FCA 14, so we'll see what  
9 happens. But it was difficult. I mean,  
10 that was a tough spot for someone to be in,  
11 to very confidently make a prediction and  
12 then see it be wrong and then very  
13 confidently make another prediction and see  
14 it be wrong, and it does take a toll on the  
15 credibility determination of that person  
16 over the course of the process.

17          ASSOC. DIRECTOR BRADY: I'd just  
18 add here, I used the example of the revenue  
19 estimating conference with the state before.  
20 Having been on the side of the table making  
21 the revenue estimates, it's not easy to make  
22 that kind of judgment or those kinds of  
23 predictions based on all the evidence that  
24 you might have. So I'm again going to

1 reflect back on the fact that things changed  
2 over the course of this period of time that  
3 we were examining things, and so where the  
4 prediction may have been made and may have  
5 been using lots of facts and data and right  
6 on point, it was unfortunate for him that  
7 the environment that we're examining is  
8 larger than that set of facts and that's  
9 what we have to take a look at here in its  
10 entirety.

11 DIRECTOR COIT: Yes. I lost -- I  
12 lost a thought that I just wanted to state.  
13 So I guess I will just conclude and maybe  
14 that will come back to me. So I think -- I  
15 just kind of ran through a lot of thinking  
16 and a lot of reading and a lot of  
17 conclusions that I drew based on what I  
18 thought were the facts, based on the  
19 evidence in this case on the issue of need.  
20 That's a dispositive determination for this  
21 Board that we're required to make and we  
22 each spent I would say countless hours  
23 considering the evidence. It's interesting  
24 to me to see that you're coming out at the

1 same place. And I think my reasoning is  
2 sound.

3 So I have examined all of the  
4 elements and in my view it's really the  
5 totality, no one single element like the CSO  
6 convinced me, but I believe the project is  
7 not needed. I think the totality of the  
8 evidence add up to that conclusion, and I  
9 find that the evidence before us in this  
10 docket presented by Invenergy does not  
11 support a finding that the proposed facility  
12 is necessary to meet the needs of the state  
13 and/or region of the type to be produced by  
14 this combined cycle electric generating  
15 facility. So I would be -- those are a  
16 summary of my thoughts, but I would be  
17 voting in favor of that motion.

18 THE CHAIRPERSON: And I was going  
19 to note that in -- with respect to your --  
20 the final points of your analysis of the  
21 predictions, we have certainly been  
22 fortunate that we have the benefit of  
23 hindsight in looking at those predictions,  
24 so yes, it turns out hindsight is indeed

1 20/20 when reviewing the predictions.

2 DIRECTOR COIT: That's what I  
3 think, and I'm not trying to bash in any way  
4 the applicant because the length of this  
5 process is not something that I will take  
6 the sole responsibility for because things  
7 like the water plan falling through and the  
8 suspended process while the applicant put  
9 together a new plan or bringing in the  
10 Narragansett Indian Tribe or things like  
11 agreeing to delay while a FERC decision was  
12 argued and ultimately made are things that  
13 happened in the last few years. They  
14 weren't things that this Board had control  
15 over. When there's no water supply plan,  
16 there's no ability to run a facility of this  
17 kind.

18 So giving the applicant the  
19 opportunity to put together another plan and  
20 suspending this process I think was the  
21 right thing to do in terms of their  
22 opportunity to make their case. But I think  
23 it is not fair to conclude that that means  
24 that this Board prolonged the process

1           because so many of those things were not  
2           only out of our control but were the request  
3           of the applicant. So I think that's an  
4           important point because one of the reasons  
5           that hindsight is 20 -- not that hindsight  
6           is 20/20, but one of the reasons so many  
7           things have happened during this process is  
8           because of how long it took, and one of the  
9           reasons that it took so long was because of  
10          the way it was handled.

11                         THE CHAIRPERSON: Yes, I agree.  
12          And that is not to cast aspersions on the  
13          applicant because I don't think -- I think  
14          that it's clear that it was not intentional  
15          on the applicant's part to hold things up.  
16          Being on the PUC, concerns about regulatory  
17          lag are fairly consistent, and yes, that  
18          does happen. But I think that -- I think  
19          the Board has been criticized, and I'm not  
20          talking about any criticism from the  
21          parties, I'm not aware that they have ever  
22          said anything about that, but there has  
23          been, I think, perhaps just a general  
24          assumption made by people who are not

1 involved in this process that this is taking  
2 an incredibly long time, so it must be the  
3 Board's fault, and it hasn't been. I think  
4 that we should at least get the credit for  
5 having kept it moving along as well as it  
6 could given a number of things that came up  
7 that the parties acknowledged made it  
8 imperative that we pause and we could escape  
9 those criticisms perhaps if we just made  
10 them go forward notwithstanding the issues  
11 that they themselves had indicated. But I  
12 think that I agree, it was the appropriate  
13 thing to do so that the applicant had the  
14 opportunity and the opposing parties had the  
15 opportunity to make the case that they  
16 wanted to make so that we have ended up with  
17 a record before us that allows us I think to  
18 make well-grounded findings and  
19 determinations as we're required to under  
20 the Act.

21 DIRECTOR COIT: I think one of the  
22 things that happened, and it happened from  
23 both sides was that because so many things  
24 were happening external to this, despite the



1 rules on the prefiled testimony, we kept  
2 getting a pile of reports and documents, new  
3 exhibits that I don't think either side --  
4 each side made an issue of it, but in both  
5 cases it was new information that was  
6 relevant to this process that came after the  
7 deadline for the prefiled testimony. So I  
8 thought it was by and large helpful.

9 THE CHAIRPERSON: Absolutely. I  
10 think it was appropriate that we had that  
11 relevant information to consider in our  
12 determinations.

13 ASSOC. DIRECTOR BRADY: I would  
14 also add to this discussion, although  
15 obviously I'm a little bit later to the  
16 table on this, going back through all the  
17 records and listening to in particular --  
18 reading through an listening to the  
19 reiteration of the timeline was helpful for  
20 me as well because it really put into  
21 context a lot of things that I had been  
22 seeing all throughout the discussion and  
23 taking a look at the full record of  
24 evidence. So stopping this process

1            somewhere along the line because not  
2            everything had been provided, giving that  
3            opportunity I think was definitely the right  
4            thing to do. I think it was very important  
5            for us to give that opportunity for the full  
6            level of testimony to be presented, but even  
7            -- through the spring we received a number  
8            of different reports. The amount of things  
9            that we had to read and look at and file,  
10           and sometimes overnight. I know we've had  
11           some arguments on that. But I think all of  
12           that, even the things we received that were  
13           short notice that we had to read overnight  
14           also added to the level of information that  
15           we had available to us and helped to make a  
16           better decision.

17                         DIRECTOR COIT: So if you want to  
18                         add any thoughts, that's really kind of --  
19                         concludes my articulation of my thinking  
20                         that was developed over a period of many  
21                         months.

22                         THE CHAIRPERSON: Thank you. That  
23                         was impressive. And we are getting very  
24                         close to when we said we would break for

1 lunch, and I think before, it would be  
2 appropriate, unless anybody has an  
3 objection, to break now.

4 DIRECTOR COIT: I wasn't expecting  
5 that. I'm fine with that. For an hour?

6 THE CHAIRPERSON: Yes.

7 DR. BIANCO: Give everybody a time.

8 THE CHAIRPERSON: Right. So the  
9 time currently is 11:53. So we want to be  
10 back here no later than 12:53.

11 (LUNCHEON RECESS)

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## 1 AFTERNOON SESSION

2 JUNE 20, 2019

3 1:07 P.M.

4 THE CHAIRPERSON: Let's officially  
5 reconvene. Hello, everybody. We are  
6 reconvening. I would ask people to please  
7 sit down, stop talking. Thanks.

8 DR. BIANCO: Chairperson, our  
9 stream is working. There are a number of  
10 viewers online, it looks like more viewers  
11 online than here in the room today, and  
12 that's causing a little bit -- that's  
13 causing --

14 THE CHAIRPERSON: This was a great  
15 idea.

16 DR. BIANCO: It wasn't mine, so  
17 congratulations. So it is causing a little  
18 bit of download problems. There's a little  
19 bit of lag, sometimes frozen screen. Folks  
20 need to hit play again. And the stream is  
21 being preserved and will be able to be  
22 re-watched. But if you're watching it live,  
23 you may find that it freezes and needs to be  
24 re-started.

1           THE CHAIRPERSON: Thank you. Okay.  
2           We have a motion pending, that was the  
3           motion that Invenergy, the applicant, has  
4           failed its burden of proving by a  
5           preponderance of the evidence that the  
6           proposed facility is needed to meet the  
7           state and/or region's need for energy of the  
8           type produced by the proposed facility. All  
9           in favor? Aye.

10           DIRECTOR COIT: Aye.

11           ASSOC. DIRECTOR BRADY: Aye.

12           THE CHAIRPERSON: We have found  
13           that the applicant has failed to prove that  
14           the facility is needed. That finding is  
15           dispositive of this matter. Failure on that  
16           element of its burden of proof disposes of  
17           the matter of, for example, no further harm  
18           to the environment is justified. So we need  
19           not decide if the applicant proved that the  
20           facility will not cause unacceptable harm.  
21           There's no question that it would cause  
22           harm. The Act itself assumes that harm will  
23           be caused by a new energy facility which is  
24           why the burden is on the applicant to prove

1           that that harm is not unacceptable.  There's  
2           no question that building the facility and  
3           operating it would cause harm.  Therefore, I  
4           move that no further discussion on the  
5           elements of proof is necessary.  Is there a  
6           second?

7                         ASSOC. DIRECTOR BRADY:  Second the  
8           motion.

9                         THE CHAIRPERSON:  Is there a  
10          discussion?

11                        DIRECTOR COIT:  I think that we  
12          should discuss this.  So the Act has  
13          specific standards, particularly in Section  
14          11, although there's some others that you  
15          referenced, and they all require a positive  
16          finding.  So in thinking about this, we have  
17          a negative finding on need, and since each  
18          of those need to be positive, that means  
19          that we won't be granting a license, and I  
20          think the question is do you go through the  
21          rest of them.  I could not find a precedent  
22          from this Board, but I did look for other  
23          precedence on -- in New England from Siting  
24          Boards.  And we discussed the Killingly

1 decision here, and that was a decision where  
2 under the Connecticut General Laws --  
3 general statutes that Board found that since  
4 the first key criterion which was public  
5 benefit was not met, and need was part of  
6 that evaluation, then there was no need to  
7 get to the other two criteria under that  
8 Act. That was in 2017.

9 And then there was a recent  
10 decision -- actually, last year by the New  
11 Hampshire Siting Board about the Northern  
12 Pass, and in that case I believe they had  
13 four prongs under the statute and, again,  
14 their first was on how it affected economic  
15 development in the area -- I think I have  
16 that right. And they voted on that. So I  
17 think it's a good thing that you put this up  
18 forward for a motion. And they concluded  
19 that the applicant did not meet their burden  
20 in demonstrating that the project would not  
21 unduly interfere with the orderly  
22 development of the region, and there was no  
23 need to address the other prongs stating  
24 that since the Council couldn't grant a

1 certificate even if the other three prongs  
2 were satisfied, there wasn't a compelling  
3 reason to go through them.

4 And in thinking this through, I  
5 think that is logical. It's what other  
6 Siting Boards have done, certainly mindful  
7 of all the evidence that has been put  
8 forward, but I think that having not met one  
9 of the key criteria that is essential to  
10 getting a license, there really isn't a  
11 benefit to going through the rest of them.

12 ASSOC. DIRECTOR BRADY: Thank you,  
13 and, again, I appreciate the opportunity to  
14 discuss this question and I believe that  
15 given that the finding is that they did not  
16 prove that there was a need of this -- for  
17 the region and for the state of this type of  
18 energy proposed to be produced, that the  
19 rest of the questions that would have  
20 followed, as we're going in series and we  
21 don't meet the requirement for the first, we  
22 simply can't find for the others. So the  
23 discussion of those, while it would probably  
24 be interesting and it would probably be --



1 we could accomplish that certainly given the  
2 amount of time we've invested into this  
3 particular case, there is no need at this  
4 time since the first point was not proven.

5 THE CHAIRPERSON: All in favor?

6 Aye.

7 DIRECTOR COIT: Aye.

8 ASSOC. DIRECTOR BRADY: Aye.

9 THE CHAIRPERSON: Given -- hold on.  
10 Hold on. Given our prior two decisions, I  
11 move that the application for a license to  
12 construct and operate the Clear River Energy  
13 Center be denied.

14 (APPLAUSE)

15 THE CHAIRPERSON: Is there  
16 discussion?

17 DR. BIANCO: I need a second.

18 ASSOC. DIRECTOR BRADY: I will  
19 second the motion.

20 THE CHAIRPERSON: Is there  
21 discussion?

22 DIRECTOR COIT: I have nothing  
23 further to add right now.

24 ASSOC. DIRECTOR BRAY: No.

1 THE CHAIRPERSON: All in favor?

2 Aye.

3 DIRECTOR COIT: Aye.

4 ASSOC. DIRECTOR BRADY: Aye.

5 THE CHAIRPERSON: Given that we  
6 have denied the application, I move that we  
7 adjourn.

8 ASSOC. DIRECTOR BRADY: Second.

9 THE CHAIRPERSON: Hearing no  
10 objection to that motion, we will adjourn by  
11 acclamation.

12 (ADJOURNED AT 1:15 P.M.)

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C E R T I F I C A T E

I hereby certify that the foregoing  
is a true and accurate transcript of the  
hearing taken before the State of Rhode  
Island Energy Facility Siting Board, on June  
20, 2019 at 10:00 a.m.

\_\_\_\_\_  
JO ANNE M. SUTCLIFFE, RPR/CSR  
NOTARY PUBLIC, STATE OF RHODE ISLAND

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