

March 31, 2016

Michael Wood, Mgr.  
Burrillville Town Hall  
Harrisville Main St.,  
Harrisville, RI 02830

Re: INVENERGY TIMELILNE

Dear Mr. Manager,

Based on some public hearings and meetings of the Town Council, the public appears to be under a misimpression regarding what the Town can and cannot do with respect to the building of the power plant proposed by Invenergy. I, as the Solicitor, desire to clarify the legal process and the powers of the Council in dealing with this issue.

The sole power whether to allow the construction of the power plant is provided by the laws of the State of Rhode Island, and not the ordinances or Charter of the Town of Burrillville. The General Assembly has vested the Energy Facilities Siting Board (EFSB), pursuant to the Energy Facility Siting Act, with the sole power to make that decision, and not the Town.

First, it must be understood that the law in Rhode Island is framed in a fashion that the application for the Facility shall be reviewed and receive all approvals for construction and operation from the EFSB . Because of the nature of the project (energy by its nature is to be distributed region wide, not just locally in one municipality), the General Assembly specifically **excluded** all municipalities from having any power to stop such an endeavor.

Specifically, the Town of Burrillville has absolutely no power to decide whether or not any energy generating facility can be located within its boundaries, no matter how strongly it feels about it. The residents of the municipalities are permitted to voice their opinion TO THE EFSB in an attempt to influence them about the appropriateness of the facility.

The EFSB has directed that certain State and Town agencies and Boards provide it with "advisory opinions" only. Those "advisory opinions" are not binding upon the EFSB. Whether the advisory opinions are issued or not is of no consequence to the EFSB. It will do what it believes is consistent with the Energy Facility Siting Act. It can accept, ignore, or accept with modifications all such advisory opinions. All advisory opinions are due to the EFSB by Sept. 9, 2016.

The EFSB will hold hearings where all parties that were allowed to intervene have an opportunity to present evidence in an attempt to influence the EFSB regarding whether the Facility should be allowed to be constructed, and if so, under what conditions. All advisory opinions submitted will be considered by the EFSB.

Pursuant to Rhode Island law, the EFSB requested advisory opinions from numerous State agencies and certain Town's boards and entities (please note that the Town Council was **not** asked to provide any input or advisory opinion). Those Town agencies and entities are as follows:

1. Planning Board
2. Zoning Board
3. Building Inspector
4. Tax Assessor

Also, the EFSB has requested that the Pascoag Utility District provide an advisory opinion.

This is a synopsis of the pertinent deadlines and responsibilities that need to be addressed by the above named in response to the Energy Facilities Siting Board (EFSB) request in respect to the proposed Clear River Energy Center (Facility). Should the Town's Planning Board, Zoning Board, Building Inspector or Tax Assessor fail to give timely input by way of an "advisory opinion", then we "waive" our right to do so and the EFSB will act in any way it sees fit without any input from the Town's agencies. We have until September 9, 2016 to do so.

As a result, the Town Council has hired expert consultants to help guide the above named Town's boards and entities in their duties. The experts that the Town hired are "our" experts in the sense that they can critically review the Facility as proposed, and determine whether it can be modified or otherwise improved, in order to protect the residents and the community as a whole from adverse impact. It should be noted that only the EFSB can make a determination that the Facility as a whole is inappropriate, not needed, or too injurious to the public or the environment, and not permit its construction.

Therefore, the following schedule is proposed to guide our Boards and entities in formulating their advisory opinions:

**PLANNING BOARD:**

The EFSB has instructed the Planning Board to address only two specific issues:

1. Whether the Facility would be consistent with the Town's comprehensive plan, and,
2. Whether Invenergy will be able to comply with the Town's noise ordinance during construction and operation.

Invenergy is scheduled to file with the Planning Board an application for approval of a Major Land Development on April 1, 2016. That process will deal with Item #1 instructed by the EFSB for the Planning Board to review, i.e., whether the Facility is consistent with the comprehensive plan.

The Planning Board will hold a “conceptual” meeting with Invenergy on May 2, 2016. That meeting is only for Invenergy to present its plan.

The Planning Board will, on June 6, 2016 hold a combined Master Plan and Preliminary Plan Application review and public hearing with a Final Advisory coming sometime after the June 6<sup>th</sup> Public Hearing. This accelerated schedule is meant to provide enough time for the Zoning Board to review the Planning Board’s opinion and recommendation when it deals with this topic and renders its advisory opinion prior to September 9, 2016.

In order to help the Planning Board, we have tentatively scheduled an informational meeting for both the Planning and Zoning Boards on April 28, 2016. In order to so inform the Boards, we have asked our consultant experts to review all information provided by Invenergy and other interested parties that were given intervenor status by the EFSB. We also asked them to do independent research and modeling, and to present in written format, their opinion regarding the following issues: Soil and sediment runoff; air quality; traffic; and, noise pollution. We hope to have those reports sometime prior to April 28, 2016.

At the “workshop/informational” session (April 28, 2016), there will be no public comment permitted. This is strictly for our Boards’ educational purposes. The public will be invited to be present and listen to our experts, but not to participate. The public will be allowed to participate, along with Invenergy’s witnesses, on June 6, 2016. It is very important to note that the following dates are subject to the availability of our experts to perform their tasks in a timely manner, and to have them available on the dates proposed.

The Planning Board will then issue its “advisory opinion” to the EFSB, as well as to the Zoning Board.

Summarizing, these are the dates before the Planning Board:

1. **April 1, 2016:** Application from Invenergy is due for Pre-application.
2. **Prior to April 28, 2016:** consultant/experts opinions in written form to be provided to the Planning Board.
3. **April 28, 2016:** Workshop Session with Planning and Zoning Board during which time our experts will hopefully educate our members.
4. **May 2, 2016:** Planning Board Pre-application (Concept) Meeting.
5. **May 6, 2016:** Combined Master/Preliminary Application due.
6. **June 6, 2016:** Preliminary and Final Hearing: all witnesses, including our experts and experts from Invenergy, and interested citizens are allowed to participate and give testimony before the Planning Board.
7. **Prior to July 1, 2016:** Advisory Opinion from the Planning Board.

Please note that there will be no **Decision** from the Planning Board, only an advisory opinion. Therefore, there is no appeal provided from such an advisory opinion.

**ZONING BOARD:**

The EFSB has requested that the Zoning Board provide an advisory opinion upon the following matters:

1. Whether the Facility will meet the requirements of our zoning ordinances, and whether any variance should be granted;
2. Whether a special use permit should be granted to exempt the Facility from construction hour restrictions, and
3. Whether Invenergy will be able to be compliant with the noise ordinance during construction and operation, and if not, whether a variance should be granted.

The Zoning Board will need an application from Invenergy for any variance it feels it needs. However, we foresee that a variance and a special use permit will be needed for the following:

1. Noise
2. Height of smoke stacks
3. A special use permit will be needed to permit operation of the Facility in this zone.
4. A determination whether the Facility otherwise meets the zoning ordinance.

No dates for the Zoning Board are yet proposed as it will depend upon receipt of the Planning Board report/advisory opinion. However, July 12, 2016 is the most likely date. At that time we do not anticipate any testimony from our experts, as they would have testified on June 6, 2016 before the Planning Board, and the Zoning Board members would be there to participate in that “workshop” session. However, the public would be free to participate.

**BUILDING INSPECTOR:**

The EFSB has asked the building inspector to render an advisory opinion as to:

1. whether the work proposed during construction and operation is subject to the Erosion and Sediment Control Ordinance and if so, whether it conforms to the Town’s ordinance, and
2. whether the Facility would meet the requirements of “other” municipal ordinances.

The building inspector will participate with the Planning Board during its workshop session as well as during the public hearings on June 6, 2016. He would render his advisory opinion prior to July 12, 2016.

Respectfully submitted by,

*/s/Oleg Nikolyszyn*

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Oleg Nikolyszyn, Esq.  
Town Solicitor