

Schacht & McElroy

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July 13, 2017

Todd A. Bianco
Coordinator
Rhode Island Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, RI 02888

Re: Invenergy Thermal Development LLC – Clear River Energy Center
Docket No. SB-2015-06

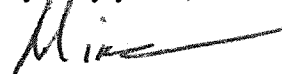
Dear Todd:

Enclosed for filing in this matter are an original and ten (10) copies of a Motion to Dismiss being filed by the Town of Burrillville in this docket. Electronic copies have been sent to the service list.

The Town respectfully requests oral argument on this Motion.

If you need any further information, please do not hesitate to contact me.

Very truly yours,



Michael R. McElroy

cc: Service List

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

IN RE: INVENERGY THERMAL DEVELOPMENT LLC's :
APPLICATION TO CONSTRUCT THE CLEAR RIVER : DOCKET No. SB-2015-06
ENERGY CENTER IN BURRILLVILLE, RHODE ISLAND :

MOTION OF THE TOWN OF BURRILLVILLE
TO DISMISS THE APPLICATION DUE TO INVENERGY'S FAILURE
TO FURNISH COMPLETE PLANS AS TO ALL STRUCTURES

The Town of Burrillville ("Town") hereby moves to dismiss Invenergy Thermal Development LLC's ("Invenergy") Application pursuant to R.I.G.L. § 42-98-16(a) and Energy Facility Siting Board ("EFSB" or "Board") Rule of Practice and Procedure 1.17. Specifically, the Town moves to dismiss Invenergy's Application to construct and operate the Clear River Energy Center ("CREC") because:

- (1) the jurisdiction of the EFSB is based on "complete plans as to all structures ... associated with the proposed facility" in accordance with R.I.G.L. § 42-98-8(a)(2);
- (2) Invenergy has failed to provide complete plans as to all structures associated with the proposed facility;
- (3) jurisdictional requirements cannot be waived by the EFSB or the parties; and
- (4) under R.I.G.L. § 42-98-16(a), failure to comply with an EFSB rule, regulation, requirement or procedure for licensing constitutes grounds for dismissal.

The Energy Facility Siting Act ("EFSA") is a jurisdictional statute (as well as a substantive one). Enacted by the Rhode Island General Assembly in 1986, the EFSA consolidated the "authority to regulate many aspects of the issues involved in the siting of major energy facilities" and established the EFSB. R.I.G.L. § 42-98-1(b).

R.I.G.L. § 42-98-8(a) requires the submission of “at least” a:

“detailed description of the proposed facility, including its function and operating characteristics, and **complete plans as to all structures**, including underground construction and transmission facilities, underground or aerial, associated with the proposed facility. The **complete plans shall be the basis for determining jurisdiction under the energy facility siting act** and shall be the plans submitted to all agencies whose permit is required under the law.” R.I.G.L. § 42-98-8(a)(2) (emphasis added).

The same requirements are set forth in R.I.G.L. § 42-98-20(b) and in EFSB Rule 1.6(b)(4), except that EFSB Rule 1.6(b)(4) provides more detail regarding the requirement for the submission of “complete plans as to all structures” making specific (but not exclusive) reference to plans for “underground construction, transmission facilities, cooling systems, pollution control systems, and fuel storage facilities associated with the proposed location for the project.”

As shown by Invenenergy’s “Principal and Accessory Structure” listing (attached hereto as Exhibit 1), there are fifty-five (55) structures proposed for the CREC project including:

- Two Turbine Buildings (Structure #3) (202’ x 136’)
- Administration/Control Building (Structure #4) (140’ x 100’)
- Water Treatment Building (Structure #8) (112’ x 64’)
- Fire Pump Building (Structure #9) (34’ x 14’)
- Auxiliary Boiler Building (Structure #10) (54’ x 45’)
- Two BOP Electrical Buildings (Structure #21) (80’ x 30’)
- Two Feedwater Pump Buildings (Structure #27) (74’ x 49’)
- Gas Compressor Building (Structure #28) (56’ x 30’)
- Fuel Oil Equipment Building (Structure #39) (40’ x 20’)

Moreover, as shown by Exhibit 1, nineteen (19) of the listed structures need a variance from this Board. Neither the EFSB nor the Town Zoning Board can determine whether these variances would be appropriate without reviewing the plans for each structure.

Despite the fact that this Application has been pending for over 20 months (since October 29, 2015), the Building Inspector does not have anything even approaching “complete plans as to all structures” for the facility.

In 2016, the Town received the following:

- A two-page transmittal letter with a four-page index;
- Thirty (30) pages of generic building design specifications;
- A two-page preliminary site plan for the project;
- A one-page preliminary floor plan for the administration building for the CREC, with another page showing preliminary north, east, south, and west elevations, and two typical wall sections for the building.
- Readable plans of the drainage and stormwater management plans that were not readable in the initial Stormwater Management Plan (eight and one half by eleven-inch plans in the narrative) with details; and
- Sixty (60) plus pages of preliminary plans for the administration/warehouse building, and three pages (one floor plan and two elevations) for the turbine building for each of the combustion units at the Lackawanna Energy Center under construction **in Pennsylvania** at this time.

Without reviewing complete plans for all proposed Burrillville structures, we believe it would be impermissible for the EFSB to license the facility in compliance with the EFSA and the EFSB’s own Rules.

In order to give Invenergy a chance to comply with the EFSA and the Rules before this Motion was filed, the Town made a formal written request to Invenergy on May 9, 2017 asking that Invenergy provide the Town with complete plans as to all structures associated with the proposed facility in Burrillville. (Attached as Exhibit 2). The Town asked that the complete plans be provided to the Town no later than June 16, 2017, in order to provide sufficient time for the Building Inspector to review the complete plans.

Without in any way intending to limit the plans that should be submitted, the Town asked to see, for all structures associated with the facility, site plans, foundation plans, electrical plans, plumbing plans, building plans, engineering plans, design plans, and all other usual and customary plans associated with the proposed CREC facility. However, the requested plans were not provided. Instead, Invenenergy responded with a letter dated June 9, 2017. (Attached as Exhibit 3). The Town responded to that letter on June 30, 2017. (Attached as Exhibit 4).

With respect to the planned structures for the project, the Building Inspector has received only limited information for the administration building and turbine building, and has received nothing for the other structures.¹

The failure of Invenenergy to provide “complete plans as to all [fifty-five] structures” renders Invenenergy’s Application incomplete as a matter of law because the Application is not in accordance with the unambiguous directives of the EFSA and the Rules of this Board.

The Rhode Island Supreme Court has consistently held that “a claim of lack of subject matter jurisdiction may be raised at any time.” *DeMarco v. Travelers Ins. Co.*, 102 A.3d 616, 621 (R.I. 2014) (*citing Long v. Dell, Inc.*, 984 A.2d 1074, 1078 (R.I. 2009)); *see also McGann v. Board of Elections*, 129 A.2d 341, 347 (R.I. 1957) (“...if the court should be convinced that it has no jurisdiction over the suit it ought to dismiss the same at any stage of the proceedings.”) (*quoting Gorman v. Stillman*, 54 A. 934, 936 (R.I. 1903)).

Further, the issue of subject-matter jurisdiction “cannot be waived or conferred” by any party. *DeMarco*, 102 A.3d at 621 (*citing Rogers v. Rogers*, 18 A.3d 491, 493 (R.I. 2011)). The

¹ We recognize that Rule 1.14(a) dealing with post-licensing permits provides a procedure whereby “final design drawings and plans for the applicant’s energy facility” are submitted and reviewed after the Board has issued a license. However, it is important to note that it is the “final” design drawings and plans that are reviewed after the issuance of the Board license, and nothing in this Rule takes away from the fact that “complete plans as to all structures” are statutorily required by R.I.G.L. § 42-98-8 to be part of the Application itself.

U.S. Supreme Court has similarly held that “a question of jurisdiction cannot be waived. Jurisdiction should affirmatively appear, and the question may be raised at any time.” *City of Gainesville v. Brown-Crummer Investment Co.*, 277 U.S. 54, 59 (1928).

Where, as here, the applicant has failed to produce the statutorily required “complete plans for all structures” and has also failed to “remedy the lack of compliance,” the EFSB lacks jurisdiction and should therefore dismiss the Application.²

R.I.G.L. § 42-98-8(a)(2) of the EFSA and Rule 1.6(b)(4) make it clear that Invenergy’s application must contain the “complete plans as to all structures.” It is clear that the Application does not contain complete plans for all structures. Therefore, dismissal is appropriate under R.I.G.L. § 42-98-16(a):

“Failure to comply with any promulgated board rule, regulation, requirement or procedure for the licensing of energy facilities shall constitute grounds for suspension or dismissal, with or without prejudice in its discretion, of licensing proceedings, provided that the applicant shall have a reasonable opportunity to show cause for and remedy the lack of compliance.” (Emphasis added).

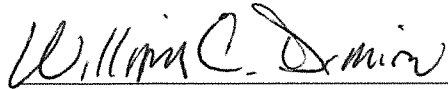
The Town submits that Invenergy has already had over 20 months to produce “complete plans for all structures” and to “remedy the lack of compliance,” but has failed to do so.

WHEREFORE, the Town respectfully requests that this Board exercise its discretion and dismiss this licensing proceeding with prejudice.

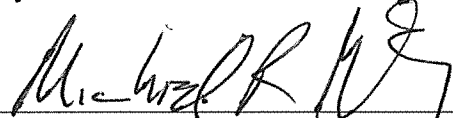
² If subject matter jurisdiction is lacking, a claim must be dismissed. Failure to do so results in reversible error. *See In re Kimberly and James*, 583 A.2d 877, 878 (R.I. 1990) (“The judgment of the Family Court awarding custody to the defendant is vacated, and the case is remanded to the Family Court with directions to dismiss the custody proceeding for want of jurisdiction.”); *Petition of Donald J. Loudin*, 219 A.2d 915, 918 (R.I. 1966) (“If the court whose decision is challenged lacks jurisdiction, it follows that the decision is without validity even though all the parties may have participated therein.”); *United States v. Griffin*, 303 U.S. 226 (1938) (“Since lack of jurisdiction of a federal court touching the subject matter of the litigation cannot be waived by the parties, we must upon this appeal examine the contention, and, if we conclude that the District Court lacked jurisdiction of the cause, direct that the bill be dismissed.”)

The Town respectfully requests oral argument on this Motion to Dismiss.

Respectfully submitted,
Town of Burrillville
By its attorneys



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dimitrilaw@icloud.com

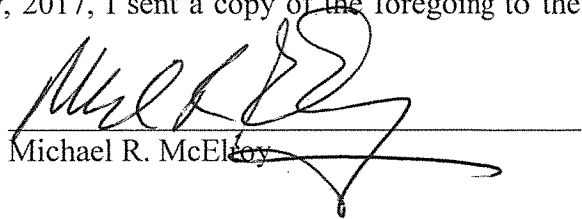


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Date: July 13, 2017

CERTIFICATE OF SERVICE

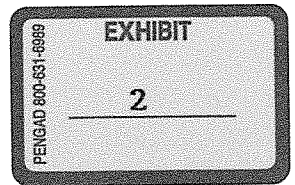
I hereby certify that on the 13th day of July, 2017, I sent a copy of the foregoing to the attached service list.



Michael R. McElroy

PRINCIPAL AND ACCESSORY STRUCTURE

BUILDING AND EQUIPMENT LIST								
	STRUCTURE	QUANTITY (EACH)	PRINCIPAL	ACCESSORY	SIZE (DIMENSIONS IN FEET)			EFSB VARIANCE NEEDED
					LENGTH/DIAMETER	WIDTH	HEIGHT	
1	COMBUSTION TURBINE INLET FILTER	2		X	60	27	50	X
2	HEAT RECOVERY STEAM GENERATOR	2		X	103	44	135	X
3	TURBINE BUILDING	2		X	202	136	80	X
4	ADMINISTRATION/CONTROL BUILDING	1	X		140	100	25	NA
5	SWITCHYARD	1		X	367	153	70	X
6	AIR-COOLED CONDENSER	2		X	305	130	110	X
7	FUEL OIL STORAGE TANK	1		X	90	—	48	X
8	WATER TREATMENT BUILDING	1		X	112	64	30	X
9	FIRE PUMP BUILDING	1		X	34	14	15	NA
10	AUXILIARY BOILER BUILDING	1		X	54	45	35	X
11	CTG FUEL GAS DEW POINT HEATER	1		X	18	9	15	NA
12	STORM WATER DETENTION POND #1	1			—	—	—	
13	AMMONIA STORAGE TANK	1		X	50	12	15	NA
14	WAREHOUSE	1			100	84	25	PART OF THE ADMIN/CONTROL BUILDING
15	FUEL GAS FILTER/SEPARATOR	1		X	24	6	15	NA
16	EMERGENCY DIESEL GENERATOR	1		X	33	8	15	NA
17	GSU TRANSFORMER	2		X	48	27	15	NA
18	PIPE RACK	2		X	313	15	55	X
19	FIRE/SERVICE WATER TANK	1		X	64	—	49	X
20	DEMINERALIZED WATER STORAGE TANK	1		X	86	—	55	X
21	BOP ELECTRICAL BUILDING	2		X	80	30	25	X
22	WASTE WATER TANK	1		X	32.5	—	30	X
23	HRSG LTE RECIRCULATION PUMPS	2 SETS		X	10	4	6	NA
24	HYDROGEN TUBE TRAILER	2 SETS			42	8.5	15	NA
25	WATER TRANSFER PUMP BUILDING	1		X	21	10	15	NA
26	WASTE OIL STORAGE SHELTER	2		X	30	15	12	NA
27	FEEDWATER PUMP BUILDING	2		X	74	49	25	X
28	GAS COMPRESSOR BUILDING	1		X	78.5	56	30	X
29	OIL WATER SEPARATOR	2		X	24	5	—	NA
30	CCCW HEAT EXCHANGER	2		X	60	58	32	X
31	AUX. TRANSFORMERS	2		X	20	16	15	NA
32	SUS TRANSFORMERS	6		X	51	25	12	NA
33	345 KV UNDERGROUND DUCT BANK	2			—	—	—	NA
34	CENS SHELTER	2		X	9	8	12	NA
35	GENERATOR CIRCUIT BREAKER	2		X	23.5	8	20	NA
36	LCI EXCITATION CONTAINER	2		X	52	12	12	NA
37	FUEL GAS FLOW METER	1		X	18	9	6	NA
38	FUEL GAS PRESSURE REGULATION	1		X	27	11	6	NA
39	FUEL OIL EQUIPMENT BUILDING	1		X	40	20	20	NA
40	SAMPLE PANEL ENCLOSURE	2		X	31	9	12	NA
41	FUEL GAS PERFORMANCE HEATER	2		X	57	13	10	NA
42	CCCW PUMPS	2 SETS		X	16	16	6	NA
43	WORKSHOP	1		X	20	20	25	PART OF THE ADMIN/CONTROL BUILDING
44	BLOWDOWN TANK	2		X	100	—	10	NA
45	LP FUEL GAS DEW POINT HEATER	1		X	18	9	8	NA
46	WATER WASH DRAIN TANK	2		X	11	11	—	NA
47	DUCT BURNER FUEL SKID	2		X	16	8.5	8	NA
48	DUCT BURNER COOLING AIR BLOWER	2		X	12	8.5	6	NA
49	SEPTIC LEACH FIELD	1		X	60	30	—	NA
50	SEPTIC TANK	1		X	8	6	—	NA
51	NITROGEN/CO BOTTLES	2 SETS			12	7.5	—	NA
52	LP REGULATION	1		X	18	8.5	—	NA
53	HRSG EXHAUST STACK 1	1		X	22		195	X
54	HRSG EXHAUST STACK 2	1		X	22		195	X
55	AUXILIARY BOILER STACK	1		X	4		50	X



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May 9, 2017

Alan Shoer, Esq.
Adler, Pollock & Sheehan
One Citizens Plaza, 8th Floor
Providence, RI 02903

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

Dear Alan:

As you know, I represent the Town of Burrillville in this matter ("Town"). As you are also aware, in an Order dated April 13, 2017, the Energy Facility Siting Board ("EFSB" or "Board") directed the Burrillville Building Inspector to "supplement his advisory opinion considering the new information that he has been provided since his original opinion was issued, including but not limited to the preliminary soil erosion and sediment control drawings and plans and the preliminary site plan and design drawings. The advisory opinion should address (i) whether the work proposed in the municipality as part of the Facility's construction and operation is subject to the municipality's Erosion and Sediment Control Ordinance and, if so, whether Invenergy's Erosion and Sediment Control Plan would conform to the Ordinance; and (ii) whether the Facility would meet the requirements of other municipal ordinances."

The Burrillville Building Inspector has informed me that he needs complete plans from Invenergy as to all structures associated with the proposed facility.

As you are aware, R.I.G.L. § 42-98-8(a) requires the submission of "at least" a "detailed description of the proposed facility, including its function and operating characteristics, and **complete plans as to all structures, including underground construction and transmission facilities, underground or aerial, associated with the proposed facility.** The **complete plans** shall be the basis for determining jurisdiction under the energy facility siting act and shall be the plans submitted to all agencies whose permit is required under the law." (R.I.G.L. § 42-98-8(a)(2)). (Emphasis added).

The same requirements are set forth in R.I.G.L. § 42-98-20(b) and in EFSB Rule 1.6(b)(4), except that EFSB Rule 1.6(b)(4) provides more detail regarding the requirement for the submission of "complete plans as to all structures" making specific (but not exclusive) reference to plans for "underground construction, transmission facilities, cooling systems, pollution control systems, and fuel storage facilities associated with the proposed location for the project."

EFSB Rule 1.6(b)(11) also requires submission of information regarding "required support facilities, e.g. road, gas, electric, water, telephone, and an analysis of the availability of the facilities and/or resources to the project."

The Building Inspector informs me that he does not yet have anything even approaching complete plans as to all structures for the facility.

As of the writing of this letter, the Building Inspector informs me that he only has the following:

1. Preliminary soil erosion and sediment control plans for the project.
2. Preliminary drawings for storm water management and site drainage.
3. Preliminary plans for the construction of an "administration/warehouse building" and two elevations of a "turbine building," which are both apparently part of a project Invenergy is constructing in Pennsylvania. These plans are marked "issued for proposal" and "not for construction." It appears that these plans were designed under whatever Pennsylvania state building code that was controlling in that city or town at the time they were produced. We fail to see how these plans are appropriate in any way for review and analysis by the Burrillville Building Inspector in connection with compliance with Burrillville's ordinances.

Without complete plans, we believe it would be impermissible for the Board to issue a permit for the facility in compliance with the Energy Facility Siting Act and the Board's own rules.

Accordingly, please accept this letter as a formal request to Invenergy to provide the Town of Burrillville with complete plans as to all structures associated with the proposed facility in Burrillville.

Because the Burrillville Building Inspector has to issue his supplemental advisory opinion by August 15, 2017, we respectfully request that the complete plans be provided to the Town of Burrillville no later than June 16, 2017, in order to provide sufficient time for the Building Inspector to review the complete plans.

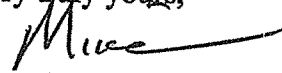
Without in any way intending to limit the complete plans that should be submitted, the Building Inspector would expect to see, for all structures associated with the facility, such plans as complete site plans, foundation plans, electrical plans, plumbing plans, building plans,

Schacht & McElroy

Alan Shoer, Esq.
May 9, 2017
Page 3

engineering plans, design plans, and all other usual and customary plans necessary for the construction of the structures associated with the proposed Clear River Energy Center facility.

Very truly yours,



Michael R. McElroy

MRMc/tmg

Schacht & McElroy

June 9, 2017

Via Email & Regular Mail

Michael R. McElroy
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21 Dryden Lane
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Providence, RI 02940-6721

Re: Invenergy Thermal Development LLC's Application to Construct the Clear River Energy Center in Burrillville, Rhode Island – EFSB Docket No.: SB2015-06

Dear Mr. McElroy: *mta*

I am writing to respond to your letter of May 9, 2017 where you request, on behalf of the Town of Burrillville's ("Town's") Building Inspector, "complete plans from Invenergy as to all structures associated with the proposed facility" and "all other usual and customary plans necessary for the construction of the structures associated with the proposed Clear River Energy Center facility."

Your letter makes this request on behalf of the Town, to assist in the Building Inspector's Supplemental Advisory Opinion to the R.I. Energy Facilities Siting Board ("Board" or "EFSB").

Invenergy has provided the Town with the required level of detailed descriptions of the proposed facility, as described in the Application pending with the Board; in responses to hundreds of the Town's specific data requests (as relates to the structures and facilities); with numerous reports describing the plans for the facility filed with the Board and served upon the Town; and in the many pages of detailed project site drawings filed with the Board, and specifically provided to the Town via separate deliveries.

Accordingly, as required by R.I. Gen. Laws § 42-98-8(a), the company's proposed plans for each of the many component facilities and structures required for this project have been filed with the Board and made available to the Town. We expect that the materials we serve upon the Town are being made available to the Building Inspector. For this reason, we take issue with your suggestion that the company has not made available to the Town a detailed description of the proposed facility, the functions, characteristics and other plans that allow for sufficient licensing review by the Board.

ADLER POLLOCK & SHEEHAN P.C.

Michael R. McElroy
June 9, 2017
Page 2

It also appears that you are incorrectly interpreting the phrase "complete plans as to all structures" in the statute to mean detailed structural drawings that are submitted to the building official for purposes of obtaining a building construction permit, once all site conditions and requirements are imposed by the Board.

As you know, the EFSB rules have a separate, post-licensing procedure for the submission, and review by building officials, of the final structural engineering procurement construction ("EPC") prepared drawings, similar to the set that was provided by way of reference -- and to provide a general preview for the Building Inspector -- with reference to a similar Pennsylvania project, where these structural drawings were submitted after that agency granted the company a license. I am referring specifically to the process identified in Board Rules 1.13 and 1.14.

For example, Board Rule 1.13(d) recognizes that the "grant of a Board License in favor of the application shall constitute a granting of all licenses which would, absent the Act, be required for the facility **except for building, construction and occupancy permits for which final designs will not be executed until after the final decision is issued** . ." (Emphasis added.)

Also, Board Rule 1.14 spells out an entire "Post Licensure Proceeding" that begins with the filing of the final design drawings in a post-EFSB license filing for a local building permit, for the arranging of a special meeting with the building official and a State building representative, and for the reviewing of the "final design drawings." Rule 1.14(a)(2).

These Rules also establish a separate post-licensing filing of an advisory opinion by the local building official, with regard to the post-licensing local building permit filing, after review of the "final design" structural drawings. *Id.* So there will be ample opportunity for the Building Inspector to review final design structural drawings.

I noticed that these Board specific post-licensing procedures, and the required separate submission of the detailed final design drawings, are not mentioned or referenced in your correspondence.

Next, your letter also repeats the Board's charge to the Building Inspector, to render a supplemental advisory opinion on matters related to: 1) the applicability of the Town's soil and sediment control program, and whether the company's plans conform to the

Michael R. McElroy
June 9, 2017
Page 3

Town's soil and sediment control ordinances; and 2) whether the Clear River Energy Center facility would meet the requirements of other municipal ordinances.

However, the Board did not request an advisory opinion at this time on whether a local building and construction permit should be issued for the project. Consistent with the Board's Rules, this request cannot be made until after the licensing hearings (and Board decision) and after final EPC prepared detailed structural drawings are submitted. Therefore, if you are requesting the final structural engineering drawings that would be submitted in a post-licensing process for a building permit, this request is premature.

Next, as to specific engineering drawings submitted thus far, your letter identified the documents that the Building Inspector informed you he has received from Invenergy. Your letter listed the following: 1) the Preliminary soil erosion/sediment control plans; 2) the Preliminary storm water management drawings; and 3) drawings related to Invenergy's Pennsylvania project. In my email of May 22, 2017, I also informed you that the list of documents that you identified with the Building Inspector was not accurate or complete. For example, your letter did not include any reference to the specific CREC drawings package prepared by HDR and submitted to the Building Inspector, on or about October 14, 2016. (These plan documents and narrative descriptions of the CREC design plans were also attached as an exhibit to our status update with the Board).

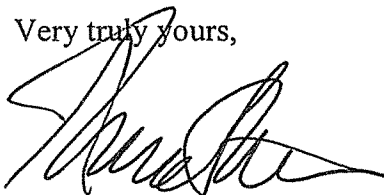
For example, the General Arrangement Plan (provided in the plan sets delivered to the Town) identifies each of the structures, with references in the table to the specific dimensions of the structures. I did receive your email with a summary from the Building Inspector, and he did confirm that he has these October and November deliveries of plans and drawings. The latest revisions to the GA Plan are being sent to the Building Inspector today, along with further documents to describe the specific structures associated with the project.

Finally, I repeat my request made to you in my email of May 22, 2017, that Invenergy would like to meet with the Building Inspector to answer questions and to further assist the Building Inspector to ensure he has what is needed in order to prepare his supplemental advisory opinion. I have not heard back from you on this request, and so I follow up again here.

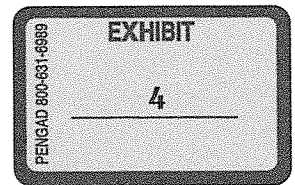
ADLER POLLOCK & SHEEHAN P.C.

Michael R. McElroy
June 9, 2017
Page 4

Very truly yours,

A handwritten signature in black ink, appearing to read 'Alan M. Shoer', written over a horizontal line.

ALAN M. SHOER
ashoer@apslaw.com



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June 30, 2017

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Re: Invenergy Thermal Development LLC – Clear River Energy Center
Docket No. SB-2015-06

Dear Alan:

Thank you for your letter of June 9, 2017 regarding the Town's request for complete plans as to all structures. The Town's Building Inspector has reviewed your letter. Our response is as follows:

- **Invenergy has not provided the Town with the required complete plans for the proposed facility.**

The Energy Facility Siting Board ("EFSB") Rules require: "A detailed description of the proposed facility including its function and operating characteristics, and **complete plans as to all structures, including, where applicable, underground construction, transmission facilities, cooling systems, pollution control systems and fuel storage facilities associated with the proposed location for the project.**" (EFSB Rule 1.6(b)(4) (emphasis added)). This is even more comprehensive than the language of R.I.G.L. § 42-98-8(a)(2).

The only plans for any structures that Invenergy has submitted are a rudimentary floor plan for an administration building and an elevation plan for a different facility in Pennsylvania. That is all. Two pages. And that was submitted a year after the project was docketed. Plans to the level of the "Not For Construction" or "Issued For Proposal" plans Invenergy sent to the Building Inspector for the proposed construction of an administration/warehouse building for their Lackawanna Energy Center in Pennsylvania have apparently never been developed for the CREC. This does not meet the standard of the required "detailed description of the proposed facility." (EFSB Rule 1.6(b)(4)). The language in R.I.G.L. § 42-98-8, as well as the language of the EFSB Rules, is clear. The low level of information provided is wholly inadequate.

The application requirements also include a "Site plan for each proposed location for the project." (EFSB Rule 1.6(b)(5)). Invenergy hired Waterman Engineering to conduct a boundary survey of the Algonquin Gas Transmission, LLC property. A boundary Survey Plan dated December 31, 2015 was drawn to a Class I Survey standard and signed by the Professional Land Surveyor, Richard S. Lipsitz #1837. This is a survey of the seven hundred odd acres owned by Algonquin Gas Transmission, LLC, and does **not** include a surveyed site plan for a subdivision for a proposed new lot for the Clear River Energy Center ("CREC"). On March 31, 2016, the Burrillville Planning Board received a copy of the Lipsitz Survey, with a new shaded area noted as "parcel 2 (Invenergy Parcel)." The survey was signed and dated by Richard Lipsitz on March 30, 2016. While there are no dimensions noted for the parcel, with the exception of a frontage dimension of 450', printed in red, along Wallum Lake Road, the survey is certified as a Class I survey.

Invenergy's application was docketed on November 16, 2015. At that time, this site plan did not exist. The "site plans" we were shown were a different proposed lot, with no frontage. Another proposed "lot" had a small amount of frontage adjacent to the proposed access route to the CREC. The plan submitted to the Planning Board, while more accurate, would not have been acceptable for a subdivision. It would have been easy enough to have the surveyor complete the survey. Instead, more than a year later, the proposed site is still changing. Although not a Class I survey, the only site plan ever presented is the above mentioned March 31, 2016 plan and, although there is no other site plan submitted, the shape of the proposed parcel has changed again in current Invenergy drawings.

We do not believe that the Town, through this request, is asking too much of the applicant to submit a legitimate subdivision plan for the proposed CREC facility lot. We expect a Class I survey of the parcel, with a metes and bounds description of the proposed lot, in order to identify any site issues, such as the zoning issues noted in the Building Inspector's advisory opinion. For the same reason, we object to the degree of redaction utilized by the applicant in the purchase/sale agreement. We have no interest in the applicant's financial business transaction with Algonquin, only a legitimate metes and bounds description of the parcel they are purchasing. The generic parcel defined in the option, in "Exhibit A", could be anywhere on the Algonquin property.

- **The company's proposed plans for each of the many component facilities and structures required for this project have not been filed with the Board and made available to the Town.**

In the construction trades it is evident what a "plan" is. It would be something in the form of a drawing or detail, in scale, to represent something proposed to be constructed. We do not have this.

We have been asking for two very specific things. Both should be readily available. Both are in the EFSB Rules. Both are in 1.6 APPLICATIONS (b), number 4 and number 5. We are not even at the level of sufficient licensing review. We are still asking for the same information we have been requesting since before the advisory opinions were published in September 2016, almost a year ago. Invenergy's list titled "Principal and Accessory Structures" for the project, shows that there are fifty five structures proposed to be built on this site. Invenergy is stating that there will only be one principal structure on the property; the Administration/Control Building. If this were true, the principal use of this property would be for an administration building, and not for power plants. It is illogical for Invenergy to assume that two very preliminary plans for an administration building to be

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built in another state meet the requirements of "complete plans as to all structures, including, when applicable, underground construction, transmission facilities, cooling systems, pollution control systems and fuel storage facilities associated with the proposed location for the project."

Much of your letter was about the post-licensing procedure. No one is implying we are at that juncture. All we have for construction plans are two pages of very rudimentary plans for a floor plan for an administration building and four exterior elevations of the four sides in another state. To imply this is all that is required under the Act for "complete plans as to all structures" makes no sense.

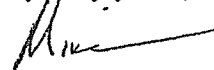
The recent revision to the two plans, the General Arrangement and the Site Arrangement re-numbers the sheets. The new document to describe the specific structures is a page titled "Principal and Accessory Structures" with the list of fifty five structures mentioned above. This revision adds nothing substantive.

Your letter dated June 9, 2017 informs us that a subdivision plan is presently being finalized and will be sent to us once it is completed. We await the plan and expect it to arrive in time to review prior to when the Building Inspector's supplemental advisory opinion must be rendered.

Finally, we do not believe it would be productive to meet with Invenergy when it is apparent that there has been no serious attempt to address the following:

- A detailed description of the proposed facility including its function and operating characteristics, and complete plans as to all structures, including, where applicable, underground construction, transmission facilities, cooling systems, pollution control systems and fuel storage facilities associated with the proposed location for the project.
- A survey of the proposed lot, meeting the standards of a subdivision plan to create a lot that the CREC is projected to be constructed on.
- Issues the Building Inspector addressed in his advisory opinion of September 2016 regarding the use variances required and potentially required, once he is capable of reviewing the actual lot for the CREC to determine what issues need to be addressed.
- A response from Invenergy regarding the Building Inspector's Zoning determinations.

Very truly yours,



Michael R. McElroy

cc: Joseph Raymond
Michael Wood
William Dimitri, Esq.

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