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Certified Mail RRR # 7015 3010 0001 0235 9005

U.S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA 01742

Attn: Public Affairs Office
cenaepa@usace.army.mil

Re: Invenergy Thermal Development LLC's Proposed Clear River Energy Center and Burrillville Interconnect Project – Wallum Lake Road in Burrillville, Rhode Island – Request for an Environmental Impact Statement

Dear USACE-NED Public Affairs Officer:

I am writing on behalf of my client, the Town of Burrillville, Rhode Island (“the Town”) to request that an Environmental Impact Statement (“EIS”) be performed concerning a pending Clean Water Act (“CWA”) Section 404 Wetlands Application to the US Army Corps of Engineers – New England District Regulatory Division (“ACOE”) under consideration for the Clear River Energy Center, proposed by Invenergy Thermal Development LLC (the “Applicant”) off of Wallum Lake Road in Burrillville, Rhode Island.

The Town and various stakeholders share several concerns related to the adverse impacts to the environment that the construction and operation of this plant would have should this application be approved without due regard to its environmental impacts. The relevant facts and issues of concern are as follows:

1. The proposed action will convert 67 acres of a larger 730-acre parcel of undeveloped existing forested land into industrial usage¹.

¹ Invenergy Thermal Development LLC's Application to Construct the Clear River Energy Center in Burrillville, RI dated October 28, 2015.

2. The proposed action would result in the inter-basin daily transport of significant quantities of water by 18-wheel commercial trucks to maintain appropriate quantities in a two million gallon storage tank.
3. The proposed industrial usage will involve the storage and usage of hazardous and toxic compounds in large quantities² topographically and hydrologically upgradient from an aquifer protection zone as well as residential properties. These hazardous and toxic compounds include ammonia, hydrogen, and fuel oil.
4. The proposed action would result in a New Major Source of toxic air emissions in the State of Rhode Island and Providence Plantations³ thereby requiring a Clean Air Act Title V Permit from the EPA.
5. The proposed action would result in the generation of a new source of stormwater and wastewater discharge⁴.
6. The proposed action would result in the generation of stormwater discharge to a Class B watercourse⁵ which has not been biologically evaluated downstream of the property of the proposed action.
7. The proposed action has generated substantial controversy.
8. The controversy is of both local AND of national concern as it involves (a) destruction or adverse impact to Waters of the United States, (b) adverse impact to the habitat of a species under review for listing under Section 7 of the Federal Endangered Species Act, and (c) a New Major Source of emission of greenhouse gases and toxic air pollutants.
9. Invenergy's consultants have shown that the proposed action poses the risk of direct adverse impacts via the loss or degradation of habitat to:
 - a. forty-two (42) species of state or regional conservation concern including – at a minimum - 17 RI-state listed species⁶;
 - b. five (5) species identified by the United States Fish & Wildlife Service as Bird species of Conservation Concern (BCC) for Bird Conservation Region (BCR) No. 30 (New England/Mid-Atlantic Coast)⁷;

² ibid

³ ibid

⁴ ibid

⁵ Stormwater Management Plan for the Clear River Energy Center Prepared for Invenergy Thermal Development LLC Prepared by HDR Engineering, Inc. March 2017

⁶ Invenergy Biological Inventory Report Clear River Energy Center Burrillville, Rhode Island Prepared by ESS Group, Inc. Aug. 2, 2017

⁷ <https://www.fws.gov/migratorybirds/pdf/grants/BirdsofConservationConcern2008.pdf>

- c. one (1) federal review turtle species; and
 - d. additional species of conservation concern not previously reported by the Applicant⁸ but for which there is supporting evidence of occurrence on or proximal to the site.
10. There is potential for Native American resources to occur on the property⁹ yet the Applicant may not have effectively conducted Native American consultation to address potential adverse impacts to these resources.
 11. The proposed action has excluded major stakeholders (e.g., The Town of Burrillville, The Burrillville Land Trust, adjacent property abutters, etc.) from planning meetings with the ACOE regarding the Section 404 Application.
 12. The proponents of the proposed action have not engaged in meaningful public participation regarding the Section 404 Application.
 13. A full alternatives analysis of prudent and feasible alternatives has not been conducted to date at the same level of detail as the Applicant's preferred alternative.
 14. The Rhode Island Department of Environmental Management suspects, and we concur, that the proposed action to build the Clear River Energy Center has been segmented from the proposed action of the Burrillville Interconnect Project (BIP) either intentionally or as a result of the state's EFSB docketing and review process.¹⁰ By way of the Applicant's own admission, one project necessitates the other¹¹.
 15. The property adjoining the site of the proposed action, the Burrillville Compressor Station, is an Algonquin Gas Transmission facility owned by Spectra Energy Partners, LP and operated by Enbridge Inc. It is a facility that is part of a geographically-diverse gas transmission system that includes facilities in New York, Connecticut, and Massachusetts. It was the subject of an EIS by the Federal Energy Regulatory Commission ("FERC") in 2015 as a result of its request to seek a Certificate of Public Convenience and Necessity ("Certificate") from FERC to construct, abandon, install, own, operate, and maintain expansions of its existing interstate natural gas pipeline systems in New York, Connecticut, Rhode Island, and Massachusetts.
 16. Precedent has been set by a previous EIS (Ocean State Power Project, Final Environmental Impact Statement, July 1988) that dropped the site of the proposed action for land use conversion to a power-generating facility due to (a) a poor quality,

⁸ Pre-filed Testimony of Anthony J. Zemba August 7, 2017

⁹ Phase I and II Archeological Survey Clear River Energy Center, Invenergy LLC, Burrillville, RI

¹⁰ RI EFSB Docket Nos. SB-2015-06 for the CREC and SB-2017-01 for the BIP

¹¹ Burrillville Interconnection Project RI EFSB Environmental Report, Prepared by Power Engineers February 2017

narrow, curving, 2-lane rural access road, (b) potential impact to wildlife and other natural resources, (c) the proximity and potential impact to recreational activities available at Pulaski State Park, and (d) the cost concerns of constructing a 10-mile long water pipeline for cooling water as well as a transmission line and a gas supply pipeline.¹²

17. The proponent has not conducted an indirect, secondary, and cumulative effects analysis of the proposed action in accordance with the National Environmental Policy Act of 1969 (“NEPA”).
18. The purpose and need of the project has been challenged by evidence submitted by expert witnesses during recent testimony at the Rhode Island Energy Facility Siting Board (“RI EFSB”) on behalf of the Town of Burrillville¹³.
19. The approval by permit of wetland impacts via the Section 404 process of the CWA would constitute a major federal action and is, therefore, subject to compliance with NEPA.
20. The proposed action does not qualify for a Department of Defense Categorical Exclusion¹⁴ under NEPA.
21. Strong evidence has been presented that demonstrates that adverse impacts to natural resources in both the upland and wetland environments are significant and cannot be mitigated by simply replacing the lost acreage of wetland cover types either on-site or off-site.

Therefore, it is the opinion of my client, the Town of Burrillville (the municipality in which the proposed action would occur), abutting land owners, and other local, state, and regional stakeholders that the proposed action should be assessed by the EIS process under NEPA in order to achieve NEPA compliance. Only an EIS is sufficient to address the adverse impacts of the proposed project as it does not qualify for a Categorical Exclusion, nor would an Environmental Assessment be appropriate due to the myriad of extraordinary circumstances identified herein. Furthermore, the RI EFSB process, which is not considering both the construction of the proposed CREC facility and the required 8.5-mile Burrillville Interconnect Project together as one project, constitutes improper segmentation of the proposed action.

Accordingly, the Town requests that the Army Corps of Engineers not review the Applicant’s Section 404 application to impact wetlands until NEPA compliance has been achieved. The Town requests that the Corps require the Applicant to prepare an EIS to address the anticipated adverse impacts that the CREC facility and associated Burrillville Interconnect Project would

¹² Citizen Testimony of William Eccleston to RI EFSB, February 16, 2019

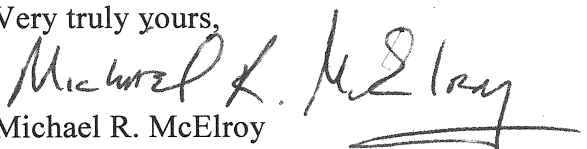
¹³ Testimony of Glenn Walker, RI EFSB.

¹⁴ Code of Federal Register Title 32 Subtitle A Chapter V Subchapter K Part 651 - ENVIRONMENTAL ANALYSIS OF ARMY ACTIONS (AR 200-2) Appendix B to Subpart D—Categorical Exclusions

have on the various resources of the natural and built environments and their respective natural, cultural, and socioeconomic resources/receptors.

The EIS should address all adverse affects imposed by the proposed Clear River Energy Center together with the Burrillville Interconnect Project. The EIS cultural resource assessment should (a) include appropriate Native American consultation, (b) provide meaningful public participation, (c) address socioeconomic concerns and Environmental Justice, and (d) address the indirect, secondary, and cumulative effects of the proposed action in sufficient detail in order to determine whether or not the project would cause unacceptable harm to the environment.

Very truly yours,


Michael R. McElroy

MRMc/tmg