

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD**

In re: Invenergy Thermal Development LLC : SB-2015-06
Application to Construct the Clear River :
Energy Center in Burrillville, R.I. :

**MOTION OF INVENERGY THERMAL DEVELOPMENT
LLC TO TREAT THE TOWN OF BURRILLVILLE EXHIBIT
NOS. 20, 21 AND 22 AS PUBLIC COMMENT AND NOT FULL EXHIBITS**

Pursuant to Rule 1.29(a) of the Rhode Island Energy Facility Siting Board Rules of Practice and Procedure and Rule 402 of the Rhode Island Rules of Evidence, Invenergy Thermal Development LLC and the Clear River Energy Center Project hereby requests that the Energy Facility Siting Board treat the Town of Burrillville’s Exhibit Nos. 20, 21 and 22 (the municipal resolutions) as public comment and not as full exhibits. The facts and argument upon which this Motion is based are set forth in the contemporaneously filed Memorandum of Law.

Respectfully submitted,
INVENERGY THERMAL DEVELOPMENT LLC
By its attorneys,

/s/ Alan M. Shoer
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Dated: October 10, 2017

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD**

In re: Invenergy Thermal Development LLC : SB-2015-06
Application to Construct the Clear River :
Energy Center in Burrillville, R.I. :

**MEMORANDUM OF LAW IN SUPPORT OF INVENERGY THERMAL
DEVELOPMENT LLC’S MOTION TO TREAT THE TOWN OF BURRILLVILLE
EXHIBIT NOS. 20, 21 AND 22 AS PUBLIC COMMENT AND NOT FULL EXHIBITS**

Now comes Invenergy Thermal Development LLC and the Clear River Energy Center Project (“Invenergy”) and hereby requests that the Energy Facility Siting Board (“EFSB” or “the Board”) treat the Town of Burrillville’s (“Town’s”) Exhibit Nos. 20, 21 and 22 (the municipal resolutions) as public comment and not as full exhibits. Because the municipal resolutions are irrelevant as to whether or not Invenergy can meet its burden under the Rhode Island Energy Facility Siting Act (“the Act”) and because the Town is not presenting the City and/or Town Council Presidents to be subject to cross examination regarding these resolutions, Invenergy respectfully objects to the resolutions being accepted as full exhibits and requests that the Board treat them as public comment.

Pursuant to the EFSB Rules of Practice and Procedure (“EFSB Rules” or “Board Rules”), “[i]n all proceedings wherein evidence is taken, irrelevant, immaterial or unduly repetitious evidence shall be excluded.” EFSB Rule 1.29(a). Likewise, Rule 402 of the Rhode Island Rules of Evidence states that “[e]vidence which is not relevant is not admissible.” R.I. R. Evid. 402. These municipal resolutions are not relevant to the Board’s determination as to whether or not Invenergy can meet its burden under the Act.

The Act provides that the Board shall grant a license if the applicant has shown the following: (1) construction of the proposed facility “is necessary to meet the needs of the state and/or region for energy of the type to be produced by the proposed facility”; (2) the proposed

facility is “cost-justified, and can be expected to produce energy at the lowest reasonable cost to the consumer . . .”; and (3) the proposed facility “will not cause unacceptable harm to the environment and will enhance the socio-economic fabric of the state.” R.I. Gen. Laws § 42-98-11(b). These municipal resolutions do not have any bearing on whether or not the Clear River Energy Center (“CREC”) is needed to meet the energy needs of the state, do not relate to whether or not CREC is cost-justified and do not establish whether or not CREC will cause an unacceptable harm to the environment and/or enhance the socio-economic fabric of the state. Also, none of these other cities or towns are parties to this proceeding, and it is the Board, not any of these cities or towns, that has jurisdiction over Invenergy’s EFSB Application.

Whether or not another City or Town supports (or opposes) CREC does not impact whether Invenergy will meet its burden under the Act. Because the Board Rules and Rhode Island Rules of Evidence require exclusion of evidence that is irrelevant and immaterial and because the municipal resolutions are irrelevant and immaterial to the Board’s determination under the Act, the Town’s Exhibit Nos. 20, 21 and 22 should not be accepted as full exhibits.

Additionally, the Town is attempting to introduce these additional municipal resolutions without submitting appropriate witnesses to introduce them and that can be cross examined as to the contents of these municipal resolutions.¹ Under Rhode Island law, if a party introduces a document, the opposing party has a corresponding right to cross-examine the author as to the contents of the document. *See Seddon v. Duke*, 884 A.2d 413, 415 (R.I. 2005)(stating that “because plaintiff introduced the medical report into evidence during her case in chief, defendant had a corresponding right to summon and cross-examine its author as to its contents”); *see also*

¹ Although the Town’s Pre-Filed Direct Testimony of John F. Pacheco III states that “[a] set of all resolutions opposing the project was previously filed with the EFSB by our legal counsel, and I adopt those resolutions by reference[.]” Mr. Pacheco is unable to speak for or on behalf of the cities and/or towns that passed these resolutions. *See* E. Pacheco’s Pre-Filed Direct Testimony, dated Aug. 7, 2017, at 1:19-22, 20:9-22:5.

R.I. Gen. Laws § 42-35-10 (“[a] party may conduct cross examinations required for a full and true disclosure of the facts”).

Here, the Town is attempting to introduce the resolutions, without providing Invenergy, the Board and/or any other party with an opportunity to cross examine an appropriate witness on the contents of these resolutions. Because Invenergy is being denied an opportunity to cross-examine an appropriate witness regarding these resolutions, the resolutions should not be treated as full exhibits.

Accordingly, Invenergy respectfully moves that the Town’s Exhibit Nos. 20, 21 and 22 be treated as public comment and not accepted as full exhibits.

Respectfully submitted,
INVENERGY THERMAL DEVELOPMENT LLC
By its attorneys,

/s/ Alan M. Shoer
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Dated: October 10, 2017

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2017, I delivered a true copy of the foregoing Motion and Memorandum of Law via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer