

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
ENERGY FACILITY SITING BOARD

**In Re: INVENERGY THERMAL  
DEVELOPMENT LLC'S APPLICATION  
TO CONSTRUCT THE CLEAR RIVER  
ENERGY CENTER POWER PLANT  
IN BURRILLVILLE, RHODE ISLAND**

Docket No.: SB-2015-06

**MOTION TO INTERVENE OF THE TOWN OF CHARLESTOWN**

Now comes the Town of Charlestown (“Charlestown”) and hereby respectfully moves to intervene in the above-entitled cause pursuant to Rule 1.10 of the Rules of Practice and Procedure for the Energy Facility Siting Board (“EFSB”) for the reasons set forth below.

**I. Introduction and Background**

Charlestown is a municipal corporation duly organized and incorporated pursuant to a home rule charter under the Rhode Island Constitution, with an office located at 4540 South County Trail, Charlestown, Rhode Island 02813. On October 29, 2015, Invenergy Thermal Development LLC (“Invenergy”) submitted an application to the EFSB to construct and operate the Clear River Energy Center, which is a combined-cycle electric generating facility (“the Power Plant”), fueled by natural gas, to be located on Wallum Lake Road (State Route 100) in the Town of Burrillville (“Application”). In the Application, Invenergy proposes to obtain water to cool the Power Plant’s power production systems from various sources. See Invenergy Revised Water Supply Plan, dated January 11, 2017 (hereinafter “Supply Plan”); Water Supply Plan – Supplement, dated September 28, 2017 (hereinafter “Supplement”). Of note to the Town, the Supplement, for the first time, identifies the wells of the Narragansett Indian Tribe (hereinafter, the “NIT”) as the source of a water supply source for the Power Plant. See Supplement, at 3; compare with Supply Plan. Following the U.S. Supreme Court decision, Carcieri v. Salazar, 555 U.S. 379 (2009), it was firmly established that the NIT and its lands were not “sovereign” in the same way other tribal lands held in trust by the Federal government are, but are subject to the civil and criminal laws of the State of Rhode Island. The NIT’s lands are geographically wholly within the jurisdictional boundaries of Town of Charlestown.

## **II Summary of Interest of Charlestown**

The water supply for the area comprising Charlestown, including the NIT, is through a variety of private, public and quasi-municipal wells using a common aquifer, known as the Lower Wood River Aquifer, located within the Pawcatuck River Basin. The various public documents available show a range of 15,000 gallons of water per day up to what the Supply Plan states at times “approximately 724,320 [gallons per day]. All water taken from the NIT property will be trucked in to the Power Plant. See Supply Plan at 9. The agreement between Invenergy and the NIT has been redacted from the public filing of the Supplement, so it is not possible to gauge the effect of the routine and winter demand on the water supply for the entire Town of Charlestown. All attempts to obtain an un-redacted version of the Supplement have been denied by the relevant parties. Charlestown’s interest, therefore, is the potential of a material, adverse impact on Charlestown’s water supply as a consequence of the operation of the proposed Power Plant. To this extent, the Town of Charlestown is an “affected community” under R.I.G.L. § 42-98-9.1. As such, a public hearing must be conducted in Charlestown, with notice at least 30 days prior, and prior to the final hearing on the Application. Id.

## **III. Relevant Rules and Procedure**

Rule 1.10 of the Rules of Practice and Procedure for the EFSB governs a party’s intervention in any proceeding before the EFSB:

- a.** Rule 1.10(a)(2) of the Rules of Practice and Procedure for the EFSB states that “[p]articipation in a proceeding as an intervenor may be initiated . . . [b]y order of the [EFSB] upon a motion to intervene.”
- b.** Rule 1.10(b) provides that subject to the provisions of the Rules of Practice and Procedure for the EFSB, any person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate may intervene in any proceeding before the EFSB. Such right or interest may be:
  1. A right conferred by statute.
  2. An interest which may be directly affected and which is not adequately represented by existing parties and as to which petitioners may be bound by the Board’s action in the proceeding.
  3. Any other interest of such nature that petitioner’s participation may be in the public interest.
- c.** Rule 1.10(c) provides that “[a] motion to intervene shall set out clearly and concisely facts from which the nature of the movant’s alleged right or interest can be determined, the grounds of the proposed intervention, and the position of the movant in the proceeding.”

- d. Rule 1.10(d)(1) states that “[a] motion to intervene or notice of intervention in a preliminary hearing or a final hearing shall be filed not less than twenty (20) days before the date on which the preliminary or final hearing begins.”

### III. Argument

#### Motion is Timely

The final hearing for the above-entitled cause will begin no later than October 31, 2017. See Notice of Final Hearing at 1, dated August 24, 2017. Likewise, the Notice of Final Hearing sets the deadline to file and serve motions for intervention in this docket is Friday, October 20, 2017. Id. Because there are more than twenty (20) days remaining before the date on which the final hearing will most probably be scheduled to begin and this motion is filed before October 20, 2017, the within motion is timely. See Rule 1.10 (d)(1) of the Rules of Practice and Procedure for the EFSB. In addition, the Supplement, identifying the NIT’s wells as the source of an additional backup or contingent water supply for the Power Plant *for the first time*, was not filed until September 28, 2017 with no notice to Charlestown. The applicant Invenergy never notified Charlestown as required § 42-98-9.1 and the Town of Charlestown only learned of its interest as an affected community by accident when local news media obtained the Invenergy agreement with the NIT in its highly redacted form on or about October 4, 2017. The Town of Charlestown held its Town Council meeting as soon as practicable on October 10, 2017 to authorize this motion to intervene. As such, this is literally the soonest any action could be taken by the Town of Charlestown. See Charlestown Town Council Resolution dated October 10, 2017, attached hereto as Exhibit A.

#### Interests Directly Affected and as to Which Charlestown Will be Bound by EFSB Decision

Invenergy proposes to use water from the Town of Charlestown’s EPA designated, sole-source aquifer to supply cooling water to the Power Plant. Consequently, Charlestown is concerned that the proposed use of the NIT’s well(s) may cause a large draw on the Lower Wood River Aquifer, part of the larger Pawcatuck River Sole Source Aquifer, which may exacerbate current water supply issues within Charlestown. Such a scenario would obviously materially impair the needs of residents, businesses, and institutions in Charlestown for water for both public consumption and fire suppression. Without knowing the full extent of the agreement between Invenergy and NIT, Charlestown cannot gauge the severity of the effect of the agreement on the citizens of the town. For these reasons, Charlestown’s interest is “directly affected” by the proposed construction and operation of the Power Plant, and Charlestown and its citizens will be bound by any decision rendered by the EFSB. See Rule 1.10(b)(2) of the Rules of Practice and Procedure for the EFSB.

#### Interests Not Adequately Represented

For the reasons discussed above, Charlestown’s interests are not “adequately represented” by existing parties. See Rule 1.10(b)(2) of the Rules of Practice and Procedure for the EFSB. Charlestown and the NIT share a common aquifer. No other party in this docket represents or purports to represent these unique and substantial interests of Charlestown and the

Lower Wood River Aquifer, which serves Charlestown's entire geographic area and population.

#### Intervention in Public Interest

For the reasons discussed in above, the intervention of Charlestown is in the "public interest." See Rule 1.10(b)(3) of the Rules of Practice and Procedure for the EFSB. The Lower Wood River Aquifer is an EPA designated sole source aquifer, and as such, the supplier of water for both public drinking and firefighting purposes serving the majority of the Town of Charlestown. Consequently, the Application directly impacts the public health, safety and welfare of residents of the Town of Charlestown.

#### Charlestown's Position

Accordingly, pursuant to Rule 1.10(c) of the Rules of Practice and Procedure for the EFSB, the position of Charlestown with respect to the Application is as follows: Charlestown would oppose approval of the Application to the extent there is a determination of a probable, material adverse impact on Charlestown's water supply, unless approval is conditioned upon remediation acceptable to Charlestown. Likewise, Charlestown would object to Invenergy's pending motion for a protective treatment concerning the Supplement dated September 27, 2017 (hereinafter "Protective Treatment Motion"), as Charlestown must be able to view the extent of the proposed usage on the Lower Wood River Aquifer. In the alternative to denying the Protective Treatment Motion, Charlestown must be granted intervenor status so as to gain access to an un-redacted version of the Supplement through a confidentiality agreement with the relevant parties. Finally, as an affected community under § 42-98-9.1, a public hearing on the matter must be held in Charlestown prior to the final hearing currently set to begin on October 31, 2017.

#### **IV. Contact Information**

If the within Motion for Intervention is granted, Charlestown requests that service of any correspondence or pleadings in connection with this proceeding be sent to the attorney, email and address set forth below.

#### **V. Conclusion**

**WHEREFORE**, for all the reasons set forth above, Charlestown respectfully prays that its Motion to Intervene be granted and that it be permitted to intervene in the above-captioned docket accordingly.

Respectfully submitted,  
TOWN OF CHARLESTOWN  
By and Through Its Attorney,

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Peter D. Ruggiero (#5733)  
Town Solicitor

/s/ David R. Petrarca, Jr.  
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Dated: October 11, 2017

**CERTIFICATION**

I, the undersigned, do hereby certify that I did forward a copy of the within Motion to Intervene via e-mail to all on the following service list on the 11<sup>th</sup> day of October, 2017.

/s/ David R. Petrarca, Jr.

**SB-2015-06 Invenergy CREC Service List as of 10/11/2017**

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# **Exhibit A**

**TOWN OF CHARLESTOWN, RI**  
**RESOLUTION OPPOSING THE WATER SUPPLY PLAN SUPPLEMENT**  
**FOR THE CLEAR RIVER ENERGY CENTER POWER PLANT IN BURRILLVILLE, RI**

WHEREAS, on October 29, 2015 Invenergy Thermal Development LLC (“Invenergy”) filed an application to construct the Clear River Energy Center Power Plant in Burrillville, RI with the Rhode Island Energy Facility Siting Board (“EFSB”); and

WHEREAS, in the months since the filing of that application, the Town of Burrillville has conducted extensive study of the application making use of credentialed professionals, including studies of noise, water, traffic and air quality, among others; and

WHEREAS, after considering expert testimony and conducting thorough public hearings, the Burrillville Planning Board and Zoning Board of Review have both advised the EFSB that Burrillville, RI is not a suitable site for the Clear River Energy Center Power Plant; and

WHEREAS, since filing their application with the EFSB, Invenergy has had difficulty in securing a reliable water supply for their proposed power plant; and

WHEREAS, the Town of Johnston has authorized the sale of water which they purchase from the Providence Water Supply Board (“PWSB”) to Invenergy for their water supply needs at the proposed power plant; and,

WHEREAS, the Town of Burrillville and the Conservation Law Foundation have filed suit in the Providence Superior Court seeking to enjoin and otherwise prevent the sale of water from Johnston to Invenergy; and

WHEREAS, since the initiation of the above-referenced litigation Invenergy has filed a Water Supply Plan Supplement which indicates, in relevant part, that additional water shall be made available through a long-term reserve capacity agreement with an undisclosed provider in a document filed with the EFSB, dated September 28, 2017; and

WHEREAS, the Town of Charlestown, after due inquiry, has reason to believe that the undisclosed water supply source is located on the Narragansett Indian Tribe (“NIT”) Settlement Land, located in the Town of Charlestown; and,

WHEREAS, the groundwater aquifer located on the NIT property is part of the larger Pawcatuck River EPA-designated sole source aquifer which supplies a large portion of the potable water needs to Charlestown’s residents, businesses, and institutions; and

WHEREAS, the water obtained from the local supply is proposed to be transferred by truck to the proposed plant in Burrillville through the Town of Charlestown; and

WHEREAS, neither Invenergy nor the NIT have provided any information to the Town of Charlestown on the impacts and or consequences of using the local groundwater to supply the Invenergy power plant’s water needs or the impact and frequency of truck traffic on local travel.

NOW, THEREFORE, BE IT RESOLVED that we, the Town Council of the Town of Charlestown, RI, without an un-redacted Water Supply Plan Supplement, do hereby oppose the use of locally supplied groundwater for the Clear River Energy Center Power Plant in Burrillville, RI.

BE IT FURTHER RESOLVED that this resolution of the Town Council of the Town of Charlestown be submitted to the Rhode Island Energy Facility Siting Board for consideration during their hearings on Invenergy Thermal Development LLC’s application to construct the Clear River Energy Center Power Plant in Burrillville, RI, to the Town of Burrillville, to Invenergy Thermal Development LLC, and to the Narragansett Indian Tribe; and that the Town Solicitor take necessary action to obtain the Water Supply Plan Supplement.

By resolution of the Charlestown Town Council  
At a meeting duly held on October 10, 2017.

*Amy Rose Weinreich, CMC*

Attested to by:

Amy Rose Weinreich, CMC Town Clerk

