

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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BROCKTON POWER LLC, and )  
 BROCKTON POWER COMPANY LLC, )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 CITY OF BROCKTON, PLANNING BOARD )  
 OF THE CITY OF BROCKTON, BROCKTON )  
 CITY COUNCIL, LINDA M. BALZOTTI, )  
 THOMAS BROPHY, MICHELLE DUBOIS, )  
 JASS STEWART, JAMES HARRINGTON, )  
 WAYNE MCALLISTER & SUSAN NICASTRO, )  
 Defendants. )

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C.A. NO. 1:12-cv-11047-JLT

**STATUS REPORT OF DEFENDANT, BROCKTON CITY COUNCIL**

As required by the Court’s electronic order of April 1, 2015, the defendant, Brockton City Council (“City Council”), hereby submits this brief Status Report to address the issue of whether City Council approval of the Settlement Agreement entered into between the plaintiff, Brockton Power Company (“BPC”), and the co-defendant, City of Brockton, is required:

1. During the hearing held in this matter on March 24, 2015, the City Council opposed the Joint Motion to Stay on the grounds that the Settlement Agreement entered into between “BPC” and the City of Brockton (through Mayor Bill Carpenter) was based on an unlawful sale of effluent from the City’s wastewater treatment plant. Specifically, under an Ordinance adopted by the City Council on November 13, 2007, City Council approval was required for the sale of any effluent from the treatment plant. Thus, in conditioning the Settlement Agreement on the sale of up to 2,300,000 gallons of effluent per day to BPC without first obtaining City Council approval, the Mayor unlawfully circumvented a valid City ordinance.

2. In their client's opposition to the Motion to Stay, counsel for the City Council requested leave to file a motion for partial judgment on the pleadings to frame the issue regarding the validity of the effluent Ordinance for the Court. Despite the City Council's opposition, the Court nonetheless granted the Motion to Stay, but clarified that the stay did not preclude the City Council from filing a suitable motion on the Ordinance issue. If such a motion was filed, the Court stated that it was prepared to look at the issue outside the scope of the stay.
3. On June 23, 2015, the City Council filed a Partial Motion for Judgment on the Pleadings as to Count VI of plaintiffs' First Amended Complaint (Document No. 147).
4. In that Motion, the City Council asked the Court to enter an Order declaring the effluent Ordinance valid and declaring further that BPC and the City of Brockton could not enter into the Settlement Agreement without first obtaining approval of the sale of effluent from the City Council.
5. On that same day, the Court denied the Partial Motion for Judgment on the Pleadings without prejudice on the grounds that the case is presently stayed. The Court further ruled that "counsel may renew the motion, if appropriate, if and when the stay is lifted."

The City Council hereby requests that the Court schedule an immediate hearing on the Partial Motion for Judgment on the Pleadings as to Count VI. The issues raised in the motion – the validity and enforceability of the effluent Ordinance – go to the very heart of the Settlement Agreement entered into between BPC and Mayor Carpenter. Therefore, it is important to all

parties involved, *including the plaintiffs*, that the issue raised in the City Council's motion be resolved sooner rather than later.

The Defendant,  
BROCKTON CITY COUNCIL,

By its Attorneys,  
**PIERCE, DAVIS & PERRITANO, LLP**

/s/ John J. Davis

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Dated: September 24, 2015

**CERTIFICATE OF SERVICE**

I, John J. Davis, hereby certify that the foregoing, filed through the Electronic Case Filing System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that a paper copy shall be served upon those indicated as non-registered participants on September 24, 2015.

/s/ John J. Davis  
John J. Davis, Esq