

3-28-16

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT DEPARTMENT

\*\*\*\*\*

BROCKTON CITY COUNCIL and \*  
 TIMOTHY CRUISE, THOMAS MONAHAN, \*  
 DENNIS EANIRI, PAUL STUDENSKI, \*  
 ANNE BEAUREGARD, JOHN LALLY, \*  
 SHIRLEY ASACK, WINTHROP FARWELL, JR., \*  
 ROBERT SULLIVAN, SHAYNAH BARNES, \*  
 & MOISES RODRIGUES \*  
 in their representative capacities, \*  
 PLAINTIFFS, \*

v. \*

BILL CARPENTER, in his representative \*  
 Capacity as the Mayor for the City of Brockton, \*  
 DEFENDANT \*

\*\*\*\*\*

FILED  
 COMMONWEALTH OF MASSACHUSETTS  
 SUPERIOR COURT DEPT. OF THE TRIAL COURT  
 PLYMOUTH COUNTY

MAR 28 2016

*[Signature]*  
 Clerk of Court

C.A. No.: 1683-CV-172

ANSWER OF THE DEFENDANT

PARTIES

1. The Defendant admits the allegations in paragraph 1 of Plaintiffs' Complaint.
2. The Defendant admits the allegations in paragraph 2 of Plaintiffs' Complaint.
3. The Defendant admits the allegations in paragraph 3 of Plaintiffs' Complaint.

JURISDICTION

4. The Defendant neither admits nor denies that allegations contained in paragraph 4 stating said allegations call for a legal conclusion requiring no answer.

STATEMENT OF FACTS

5. The Defendant admits the allegations in paragraph 5 of Plaintiffs' Complaint except to the extent that the allegations assert that the ordinance is "effective" which calls for a legal conclusion requiring no answer.

6. The Defendant admits the allegations in paragraph 6 of Plaintiffs' Complaint.
7. The Defendant admits the allegations in paragraph 7 of Plaintiffs' Complaint.
8. The Defendant admits the allegations in paragraph 8 of Plaintiffs' Complaint.
9. The Defendant admits the allegations in paragraph 9 of Plaintiffs' Complaint.
10. The Defendant admits the allegations in paragraph 10 of Plaintiffs' Complaint.
11. The Defendant denies the allegations in paragraph 11 of Plaintiffs' Complaint, affirmatively asserting Council approved the sale to the highest bidder, the predecessor in interest to Brockton Power, on February 14, 2000, which approval was signed by the then-Mayor John T. Yunits on February 17, 2000, making it effective. See Exhibits A-C.
12. The Defendant denies the allegations in paragraph 12 of Plaintiffs' Complaint.
13. The Defendant admits the allegations in paragraph 13 of Plaintiffs' Complaint.
14. The Defendant denies the allegations in paragraph 14 of Plaintiffs' Complaint.

#### COUNT I

15. The Defendant incorporates by reference the answers set forth in paragraphs 1-14 as if fully set forth herein.
16. The Defendant neither admits nor denies that allegations contained in paragraph 15, stating said allegations call for a legal conclusion requiring no answer.
17. The Defendant neither admits nor denies that allegations contained in paragraph 16, stating said allegations call for a legal conclusion requiring no answer.

**WHEREFORE**, the Defendants respectfully request that this Honorable Court:

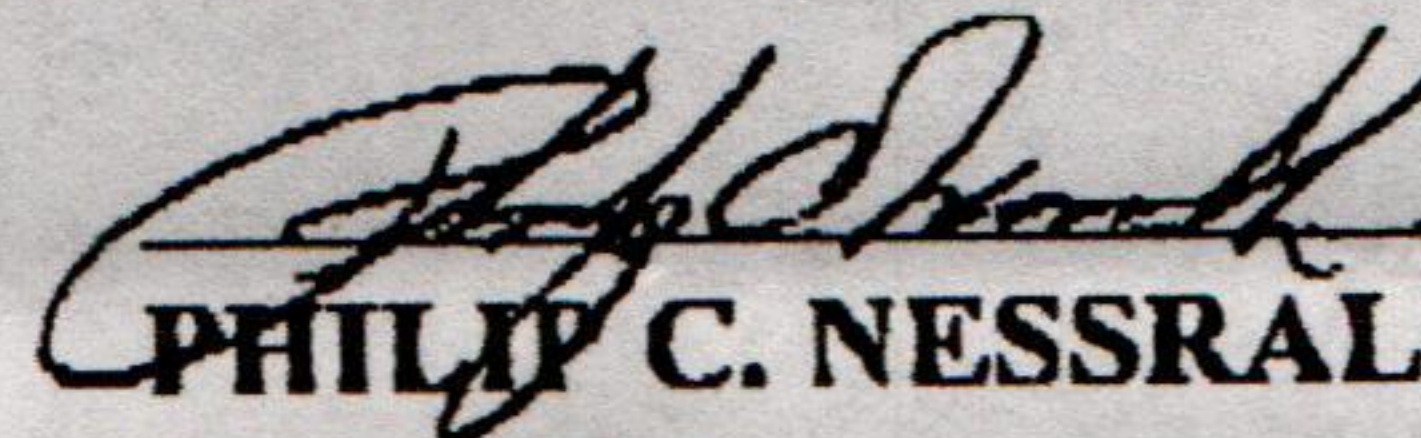
1. dismiss the Plaintiffs' Complaint with prejudice and without costs; and
2. award any other relief it deems fair and just.

#### AFFIRMATIVE DEFENSES

1. Pursuant to Rule 12(b)6 of the Massachusetts Rules of Civil Procedure, the Plaintiffs have failed to state a claim upon which relief can be granted.
2. Pursuant to Rule 12(b)1 of the Massachusetts Rules of Civil Procedure, the Plaintiffs' claim must be dismissed as this Honorable Court lacks subject matter jurisdiction.
3. Pursuant to Rule 12(b)9 of the Massachusetts Rules of Civil Procedure, the Plaintiffs are barred from filing the instant Complaint as a prior action is pending, although disposed as against the Council, between the two parties in the Commonwealth. See Brockton

Power LLC, and Brockton Power Company LLC v. City of Brockton et al., C.A. No. 1:12-cv-11047-JLT.

4. This Complaint is barred as Plaintiffs lack standing to bring an action against the Defendant.
5. The Plaintiffs are barred by the doctrine of estoppel.
6. The Plaintiffs rely on an illegality, namely an illegal ordinance to support their claim.
7. This Complaint is barred by the doctrine of Res Judicata.



**PHILIP C. NESSRALLA, JR.**

City Solicitor

BBO# 369380

City Hall - 45 School Street

Brockton, MA 02301

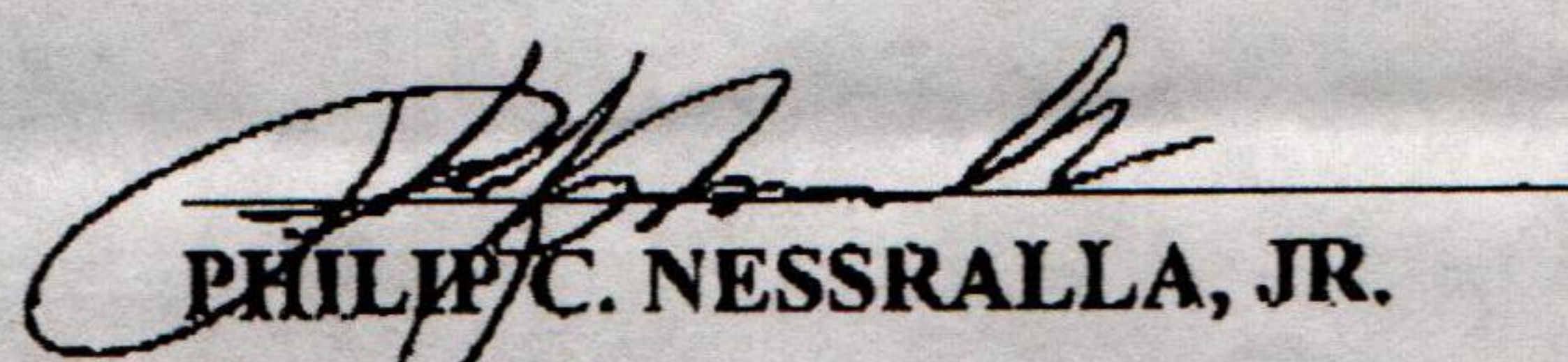
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**CERTIFICATE OF SERVICE**

I, **PHILIP C. NESSRALLA, JR.**, City Solicitor for the City of Brockton, certify that I have this date forwarded a copy of the foregoing document to counsel for all parties, postage prepaid, first-class mail, and facsimile transmission, to:

**Mark C. Gildea, Esq.  
CLARK, BALBONI & GILDEA  
72 Main Street, Bridgewater, MA 02324**

  
**PHILIP C. NESSRALLA, JR.**  
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