

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Civil Action No. 12-11047-JLT

**BROCKTON POWER, LLC and
BROCKTON POWER COMPANY, LLC,
Plaintiffs,**

v.

**CITY OF BROCKTON, MA, PLANNING BOARD
OF THE CITY OF BROCKTON, BROCKTON
CITY COUNCIL; MAYOR LINDA BALZOTTI,
CITY COUNCILOR THOMAS BROPHY, CITY
COUNCILOR MICHELLE DEBOIS, CITY
COUNCILOR JASS STEWART, FORMER
MAYOR JAMES HARRINGTON, PLANNING
BOARD CHAIRPERSON WAYNE MCALLISTER,
And PLANNING BOARD MEMBER SUSAN
NICASTRO, Individually and As Current and
Former Officials of the CITY OF BROCKTON
Defendant .**

**ANSWER AND JURY CLAIM OF THE DEFENDANT
CITY OF BROCKTON**

The defendant, City of Brockton, hereby responds to the allegations set forth in the Plaintiff's Complaint as follows:

The defendant neither admits nor denies the allegations contained in the first twelve unnumbered paragraphs of the Complaint as same are a statement of introduction. To the extent factual allegations are asserted therein, the defendant denies same.

Further answering, the defendant states that the named "Planning Board of the City of Brockton" is not a distinct legal entity for the purpose of suit, but is rather a sub-agency of the City of Brockton. As such, the within answer for the defendant City of Brockton addresses and responds to all alleged claims purportedly asserted against the named "Planning Board."

JURISDICTION AND VENUE

1. The defendant neither admits nor denies the allegations contained in the paragraph 1 as it is a statement of jurisdiction. To the extent factual allegations are asserted therein, the defendant denies same.
2. The defendant neither admits nor denies the allegations contained in the paragraph 2 as it is a statement of venue. To the extent factual allegations are asserted therein, the defendant denies same.
3. The defendant has insufficient information to either admit or deny the allegations contained in paragraph 3.
4. The defendant has insufficient information to either admit or deny the allegations contained in paragraph 4.
5. The defendant admits the allegations contained in paragraph 5.
6. The defendant admits that the Planning Board is a duly constituted board of the City of Brockton. Further answering, the defendant states that the Planning Board, as a sub-agency of the City, is not a distinct legal entity for purposes of this suit.
7. The defendant neither admits nor denies the allegations contained in paragraph 7 as same are not directed to it. To the extent factual allegations are asserted against it, the defendant admits same.
8. The defendant neither admits nor denies the allegations contained in paragraph 8 as same are not directed to it. To the extent factual allegations are asserted against it, the defendant admits that Linda M. Balzotti is the Mayor of Brockton and that she formerly served as a member of the City Council. All remaining allegations are denied.
9. The defendant neither admits nor denies the allegations contained in paragraph 9 as same are not directed to it. To the extent factual allegations are asserted against it, the defendant admits that Thomas Brophy is a member of the City Council. All remaining allegations are denied.
10. The defendant neither admits nor denies the allegations contained in paragraph 10 as same are not directed to it. To the extent factual allegations are asserted against it, the defendant admits that Michelle DuBois is a member of the City Council. All remaining allegations are denied.

11. The defendant neither admits nor denies the allegations contained in paragraph 11 as same are not directed to it. To the extent factual allegations are asserted against it, the defendant admits that Jass Stewart is a member of the City Council. All remaining allegations are denied.
12. The defendant neither admits nor denies the allegations contained in paragraph 12 as same are not directed to it. To the extent factual allegations are asserted against it, the defendant admits that James Harrington is a former Mayor of the City. All remaining allegations are denied.
13. The defendant neither admits nor denies the allegations contained in paragraph 13 as same are not directed to it. To the extent factual allegations are asserted against it, the defendant admits that Wayne McAllister was Chairman of the Planning Board at times relevant to the Complaint. All remaining allegations are denied.
14. The defendant neither admits nor denies the allegations contained in paragraph 14 as same are not directed to it. To the extent factual allegations are asserted against it, the defendant admits that Susan Nicastro is a member of the Planning Board. All remaining allegations are denied..
15. The defendant neither admits nor denies paragraph 15 as said paragraph contains no factual allegations. To the extent factual allegations are asserted against it, the defendant denies same.

FACTUAL ALLEGATIONS

16. The defendant has insufficient information to either admit or deny the allegations contained in paragraph 16.
17. The defendant admits that the Generator Site is located in the I-3 heavy industrial zone, but denies the remaining allegations contained in paragraph 17.
18. The defendant denies the allegations contained in paragraph 18.
19. The defendant denies the allegations contained in paragraph 19.
20. The defendant denies the allegations contained in paragraph 20.
21. The defendant denies the allegations contained in paragraph 21.

22. The defendant neither admits nor denies the allegations set forth in paragraph 22 as same are not directed to it; to the extent factual allegations are asserted against it, the defendant denies same.
23. The defendant denies the allegations contained in paragraph 23.
24. The defendant denies the allegations contained in paragraph 24.
25. The defendant denies the allegations contained in paragraph 25.
26. The defendant denies the allegations contained in paragraph 26.
27. The defendant denies the allegations contained in paragraph 27.
28. The defendant denies the allegations contained in paragraph 28.
29. The defendant denies the allegations contained in paragraph 29.
30. The defendant denies the allegations contained in paragraph 30.
31. The defendant denies the allegations contained in paragraph 31.
32. The defendant denies the allegations contained in paragraph 32.
33. The defendant denies the allegations contained in paragraph 33.
34. The defendant denies the allegations contained in paragraph 34.
35. The defendant denies the allegations contained in paragraph 35.
36. The defendant denies the allegations contained in paragraph 36.
37. The defendant denies the allegations contained in paragraph 37.
38. The defendant denies the allegations contained in paragraph 38.
39. The defendant denies the allegations contained in paragraph 39.
40. The defendant denies the allegations contained in paragraph 40.
41. The defendant denies the allegations contained in paragraph 41.
42. The defendant denies the allegations contained in paragraph 42.
43. The defendant denies the allegations contained in paragraph 43.
44. The defendant denies the allegations contained in paragraph 44.
45. The defendant asserts that the terms and conditions of the Resolution speak for themselves. To the extent factual allegations inconsistent with the terms of the Resolution are asserted against it, the defendant denies same.
46. The defendant denies the allegations contained in paragraph 46.
47. The defendant denies the allegations contained in paragraph 47.
48. The defendant denies the allegations contained in paragraph 48.

49. The defendant denies the allegations contained in paragraph 49.
50. The defendant denies the allegations contained in paragraph 50.
51. The defendant denies the allegations contained in paragraph 51.
52. The defendant denies the allegations contained in paragraph 52.
53. The defendant admits the allegations contained in paragraph 53.
54. The defendant denies the allegations contained in paragraph 54.
55. The defendant denies the allegations contained in paragraph 55.
56. The defendant denies the allegations contained in paragraph 56.
57. The defendant denies the allegations contained in paragraph 57.
58. The defendant denies the allegations contained in paragraph 58.
59. The defendant denies the allegations contained in paragraph 59.
60. The defendant denies the allegations contained in paragraph 60.
61. The defendant denies the allegations contained in paragraph 61.
62. The defendant denies the allegations contained in paragraph 62.
63. The defendant denies the allegations contained in paragraph 63.
64. The defendant denies the allegations contained in paragraph 64.
65. The defendant denies the allegations contained in paragraph 65.
66. The defendant denies the allegations contained in paragraph 66.
67. The defendant denies the allegations contained in paragraph 67.
68. The defendant denies the allegations contained in paragraph 68.
69. The defendant denies the allegations contained in paragraph 69.
70. The defendant denies the allegations contained in paragraph 70.
71. The defendant denies the allegations contained in paragraph 71.
72. The defendant denies the allegations contained in paragraph 72.
73. The defendant denies the allegations contained in paragraph 73.
74. The defendant asserts that the referenced Order speaks for itself; to the extent the allegations of paragraph 74 are inconsistent with said Order, the defendant denies same.
75. The defendant denies the allegations contained in paragraph 75.
76. The defendant denies the allegations contained in paragraph 76.
77. The defendant denies the allegations contained in paragraph 77.

78. The defendant denies the allegations contained in paragraph 78.
79. The defendant denies the allegations contained in paragraph 79.
80. The defendant denies the allegations contained in paragraph 80.
81. The defendant denies the allegations contained in paragraph 81.
82. The defendant denies the allegations contained in paragraph 82.
83. The defendant denies the allegations contained in paragraph 83.
84. The defendant denies the allegations contained in paragraph 84.
85. The defendant denies the allegations contained in paragraph 85.
86. The defendant denies the allegations contained in paragraph 86.
87. The defendant denies the allegations contained in paragraph 87.
88. The defendant denies the allegations contained in paragraph 88.
89. The defendant denies the allegations contained in paragraph 89.
90. The defendant denies the allegations contained in paragraph 90.
91. The defendant denies the allegations contained in paragraph 91.
92. The defendant denies the allegations contained in paragraph 92.
93. The defendant denies the allegations contained in paragraph 93.
94. The defendant denies the allegations contained in paragraph 94.
95. The defendant denies the allegations contained in paragraph 95.
96. The defendant denies the allegations contained in paragraph 96.
97. The defendant denies the allegations contained in paragraph 97.
98. The defendant denies the allegations contained in paragraph 98.
99. The defendant denies the allegations contained in paragraph 99.
100. The allegations set forth in paragraph 100 assert a conclusion of law to which no response is required herein. To the extent a response is deemed necessary, said allegations are denied.
101. The defendant denies the allegations contained in paragraph 101.
102. The defendant denies the allegations contained in paragraph 102.
103. The defendant denies the allegations contained in paragraph 103.
104. The defendant denies the allegations contained in paragraph 104.
105. The defendant denies the allegations contained in paragraph 105.
106. The defendant denies the allegations contained in paragraph 106.

107. The defendant denies the allegations contained in paragraph 107.
108. The defendant denies the allegations contained in paragraph 108.
109. The defendant denies the allegations contained in paragraph 109.
110. The defendant denies the allegations contained in paragraph 110.
111. The defendant denies the allegations contained in paragraph 111.
112. The defendant denies the allegations contained in paragraph 112.
113. The allegations set forth in paragraph 113 assert a conclusion of law to which no response is required herein. To the extent a response is deemed necessary, said allegations are denied.
114. The defendant denies the allegations contained in paragraph 114.
115. The defendant denies the allegations contained in paragraph 115.
116. The defendant denies the allegations contained in paragraph 116.
117. The defendant denies the allegations contained in paragraph 117.
118. The defendant denies the allegations contained in paragraph 118.
119. The allegations set forth in paragraph 119 assert a conclusion of law to which no response is required herein. To the extent a response is deemed necessary, said allegations are denied.
120. The defendant denies the allegations contained in paragraph 120.
121. The defendant denies the allegations contained in paragraph 121.
122. The defendant denies the allegations contained in paragraph 122.
123. The defendant denies the allegations contained in paragraph 123.
124. The defendant denies the allegations contained in paragraph 124.
125. The defendant denies the allegations contained in paragraph 125.
126. The defendant denies the allegations contained in paragraph 126.
127. The defendant denies the allegations contained in paragraph 127.
128. The defendant denies the allegations contained in paragraph 128.
129. The defendant denies the allegations contained in paragraph 129.
130. The defendant denies the allegations contained in paragraph 130.
131. The defendant denies the allegations contained in paragraph 131.
132. The defendant denies the allegations contained in paragraph 132.
133. The defendant denies the allegations contained in paragraph 133.

134. The defendant denies the allegations contained in paragraph 134.
135. The defendant denies the allegations contained in paragraph 135.
136. The defendant denies the allegations contained in paragraph 136.
137. The defendant denies the allegations contained in paragraph 137.
138. The defendant denies the allegations contained in paragraph 138.
139. The defendant denies the allegations contained in paragraph 139.
140. The defendant denies the allegations contained in paragraph 140.
141. The defendant denies the allegations contained in paragraph 141.
142. The defendant asserts that the terms of the Building Inspector's denial letter speak for themselves. To the extent the allegations set forth in paragraph 142 are inconsistent therewith, said allegations are denied.
143. The defendant admits the allegations contained in paragraph 143.
144. The defendant admits the allegations contained in paragraph 144; further answering, the November 23, 2011 Order of the Land Court speaks for itself.
145. The defendant denies the allegations contained in paragraph 145
146. The defendant denies the allegations contained in paragraph 146; further answering, the August 19, 2011 Order of the Land Court speaks for itself.
147. The defendant denies the allegations contained in paragraph 147.
148. The defendant admits that the Department of Environmental Protection issued an SOC relative to the Project, which, upon appeal by the City, resulted in the issuance of a Final Order of Conditions. The terms of the SOC speak for themselves. The defendant denies the remaining allegations contained in paragraph 148.
149. The defendant admits that it appealed the Final Order to the Superior Court. All remaining allegations contained in paragraph 149 are denied.
150. The defendant admits that the Superior Court issued an Order on February 4, 2012. The terms of said Order speak for themselves. All remaining or inconsistent allegations contained in paragraph 150 are denied.
151. The defendant admits the allegations contained in paragraph 151.
152. The defendant admits the allegations contained in paragraph 152.
153. The defendant denies the allegations contained in paragraph 153.

154. The defendant denies the allegations contained in paragraph 154.
155. The defendant denies the allegations contained in paragraph 155.
156. The defendant denies the allegations contained in paragraph 156.
157. The defendant denies the allegations contained in paragraph 157.
158. The defendant denies the allegations contained in paragraph 158.
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174. The defendant denies the allegations contained in paragraph 174.
175. The defendant denies the allegations contained in paragraph 175.
176. The defendant denies the allegations contained in paragraph 176.
177. The defendant denies the allegations contained in paragraph 177.
178. The defendant denies the allegations contained in paragraph 178.
179. The defendant denies the allegations contained in paragraph 179.
180. The defendant denies the allegations contained in paragraph 180.
181. The defendant denies the allegations contained in paragraph 181.
182. The defendant denies the allegations contained in paragraph 182.

COUNT I

183. The defendant reasserts its responses to paragraphs 1-182 as if specifically restated herein.
184. The defendant denies the allegations contained in paragraph 184.
185. The defendant denies the allegations contained in paragraph 185.
186. The defendant denies the allegations contained in paragraph 186.
187. The defendant denies the allegations contained in paragraph 187.
188. The defendant denies the allegations contained in paragraph 188.
189. The defendant denies the allegations contained in paragraph 189.
190. The defendant denies the allegations contained in paragraph 190.

COUNT II

191. The defendant reasserts its responses to paragraphs 1-190 as if specifically restated herein.
192. The defendant denies the allegations contained in paragraph 192.
193. The defendant denies the allegations contained in paragraph 193.
194. The defendant denies the allegations contained in paragraph 194.
195. The defendant denies the allegations contained in paragraph 195.
196. The defendant denies the allegations contained in paragraph 196.
197. The defendant denies the allegations contained in paragraph 197.

COUNT III

198. The defendant reasserts its responses to paragraphs 1-197 as if specifically restated herein.
199. The defendant denies the allegations contained in paragraph 199.
200. The defendant denies the allegations contained in paragraph 200.
201. The defendant denies the allegations contained in paragraph 201.
202. The defendant denies the allegations contained in paragraph 202.
203. The defendant denies the allegations contained in paragraph 203.

COUNT IV

204. The defendant reasserts its responses to paragraphs 1-203 as if specifically restated herein.
205. The defendant denies the allegations contained in paragraph 205.

- 206. The defendant denies the allegations contained in paragraph 206.
- 207. The defendant denies the allegations contained in paragraph 207.
- 208. The defendant denies the allegations contained in paragraph 208.
- 209. The defendant denies the allegations contained in paragraph 209.
- 210. The defendant denies the allegations contained in paragraph 210.
- 211. The defendant denies the allegations contained in paragraph 211.

COUNT V

- 212. The defendant reasserts its responses to paragraphs 1-211 as if specifically restated herein.
- 213. The defendant denies the allegations contained in paragraph 213.
- 214. The defendant denies the allegations contained in paragraph 214.
- 215. The defendant denies the allegations contained in paragraph 215.

COUNT VI

- 216. The defendant reasserts its responses to paragraphs 1-215 as if specifically restated herein.
- 217. The defendant denies the allegations contained in paragraph 217.
- 218. The defendant denies the allegations contained in paragraph 218.
- 219. The defendant denies the allegations contained in paragraph 219.
- 220. The defendant denies the allegations contained in paragraph 220.
- 221. The defendant denies the allegations contained in paragraph 221.

COUNT VII

- 222. The defendant reasserts its responses to paragraphs 1-221 as if specifically restated herein.
- 223. The defendant denies the allegations contained in paragraph 223.
- 224. The defendant denies the allegations contained in paragraph 224.
- 225. The defendant denies the allegations contained in paragraph 225.
- 226. The defendant denies the allegations contained in paragraph 226.
- 227. The defendant denies the allegations contained in paragraph 227.
- 228. The defendant denies the allegations contained in paragraph 228.

COUNT VIII

229. The defendant reasserts its responses to paragraphs 1-228 as if specifically restated herein.
230. The defendant denies the allegations contained in paragraph 230.
231. The defendant denies the allegations contained in paragraph 231.
232. The defendant denies the allegations contained in paragraph 232.
233. The defendant denies the allegations contained in paragraph 233.
234. The defendant denies the allegations contained in paragraph 234.
235. The defendant denies the allegations contained in paragraph 235.

WHEREFORE, the defendant demands judgment in its favor together with costs and attorneys fees.

DEMAND FOR JURY TRIAL

The defendant requests a trial by jury on all counts of plaintiff's complaint.

AFFIRMATIVE DEFENSES

First:

The plaintiffs have failed to state a claim upon which relief may be granted.

Second:

The alleged conduct of the defendant was predicated upon probable cause and legal justification.

Third:

The municipal defendant City of Brockton, and its Planning Board, cannot be held liable pursuant to MGL ch. 258, 2 et seq. for intentional torts and, therefore, all counts sounding as such must be dismissed.

Fourth:

The plaintiffs have failed to commence this action within the applicable statute of limitations and thus the claims must be dismissed.

Fifth:

Any alleged injuries or damages allegedly sustained by the plaintiffs were caused by their own intentional or negligent conduct.

Sixth:

Any alleged injuries or damages allegedly sustained by the plaintiff were caused by a person or persons for whom the defendant is not legally responsible.

Seventh:

The defendant was justified in its actions and as such did not tortiously interfere with the plaintiffs' advantageous business relationship.

Eighth:

Plaintiffs' claims sounding in civil conspiracy must fail as a matter of law as plaintiffs have failed to allege either a common design upon which the defendant intended to commit a tort, or that it combined with others to accomplish an unlawful purpose or a lawful purpose by unlawful means.

Ninth:

The plaintiffs have failed to exhaust their administrative and/or judicial remedies and that their claims sounding in Due Process or Equal Protection violations are not ripe for adjudication and must be dismissed.

Tenth:

The Plaintiffs have failed to establish the existence of a protected property right or interest upon which a cause of action for violation of Due Process or Equal Protection under 42 USC §1983 would lie; accordingly Counts I and II of the Complaint must be dismissed as a matter of law.

Eleventh:

Plaintiffs' claims are barred, in whole or in part, because they are not ripe for adjudication.

Twelfth:

Plaintiffs' claims are barred, in whole or in part, because they have not been harmed or suffered any damages.

Thirteenth:

Plaintiffs' claims are barred, in whole or in part, because they have failed to mitigate their damages, if any.

Defendant, City of Brockton,
By its attorney,

/s/ Douglas I. Louison
Douglas I. Louison (BBO# 545191)
Patrick J. Costello (BBO# 543761)
David E. Condon (BBO# 642741)
Stephen C. Pfaff (BBO# 553057)
Louison, Costello, Condon & Pfaff, LLP
101 Summer Street
Fourth Floor
Boston, MA 02110
Dlouison@lcclaw.com
Pcostello@lcclaw.com
Dcondon@lcclaw.com
(617) 439-0305

CERTIFICATE OF SERVICE

I, Douglas I. Louison, hereby certify that on the 19th day of July, 2012 I served the foregoing by causing a copy to be directed to:

Mark E. Robinson, Esq.
Siobhan E. Mee, Esq.
Deana K. El-Mallawany, Esq.
Caleb Schillinger, Esq.
Bingham McCutchen LLP
One Federal Street
Boston, MA 02110
617-951-8000

Philip A. Tracy, Jr., Esq.
DiMento & Sullivan
7 Faneuil Hall Marketplace
Boston, MA 02109
Cell: 617-905-1030
617-523-2345

William P. Breen, Esq.
Christian B.W. Stephens, Esq.
Eckert Seamans Cherin & Mellott, LLC
Two International Place, 16th Floor
Boston, MA 02110
617-342-6800

John Davis, Esq.
Adam Simms, Esq.
Seth B. Barnett, Esq.
Pierce, Davis & Perritano, LLP
90 Canal Street
Boston, MA 02114
617-350-0950

Kurt B. Fliegauf, Esq.
Conn Kavanaugh Rosenthal Peisch
& Ford, LLP
Ten Post Office, Suite 400
Boston, MA 02109
617-482-8200

/s/ Douglas I. Louison
Douglas I. Louison