
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
SUPREME COURT

No. MP-18-_____

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SUPREME COURT
CLERK'S OFFICE

*The City of Providence, The Friends of India Point Park,
Procaccianti Companies, Inc., d/b/a The Hilton Garden Inn
and McMac, Inc., d/b/a The R.I. Seafood Festival*

v.

The Rhode Island Energy Facility Siting Board

*In Re Narragansett Electric Company d/b/a National Grid
E-183 115 Kv Transmission Line Relocation Project*

Energy Facility Siting Board Docket No. SB-2003-01

**PETITIONS FOR CERTIORARI OF THE CITY
OF PROVIDENCE, THE FRIENDS OF INDIA
POINT PARK, THE HILTON GARDEN INN
AND THE R.I. SEAFOOD FESTIVAL**

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Petitioners, the City of Providence (“Providence”), the Friends of India Point Park (the “FIPP”), a Rhode Island non-profit corporation; Procaccianti Companies, Inc., a Delaware corporation, d/b/a The Hilton Garden Inn (the “Hotel”); and McMac, Inc., a New York S corporation, d/b/a The R.I. Seafood Festival (the “Seafood Festival”) (collectively, the “Petitioners”), hereby individually petition this Court for a writ of certiorari:

- (1) to vacate the January 17, 2018 order (the “January 17 Order”) of the Rhode Island Energy Facility Siting Board (the “EFSB” or the “Board”) in *In Re Narragansett Electric Company d/b/a National Grid E-183 115 Kv Transmission Line Relocation Project*, EFSB Docket No. SB-2003-01, and
- (2) to remand the case and instruct the EFSB to actually perform, rather than attempting to delegate, its statutory function and:
 - (a) follow the procedures mandated under title 42, chapter 98 of the Rhode Island General Laws as well as under the EFSB’s own Rules of Practice and Procedure (the “EFSB Rules”) and reconsider National Grid’s (“NG’s”) October 9, 2003 application to relocate the high-voltage electrical power lines that currently are being carried over the Providence and Seekonk Rivers by unsightly overhead towers and other overhead structures; and
 - (b) make the specific findings required under chapter 98 and the EFSB Rules and, on the basis of specific, competent evidence, render a comprehensible decision with respect to whether it would be feasible for NG to bury all or some of the power lines underground in connection with their planned relocation, rather than continuing to use unsightly overhead structures.

A copy of the January 17 Order is attached as Exhibit A.

II. SUMMARY OF ARGUMENT

1. The January 17 Order was Deficient as a Matter of Law

In its January 17 Order, the EFSB approved NG’s October 9, 2003 application to relocate the high-voltage electrical power lines now crossing above the Providence and Seekonk Rivers, and rather than requiring that all or some of the lines be buried underground, the Board, in a mere three-pages, summarily approved NG’s plan to replace the deteriorating and unsightly

overhead towers and other overhead structures currently in use with similarly unsightly (albeit newer) overhead towers and structures. Yet, nowhere in the three-page order did the Board fulfill its duty to: (1) ensure that the approved relocation would “not cause unacceptable harm to the environment and will enhance the socio-economic fabric of the state.” *See* RIGL § 42-98-11(b)(3) and EFSB Rule 1.13(c)(1)(v); or (2) address the specific issues raised by the several state agency advisory opinions that argued that the power lines should be buried. *See* EFSB Rule (c)(2)(i); *see also* § III(A), ¶¶ 8-10, *infra*.

In addition, the EFSB left the parties and the public guessing as to the factual basis for its conclusion that burying all or some of the lines was not feasible. In fact, there is ample evidence in the record to support the conclusion that it is technically feasible, *see* § III(A), ¶ 28, *infra*, which would have been made crystal clear if the EFSB had simply done its job and methodically reached its own independent conclusion as to feasibility. Instead, the Board delegated the task while at the same time consistently conflating technical and financial feasibility, as well as technical feasibility and risk, without considering, or even inquiring about, the degree of risk and the possible ways it could be ameliorated. Thus, it is not surprising that in the end, the Board failed to render a coherent decision based upon actual findings with respect to feasibility, however defined.

Both the EFSB’s failure to make the required findings and its lack of explanation for its conclusion would, standing alone, mandate that the January 17 Order be vacated and the case be remanded. As this Court held in *Sakonnet Rogers, Inc. v. Coastal Resources Management Council*, 536 A.2d 893 (R.I. 1988), “[a]n administrative decision that fails to include findings of fact required by statute cannot be upheld,” *id.* at 896, citing *East Greenwich Yacht Club v. Coastal Resources Management Council*, 118 R.I. 559, 569, 376 A.2d 682, 687 (1977), and the

Court made clear that “[e]ven if the evidence in the record, combined with the reviewing court’s understanding of the law, is enough to support the order, the court may not uphold the order unless it is sustainable on the agency’s findings and for the reasons stated by the agency.” *Id.*, quoting Professor Kenneth Culp Davis in 3 Davis, *Administrative Law Treatise*, § 14.29 at 128 (2d Ed. 1980).

But the Board also blatantly violated mandatory statutory procedures and rules applicable to the consideration of applications such as NG’s by abdicating its statutory duty and – through its approval of a private agreement between NG, Providence and EP – illegally delegating and essentially privatizing the non-delegable task of evaluating the feasibility of alternative approaches to the requested relocation of the power lines. Indeed, the Board did not even attempt to conceal the fact that it had allowed itself to be removed from the process. As frankly explained by EFSB Chairwoman Curran, ***“I think it’s important to keep clear that we, the Board, are not advocating or supporting anything . . . This is up to the parties.”*** EFSB February 16, 2017 Tr. at 11; *see also* EFSB October 18, 2017 Tr. at 64 (Chairwoman Curran stating “[s]o I just want to be clear that we’re dealing with an agreement and a settlement from four parties that was agreed to in 2004.”).

By attempting to delegate its statutory authority, the Board – which the General Assembly has made the ***“the sole, final, binding, and determinative”*** regulatory decision-maker in connection with such matters, *see* RIGL § 42-98-12(a) (emphasis added) – violated the nondelegation doctrine, a doctrine which, as this Court noted in *Newport Court Club Associates v. Town Council of the Town of Middletown*, 800 A.2d 405, 416 (R.I. 2002), provides “the assurance that duly authorized, politically accountable officials make fundamental policy

decisions.” *Id.* (citing *Bourque v. Dettore*, 589 A.2d 815, 817 (R.I.1991)). Thus, the January 17 Order cannot easily be cured.

In fact, after sitting idly by for almost fifteen years – during which time: (1) Providence and East Providence (“EP”), the state Attorney General (the “AG”), the General Assembly, as well as numerous state and municipal agencies and members of the public (2,100 of whom signed a petition) all agreed that the power lines should be buried underground; and (2) great effort was made to provide adequate funding to bury the lines, including two amendments to the state’s Siting Act, *see* RIGL § 42-98-1.1 (quoted in part at § III, ¶ 11, *infra*) – it took the EFSB a mere three pages to squander a once-in-a-lifetime opportunity to enhance the aesthetic, economic and recreational value of the Providence/EP waterfront, which is a significant state asset, and to remove the perception that India Point Park is a “utility company right of way,” to paraphrase a former Superintendent of the Providence Parks Department.

In summary, the Petitions for certiorari should be granted, the January 17 Order vacated and the case remanded because the EFSB:

- (1) Failed to make required findings:
 - (a) that the approved relocation will “not cause unacceptable harm to the environment and will enhance the socio-economic fabric of the state.” *See* RIGL § 42-98-11(b)(3) and EFSB Rule 1.13(c)(1)(v); and
 - (b) specifically addressing the issues raised by the several state agency advisory opinions urging that the power lines should be buried. *See* EFSB Rule at (c)(2)(i); § III(A), ¶¶ 8-10, *infra*.
- (2) Left the parties and the public guessing as to the factual basis of its conclusion that burying all or some of the lines was not “feasible” and failed to explain what it meant by its use of the term.
- (3) Blatantly violated the statutory procedures and its own rules applicable to the consideration of applications such as NG’s.

- (4) Illegally abdicated its statutory duty and effectively delegated to a private utility company and other interested third parties the non-delegable task of evaluating the feasibility of alternative approaches to the requested relocation of the lines.
- (5) And finally, authorized NG's use of ratepayer funds for purposes other than under-grounding in violation of state law. *See* § III(A), ¶¶ 11 and 19, *infra*.

2. The Petitioners Have Standing

RIGL § 39-35-1 and EFSB Rule 1.16(b) make clear that filing a petition for certiorari is “the *exclusive* remedy for persons and companies aggrieved by an order [of the EFSB].” *Id.* (emphasis added). Thus, there is no question but that Providence, as an Intervenor in the EFSB proceeding below, has standing.

Moreover, the fact that neither the FIPP, the Hotel nor the Seafood Festival were intervenors does not, *ipso facto*, establish that they are not “aggrieved parties” under § 39-5-1. Unlike the specific definition of an “aggrieved party” contained in certain appeal statutes – such as, for example, the specific definition applicable to zoning appeals, *see* RIGL § 45-24-31(4) – there is no such definition under title 39. Thus, this Court has made clear that § 39-5-1's reference to an “aggrieved person” refers merely to one who has met the general standing requirement, i.e., has alleged that the challenged order “results in injury in fact, economic or otherwise.” *See In re Town of New Shoreham Project*, 19 A.3d 1226, 1227 (R.I. 2011), citing *Newport Electric Corp. v. Public Utilities Commission*, 454 A.2d 1224, 1225 (R.I.1983) and *Rhode Island Ophthalmological Society v. Cannon*, 113 R.I. 16, 26, 317 A.2d 124, 129 (1974); *see also Blackstone Valley Chamber of Commerce v. Public Utilities Com'n*, 452 A.2d 931, 932-33 and n. 3 (R.I. 1982) (applying the general standing requirement while noting that the Court's review of appeals under § 39-5-1 is “broader than its review of cases arising under the APA”).

Here, the relocation plan approved by the EFSB, i.e., the “South Bridge Alignment,” would move the high-voltage overhead power lines from the soccer field in India Point Park to the popular George Redman Linear Park over the Seekonk River, adjacent to I-195. And, as the FIPP has made clear in several written and oral submissions to the Board, this would mean that:

- (a) power lines would continue to obstruct water views along the I-195 entrance to the City, an entrance which is used by some 60 million cars a year, and thus would continue to discourage people – including some of the roughly 10 million people who travel through Providence on their way to the Cape and the Islands – from stopping in Rhode Island;
- (b) the power lines would run the length of India Point Park and constitute a conspicuous eyesore marring water views of Rhode Island residents and visitors as they approach the Park from the City, from the ferry landing, from the water and from the vantage point of Bold Point Park;
- (c) unsightly power lines would surround the Hotel on all sides of its water views, obstructing the views of the Bay and the City shoreline from inside the Hotel, including from the dining area’s large windows, as well as the views of the Hotel from I-195 and other locations; and
- (d) the opportunity to dramatically enhance the aesthetic, economic and recreational value of the state’s signature shoreline at the head of the Narragansett Bay – which includes the Newport ferry landing and waterfront parks at India Point, Bold Point, the George Redman Linear Park bridge – would be squandered.

See, e.g., FIPP’s October 16, 2017 *Amicus Curiae Brief in Support of the City of Providence’s Motion to Extend the Time for Briefing* at 2; *see also* the affidavits in support of the Petitions submitted by FIPP Co-Chair David Riley (the “Riley Aff.”) (attached as Exhibit B), ¶¶ 6-9 at 2-4; by Procaccianti Companies Vice President and Associate General Counsel Michael A. Voccola, (the “Voccola Aff.”) (attached as Exhibit C), ¶¶ 5-6 at 2-3; and by T.J.McNulty, the President of McMac, Inc., d/b/a The R.I. Seafood Festival (the “McNulty Aff.”) (attached as Exhibit D), ¶¶ 5 -7 at 2-3.

If the January 17 Order is not vacated, the stated purpose of the FIPP – which is “to promote, protect, maintain, improve and expand India Point Park and areas in proximity to the Seekonk River, the Providence River and Narraganset Bay,” *see* FIPP Articles of Incorporation at 1 – would be directly undermined, *see* Riley Aff., ¶ 6 at 2, and the FIPP would sustain the type of “concrete and particularized” injury necessary for standing. *See Conservation Law Foundation, Inc. v. American Recycled Materials, Inc.*, 2017 WL 2622737 slip op at 2-3 (D. MA, June 16, 2017) (“[i]t has long been established that harms to aesthetic and recreational interests are injuries in fact for standing purposes and rise above a mere speculative prospect of harm”). In addition, the Voccola and McNulty Affidavits evidence that the Hotel and the Seafood Festival, which are both active, *de facto* members of the FIPP, will also sustain a “concrete and particularized” economic injury as a direct result of the January 17 Order.

Finally, even if one were to assume, for argument’s sake, that the FIPP, the Hotel and/or the Seafood Festival lack standing, there is ample precedent for this Court to “overlook the standing requirement to determine the merits of a case involving substantial public interest.” *Retirement Board of the Employees’ Retirement System of Providence v. City Council of Providence*, 660 A.2d 721, 726 (R.I.1995) (internal quotation marks omitted); *see also Watson v. Fox*, 44 A.3d 130, 138 (2012) (“Whether to apply the substantial public interest exception lies within the discretion of this Court.”).

Here, there is no question but that there is substantial public interest in seizing the opportunity to significantly enhance the aesthetic, economic and recreational value of a significant state asset by requiring that all or some of the power lines NG seeks to relocate be buried underground. Indeed, thirty (30) business, labor, environmental, neighborhood and other

groups have agreed to jointly move for leave to file an *amicus curiae* brief in support of the Petitions.¹

III. STATEMENT OF THE CASE²

A. Facts and Procedural History

(i). The EFSB's Mandatory Process

1. The EFSB is the “licensing and permitting authority for all licenses, permits, assents, or variances which, under any statute of the state or ordinance of any political subdivision of the state, would be required for siting, construction or alteration of a major energy facility in the state,” RIGL § 42-98-7, and its decisions constitute “*the sole, final, binding, and determinative* regulatory decision within the state for the purposes of siting, building, operating, or altering a major energy facility.” RIGL § 42-98-12(a) (emphasis added).

2. The mandatory procedure for the EFSB's consideration of an application to “relocate a power line with a capacity of 69 kV or more” is set forth under title 42, chapter 98 of the Rhode Island General Laws as well as under the EFSB Rules. The Board is required to

¹ Including Save the Bay, the Providence Foundation, the Providence Preservation Society, Preserve Rhode Island, the Providence-Warwick Convention & Visitors' Bureau, East Coast Greenway, the Rhode Island Bicycle Coalition, the Wickenden Area Merchants Association, Residential Properties, Cornish Associates, IBEW Local 99, Unite Here Local 26, the Greater Providence Board of Realtors, the Providence Apartment Association, Doyle Realty, the R.I. chapter of the American Society of Landscape Architects, the Narragansett Boat Club, the R.I. Philharmonic Orchestra & Music School, the Avenue Concept, the Downtown Providence Parks Conservancy, the R.I. Rivers Council, the Blackstone Park Conservancy, the R.I. chapter of the Sierra Club, as well as the Corliss Landing Condominium Association and the Fox Point, Jewelry District, West Broadway, Downtown and Summit Neighborhood Associations.

² Due to the complexity of the legal issues and the thousands of pages of reports and testimony spanning nearly fifteen (15) years that are relevant, Petitioners have moved for additional time within which to file the memoranda required under Sup. Ct. Rules, Art. I, Rule 13(a). If their motion is granted, Petitioners will set forth in more detail the legal and factual support for their Petitions in their memoranda, and will submit a joint appendix that will include copies of the documents cited herein, of all other relevant documents, as well as of the EFSB hearing transcripts.

docket the application and after holding a public hearing “in one or more of the cities or towns affected” to determine “whether the project may result in a significant impact on the environment or the public health, safety and welfare and therefore shall be treated as an alteration [of a major energy facility].” Rules 1.6 (g) and (h). If the EFSB finds that the application does involve such a potentially “significant impact,” it is then required to conduct a “preliminary hearing” “within sixty (60) days following the Board’s docketing,” Rule 1.9(b), and then to “determine the issues to be considered by the Board in evaluating [the] application” and “to designate those agencies which shall act at the direction of the Board for the purpose of rendering advisory opinions.” Rule 1.9(a). The advisory opinions must then be submitted “not more than six (6) months following the Board’s designation.” Rule 1.11(d).

3. The EFSB is then required to conduct a “final hearing” on the application “no later than forty-five (45) days after the date on which advisory opinions must be submitted,” Rule 1.12(b), and shall consider pre-filed and direct testimony and other relevant evidence. *See* Rule 1.12(d). Rule 1.13(a) provides that “[t]he Board shall issue its “final decision” not later than one hundred twenty (120) days after the commencement of final hearings or not later than sixty (60) days after all testimony and evidence has been received, whichever time period is shorter.” *Id.* And prior to approving any such application, the Board is required by both statute and its own rules to make “specific findings” that, *inter alia*:

- [a] The proposed facility [or relocation] will not cause unacceptable harm to the environment [; and]
- [b] The proposed facility [or relocation] will enhance the socioeconomic fabric of the state.

See RIGL § 42-98-11(b)(3) and EFSB Rule 1.13(c)(1)(v).

4. Finally, Rule 1.13(c)(2) provides that the Board's Final Decision shall “specifically address:”

each of the advisory opinions received from designated agencies the Public Utilities Commission and Statewide Planning. The Board shall state the reasons for accepting, rejecting or modifying such advisory opinions . . .

Id. at (c)(2)(i).

(ii). NG’s 2003 Application and the Advisory Opinions

5. On October 9, 2003, NG filed the required application and notice of intent to obtain EFSB approval for the planned relocation of some 6,200 feet of high-voltage electrical power line in the westernmost portion of its E-183 115 kV transmission line (the “E-183 Line”), which connects the Franklin Square Substation in Providence with the Brayton Point Power Station in Somerset, Massachusetts. NG alleged that relocation of the E-183 Line was necessary in order to accommodate the scheduled relocation of Interstate Route 195 by the Rhode Island Department of Transportation (“RIDOT”). *See* the April, 2003 report on the E-183 115 Kv Transmission Line Relocation Project submitted by NG (“NG’s App.”), § 2.2 at 4. In addition, NG recognized that the age, deteriorating condition and configuration of the existing overhead transmission towers and other structures along the Providence and Seekonk Rivers required that they be replaced. *Id.*, § 4.2 at 11.

6. NG sought the Board’s permission to relocate the E-183 Line from the Franklin Square Substation in Providence, across the Providence River, Fox Point, India Point and the Seekonk River to the Bold Point area of East Providence utilizing overhead power lines and towers, *id.*, § 3.2 at 5, and included four alternate relocation proposals. As recited in the January 17 Order, the EFSB granted Providence, EP and the AG (collectively, the “Intervenors”) intervenor status in the proceeding. The Intervenors objected to the relocation, arguing that the

planned overhead structures would continue what has been a blight upon the Providence/EP waterfront and squander a unique opportunity to enhance its value as an economic, civic and scenic state asset.

7. On September 30, 2003, NG and the Intervenor filed a Stipulation and proposed consent order modifying the timeline for the EFSB to complete the mandated procedures. On October 28, 2003, the EFSB approved the proposed consent order and – recognizing that the proposed project “may result in a significant impact on the environment or the public health, safety and welfare” – designated four (4) state agencies, including the Public Utilities Commission (the “PUC”), to render advisory opinions under EFSB Rule 1.9. *See* EFSB Order # 5. At the same time, the EFSB explicitly recognized that “the issues which the Board must determine in making its final decision are those specified in § 42-98-11(b),” *id.* at 4 (which, as noted, includes a finding that approving the application will, *inter alia*, “enhance the socio-economic fabric of the state.” *Id.*).

8. In the PUC’s January 27, 2004 Advisory Opinion (the “PUC Ad. Op.”), the agency, while explicitly recognizing that it was “without reliable cost estimates,” *id.* at 53, and had “outstanding questions regarding the design and the time constraints associated with the [UA],” *id.* at 45, nonetheless concluded that the “proposed overhead configuration represents the most reasonable cost alternative to provide adequate, safe and reliable service to the region.” *Id.* at 62.³ Yet, other state agencies, including the AG and the Department of Environmental Management, submitted advisory opinions which agreed with the Intervenor that the overhead relocation would not be in the public interest, at least as proposed by NG.

³ As noted, the issues raised by the PUC concerning the lack of a “reliable” cost estimate as well as those relating to “design” and “time constraints” were not addressed in the January 17 Order.

9. For example, in its advisory opinion, the AG noted that the state stood “at the midpoint of a great reclamation effort” involving the land over which the power lines crossed and “must decide whether to capture the full potential of waterfront resources by removing the last conspicuous industrial structure in the parks and waterfronts of Providence and EP,” AG Advisory Op. at 2, and raised, *inter alia*, the following issues:

- (a) what effect the failure to bury the power lines will have upon the state’s “Old Harbor Plan,” a multi-faceted set of principles designed to “return the Old Harbor to its historical status as the unifying focus and gateway of the City.” *Id.* at 2-3’
- (b) the extent to which overhead power lines will intrude upon “river walks, trails, bike paths and public spaces.” *Id.* at 4;
- (c) whether failing to underground the lines conflicted with the State Guide Plan and its concept of “a continuous greenway that will run from the State House all the way to Narragansett Bay on both sides of the Providence River.” *Id.*; and
- (d) the effect upon future development in Providence and EP in close proximity to the power lines, including the future Heritage Harbor Museum.” *Id.* at 5.

Although these and other many specific concerns were raised in the AG’s advisory opinion, none were addressed in the January 17 Order.

10. Moreover, the Department of Environmental Management raised numerous issues, including, *inter alia*, “the extent to which overhead power lines “diminish the Park experience [in India Point Park and Bold Point Park] and subsequently the recreational and aesthetic value of the Parks.” Env. Mgmt. Advisory Op. at 2. Yet again, its concerns were ignored by the Board and not addressed in the January 17 Order.

11. The State Planning Council also submitted an advisory opinion stating that burying the power lines “is more supportive of the State Guide Plan” and “most consistent with good planning practices.” January 30, 2004 letter from the State Planning Council Secretary. In

addition to the advisory opinions, pre-filed testimony was presented to the Board from an array of experts,⁴ and resolutions and letters urging the burial of the lines were received from several municipal agencies, as well as the state House of Representatives. Moreover, some \$18 million was raised and/or set aside to enable the burying of the power lines, and the General Assembly twice amended the Siting Act (in 2004 and 2008) to provide a funding mechanism for the UA.

The amended Act provided that, *inter alia*:

to the extent the actual costs for the underground alignment exceed the funding obtained for the project pursuant to this section and from federal and other sources, the company is authorized to include the incremental costs above those funding levels in its distribution rate base and reflect the revenue requirement in rates to the electric distribution customers within the cities of Providence and East Providence, subject to the timely passage and delivery of the resolution specified above.

RIGL § 42-98-1.1(d). The legislation also made clear that any use of municipal ratepayer funds would require council approval, *see id.* at (a), and that the \$2 million allocated from NG's Storm Contingency Fund could only be used "for purposes of under grounding." *Id.* at (b).

⁴ Including the testimony of Thomas Andolfo, an MAI designated member of the Appraisal Institute, certified general appraiser and licensed real estate broker, who informed the Board that:

there is a public perception that overhead high voltage power lines will negatively impact residential property values. Numerous studies have shown that the impact of power lines can extend marketing time periods and lower the values of residential properties. The Journal of Real Estate Research in 1992 surveyed residential members of the Appraisal Institute and received responses from more than 200 residentially designated appraisers. Eighty-four (84%) percent of the appraisers felt that power lines negatively impact residential property values and on average, that impact was a negative 10.3%. Major contributing factors to market value loss were health concerns and the eyesore element. Also, other nationwide studies have shown assessed values of properties adjoining overhead power lines are lower. One particular study indicated a value range loss of 12.8% to 30.7%.

March, 2004 Tr. of Andolfo pre-filed testimony at 8.

(iii). The 2004 Settlement Agreement

12. Despite the fact that it was mandated by its own rules to conduct a final hearing on an application “within forty-five days after the final date for submission of advisory opinions,” and then to render a “final decision” on the application “within sixty (60) days of the conclusion of the final hearing, *see* ¶ 2, *supra*, the EFSB took no action after it received the advisory opinions. Instead, on or about May 25, 2004, NG, Providence, EP and the AG entered into a settlement agreement (the “Agreement”) reflecting their agreement to bury the lines underground, the so-called Underground Alignment (“UA”), if feasible.

13. The parties specifically identified three (3) alternate alignments in addition to the UA which they defined in the Agreement, i.e., (a) the “Bridge Alignment North;” (b) the “Bridge Alignment South;” and (c) the “Tockwotten Alignment.” Significantly, the Agreement also provided that:

[i]n the event that Narragansett determines that construction of any of the Underground Alignment, Bridge Alignment North, Bridge Alignment South or Tockwotten Alignment is not feasible, before proceeding to any alternative alignment (e.g., from Underground Alignment to Bridge Alignment North or Bridge Alignment South), ***Narragansett shall file with the EFSB (i) a stipulation signed by all the parties hereto consenting to the alternative alignment and providing a new schedule for the actions in paragraphs E(1) – E(8) with respect to such alignment, or (ii) a report . . . presenting in detail the justifications for pursuing the alternative alignment and proposing a new schedule.***

Agreement, § II J at 8 (emphasis added).

14. The Agreement went on to substitute its own rules of procedure for those that had been promulgated by the EFSB, *see* ¶¶ 1 - 4, *supra*, providing that “any Party” had twenty (20) days to file an objection to NG’s Report, after which NG had ten (10) days to respond. *See* Agreement, § II J at 8. The EFSB was then to “conduct a hearing to resolve such issues and/or disputes and approve, modify or reject the Report.” *Id.* And the parties agreed “not to appeal or

otherwise contest a decision of the EFSB (other than a decision rendered in proceedings pursuant to II-J, above) or any other agency or governmental authority which approves the project contemplated by this agreement.” *Id.*, § III(B) at 8.⁵

15. Finally, the Agreement gratuitously provided that the EFSB was to “retain jurisdiction . . . to address any future issues related to the project, including without limiting the generality of the foregoing, the exercise of its authority under § 42-98-7 and the interpretation and application of this Settlement Agreement,” *id.*, § III(D) at 9, thus unwittingly underscoring the extent to which the EFSB had been effectively removed from the process. In short, the Board permitted private parties to create their own procedural dictates and then effectively left it to them to determine in the first instance which of the four alternatives was “feasible,” without defining the term, which was nowhere defined in the Agreement.

16. The EFSB order approving the Agreement, *which is now more than a decade old*, *see* EFSB Order #54, did include the statutorily required finding that “the alignments as provided in the Settlement Agreement will enhance the socio-economic fabric of the State and minimize the impact on the environment.” *Id.*; *see* ¶ 3, *supra*. However, the finding was based upon the premise that the “*parties have agreed that the E-183 Line will be relocated underground unless it is determined that it is not feasible.*” *See* EFSB Order #54 (emphasis added), and in any event, the finding has been rendered obsolete and ineffective by the passage of time and the occurrence of major new developments on the Providence/EP waterfront.

⁵ As Petitioners will address in their Memoranda, this provision not only is not binding upon the FIPP, the Hotel or the Seafood Festival – all non-parties – it also is void and unenforceable even as between the parties to the Agreement. Indeed, the provision is yet another example of how the parties and the EFSB conspired to circumvent the very specific procedures mandated under chapter 98.

(iv). The Major Alterations to the Providence Waterfront and the Failure to Abide by the Terms of the 2004 Agreement

17. Following the submission of various advisory opinions, *see* ¶¶ 8-10, *supra*, major developments occurred on the Providence waterfront. In 2004, there was no George Redman Linear Park, no Newport ferry landing, no upgrading of India Point Park or the adjacent Hilton Garden Inn, no concert venue at Bold Point Park, no effort to market I-195 parcels in Providence with water views obstructed by overhead power lines, and little active effort to develop EP waterfront parcels (with views to be marred by overhead wires).⁶

18. What then followed were years and years of delay as the parties waived any pretense that they would abide by the dates set in their Agreement while occasionally feuding over, *inter alia*, NG's responsibility for funding the creation of a "construction grade estimate" for the UA and/or the municipalities' responsibility to secure necessary property rights. *See* October 23, 2013 ESFB Hearing Tr.at 11, 27 (NG counsel noting that major issues were funding agreement and acquisition of property); *see also id.* at 67 (NG's counsel alleging that talks "broke down" over EP's insistence that NG pay EP's attorneys' fees).

19. Although, as NG's counsel admitted, it was the responsibility of NG, not Providence or EP, to "move [the Project] forward or to manage it," *id.* at 35, it is clear that NG breached the Settlement Agreement by willfully failing to provide an up-to-date construction grade cost estimate for the UA. As noted by EFSB member Janet Coit, "no progress had been

⁶ Indeed, Board Member Coit expressed concern over the environmental impact of the South Bridge Alignment because of "some of the ways the landscape has changed in the last 14 years," noting in particular the building of the George Redman Linear Park over the Seekonk River. *See* transcripts of EFSB open meeting on February 16, 2017 at 13 and of the EFSP hearing on 2/6/17 at 45.

made on the fundamental issues.” *Id.* at 28. Nonetheless, in March of 2017, NG informed the Board that it had spent a total of \$992,000 worth of ratepayer funds on:

internal [NG] team members such as Mr. Campili, [legal counsel], other engineers, planners . . . [l]egal fees, outside counsel and inside counsel, as well as independent consultants such as PDC and [POWER] that both prepared reports in the proceeding.

March 2, 2017 EFSB Hearing Tr. at 27.⁷

(v). NG and East EP’s 2016 Joint Motion to Approve the Bridge Alignment South and Providence’s Proposed Partial Underground Alignment

20. On October 13, 2016 NG and EP filed a Report and Joint Motion (the “2016 Joint Motion”) where, despite the acknowledged absence of an up-to-date construction grade cost estimate or any cost-benefit analysis – and even though no thorough analysis had been made with respect to the possibility of attaching the lines to existing bridges⁸ – it nonetheless concluded that:

[b]ecause of the significant cost of the [UA] and the risks which have been identified both by [NG] and by [PDC] the engineering firm which was engaged by the other parties to prepare a peer review of the project for them, [NG and EP] have determined that the [UA] is not feasible.

Id. at 1. NG and EP thus requested that EFSB conduct proceedings pursuant to § II-J of the Agreement and approve the use of the Bridge Alignment South for the E-183 project at an estimated cost of approximately \$10.5 million. *See id.* at 3.⁹

⁷ Thus, not only did NG illegally spend ratepayer funds on items other than the UA, *see* ¶ 11, *supra*, it actually spent such funds to oppose the UA.

⁸ Indeed, NG consistently misstated the conclusion reached in the PUC Advisory Opinion which, rather than concluding that the option was not technically feasible, merely stated that there were “numerous outstanding questions” that needed to be answered. *See* PUC Adv. Op. at 46.

⁹ As noted, the Bridge Alignment South being proposed would move the high-voltage overhead waterfront power lines from the soccer field in India Point Park to the popular George Redman Linear Park over the Seekonk River, adjacent to I-195. In the process, overhead power lines would be made much more visible to traffic on this major gateway to the City.

21. Originally, i.e., on November 15, 2004, NG provided six (6) preliminary cost estimates for the UA, ranging from \$16 million to \$17.1 million, depending upon the choice of technology (pipe-type or solid dielectric) and location of the required EP transition station. *See* November 14, 2004 letter from NG’s counsel and attachments. These preliminary cost estimates would increase dramatically over the years. Yet, as noted, no cost-benefit analysis was even attempted.¹⁰

22. On February 6, 2017, the EFSB conducted a hearing on the Joint Motion and Providence’s Objection and scheduled the matter for a decision at an open hearing on February 16, 2017. After the EFSB granted motions by NG and then later Providence to extend the time to consider alternate proposals, Providence, on September 25, 2017, proposed an alternate alignment that was essentially a hybrid of the UA and the South Bridge Alignment (the “Partial Underground Alignment”), the contours of which had been introduced as a possibility for the first time following a meeting with Providence’s Mayor on September 22, 2017. Providence indicated that it was:

willing to accept the position taken by the other parties to this docket adopting the South Bridge Alignment, with this critical exception: **we request that the funds derived from the Providence ratepayers be devoted exclusively to burying the power lines from Temporary Pole #1 to Temporary Pole # 7.** As we understand it, this would require the construction of two transition stations, an expensive proposition. But the use of the funds would honor the concerted effort of citizens, elected officials, business and civic leaders, organized labor, and government agencies to see the power lines buried through India Point Park. It would ensure that significant aesthetic and ancillary benefits flow to residents of the City of Providence, who have contributed no small amount to see this project completed.

Providence’s September 25, 2017 Supplemental Memorandum in Support of its Objections to the

¹⁰ As of January, 2007, the estimate had increased by approximately \$5.8 million, bringing the estimated cost range from \$21.8 million to \$22.9 million, *see* NG’s July 30, 2007 Status Report to the EFSB, and that was not the end.

2016 Joint Motion at 2 (emphasis in original).

(vi). The October 18, 2017 Hearing and January 17 Order

23. Thus, on October 10, 2017, Providence moved to extend the time for briefing to enable it to formally submit the details incident to the Partial Underground Alignment. In support of the Motion, FIPP submitted an *Amicus* Brief arguing that the Partial Underground Alignment was:

- a. within the terms of the Settlement Agreement between the parties. *See* FIPP Amicus Brief at 2;¹¹
- b. a dramatic improvement over the Bridge Alignment South. *See id.* at 2-5;
- c. technically feasible. *See id.* at 5-6; and that
- d. balancing the comparatively insignificant delay against the significant benefit to the public made clear that Providence's Motion to Extend should be granted. *See id.* at 9.¹²

24. Yet, at a hearing on October 18, 2017, the EFSB:

- (a) denied Providence's Motion to Extend, thereby denying it the "little additional time to figure out whether [the recently-proposed Partial Underground Alignment was] even doable." *See* EFSB October 18, 2017 Hearing Tr. at 16, 56;
- (b) adopted NG's October 13, 2016 Report and found that the UA and the Bridge Alignment North were not feasible. *See id.* at 57-60;
- (c) approved the Bridge Alignment South. *See id.* at 60;
- (d) approved a schedule proposed by NG which called for a preliminary design for the Bridge Alignment South by January 1, 2018. *See id.* at 61-62; and
- (e) directed that NG and Providence "conduct public meetings to explain the project to Providence residents and also to convene a meeting in EP." *See id.* at 63.

¹¹ And neither NG nor the AG disagreed.

¹² EP filed an objection to the motion to extend the time for briefing on October 11, 2017.

25. The Board, while accepting at face value NG's \$10.5 million cost estimate for the approved Bridge Alignment South without requiring any cost-benefit analysis, *see* ¶ 21, *supra*, prematurely cut-off any investigation into the Partial Underground Alignment while ignoring the fact that:

- (a) major changes to the waterfront had occurred since 2004, as had been emphasized by Board Member Coit. *See* note 6, *supra*;
- (b) a significant amount of money had been set aside for the UA. *See* ¶ 11, *supra*;
- (c) NG and the AG had conceded that the Partial Underground Alignment was "within the spirit" of the Settlement Agreement. *See* EFSB October 18, 2017 Hearing Tr. at 5,7; and
- (d) counsel for Providence explained at the October 18 hearing that although the FIPP had proposed the Partial Underground Alignment over six (6) months prior, personnel changes in Providence contributed to it not being called to the Mayor's attention until September 25, 2017.

See id. at 8-9, 12.

26. Finally, in a cryptic, three-page order dated January 17, 2018 (*see* Exhibit A), the EFSB:

- (a) reiterated its October 18, 2017 conclusion it had "found the [UA] and the Bridge Alignment North to be not feasible." January 17 Order at 3; and
- (b) approved the use of the Bridge Alignment South recommended in the October 13, 2016 Joint Report and Motion filed by NG and EP.

Id.

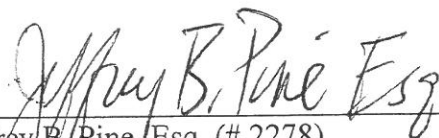
27. Significantly, the EFSB made no reference to the specific factual basis for its conclusions, other than to make a vague reference to the Joint Motion and to unspecified "significant cost" and "risks" of the UA which, it summarily claimed, "have been identified both by [NG] and by Power Delivery Consultants, Inc." *See id.* at 2.

28. In fact, there is ample evidence in the record to support the conclusion that burying the lines is technically feasible. For example, in its September 3, 2015 Peer Review Evaluation of the work done by the engineers hired by NG (Power Delivery Consultants and Haley & Aldrich), POWER Engineers concluded that the UA was “aligned with standard industry practice and is *constructible*.” *Id.* at 4 (emphasis added); *see also* the FIPP Amicus Brief at 7 and Exhibits attached thereto. As to financial feasibility, no conclusion is possible because, as noted, no cost-benefit analysis was ever even attempted (and proceeding without such an analysis is a little like trying to predict the success of a business by weighing all of its expenses while ignoring potential income).

IV. CONCLUSION

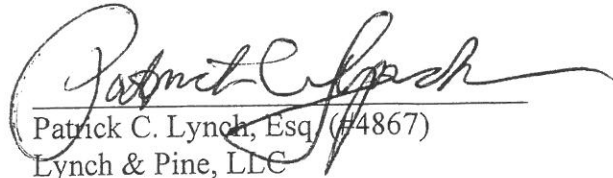
For all the above reasons, the Petitions for certiorari should be granted and the case should be remanded.

THE CITY OF PROVIDENCE,
By its attorney,



Jeffrey B. Pine, Esq. (# 2278)
Lynch & Pine, LLC
One Park Row, 5th Floor
Providence, R.I. 02903
Tel: 401-274-3306
jpine@lynchpine.com

THE FRIENDS OF INDIA POINT PARK,
PROCACCIANTI COMPANIES, INC.,
d/b/a the Hilton Garden Inn, and McMAC, INC.,
d/b/a The R.I. Seafood Festival,
By their attorney,



Patrick C. Lynch, Esq. (#4867)
Lynch & Pine, LLC
One Park Row, 5th Floor
Providence, R.I. 02903
Tel: 401-274-3306
plynch@lynchpine.com

CERTIFICATE OF SERVICE

I hereby certify that on this 29th of January, 2018, I caused a true copy of the within Petition for *Certiorari* to be delivered by hand and sent by e-mail to:

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Energy Facility Siting Board
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Warwick, RI 02888
todd.bianco@puc.ri.gov; margaret.curran@puc.ri.gov
patricia.iucarelli@puc.ri.gov; kathleen.mignanelli@puc.ri.gov

And to be sent by e-mail to the following:

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Nick Ucci, OER
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Handwritten signature of Kimberley Campagna in cursive script, written over a horizontal line.

EXHIBIT A

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

IN RE: THE NARRAGANSETT ELECTRIC :
COMPANY d/b/a NATIONAL GRID :
E-183 115 kV TRANSMISSION : **DOCKET NO. SB-2003-01**
LINE RELOCATION PROJECT :

ORDER

Whereas, on October 9, 2003, the Narragansett Electric Company d/b/a National Grid (Narragansett or the Company) filed a Notice of Intent Application with the Energy Facility Siting Board (EFSB) for modification of its E-183 115 kV Transmission Line (the E-183 Line), to accommodate the relocation of Route I-195; and

Whereas, the City of Providence (Providence), the City of East Providence (East Providence), and the Rhode Island Attorney General’s Office (Attorney General) were all granted Intervenor status in this proceeding; and

Whereas, on May 25, 2004, Narragansett and the Intervenors presented a Settlement Agreement (Settlement) to the EFSB that provided for four possible sequenced alignment alternatives for the E-183 relocation, which was planned to be conducted in two phases; and

Whereas, the four alignments were: (1) Underground Alignment; (2) Bridge Alignment North; (3) Bridge Alignment South, and (4) Tockwotten Alignment, all as described in the Settlement; and

Whereas, the Settlement provided that if Narragansett determined that construction of any of the alignments was not feasible, it should file either a stipulation signed by all parties or a report presenting justification for the alternative alignment, whereupon the EFSB would conduct a hearing to resolve any outstanding issues and either approve, modify, or reject the stipulation or report; and

Whereas, on October 29, 2004, the EFSB issued an order, No. 54, that approved the Settlement and authorized relocation of the E-183 Line; and

Whereas, EFSB Order No. 54 was not appealed; and further,

Whereas, on October 13, 2016, Narragansett and East Providence filed a Report and Joint Motion asserting that “[b]ecause of the significant cost of the underground alignment and the risks which have been identified both by [Narragansett] and by Power Delivery Consultants, Inc., the engineering firm which was engaged by the other parties to prepare a peer review of the project for them, [Narragansett] and East Providence have determined, pursuant to Section D(1) through D(8) of the Settlement, that the underground alignment is not feasible” and Providence and the Attorney General supported this conclusion; and

Whereas, Narragansett determined that the Bridge Alignment North “would require either the acquisition of an active metal fabricating business on the east side of the Seekonk River, immediately north of I-195 or the rerouting of the river crossing to a point at the north end of such property” and, pursuant to Section E(1) through E(8) of the Settlement, concluded with agreement from East Providence that the North Bridge Alignment was not feasible; and

Whereas, Narragansett and East Providence determined that the Bridge Alignment South, pursuant to Section F of the Settlement, appeared to be feasible and was preferable to either the underground alignment or the Bridge Alignment North, and requested the EFSB conduct

proceedings pursuant to § II-J of the Settlement and approve the use of the Bridge Alignment South for the E-183 project; and

Whereas, on October 28, 2016, Providence filed an objection to the Joint Motion; and

Whereas, on November 2, 2016, the Attorney General filed a response to the Joint Motion, concurring that the Bridge Alignment South represented the most feasible, cost-effective solution that accomplished the goals was “in accordance with the letter and intent of the Settlement Agreement;” and

Whereas, after several continuances requested by the parties to engage in further studies, on October 18, 2017, the EFSB found the Underground Alignment and the Bridge Alignment North to be not feasible as set forth in Sections D and E of the Settlement; and

Whereas, on October 18, 2017, the EFSB unanimously approved the Joint Report and Motion and the Bridge Alignment South as set forth in Section F of the Settlement; and

Whereas, the EFSB approved Narragansett’s proposed schedule; and

Whereas, the EFSB ordered Narragansett and the Cities of Providence and East Providence to conduct a public meeting in each community.

Accordingly, it is hereby

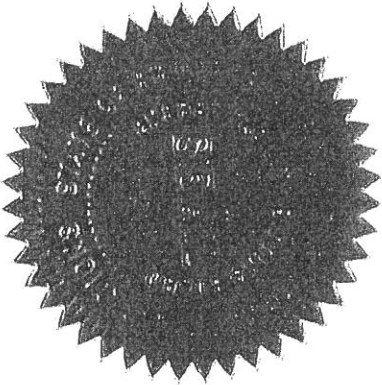
(123) ORDERED:

1. The Joint Report and Motion filed by Narragansett and the City of East Providence to approve the use of the Bridge Alignment South for the E-183 Seekonk River crossing is approved.
2. Narragansett’s proposed schedule as set forth in substituted Attachment 2 to Narragansett’s October 13, 2016 Report and Joint Motion is approved.

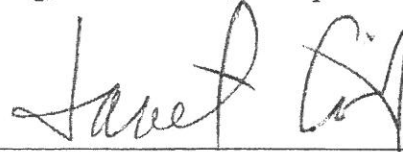
3. Narragansett and the Cities of Providence and East Providence shall conduct a public meeting in each community.

EFFECTIVE AT WARWICK, RHODE ISLAND ON OCTOBER 18, 2017 PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED JANUARY 17, 2018.

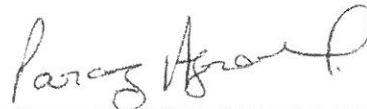
ENERGY FACILITY SITING BOARD



Margaret E. Curran, Chairperson



Janet Coit, Member



Parag Agrawal, Member

NOTICE OF RIGHT OF APPEAL PURSUANT TO R.I. GEN. LAWS SECTION 42-98-12, ANY PERSON AGGRIEVED BY A DECISION OF THE BOARD MAY, WITHIN TEN (10) DAYS OF THE ISSUANCE OF THIS ORDER PETITION THE SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW THE LEGALITY AND REASONABLENESS OF THIS ORDER.

EXHIBIT B

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATION
SUPREME COURT

IN RE THE NARRAGANSETT :
ELECTRIC COMPANY, d/b/a/ :
NATIONAL GRID, e-183 115 Kv : No. SU-18-_____
TRANSMISSION LINE : EFSB Docket No. SB-2003-01
RELOCATION PROJECT :

**AFFIDAVIT OF DAVID RILEY IN SUPPORT
OF THE FRIEND OF INDIA POINT PARK'S
PETITION FOR CERTIORARI**

DAVID RILEY, being duly sworn, hereby deposes and states as follows:

1. I am a long-time resident of the Fox Point neighborhood of Providence and President of The Friends of India Point Park (the "FIPP"), a Rhode Island non-profit corporation which was created in 2000 "to promote, protect, maintain, improve and expand India Point Park and areas in proximity to the Seekonk River, the Providence River and Narraganset Bay." *See* FIPP Articles of Incorporation at 1. I have been actively involved with the FIPP and have served as its Co-Chair since its inception.

2. Although the FIPP does not maintain an official, dues-paying roster of members, individuals and groups are considered FIPP members by virtue of their involvement in and support for FIPP activities. Thus, I am making this affidavit in support of the petitions for certiorari filed in the above matter not only by the FIPP and the City of Providence, but by two *de facto* FIPP members -- Procaccianti Companies, d/b/a/ The Hilton Garden Inn (the "Hilton"), and McMac, Inc., d/b/a The R.I. Seafood Festival (the "Seafood Festival").

3. While recognizing that some 6,200 feet of National Grid's ("NG's") high-voltage electrical power line in the westernmost portion of its E-183 115 kV transmission line needs to be relocated, the FIPP has opposed the plan to replace the deteriorating and unsightly overhead

towers and other overhead structures which currently carry the power lines across the Providence and Seekonk Rivers with similarly unsightly (albeit newer) overhead towers and structures. Thus, the FIPP, along with the Petitioners and thirty business, labor, environmental, neighborhood, and other organizations, has urged the state's Energy Facility Siting Board ("EFSB") to enhance the aesthetic, economic and recreational value of India Point Park and the Providence/East Providence ("EP") waterfront as a whole by mandating that all or some of the lines be buried underground when relocated.

5. I have reviewed the plan for the relocation of the high-voltage overhead waterfront power lines that has been approved by the EFSB Order of January 17, 2018 (the "January 17 Order), i.e., the so-called "South Bridge Alignment," which would relocate the overhead power lines from the soccer field in India Point Park to the popular George Redman Linear Park over the Seekonk River, adjacent to I-195.

6. The FIPP has made clear to the EFSB over the last fifteen years through numerous written submissions and testimony that failing to bury all or some of the power lines underground would defeat the central purpose for which the FIPP was created. Thus, if the relocation approved by the January 17 Order were to be implemented:

- (a) power lines would continue to obstruct water views along the I-195 entrance to the City, an entrance which is used by some 60 million cars a year, and thus would continue to discourage people – including some of the roughly 10 million people who travel through Providence on their way to the Cape and the Islands – from stopping in Rhode Island;
- (b) the power lines would run the length of India Point Park and constitute a conspicuous eyesore marring water views as Rhode Island residents and visitors (more than 150,000 a year, according to a Providence Parks Department estimate) approach the Park from the City, from the ferry landing, from the water and from the vantage point of Bold Point Park; and

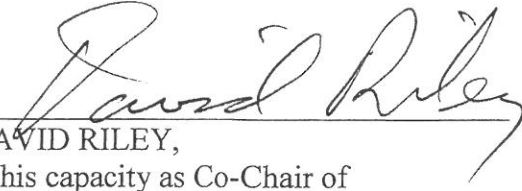
- (c) a once-in a lifetime opportunity to dramatically enhance the aesthetic, economic and recreational value of the state's signature shoreline at the head of the Narragansett Bay – which includes the Newport ferry landing and waterfront parks at India Point, Bold Point, Corliss Landing, and the George Redman Linear Park bridge – would be squandered. This is the only vista with sweeping water views along the heavily traveled interstate highways of the Ocean State.

7. The FIPP has recognized from its beginning that India Point Park is the only expanse of shoreline at the head of Narragansett Bay open to the public in the Capital City of the Ocean State. It has cherished the Park as a respite from urban life, and continuously sought, with significant successes, to prevent or limit intrusions by the built environment onto the Park's narrow natural shoreline. The overhead power lines are a conspicuous element of the built environment that unnecessarily scar the Park, as 2,100 people have stated by signing the FIPP's online petition urging burial.

8. The FIPP has publicized the widely recognized fact, confirmed by multiple studies, that proximity to high-voltage power lines can significantly reduce property values, sometimes by as much as 30%, and that leaving the waterfront power lines overhead will therefore reduce both property values of waterfront parcels and the tax bases of Providence and East Providence, for generations to come, causing long-term, avoidable damage to the State's economy.

9. The FIPP has also publicized the widespread public concern about the health effects of exposure to electromagnetic fields (EMF) emanating from high-voltage power lines, fears which have been recognized as a factor in reducing the property values of parcels proximate to or with views of high-voltage wires, including several of the parcels that the I-195 Commission seeks to market. For example, the Providence Children's Museum rejected then-Providence Mayor Vincent Cianci's offer of free land in India Point Park for a new building

because of public concerns about EMF exposure, as reported in the Providence Journal in 1993 and confirmed in public testimony in 2003 by then Museum Director Janice O'Donnell.


DAVID RILEY,
in his capacity as Co-Chair of
The Friends of India Point Park

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

Sworn to before me this 29th day of January, 2018.



Notary Public: Kimberley A. Campagna
My Commission expires: 4/23/18
ID: 43112

EXHIBIT C

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATION
SUPREME COURT

IN RE THE NARRAGANSETT :
ELECTRIC COMPANY, d/b/a/ :
NATIONAL GRID, e-183 115 Kv : No. SU-18-_____
TRANSMISSION LINE : EFSB Docket No. SB-2003-01
RELOCATION PROJECT :

**AFFIDAVIT OF MICHAEL A. VOCCOLA IN
SUPPORT OF THE HILTON GARDEN INN'S
PETITION FOR *CERTIORARI***

MICHAEL A. VOCCOLA, being duly sworn, hereby deposes and states as follows:

1. I am the Corporate Vice President and Associate General Counsel at Procaccianti Companies, Inc., (the "Company"), a privately-held real estate firm with headquarters at 1140 Reservoir Avenue in Cranston. In that capacity, I am directly involved in all development projects of the Company. I also am a licensed Rhode Island real estate broker since 1981 and licensed to practice law in Connecticut. In addition, I am registered as In-House Counsel with the Rhode Island Supreme Court and have been recognized as an expert in real estate matters by all branches of the Rhode Island judiciary, as well as by virtually every municipality in Rhode Island.

2. I am making this affidavit in support of the petitions for *certiorari* filed in the above matter by the Company, d/b/a/ The Hilton Garden Inn (the "Hotel"), as well as by the City of Providence, The Friends of India Point Park (the "FIPP") and McMac, Inc., d/b/a The R.I. Seafood Festival (the "Seafood Festival").

3. The Company is the owner of the Hotel, which is located at 220 India Street in Providence. I was involved with the acquisition of the Hotel by the Company, am intimately familiar with its location, and have been directly involved in various regulatory issues involving the Hotel and its recent renovation.

4. The Hotel has been active in supporting the activities of the FIPP, including the FIPP's effort to convince the state Energy Facility Siting Board ("EFSB") to enhance the aesthetic, economic and recreational value of India Point Park and the Providence/East Providence waterfront as a whole by mandating that when relocating its high-voltage electrical power lines that now cross above the Providence and Seekonk Rivers, NG bury the lines underground, rather than continuing to use the type of unsightly overhead structures that are currently in place.

5. I have reviewed the plan for the relocation of the high-voltage overhead waterfront power lines now spanning the Providence and Seekonk Rivers that has been approved by the January 17, 2018 Order ("January 17 Order) of the state's Energy Facility Siting Board, i.e., the so-called "South Bridge Alignment," which would relocate the power lines from the soccer field in India Point Park to the popular George Redman Linear Park over the Seekonk River, adjacent to I-195.

6. If the relocation approved by the January 17 Order were to be implemented, NG's high-voltage power lines would virtually surround the Hotel and obstruct views of Narragansett Bay and the City's shoreline from within the renovated Hotel, as well as the views of the Hotel from I-195 and other locations.

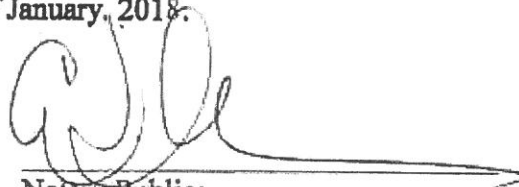
7. In my professional opinion and based upon my experience in the hotel industry and in valuing commercial real estate, the recently-approved relocation plan would make the Hotel less attractive to potential customers, result in a decrease in the number of annual bookings, and thus negatively impact both the income generated by the Hotel as well as the commercial value of the property, all to the economic detriment of the Company.



MICHAEL A. VOCCOLA,
in his capacity as Corporate Vice President
and Associate General Counsel at
Procaccianti Companies, d/b/a
The Hilton Garden Inn

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

Sworn to before me this 25TH day of January, 2018.



Notary Public:

My Commission expires: 01/12/2022

Elizabeth L. Comella
Notary Public
State of Rhode Island
Commission Expires: 01/12/2022
ID # 67335

EXHIBIT D

STATE OF RIODE ISLAND AND PROVIDENCE PLANTATION
SUPREME COURT

IN RE THE NARRAGANSETT :
ELECTRIC COMPANY, d/b/a/ :
NATIONAL GRID, e-183 115 Kv : No. SU-18-_____
TRANSMISSION LINE : EFSB Docket No. SB-2003-01
RELOCATION PROJECT :

**AFFIDAVIT OF T. J. McNULTY IN SUPPORT
OF THE R.I. SEAFOOD FESTIVAL'S
PETITION FOR *CERTIORARI***

T. J. McNULTY, being duly sworn, hereby deposes and states as follows:

1. I am the President of McMac, Inc., a New York S corporation, d/b/a The R.I. Seafood Festival (the "Seafood Festival"), as well as a co-founder of an annual seafood festival held in India Point Park (the "Park") in Providence. I am an experienced retail, commercial, and residential construction and facilities manager, and currently a Superintendent at J.T. Magen & Co., Inc., a preconstruction, construction management, design-build, and general contracting services firm based in New York City.

2. I am making this affidavit in support of the petitions for *certiorari* filed in the above matter by the Seafood Festival, the Friends of India Point Park (the "FIPP"), the City of Providence, and Procaccianti Companies, d/b/a the Hilton Garden Inn.

3. Last year, over 30 food service businesses were involved in the annual seafood festival, and an estimated 5000 people attended. The overall gross receipts from last year's festival totaled an estimated \$50,000.

4. The Seafood Festival chose the Park as the location for its annual event, and has been actively exploring the possibility of sponsoring concerts and other activities in the Park, because of the Park's convenient location and beauty, which has been enhanced by recent

renovations. The Park also contains splendid views of Narragansett Bay, even if many of the views are marred by unsightly electrical towers and other structures.

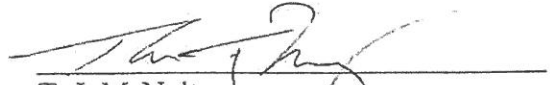
5. Indeed, in 2013 the Seafood Festival looked into the possibility of having a helicopter company from Newport do tours of Providence from the soccer field at India Point Park, but was unable to do so because, it was informed, the high-voltage electrical power lines operated by National Grid (“NG”) in the area make the soccer field a “a no fly zone.”

6. The Seafood Festival has been active in supporting the activities of the FIPP, including the FIPP’s effort to convince the state Energy Facility Siting Board (the “EFSB”) to enhance the aesthetic, economic and recreational value of the Park and the Providence/EP waterfront as a whole by mandating that when relocating its high-voltage electrical power lines that now cross above the Providence and Seekonk Rivers, NG bury the lines underground, rather than continuing to use the type of unsightly overhead structures that are currently in place.

7. I have reviewed the plan for the relocation of the high-voltage overhead waterfront power lines now spanning the Providence and Seekonk Rivers that has been approved by the EFSB’s January 17, 2018 Order (the “January 17 Order”), i.e., the so-called “South Bridge Alignment,” which does not require that the lines be buried and which would relocate the power lines from the soccer field in India Point Park to the popular George Redman Linear Park over the Seekonk River, adjacent to I-195.

8. Implementing the relocation plan approved by the January 17 Order would squander a once-in-a-lifetime opportunity to enhance the aesthetic, economic and recreational value of the Park. Such enhancements would result in increased attendance at the annual seafood festivals and other events in the Park. This would be an incalculable loss to the public at large, as well as a more specific and calculable economic loss to the many individuals and businesses

who participate in events in the Park by, among other things, selling food and other products, and/or performing.

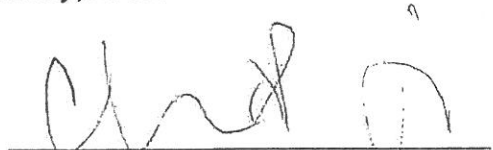


T. J. McNulty,
in his capacity as President of McMac, Inc.,
d/b/a/ The R.I. Seafood Festival

STATE OF NEW YORK
COUNTY OF NEW YORK

Sworn to before me this 26 day of January, 2018.

SARAH BERNIER
Notary Public – State of New York
No. 01BE6281600
Qualified in Bronx County
My Commission Expires 5/20/21


Notary Public:
My Commission expires: 5/20/21