

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

In re: The Narragansett Electric Company :
(E-183 115 kV Transmission Line : Docket No. SB-2003-01
Relocation Project – A/C I-195 Relocation) :

POSITION OF THE CITY OF EAST PROVIDENCE REGARDING
THE CITY OF PROVIDENCE’S SEPTEMBER 25, 2017 ALTERNATIVE OVERHEAD
ALIGNMENT PROPOSAL IN RELATION TO THE SETTLEMENT AGREEMENT

The City of East Providence (“East Providence”), submits this position paper, as requested by the Rhode Island Energy Facility Siting Board (the “Board”), at the conclusion of the Board’s hearing on September 26, 2017.

The Board requested that all parties, including East Providence, submit a position paper relative to this City of Providence’s (“Providence”) September 25, 2017 Alternative Overhead Alignment Proposal (“Providence’s September 25th Alternative Overhead Alignment Proposal”).¹ Specifically, the Board asked for position papers to be submitted as to whether Providence’s September 25th Alternative Overhead Alignment Proposal could be considered an alternative overhead alignment as defined in the Settlement Agreement.

To be clear, Providence’s September 25th Alternative Overhead Alignment Proposal involves the following:

1. Modifying the Bridge Alignment South as defined in the Settlement Agreement to include burial of the power lines from “Temporary Pole 1” in India Point Park to “Temporary Pole 7” in India Point Park. *See* Providence’s Supplemental Memorandum in Support of its Objection dated September 25, 2017 at p. 2;
2. The construction of two (2), unidentified transition stations somewhere in Providence and/or India Point Park to accommodate the alternative. *Id.*; and
3. To fund the alternative from Providence ratepayer contributions to the Rhode Island Public Utilities Commission rate settlement funds that are being held by National Grid to fund the transmission line realignment contemplated by the Settlement Agreement. *Id.*

¹ Providence’s September 25th Alternative Overhead Alignment Proposal is set forth in Providence’s Supplemental Memorandum in Support of Its Objection dated September 25, 2017 and the proposal is presented as a modification of the Bridge Alignment South.

It is the position of East Providence that Providence's September 25th Alternative Overhead Alignment Proposal falls outside of the definitions set forth in the Settlement Agreement and therefore, cannot be considered by the Board.

First of all, the Settlement Agreement is a form of contract by and between the signatories to the Settlement Agreement. The Rhode Island Supreme Court interprets a settlement agreement as "any other type of contract, applying [the] general rules of contract construction". See *Furtado v. Goncalves*, 63 A.3d 533, 538 (R.I. 2013); see also, *Karmick, LLC v. Kane*, 2014 R.I. Super. LEXIS 80 (R.I. Super. June 2, 2014).

It is well settled that "[w]hen contract language is clear and unambiguous, words contained therein will be given their usual and ordinary meaning and the parties will be bound by such meaning." *Andrukiewicz v. Andrukiewicz*, 860 A.2d 235, 238 (R.I. 2004). "Clear and unambiguous language set out in a contract is controlling with regard to the intent of the parties to such contract and governs the legal consequences of its provisions." *Dovenmuehle Mortg., Inc. v. Antonelli*, 790 A.2d 1113, 1115 (R.I. 2002).

In this instance, the Settlement Agreement clearly states at Recital VI on page 1, that "[t]he Parties have developed several alternatives to the Original Alignment" and those alternate, overhead alignments are specifically and unambiguously defined in Section I of the Settlement Agreement. See Settlement Agreement at Recital VI, p. 1.

Providence specifically labels its alternative as an alternative overhead alignment. See Providence's Supplemental Memorandum in Support of Its Objection dated September 25, 2017. Specifically, Providence argues that it is alternative to the Bridge Alignment South, which is clearly defined at Section I(7) of the Settlement Agreement. See Settlement Agreement at Section I(7).

The definition of the Bridge Alignment South utilized by the parties in the Settlement Agreement is plain and unambiguous. The Bridge Alignment South is an overhead route which does not have any underground aspects.

With that said, the Settlement Agreement also provides that the Cities, including Providence, cannot contest before this Board, any of the alternative alignments that the parties have already selected. See Settlement Agreement at Section III(a).

However, if Providence had determined that it would like to dedicate large portions of India Point Park to transition stations, then East Providence, in the normal course, would not object. However, Providence's September 25th Alternative Overhead Alignment Proposal raises a number of significant questions. The unanswered questions are going to lead to delay and place feasibility of Providence's alternative alignment in serious doubt.

For these reasons, alone, East Providence must insist upon the literal enforcement of the Settlement Agreement and a finding that Providence's September 25th Alternative Overhead Alignment Proposal is not consistent with the clear definitions in the Settlement Agreement.

Moreover, the uncertainties that exist will undoubtedly translate into higher project expense. In that regard, Providence again attempts to unilaterally amend the Settlement Agreement by putting conditions upon how Providence's September 25th Alternative Overhead Alignment Proposal would be funded. The funding provisions that Providence proposes are also inconsistent with the Settlement Agreement.

Therefore, taken as a whole, Providence's September 25th Alternative Overhead Alignment Proposal, which Providence admits was suggested at the 11th hour by a select constituency within Providence, is not consistent with the Settlement Agreement and cannot be considered by the Board.

Respectfully Submitted,
CITY OF EAST PROVIDENCE
By its Attorney,



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Dated: October 10, 2017

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the within was sent by e-mail to the following this the 10th day of October, 2017:

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