STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: June 20, 2017]

CONSERVATION LAW FOUNDATION, INC.,	:	
Plaintiff,	:	
v.	:	**C.A. No. PC-2017-1037**
CLEAR RIVER ENERGY, LLC, and TOWN OF JOHNSTON, RHODE ISLAND,	:	
Defendants.	:	
		(Consolidated with)
TOWN OF BURRILLVILLE, RHODE ISLAND,	:	
Plaintiff,	:	
v.	:	**C.A. No. PC-2017-1039**
CLEAR RIVER ENERGY, LLC, and TOWN OF JOHNSTON, RHODE ISLAND,	:	
Defendants.	:	

DECISION

SILVERSTEIN, J. Before the Court in these consolidated matters are Defendants'—Clean River Energy, LLC (CREC) and Town of Johnston, Rhode Island (Johnston) (collectively, Defendants)—motions to dismiss Plaintiffs'—Conservation Law Foundation, Inc. (CLF) and Town of Burrillville, Rhode Island (Burrillville) (collectively, Plaintiffs)—Amended Complaints

pursuant to Super. R. Civ. P. 12(b)(1), 12(b)(6), and 12(b)(7). In their nearly identical Amended Complaints, both CLF and Burrillville seek the same relief: (1) a declaration that Johnston has no legal authority to sell to CREC water initially purchased from the Providence Water Supply Board (PWSB) under P.L. 1915, ch. 1278, § 18;[1] (2) a declaration that Johnston has no legal authority to sell CREC water initially purchased from the PWSB under any provision of Rhode Island law; and (3) injunctive relief preventing Johnston from receiving water from the PWSB and reselling it to CREC for use in CREC's proposed power plant. Plaintiffs frame their requests for relief as presenting a straightforward matter of statutory interpretation—that is, whether Johnston's reselling of water to CREC is a "domestic, fire [or] other ordinary municipal water supply purpose[] . . . ." See P.L. 1915, ch. 1278, § 18.

Defendants seek to place Plaintiffs' claims within the broader context of what amounts to the proverbial elephant in the room—CREC's proposed power plant and Plaintiffs' adamant opposition to it. Admittedly, CLF and Burrillville's requests for declaratory judgments and injunctive relief do not arise in isolation; they arise under the possibility that Burrillville may someday be home to the proposed power plant which Plaintiffs presently oppose. Yet the contested policy issues clouding the proposed power plant's impending hearing before the Energy Facility and Siting Board (EFSB)—specifically those of licensing and permitting—are of no moment to this Court. These motions to dismiss pose legal questions relating to the doctrines

[1] P.L. 1915, ch. 1278—entitled "An Act to Furnish the City of Providence with a Supply of Pure Water"—has been amended over a dozen times since the General Assembly originally enacted it in 1915. However, the language at the core of these consolidated cases, as provided in Section 18 of P.L.1915, ch. 1278, has remained the same. Therefore, the Court will cite to Section 18 as "P.L. 1915, ch. 1278, § 18" throughout this Decision. For purposes of clarity, when the Court does so, it is referring to the most recent iteration of the law, which was last amended in 1986. See 1986 R.I. P.L. 132.

of standing, exhaustion of administrative remedies, joinder of indispensable parties, and so on. The Court exercises jurisdiction pursuant to G.L. 1956 §§ 9-30-1, et seq.

I

Facts and Travel

On January 6, 2017, Johnston and CREC executed a contract—the "Water Supply and Economic Development Agreement" (the Water Agreement)—which, by its terms, obligates Johnston to provide CREC with water. Unable to obtain water from Burrillville or Woonsocket, CREC turned to Johnston for a steady supply of water. CREC needs water to cool its proposed power plant. Pursuant to the Water Agreement, Johnston, which purchases water from the PWSB, will sell water to CREC. Johnston plans on constructing a water supply facility in Johnston at which CREC can fill up on the water it needs. CREC will send trucks to that facility, fill up with water, and return to Burrillville.

Shortly after CREC and Johnston executed the Water Agreement, CLF and Burrillville separately filed suit alleging that Johnston's sale of water—water initially obtained from the PWSB—violates the statutory water use restrictions codified in Section 18 of ch. 1278 to P.L. 1915. In early April of 2017, the Court consolidated CLF and Burrillville's cases. At the end of April, CREC and Johnston moved to dismiss Plaintiffs' Amended Complaints; Plaintiffs objected. Over the course of the next month, all parties filed memoranda and reply memoranda in support of their respective positions. The Court heard argument on May 31, 2017.

II

Standard of Review

"The 'sole function of a motion to dismiss is to test the sufficiency of the complaint.'" Martin v. Howard, 784 A.2d 291, 297 (R.I. 2001) (quoting R.I. Affiliate, ACLU, Inc. v.

Bernasconi, 557 A.2d 1232, 1232 (R.I. 1989)). In testing the sufficiency of the complaint, the "'Court assumes the allegations contained in the complaint to be true and views the facts in the light most favorable to the plaintiffs.'" Id. at 297-98 (quoting St. James Condo. Ass'n v. Lokey, 676 A.2d 1343, 1346 (R.I. 1996)); see also Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008). Our Supreme Court has long adhered to the rule that "no complaint will be deemed insufficient unless it is clear beyond a reasonable doubt that the plaintiff will be unable to prove his right to relief [.]" Bragg v. Warwick Shoppers World, Inc., 102 R.I. 8, 12, 227 A.2d 582, 584 (1967). Accordingly, a motion to dismiss "should not be granted 'unless it appears to a certainty that [the plaintiffs] will not be entitled to relief under any set of facts which might be proved in support of [their] claim.'" Martin, 784 A.2d at 298 (quoting St. James Condo. Ass'n, 676 A.2d at 1346) (alterations in original).

III

Discussion

Defendants move to dismiss Plaintiffs' Amended Complaints for several reasons. First, Defendants assert that CLF and Burrillville lack standing—a prerequisite to seeking a declaratory judgment. Second, Defendants argue that Plaintiffs have not exhausted their administrative remedies with the EFSB and, accordingly, the Court should dismiss their Amended Complaints. Third, Defendants argue that the EFSB has primary jurisdiction over all issues of licensing and permitting major energy facilities—including CREC's proposed power plant. Fourth, Defendants aver that the Court is without any role in the EFSB's decision-making process because decisions of the EFSB are appealable only to the Rhode Island Supreme Court. Fifth, Defendants ask the Court to dismiss Plaintiffs' claims on the ground that they have failed

to join indispensable parties. Finally, Defendants seek to dismiss Plaintiffs' request for injunctive relief. Plaintiffs oppose each of Defendants' arguments.

The statute at the root of these cases, P.L. 1915, ch. 1278, § 18, provides, in pertinent part, that certain towns, cities, and other entities—including both Johnston and Burrillville[2]—"shall have the right to take and receive water [from the PWSB] for use for domestic, fire and other ordinary municipal water supply purposes . . . ." However, before determining the merits of these consolidated cases, the Court first considers whether Plaintiffs have standing.

A

Standing

Defendants first contest whether Plaintiffs have standing to pursue the declaratory judgments they seek. Plaintiffs argue that they not only have standing to challenge Johnston's legal authority to sell water to CREC, but they also aver that if the Court finds that Burrillville and CLF lack standing, then the Court should invoke the "substantial public interest" exception and overlook any flaw in their ability to establish standing to sue.

Under Rhode Island's Uniform Declaratory Judgments Act (UDJA),

> "Any person[3] . . . whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder." Sec. 9-30-2.

The UDJA was enacted "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and

[2] Johnston and Burrillville were added to the list of towns authorized "to take and receive water" from the PWSB in 1936 and 1986, respectively. See 1936 R.I. P.L. 698, 1986 R.I. P.L. 32.

[3] "The word 'person' . . . shall be construed to mean any person, partnership, joint stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever." Sec. 9-30-13.

administered." Sec. 9-30-12. However, the General Assembly also vested in this Court the discretion to "refuse to render or enter a declaratory judgment or decree where the judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding." Sec. 9-30-6.

While the UDJA affords litigants the opportunity to clarify their legal rights under written contracts and statutes, it does not facilitate "the determination of abstract questions or the rendering of advisory opinions, nor does it license litigants to fish in judicial ponds for legal advice." Sullivan v. Chafee, 703 A.2d 748, 751 (R.I. 1997) (citations omitted) (internal quotation marks omitted). This Court is mindful of its duty to not wade into unsettled waters and decide legal issues presented only in the abstract; there generally must be before the Court an actual case or controversy. Haviland v. Simmons, 45 A.3d 1246, 1256 (R.I. 2012). One way in which our jurisprudence ensures that the UDJA is not used for opining in the abstract is through the doctrine of standing. Id. As our Supreme Court has consistently held, standing is "a necessary predicate to pursuing a declaratory judgment." DePetrillo v. Belo Holdings, Inc., 45 A.3d 485, 491 (R.I. 2012) (citing Bowen v. Mollis, 945 A.2d 314, 317 (R.I. 2008)); see also Meyer v. City of Newport, 844 A.2d 148, 151 (R.I. 2004).

"Standing is a threshold inquiry into whether the party seeking relief is entitled to bring suit." Narragansett Indian Tribe v. State, 81 A.3d 1106, 1110 (R.I. 2014) (citing Blackstone Valley Chamber of Commerce v. Pub. Utils. Comm'n, 452 A.2d 931, 932, 933 (R.I. 1982)). It has been described as "'[simply] an access barrier that calls for the assessment of one's credentials to bring suit[.]'" Ahlburn v. Clark, 728 A.2d 449, 451 (R.I. 1999) (alteration in original) (quoting Blackstone Valley Chamber of Commerce, 452 A.2d at 932). "In determining whether a party has standing, a court begins with the pivotal question of whether the party

alleges that the challenged action has caused him or her injury in fact." Narragansett Indian Tribe, 81 A.3d at 1110. An injury in fact is defined as "'an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical.'" Id. (internal quotation marks omitted) (quoting Pontbriand v. Sundlun, 699 A.2d 856, 862 (R.I. 1997)). Our Supreme Court has emphasized time and again that "'[t]he line is not between a substantial injury and an insubstantial injury. The line is between injury and no injury.'" Roch v. Garrahy, 419 A.2d 827, 831 (R.I. 1980) (quoting Matunuck Beach Hotel, Inc. v. Sheldon, 121 R.I. 386, 396, 399 A.2d 489, 499 (1979)); see also Cummings v. Shorey, 761 A.2d 680, 684 (R.I. 2000). Put another way, for purposes of determining whether a party has standing to sue, the Court focuses not on the magnitude of the injury alleged, but whether there is any injury alleged at all. Roch, 419 A.2d at 831.

Here, Defendants argue that neither Burrillville nor CLF has alleged a legally sufficient injury in fact necessary to establish standing, thus depriving the Court of subject matter jurisdiction to hear Plaintiffs' requests for declaratory judgments. First, Defendants point the Court to the Water Agreement, an agreement to which neither Burrillville nor CLF is a party. According to Defendants, because Plaintiffs are not parties to that agreement, they lack the standing needed to challenge its validity. Indeed, the Rhode Island Supreme Court has, on multiple occasions, "indicated that an individual who was not a party to a contractual agreement lacks standing to challenge its validity." DePetrillo, 45 A.3d at 492 (citations omitted); see also Sousa v. Town of Coventry, 774 A.2d 812, 815 n.4 (R.I. 2001). On this point, the Court agrees with Defendants. Following the standard articulated in DePetrillo, 45 A.3d at 492, this Court finds that Plaintiffs do not have standing to seek a declaratory judgment under the Water Agreement itself. However, as Plaintiffs argue, at the heart of the issue of standing—and at the

heart of these consolidated cases—is not the validity of the Water Agreement under principles of contract law but, instead, is a question of statutory interpretation. Plaintiffs do not dispute that they lack the standing necessary to challenge whether the Water Agreement was properly formed under principles of contract law; rather, Plaintiffs argue that they have standing to seek declarations that Johnston has no legal right under P.L. 1915, ch. 1278, § 18, or under any other Rhode Island law, to obtain water from the PWSB and resell it to CREC. In other words, Plaintiffs aver that they have standing to challenge whether Johnston has the legal authority to sell CREC water in light of P.L. 1915, ch. 1278, § 18—i.e., whether Johnston's agreement to sell CREC water taken and received from the PWSB is "for use for domestic, fire [or] other ordinary municipal water supply purposes . . . ." To the Court, this is an issue separate and apart from whether Johnston and CREC met each of the elements of contract formation.

Nevertheless, Defendants maintain that neither Burrillville nor CLF has standing to seek a declaration that Johnston lacks the legal authority to sell water to CREC. Defendants frame Plaintiffs' claims as stall tactics to prevent what Defendants consider the main thrust of this case: Plaintiffs' opposition to CREC's proposed power plant. According to Defendants, Burrillville and CLF, as strangers to the Water Agreement, filed requests for declaratory judgments as an end run around the EFSB. With that framing set, Defendants argue that neither Burrillville nor CLF has alleged or suffered an injury in fact as a result of the Water Agreement. Defendants claim that the only harm anticipated as a result of Johnston's agreement to sell water to CREC is the potential approval of CREC's power plant. For Defendants, it follows that without any legally cognizable injury in fact, Plaintiffs lack the standing necessary to invoke the subject matter jurisdiction of this Court to issue declaratory judgments. Conversely, Plaintiffs argue that they have alleged injuries necessary to establish standing to challenge Johnston's legal authority

to sell CREC water. At this juncture, the Court will address each plaintiff separately and determine whether each or both has standing to pursue relief under the UDJA.

1

Burrillville

Burrillville alleges that Johnston's sale of water to CREC will cause a strain on the water supply that the PWSB has available. Burrillville's Am. Compl. ¶¶ 18, 27. Essentially, Burrillville reasons that for every ounce of water that flows to Johnston in service of the Water Agreement, Burrillville's rights, status, or other legal relations are affected. Burrillville traces that injury—the strain on the water supply—to Johnston's agreement to sell water to CREC. If, Burrillville argues, Johnston is without the legal authority under P.L. 1915, ch. 1278, § 18 to sell CREC water, but does so anyway, then Burrillville is injured. In its papers, Burrillville estimates that Johnston will drain upwards of fifteen million gallons of water per year in furtherance of the Water Agreement, which could decrease the amount of water that Burrillville can take and receive from the PWSB. Burrillville's proposed remedies for this injury are declarations that (1) Johnston's sale of water to CREC conflicts with P.L. 1915, ch. 1278, § 18 and (2) Johnston is without any other legal authority to sell CREC water that was purchased in the first instance from the PWSB. Burrillville also seeks injunctive relief.

If, however, as Defendants contend, Johnston's sale of water to CREC does not cause Burrillville an injury that is "'(a) concrete and particularized . . . and (b) actual or imminent,'" then Burrillville lacks standing to sue. Narragansett Indian Tribe, 81 A.3d at 1110 (internal quotation marks omitted) (quoting Pontbriand, 699 A.2d at 862). Defendants argue that this is precisely the case here: any alleged strain on the PWSB's water supply is hypothetical and conjectural because the power plant has yet to be approved by the EFSB. According to

Defendants, because Burrillville's injury is contingent on a future event, Burrillville is without standing under Rhode Island law.

The Court need not determine whether the EFSB's pending decision affects Burrillville's alleged injury in fact because the very statute that Plaintiffs ask this Court to interpret takes care of Burrillville's purported injury. Section 18 of P.L. 1915, ch. 1278 provides, in pertinent part, that the towns, cities, and other entities listed therein—including both Johnston and Burrillville—

> "shall have the right to take such water as aforesaid to any extent each month not exceeding an average per day of one hundred fifty gallons per capita of the number of inhabitants of such parts of its territory or territories as are served from such water supply source or sources, as such number of inhabitants was shown by the last preceding census of the United States or of the State of Rhode Island, unless and to the extent and for the time only that said officer or officers of said city of Providence shall consent to the taking by such town, city, or water or fire district, water company or water users of a greater quantity of such water." (Emphasis added).

That language, which places a statutory limit on the amount of water Johnston can lawfully take from the PWSB (albeit subject to an increase if the PWSB approves), squarely addresses Burrillville's concern regarding the potential strain on the water supply. The statutory cap on the water Johnston can take from the PWSB includes the water that will be taken and sold to CREC, quelling Burrillville's hypothetical concern for the overburdening of the PWSB's water supply. In this way, Burrillville's asserted injury is illusory. Therefore, the Court concludes that Burrillville's alleged injury—a potential strain on the water available to it "for use for domestic, fire and other ordinary municipal water supply purposes"—is not an "injury in fact" for purposes

of establishing standing. See Narragansett Indian Tribe, 81 A.3d at 1110.[4] Having concluded that the potential strain on the water supply is not a demonstrable injury in fact here, the Court turns now to whether CLF has alleged an injury in fact of its own.

2

CLF

CLF argues that it has standing in two ways: (1) through its members; and (2) through Burrillville. With respect to the former, our Supreme Court has recognized that organizations have standing to sue on behalf of its members when those members suffer an injury in fact. E. Greenwich Yacht Club, 118 R.I. at 564-65, 376 A.2d at 684-685. In addressing whether CLF had standing in another context, our Supreme Court adopted the United States Supreme Court's test for determining whether an organization has standing to sue on behalf of its members. In re Town of New Shoreham Project, 19 A.3d 1226, 1227 (R.I. 2011) (mem). As our Supreme Court explained, "[i]n the case of an organization such as CLF . . . th[e] standing requirement is satisfied 'when [the organization's] members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested require the participation of individual members in the lawsuit.'"

[4] CLF, in its attempt to piggyback onto Burrillville to establish standing, argues that Burrillville will also suffer from a "significant number of trucks on its small, rural, winding roads, including in winter when those roads may be snowy or icy." CLF's Mem. of Law in Supp. of its Objs. To Defs.' Mots. to Dismiss 7. To the extent that Burrillville has adopted that as an injury resulting from Johnston's selling of water to CREC, the Court finds that the increase in trucks on the roads of Burrillville does not amount to an "'injury in fact, economic or otherwise.'" N & M Properties, LLC v. Town of W. Warwick ex rel. Moore, 964 A.2d 1141, 1145 (R.I. 2009) (quoting Bowen, 945 A.2d at 317). Such a harm, without more, does not "demonstrate 'adverse effect upon its property, income, or . . . its investment potential.'" City of E. Providence v. Pub. Utils. Comm'n, 566 A.2d 1305, 1307 (R.I. 1989) (quoting Newport Elec. Corp. v. Pub. Utils. Comm'n, 454 A.2d 1224, 1225 (R.I. 1983)); see also E. Greenwich Yacht Club v. Coastal Res. Mgmt. Council, 118 R.I. 559, 564, 376 A.2d 682, 684 (1977) (noting that the test for evaluating standing—i.e., whether a party has alleged an injury in fact—is the same as the standard for evaluating whether a person is aggrieved).

Id. (quoting Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 181 (2000)). Therefore, the threshold question for the Court here is whether CLF's members would have standing in their own right to challenge Johnston's sale of water to CREC.

In support of the proposition that its members have standing to sue, CLF has provided the Court with affidavits from four members, all of whom live in Burrillville. See Ex. A (Affidavit of Kathryn Sherman), Ex. B (Affidavit of David A. Brunetti), Ex. C (Affidavit of Jason Olkowski), Ex. D (Affidavit of Paul Roselli). After reviewing these affidavits and considering CLF's reasoned arguments on this issue, the Court finds that CLF's members have not asserted injuries in fact necessary to establish standing to sue in their own right. See Town of New Shoreham Project, 19 A.3d at 1227. In their affidavits, CLF's members express their adamant opposition to CREC's proposed power plant, asserting concerns related to quality of life and impacts on the environment—including carbon emission, damage to their freshwater system, and negative effects to the local biodiversity. However, those concerns all relate to the power plant and not to the issue of whether Johnston's sale of water to CREC conflicts with the language in P.L. 1915, ch. 1278, § 18. That is not to say that the injuries alleged by CLF's members are not real or worthy of consideration, it is only that those injuries are not fairly traceable to Johnston's sale of water to CREC.

CLF's members also express concern with the trucks that CREC will inevitably send to pick up and return with water from Johnston. See Ex. A ¶ 15, Ex. B ¶ 11, Ex. C ¶ 12, Ex. D. ¶ 10. However, as footnoted supra, concern with an increase in trucks carrying water to and from CREC's proposed power plant, without more, does not amount to an injury in fact. The potential that some of these trucks may spill over onto Burrillville's roads or that the trucks will clog Burrillville's narrow and winding roads is the sort of "conjectural or hypothetical" interest

that fails to demonstrate a legally cognizable injury in fact. See, e.g., N & M Properties, LLC, 964 A.2d at 1145-46. Indeed, every resident of Burrillville would experience that harm, illustrating that the increase in trucks on Burrillville's roads in not a particularized injury. See, e.g., Watson v. Fox, 44 A.3d 130, 137 (R.I. 2012); Meyer, 844 A.2d at 151 (citing cases where our Supreme Court "has refused to find standing when a plaintiff has failed to demonstrate a personalized injury distinct from that of the community as a whole"). Accordingly, CLF does not have standing through its members because those members lack the prerequisite injury in fact necessary to sue in their own right. See In re New Shoreham Project, 19 A.3d at 1227; E. Greenwich Yacht Club, 118 R.I. at 564-65, 376 A.2d at 684-85.

Moreover, CLF's argument that it has standing because Burrillville has standing also fails. Citing Rumsfeld v. Forum for Acad. & Institutional Rights, Inc., 547 U.S. 47, 52 n.2 (2006), CLF contends that if one party has standing, so too does the other party. In this way, CLF seeks to latch onto Burrillville's alleged injury in fact in order to pursue relief under the UDJA. However, as the Court has found supra, Burrillville has not alleged an injury in fact sufficient for purposes of demonstrating standing. As a result, even if it were the case that standing for one established standing for all,[5] Burrillville lacks the requisite injury in fact onto which CLF can grasp to create standing. Therefore, CLF does not have standing either through its members or through Burrillville.

[5] The Court doubts whether this proposition extends as far as CLF contends. The case CLF cites, Forum for Acad. & Institutional Rights, Inc., 547 U.S. at 52 n.2, references the notion that an appellate court need not address whether every appellant has standing so long as one appellant does. See also Bowsher v. Synar, 478 U.S. 714, 721 (1986). Such a rule appears more appropriate for appellate courts, where the courts can eschew discussion of each appellant's standing to sue, and directly address the questions of law presented for review.

3

Substantial Public Interest

Although the Court has concluded that Burrillville and CLF have not alleged injuries in fact for purposes of establishing standing, they are not without one last arrow in their quiver. Plaintiffs urge this Court to invoke what is known as the "substantial public interest" exception in order to hear their cases on the merits, even in lieu of finding that Plaintiffs have standing. While it is generally the case that standing is a prerequisite to seeking a declaratory judgment, on occasion, courts will "overlook[] the standing requirement to determine the merits of a case of substantial public interest." Burns v. Sundlun, 617 A.2d 114, 116 (R.I. 1992) (citing Sennott v. Hawksley, 103 R.I. 730, 731, 241 A.2d 286, 287 (1968)). Our Supreme Court has cautioned that the substantial public interest exception should be "reserved for rare circumstances," Narragansett Indian Tribe, 81 A.3d at 1111, and that questions of policy, such as a generalized interest in climate change, should be left to the political arena and not the courts. In re Town of New Shoreham Project, 19 A.3d at 1229. However, from time to time the Rhode Island Supreme Court has been presented with the rare circumstances required to justify invoking the substantial public interest exception. See, e.g., In re Town of New Shoreham Project, 19 A.3d at 1229 (Flaherty, J., dissenting) (collecting cases). For example, in Burns our Supreme Court invoked the substantial public interest exception because the plaintiff "raise[d] a question of statutory interpretation of great importance to citizens in localities that could become home to gambling facilities seeking to simulcast and invite wagering on out-of-state events." 617 A.2d at 116.

Here, the Court is presented a question of statutory interpretation that falls squarely within the substantial public interest exception. See id. In other words, Plaintiffs raise an issue that presents one of those "rare occasions" where the Court will overlook standing. See id.

These consolidated cases do not involve thorny questions of constitutional importance, see Watson, 44 A.3d at 138-39, or generalized interests in environmental problems like climate change, see In re Town of New Shoreham Project, 19 A.3d at 1228-29. Rather, here, Plaintiffs present the Court with a concrete issue of statutory interpretation that affects the legal authority of towns, cities, and other entities—including Burrillville and Johnston—to use the water they take and receive from the PWSB. Based on the number of people affected, it is almost unfathomable to conclude that such an issue does not address the public interest in a significant way.[6] Indeed, the question presented in these cases falls neatly into the language from Burns: Plaintiffs "raise a question of statutory interpretation of great importance to citizens in localities that" take and receive water from the PWSB under P.L. 1915, ch. 1278, § 18. See Burns, 617 A.2d at 116. In finding that Plaintiffs may proceed in light of the substantial public interest presented here, the Court underscores that this is not a case about CREC's proposed power plant. It is, instead, a case about water supply, and the discrete issue of whether Johnston has the legal authority to sell water to CREC in light of P.L. 1915, ch. 1278, § 18. Therefore, because the Court holds that Plaintiffs' consolidated cases address an issue of substantial public interest, Plaintiffs may proceed in their pursuit of a declaratory judgment as outlined in Count I of their

[6] This Court has previously noted two circumstances where the substantial public interest could justify overlooking standing. E.g., A.F. Lusi Constr., Inc. v. R.I. Dep't of Admin., No. PB 07-1104, 2007 WL 1460214 n.13 (R.I. Super. May 7, 2007) (Silverstein, J.) (citing Burns, 617 A.2d at 116) (noting that "a challenge to a regulation which potentially affects every construction contract awarded by the State is likely of sufficient public importance to justify disregarding the standing requirement, as our Supreme Court has done from time to time"); Gagnon v. Benoit, C.A. No. PB 05-5964, 2006 WL 2868658, at *3 (R.I. Super. Oct. 5, 2006) (Silverstein, J.) (noting that "given the large number of persons who will be affected by the requested relief and the likelihood that a similar case would be brought in the near future, the Court would be justified in overlooking the standing requirement under the substantial public interest exception"). Given the straightforward question presented in this case, and the public import involved, such circumstances are also present here.

Amended Complaints. See Burns, 617 A.2d at 116; see also Ret. Bd. of Emps.' Ret. Sys. of City of Providence v. City Council of Providence, 660 A.2d 721, 726 (R.I. 1995).

B

Exhaustion of Administrative Remedies

Defendants next argue that Plaintiffs' cases should be dismissed because Plaintiffs have failed to exhaust their administrative remedies with the EFSB. While it is true that a party's failure to exhaust administrative remedies may prove fatal to his or her claim in court, see Burns, 617 A.2d at 116, that is not the case here. By statute, the EFSB "is the licensing and permitting authority for all licenses, permits, assents, or variances which . . . would be required for siting, construction or alteration of a major energy facility in the state." G.L. 1956 § 42-98-7(a)(1). Sitting as a super zoning board for major energy facilities, EFSB is delegated broad authority. However, that authority is not without bound; it is limited to the context of licensing and permitting and its decisions are subject to judicial review by our Supreme Court. See §§ 42-98-7(a)(1)-(e), 42-98-12. Defendants rely on the EFSB's broad authority to argue that Plaintiffs should have brought the issues presently raised here before the EFSB. Yet, other than a grant of authority to license and permit major energy facilities as well as an instruction that the Energy Facility Siting Act should be construed liberally, nothing in the EFSB's enabling act provides that the EFSB has the authority to issue declaratory judgments or interpret statutes outside the purview of licensing and permitting. See § 42-98-7. Here, the Court is presented with a statute dealing with water supply—a statute that has almost nothing to do with the licensing and permitting of a major energy facility. While the EFSB may evaluate a proposed power plant's water plan as part of the required criteria considered for licensing, the power to construe statutes that are wholly unrelated to licensing and permitting, such as P.L. 1915, ch. 1278, § 18, is vested

in this Court. As the United States Supreme Court stated long ago, "[i]t is emphatically the province and duty of the judicial department to say what the law is." Marbury v. Madison, 5 U.S. 137, 177 (1803). Simply put, this Court is the appropriate forum to interpret P.L. 1915, ch. 1278, § 18. Accordingly, the Court rejects Defendants' argument that these consolidated cases should be dismissed due to a failure to exhaust administrative remedies.[7]

C

Failure to Join Indispensable Parties

Defendants' last salvo in favor of dismissing Plaintiffs' cases is an argument that Plaintiffs' failure to join a host of indispensable parties warrants dismissal pursuant to Super. R. Civ. P. 12(b)(7). The Court concurs with Defendants that all parties affected by the issuance of a declaratory judgment here are indispensable to this lawsuit. See § 9-30-11 ("When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding."). However, here, outright dismissal of Plaintiffs' Amended Complaints is not an appropriate remedy. Rather, the Court will give Plaintiffs twenty days from the date of the entry of an order embodying the provisions of this Decision to join the parties indispensable to these consolidated cases. For example, anyone entitled to "take and receive water" pursuant to

[7] For similar reasons, Defendants' arguments that the EFSB—not this Court—has primary jurisdiction over Plaintiffs' declaratory judgments also fails. While the EFSB has broad authority in the way of licensing and permitting major energy facilities, the Energy Facility Siting Act does not divest the Superior Court of its jurisdiction to issue declaratory judgments and interpret statutes. In that vein, Defendants' assertion that this Court lacks subject matter jurisdiction here is without merit. Clearly, judicial review of the EFSB's decisions is reserved solely to our Supreme Court. See § 42-98-12. These cases, however, do not involve judicial review of the EFSB's decision. Thus, the Court will not dismiss Plaintiffs' cases due to the doctrine of primary jurisdiction or due to a lack of subject matter jurisdiction.

P.L. 1915, ch. 1278, § 18 is indispensable to these proceedings. This process ensures that each party affected by a declaratory judgment in these consolidated matters has a right to be heard.

D

Injunctive Relief

Defendants also seek to dismiss Plaintiffs' claims for injunctive relief. However, at this juncture, because the Court has found that Plaintiffs may pursue their declaratory judgment actions under Count I, their claims for injunctive relief as an alternative remedy will not be dismissed. In other words, the Court cannot conclude at present that "'it appears to a certainty that [Plaintiffs] will not be entitled to [such] relief under any set of facts which might be proved in support of [their] claim.'" Martin, 784 A.2d at 298 (quoting St. James Condo. Ass'n, 676 A.2d at 1346).

E

Staying the Cases

Based on a reading of the memoranda submitted regarding Defendants' motions, all parties initially appeared amenable to staying the present matter and allowing the licensing process before the EFSB to continue. However, as the May 31, 2017 hearing unfolded, it became clear that Defendants have backed off this position. In any event, the Court will not stay the cases. Plaintiffs have brought to this Court a question of statutory interpretation of substantial public interest that cries out for a declaratory judgment.

F

A More Definite Statement

Although the Court has concluded that Plaintiffs' requests for declaratory judgments may proceed, pursuant to Super. R. Civ. P. 12(e), the Court will sua sponte require Plaintiffs to file a

more definite statement as to Count II of their Amended Complaints. Plaintiffs' second declaratory judgment count seeks a declaration "so vague or ambiguous that [Defendants] cannot reasonably be required to frame a respons[e]" to it. Super. R. Civ. P. 12(e). The broad and sweeping nature of the declaration sought in Count II is vague and ambiguous to the Court, necessitating a more definite statement. Id. Therefore, Plaintiffs are directed to file a more definite statement as to their second declaratory judgment claim as stated in Count II of their Amended Complaints within twenty days of the entry of the order embodying the provisions of this Decision or Defendants' motions to dismiss as to that count shall be granted.

IV

Conclusion

For the foregoing reasons, Defendants' motions to dismiss are denied as to Count I and as to Plaintiffs' claims for injunctive relief.[8] Subject to Plaintiffs' filing of a more definite statement, Defendants' motions to dismiss as to Count II may be denied at a later date.[9] As to Count I, the discrete issue remaining before the Court is whether Johnston's sale of water to CREC is "for use for domestic, fire [or] other ordinary municipal water supply purposes" under P.L. 1915, ch. 1278, § 18. The substantial public interest raised by that issue compels this Court to overlook standing and determine the merits of Plaintiffs' consolidated cases. Plaintiffs have twenty days from the date of the entry of the order embodying the provisions of this Decision to join all indispensable parties, and twenty days to file a more definite statement as to Count II, after which the Court will set a briefing and hearing schedule. Prevailing counsel shall present

[8] CLF's claim for injunctive relief is provided in Count III of its Amended Complaint. Burrillville's claim for injunctive relief is included in Count II of its Amended Complaint.

[9] However, Burrillville's claim for injunctive relief, as provided in Count II of its Amended Complaint, is not subject to the Court's order that Plaintiffs file a more definite statement.

an appropriate order consistent herewith which shall be settled after due notice to counsel of record.