

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION**

IN RE: BLOCK ISLAND POWER COMPANY :
GENERAL RATE FILING : **DOCKET NO. 3900**

ORDER

I. Introduction

On November 9, 2007, Block Island Power Company (“BIPCo or “Company”) filed an application for a General Rate Change, seeking an increase in revenues of \$400,027 or 17.5% over current revenue (excluding fuel) with the Public Utilities Commission (“Commission”). This represents an across the board rate increase on all applicable tariff rates of 19.0%. The proposed effective date of the tariff change was December 9, 2007. On November 29, 2007 at an Open Meeting, the Commission suspended the effective date pending its investigation pursuant to its authority under R.I. Gen. Laws §39-1-11.¹

II. BIPCO’s Pre-filed Testimony

In support of its filing, BIPCo submitted direct testimony of Albert R. Casazza, MD, MBA, President of the Company and Walter Edge and David Bebyn, the Company’s consultants. Dr. Casazza testified that as President, he is responsible for all of the operations of the Company and noted a number of issues recently addressed by management and the Board of Directors. BIPCo established a new employee defined contribution tax deferred profit sharing plan and implemented the sale of a small portion of BIPCo property resulting in BIPCo’s debt/equity ratio

¹ R.I. Gen. Laws §39-3-11 authorizes the Commission to suspend the taking effect of proposed rate(s) for a period not to exceed six (6) months in order that it may investigate and hold public hearings on the propriety of the proposed change(s).

being improved. Dr. Casazza noted that BIPCo has complied with all of the mandates noted in the prior order of the Commission in Docket No. 3655 dated June 1, 2005.²

Dr. Casazza noted that no dividends were paid in the rate year and that compensation of the President, CFO and COO were only at the approved levels. Additionally, the free electricity that was being provided to a retired employee was discontinued, and Dave Milner, a long time employee, was promoted to the position of general manager. BIPCo also set up the IRP³ committee to look at conservation, renewable energy and the feasibility of an underwater cable to the mainland. Regarding conservation, Dr. Casazza pointed out that there was no increase in the use of electricity during the summer of 2007 as opposed to the previous year. Furthermore, BIPCo's consultant determined that absent any grant money, the cost of an underwater cable at \$18 million would be prohibitively expensive. BIPCo has applied for a grant, and if successful in obtaining such, the underwater cable will be reevaluated. In reviewing renewable energy, BIPCo management considered installation of windmills and is currently following the efforts of the State of Rhode Island for an off-shore windmill project.⁴

Dr. Casazza discussed BIPCo's efforts to improve its debt/equity ratio, including the sale of property, and the decision not to authorize payment of dividends. BIPCo notified customers through a bill insert of the \$0.01 per kWh surcharge for the IRP/DSM⁵ Fund and established a Reserve Balance Sheet Account for SCR⁶ and Engine Activities. Dr. Casazza pointed out that BIPCo has never done a complete meter replacement. While it has a number of options to address this issue, BIPCo does not have the expertise to evaluate each of these options.

² BIPCo Exhibit 1a, Direct Testimony of Albert Casazza, November 9, 2007 at 1-2.

³ IRP is the acronym for Integrated Resource Plan.

⁴ *Id.* at 2-4.

⁵ DSM is the acronym for Demand Side Management.

⁶ SCR is the acronym for Selective Catalytic Reduction.

Therefore, BIPCo is requesting \$10,000 in revenue to retain an expert to evaluate the various options to replace the meters. Dr. Casazza noted that BIPCo is anticipating a substantial loss for the year ending May 31, 2008, even though as of November 2007, it had a surplus of \$40,000, based on the FYE May 31, 2008 budget.⁷

David Bebyn, Vice President of B&E Consulting LLC, a CPA firm that specializes in utility regulation and provides expert rate and accounting testimony, provided testimony in support of BIPCo's rate request. He presented the normalized test year and the calculation of a working capital allowance. Mr. Bebyn noted that the test year, FYE May 31, 2007, was still being audited and that he prepared documents, gathered information, interacted with the outside auditors and reviewed all balances and major transactions to ensure that the amounts were properly recorded.⁸

Mr. Bebyn made a number of adjustments to the audited test year to present the test year on a normalized "rate making basis." He normalized rental revenues to include a full twelve months at current rates, normalized pole rental revenues to eliminate a one time billing of \$54,355 to calculate normalized test year pole rental revenue of \$15,249, and removed one-time revenue of \$16,464 for the sale of land. Mr. Bebyn reclassified payroll expenses to their proper accounts, and removed a one-time expense of \$32,470 for services provided regarding the sale of land. He further normalized pension expense by increasing it by \$5,000, to \$72,000, to reflect twelve months for all five pension recipients. He normalized employee benefits from \$139,193 to \$141,926 to include 12 months of medical and dental insurance, and reclassified a \$155 non-medical insurance expense to a miscellaneous expense account. Finally, he reclassified \$74,868

⁷ *Id.* at 4-6.

⁸ BIPCO Exhibit 1b, Testimony of David Bebyn, November 9, 2007 at 1-2.

of accounting expenses from one general account to multiple accounts that were created to address specific areas of service, reclassified \$87,742 of gross receipts tax that was charged against fuel revenues, and reduced the remaining portion of gross receipts tax by \$3,476 because of the \$239,936 reduction of revenues resulting from test year adjustments. In order to prepare these test year adjustments, Mr. Bebyn analyzed the prior five years of revenues and expenses and discussed this analysis with Mr. Edge to determine what, if any, type of adjustment might be required.⁹

Mr. Bebyn also calculated working capital. He used the Division's model that was accepted by BIPCo in the previous docket, adjusted for two changes in the instant case. He recommended two changes to the \$113,753 working capital amount that was agreed to by the parties in the previous docket: 1) the inclusion in gross receipt tax of the tax calculated on the increase in revenue requirement resulting from the new rates and 2) the inclusion of a working capital allowance on fuel and fuel related expenses. Mr. Bebyn prepared six working capital schedules supporting his increase to working capital of \$51,629, for a total projected working capital of \$165,382.¹⁰

Mr. Edge provided expert accounting and rate testimony in support of BIPCo's rate request. He identified the rate year as June 1, 2008 through May 31, 2009, and the test year as FYE May 31, 2007. Mr. Edge noted the reasons for BIPCo's request for a rate increase to include the Company's inability to achieve the earnings and debt ratios required by its Rural Utilities Service ("RUS") borrowings of almost \$4 million, increasing operating costs, additional depreciation and return on a recent investment, increased environmental costs, and lost revenues

⁹ *Id.* at 2-3, Schedules DGB-1 and DGB-2.

¹⁰ *Id.* at 4-5, Schedules DGB-6-DGB-11.

as a result of customer conservation. He pointed out that the \$400,027 increase in the revenue requirement represents a 17.46% increase over the adjusted rate year revenue at current rates of \$2,291,692. Fuel revenue is not included. Mr. Edge noted that customer bills will increase less than 10%, assuming the same cost of fuel and customer usage.¹¹

Mr. Edge first discussed total test year revenue of \$4,489,655. He identified fuel as the largest revenue account, accounting for \$2,193,557, or 48.86% of total revenue. The second largest source of revenue for BIPCo was the sale of electricity, accounting for \$1,867,755 or 41.60% of total revenue. Customer charges, other revenue and miscellaneous revenue make up the remaining \$428,342 or 9.54 percent of revenue for the Company. Mr. Edge explained that he eliminated test year fuel revenue of \$2,193,557 from the revenue requirement because those revenues and costs are a pass through and are calculated as part of the monthly Fuel Adjustment Clause (“FAC”) revenue calculation. He did note that fuel costs have more than doubled since the last docket, increasing from \$960,113 to \$2,193,557. He explained that he projected the rate year revenue level for electric charges by reviewing two years of actual revenue and estimating the interim year. This review showed a 2.2% decrease in revenue from the sale of electricity since the last rate filing, from \$1,871,000 to \$1,829,000. He increased customer charges revenue by \$1,007, which he described as needed to reflect new services for a projected level of customer charge revenue of \$238,497. Mr. Edge described the decrease in rental revenues from \$175,719 to \$150,648 as resulting from the sale of land and fewer companies renting space on the communications tower.¹²

¹¹ BIPCo Exhibit 1c, Testimony of Walter Edge, November 9, 2007 at 1-3.

¹² *Id.* at 4-7.

Mr. Edge made a number of adjustments to expense accounts. To estimate the expense balances, he eliminated fuel related expense accounts totaling \$2,176,397 as he had with fuel related revenue accounts, and eliminated \$231,700 of interest related expense accounts. He increased salary levels by 3% for the interim year, and then increased those salary levels by 3% for the anticipated rate year salary levels of \$634,223. Mr. Edge noted that he left the Miscellaneous Distribution Expense account at the test year level of \$51,074, because even though BIPCo was able to hire a replacement for its overhead line employee, that employee's inexperience required that BIPCo continue to retain the services of an outside company.¹³

Mr. Edge also discussed the management compensation of the Company. He noted that Docket No. 3655 provided for \$135,611 for three positions, President, CFO and COO. In the current docket, Mr. Edge requests compensation of \$72,000 for the President and \$48,000 each for CFO and COO, all of which is still below the low end salary range as calculated by Dr. Matthew Bodah in the last rate case. BIPCo paid the entire \$168,000 as salaries rather than a combination of salaries and dividends.¹⁴

Regarding Outside Services and Accounting Accounts, Mr. Edge noted that many professional type activities have to be outsourced because BIPCo has such a limited staff. He discussed the significant underfunding of this account, and explained that many of the items that should have previously been in various general ledger accounts have been recorded in the Outside Services and Accounting Accounts. In the instant matter, he corrected this. He and Mr. Bebyn reclassified these two general accounts to thirteen new specific accounts. As for \$5,525 for Outside Services-Other, which includes expenses for retirement services, lobbyist and

¹³ *Id.* at 8-10.

¹⁴ *Id.* at 11-12.

Abacus Benefit, Accounting General Matters and Accountant Regulatory Accounts, Mr. Edge found no adjustment necessary. Mr. Edge eliminated \$10,374 that was in the Account Financing Account, because BIPCo will not incur this expense in the rate year. Regarding the Legal and Accounting RUS, Mr. Edge reduced this account by \$8,160 leaving \$25,000 in the Account. He made no adjustment to the \$29,475 in the Legal General Matters and Legal Regulatory Accounts. Mr. Edge was able to eliminate all of the \$5,242 from the Legal Financing Account, as BIPCo does not intend to borrow any money during the rate year. Regarding Accounting Services, Mr. Edge made no adjustments to the Board and Annual Meetings, Bookkeeping and Finance Committee and Budgeting Accounts leaving the total at \$40,091. He reduced the Accounting-Audit and Accounting-Taxes Accounts by a total of \$51,000 for an overall expense of \$49,354, because BIPCo changed its service provider to one who is less expensive.¹⁵

Mr. Edge discussed the proposed \$24,000 pension that BIPCo pays to its former president. He noted that although BIPCo did not fund the pension during the ten years of service of the president, exemplary service entitles this individual to the pension approved by the BIPCo Board of Directors. He pointed out that in Docket No. 3655, the Commission allowed BIPCo to convert its “profit sharing” plan to a “defined contribution” plan. The \$160,205 employee benefits expense was projected for the rate year in the same way manner as the Commission approved in Docket No. 3655. Rate case expense of \$125,000 was \$55,000 less than the previous docket. Mr. Edge noted that BIPCo spent \$45,508 more for rate case expense than allowed in rates for the previous docket, and he added that expense to the current year’s expense for a total of \$57,169 each year for three years.¹⁶

¹⁵ *Id.* at 12-18.

¹⁶ *Id.* at 19-21.

Regarding environmental expense, Mr. Edge noted that these expenses have been increasing since Docket No. 3655, and he increased this account by \$3,433 to a total of \$70,000 to address the increasing trend. He averaged the last two years of clean air compliance expenses to come up with the \$66,000 he used for the rate year. Mr. Edge made adjustments to the maintenance expenses for engines and noted that as these relatively new engines age, they will require more maintenance. He made a small adjustment of \$188 to decrease payroll taxes for a total of \$38,126. He used Mr. Bebyn's new asset projections and rolled the depreciation schedules forward to the rate year. He explained his (\$725) adjustment to deferred federal income taxes and calculated federal income taxes for the rate year of \$29,042. Mr. Edge noted one other new expense of \$10,000 he added to the cost of service for a meter replacement survey.¹⁷

Mr. Edge calculated the average of the net utility plant in rate base to be \$4,348,850 for rate year. He identified the capital additions for FYE 2008 as a new bucket truck, \$86,000, roof repair-day building, \$50,000 and switch gear for engine #24, \$250,000, as the capital additions for FYE 2009. Mr. Edge noted that BIPCo agreed with the Division's \$113,753 in changes to working capital in the last docket. He also noted that when Mr. Bebyn calculated the \$168,382 for this rate year, he used the same working capital model the Division used previously, making changes only to address additional gross receipts tax, FAC ("Fuel Adjustment Clause") revenues and fuel and fuel related expenses. He calculated the twelve month average for the test year inventory balances and excluded the \$116,517 fuel inventory from this calculation, because the Commission allows BIPCo to recover the carrying cost of fuel inventory in the FAC. Finally, Mr. Edge noted that the balance of prepaid expenses is about \$27,000 each year, and that he did

¹⁷ *Id.* at 22-25.

not post an average rate case expense balance in the rate base at the time but may in his rebuttal testimony.¹⁸

III. Division's Pre-filed Testimony

In response to BIPCo's initial filing, the Division submitted the pre-filed testimony of David J. Effron, its consultant. Mr. Effron provided testimony addressing BIPCo's proposed revenue requirement. After review and adjustments, he calculated the revenue requirement to be \$2,246,632 or 6.66% greater than the current revenues collected in base rates. Mr. Effron calculated a revenue deficiency, the difference between the net revenue requirement and the rate year revenues earned from tariff services, of \$140,380 as opposed to the \$400,027 calculated by BIPCo.¹⁹

Mr. Effron proposed a total cost of service for the rate year of \$2,432,072, which is \$259,647 less than BIPCo's proposal, and made a number of adjustments to various accounts. Regarding management fees, Mr. Effron excluded the \$35,000 additional compensation proposed by BIPCo and instead proposed the current expense to be increased by an annual inflation rate of 2.5%, resulting in a \$21,962 reduction in the pro forma rate year management fee expense. He noted that Mr. Edge did not provide a valid explanation as to why it was cheaper for ratepayers to pay compensation as salaries as opposed to a combination salaries and dividends. Mr. Effron also adjusted BIPCo's requested pension expense to exclude the additional \$24,000 that BIPCo proposed for a former employee for whom the Company had not

¹⁸ *Id.* at 27-30.

¹⁹ Division Exhibit 1, Direct Testimony of David J. Effron, February 19, 2008 at 2-4.

set aside funds. Other than a vote by the Board of Directors to allow for these pension payments, BIPCo did not provide sufficient evidence that this former employee is entitled to a pension.²⁰

Mr. Effron proposed adjusting BIPCo's proposed \$238,917 for "SCR and Engine Maintenance" expense to \$200,000, noting that that amount was more in line with the average of expenditures incurred in fiscal years 2006 and 2007. He also proposed disallowing the \$15,169 requested for rate case expense for the prior docket, pointing out that to allow for such would constitute retroactive ratemaking. As for lobbying costs, Mr. Effron eliminated this proposed \$3,825 expense, pointing out that as a matter of public policy lobbying expenditures should not be included in the cost of service. He recommended spreading the \$10,000 cost of the meter replacement survey over three years, reducing the expense included in the cost of service by \$6,667. He further eliminated the \$1,330 condo fees expense proposed by BIPCo.²¹

Mr. Effron proposed two adjustments to BIPCo's calculation of depreciation expense, reducing it by \$41,635. The first adjustment modified the pro forma annual depreciation expense on capitalized overhaul costs of Engine #24. The second adjustment modified the pro forma depreciation expense on the new bucket truck. He also reduced taxes other than income taxes by \$17,804 to reflect the other modifications made to the cost of service and recalculated the income tax expense, resulting in a \$30,972 reduction of the Company's \$50,801 proposal. With regard to the return on rate base, Mr. Effron proposed adjustments to the rate base and rate of return proposed by BIPCo. He deducted the \$300,618 reserve related to the "SCR and Engine Maintenance" and the \$52,492 surcharge payable related to the IRP and DSM recovery from the rate base. He reflected a 10.50% return on equity for BIPCo instead of the 10.70% proposed by

²⁰ *Id.* at 4-9, Schedules DJE-1, DJE-2 and DJE-3.

²¹ *Id.* at 9-13.

the Company, noting that BIPCo did not present convincing evidence that the return should be increased. He also proposed sharing the benefits of the \$828,196 gain on the sale of land equally between the shareholders and the ratepayers, because some of that property had been included in the Company's rate base during the period of ownership. He calculated a return on rate base of \$225,428, which is \$57,367 less than BIPCo's calculated return.²²

IV. Town of New Shoreham's Pre-filed Testimony

On February 19, 2008, the Town of New Shoreham filed the direct testimony of Richard LaCapra, the Town's consultant, specializing in energy and regulatory issues. Mr. LaCapra's testimony addressed five issues in BIPCo's filing: 1) the appropriate ratemaking treatment of the gain on the sale of BIPCo's real property; 2) the need to upgrade the distribution system; 3) the creation of an Energy Advisor position; 4) the proposed increase in payments to BIPCo owner/officers and pension payment to a former employee; and 5) a comprehensive review of customer classifications and development of a cost based rate design.²³

Regarding the treatment of the monetary gain on the sale of real property, Mr. LaCapra stated that ratepayers should benefit from this gain. He pointed out that where an asset included in the rate base was paid for by ratepayers through the ratemaking process, any gain on the sale of that asset should be afforded to the ratepayers. Mr. LaCapra stated that the original cost of the land was included in rate base, and that BIPCo made no attempt over the years to separate the asset, or the expenses associated with it, into utility and non-utility property. He noted that all expenses associated with the property and the rental income derived from such has been included in BIPCo's cost of service. Mr. LaCapra pointed out that the entire net gain on the sale of the

²² *Id.* at 14-22; Schedules DJE-2, DJE-4, DJE-5, DJE-6, DJE-7 and DJE-8.

²³ Town Exhibit 1, Direct Testimony of Richard LaCapra, February 19, 2008 at 2-3.

property was accounted for as an addition to BIPCo's common equity balance. Finally, he recommended that the entire net gain from the sale be for the benefit of ratepayers, by either a reduction in rates amortized over a period of years or by applying the gain to make improvements to the system that would benefit the ratepayers.²⁴

Mr. LaCapra also discussed the distribution system. He recommended that the net gain from the sale of the land be used to immediately support necessary system improvements. He noted that the HDR²⁵ Report made it clear that the current system is not sufficient with regard to capacity, voltage, stability, reliability or restoration. Mr. LaCapra pointed out that one option recommended by the HDR Report was a \$1.4 million upgrade to the distribution system. He stated that with the gain from the sale of land and the reduction in losses that would result from the upgrade, a large amount of the capital to accomplish the upgrade is already in place. Instead of proceeding with the option of the distribution upgrade, Mr. LaCapra noted that BIPCo has instead chosen to apply for a RUS grant to defray the \$21,000,000 cost of a cable project and distribution upgrade. He pointed out that the cable option was not specifically endorsed by HDR, the Commission or the working group.²⁶

Mr. LaCapra also recommended hiring an Energy Advisor, a position that was suggested in the HDR Study. He pointed out that the Town Council passed a motion to "receive, accept and acknowledge" the HDR Study. The duties of the Energy Advisor would include securing funding and grants from outside agencies, researching state and national energy management resources available to Block Island, designing and implementing activities to acquire specific conservation resource measures and providing public information and advising customers on

²⁴ *Id.* at 6-14.

²⁵ HDR Engineering, Inc. prepared the report.

²⁶ *Id.* at 15-22.

energy conservation opportunities. Mr. LaCapra recommended that the position be funded with a continuation of the \$0.01 per KWh surcharge in the summer period.²⁷

Regarding the compensation paid to BIPCo's owners/officers, Mr. LaCapra suggested several alternatives to reduce the level of compensation and benefits provided for the Company's owners / officers which he identified as totaling \$262,510.69. These benefits include free electricity, use of company owned vehicles, free boat storage, medical and dental insurance and payment of a pension to a former employee who did not contribute to the pension program. Mr. LaCapra noted the company's total payroll is proposed to be \$634,223 and more than 25% of that total will be paid to the owners / officers. He also expressed concern over the fact that none of the owners/officers formally account for the time spent on Company business, and there is no documentation of services provided by these owners/officers.²⁸

Mr. LaCapra recommended that the Commission disallow all amounts in excess of \$135,000 to cover expenses attributable to payments and benefits for the owner/officers. He, like the Division, recommended disallowing the \$24,000 annual pension payment to the former employee who was not part of the pension plan for employees. Even though he does not believe that the \$135,000 was justified by the Company, Mr. LaCapra recommended it be maintained until such time as there is a review of the manner in which the owners/officers receive compensation and benefits. He also offered an alternative recommendation, which is to deny payment of \$48,000 and benefits of \$15,121.87 to Dr. Pezzimenti, BIIPCO's Chief Financial Officer, because BIPCo presented no evidence describing the level and amount of work performed by Dr. Pezzimenti. Additionally, this alternative recommendation would disallow the

²⁷ *Id.* at 23-27.

²⁸ *Id.* at 28-34.

\$24,000 pension to the former employee and the increase in payments to the President, Dr. Casazza and the Chief Operating Officer, Mr. McGinnis. Finally, Mr. LaCapra recommended that the Commission impute \$1,200 in revenues to BIPCo for storage of Mr. McGinnis' boat on Company property. Lastly, Mr. LaCapra recommended that the Commission direct BIPCo to implement a system setting out job requirements and a time and materials billing system, prohibit non-employee pensions, and establish hourly rates for part-time owners/officers so that they are paid appropriately.²⁹

Finally, Mr. LaCapra recommended that BIPCo be directed to institute a full rate study. He asked that the Commission review the use of a "system charge" to determine reasonableness, correct the applicability of the system charge to include demand metered General Service customers, study ratcheted demand charges or annual minimum charges for seasonal loads, evaluate the summer-winter energy differential, review the uncommonly lower demand trigger point differentiating demand metered from non-demand metered service, examine the propriety of moving residential customers using in excess of 2,500 kWh/month to the general-demand rate, and review current tariffs to ensure they accurately reflect factors such as conservation goals, time of usage, etc. He recommended that a cost allocation and rate design study be conducted by the IRP at BIPCo's expense, which he alleged could be paid for by the \$24,000 pension payment to the former employee he recommended be denied.³⁰

V. BIPCO's Rebuttal Testimony

On March 18, 2008, BIPCo filed the rebuttal testimony of Walter E. Edge, Jr. Mr. Edge supported his previous testimony regarding management compensation by noting that both Dr.

²⁹ *Id.* at 35-46.

³⁰ *Id.* at 47-51.

Matthew Bodah, a consultant and expert in the area of compensation, who evaluated the compensation plan and analyzed the compensation levels, and the Commission accepted BIPCo's compensation compliance filing. He stated that if the Town wants to change the current compensation levels, it should hire an expert to conduct a study and present expert testimony in support of such a change. He pointed out that an hourly compensation model and the filing of time reports by high level officers is not common, and knows of no company that employs this practice.³¹

Regarding rate case expense, Mr. Edge noted that BIPCo is requesting an additional \$60,000 for rate case expense largely because the number of data requests filed by the Town has caused BIPCo to incur additional costs. He pointed out that while Mr. Effron's calculation of management fees was reasonable, he could not agree with the conclusion. He noted that the salary ranges of the President, CFO and COO of BIPCo were less than the low end of Dr. Bodah's study. Mr. Edge did not offer further discussion regarding the pension for the former President of BIPCo.³²

Mr. Edge pointed out that because of the additional costs incurred for engine maintenance, the Division's allowance of only \$200,000 would cause a shortfall in BIPCo's rate year profit, resulting in BIPCo's having difficulty in meeting its operating ratios for calendar year 2008 and possibly 2009. To justify the additional \$15,169 in rate case expense from the prior docket, Mr. Edge noted that the loss of this amount in rates would negatively impact BIPCo's RUS TIER ratio. Mr. Edge also explained that lobbying expense is a well spent cost,

³¹ BIPCo Exhibit 2, Rebuttal Testimony of Walter E. Edge, Jr., March 18, 2008 at 1-6.

³² *Id.* at 7-9.

even though he acknowledged that the current financial situation in the state will likely prevent BIPCo from successfully lobbying for an exemption from fuel excise tax.³³

Mr. Edge noted that BIPCo agreed with the Division to spread the \$10,000 cost of a meter replacement program over three years and to eliminate the \$1,300 expense for condo fees. Regarding the depreciation of the engine overhaul, Mr. Edge described the Division's adjustments as inconsistent with depreciation rules in establishing rates, and noted that he has never seen the Division take the last year of depreciation and divide it by three to extend a lesser charge for two more years when an asset is to be fully depreciated in the rate year. He pointed out that because the overhauled engine did not exist prior to FYE 2007, it is not in current rates and thus, the ratepayers have not paid for the cost of the engine overhaul to date. He conceded that a ten year depreciation life for the new bucket truck was reasonable, and decreased his original expense it by \$8,600.³⁴

Mr. Edge also disagreed with Mr. Effron's \$17,804 decrease to BIPCo's taxes, noting that BIPCo is required to pay gross receipts tax on all of its revenues including miscellaneous revenue. He agreed to use Mr. Effron's method of calculation for Federal Income Tax expense, but requested that the Commission allow the expense and restrict the revenue. Regarding Mr. Effron's three adjustments to rate base, Mr. Edge only agreed with reflecting the Accrued Maintenance Reserve account as a deferred credit. As for the other two adjustments, Mr. Edge did not agree with Mr. Effron noting that the balances in the two accounts were less than stated

³³ *Id.* at 9-12.

³⁴ *Id.* at 12-15.

by Mr. Effron. Mr. Edge accepted Mr. Effron's reduction to his proposed 10.7% rate of return to 10.5%.³⁵

Mr. Edge discussed a number of issues relating to the sale of the real estate and how the gain should be treated. He noted that RUS, BIPCo's largest creditor and a federal utility regulator, identified the property as a non-utility asset. He noted that BIPCo used the proceeds from the sale of the property to pay off certain accounts payable and that RUS approved this payment. He pointed out that in order to make the adjustment suggested by the Division, BIPCo would have to get RUS approval which he described as impossible to obtain and would put the RUS loans at risk. Mr. Edge described the property's inclusion in rate base as an error, and that if any adjustment is made regarding the sale, it should be reflected as a reduction of rate base as opposed to a reduction of equity. He also disputed the more than \$800,000 gain claimed by the Division and the Town, noting that this amount does not reflect the offsetting costs associated with the transfer of the property.³⁶

Finally, Mr. Edge disputed the Town's request to continue with the \$0.01 per kWh surcharge, stating that there was no need to continue to burden the ratepayers with the surcharge. He explained that BIPCo has applied for grants to pay for improvements to the distribution system and that these improvements could not be paid for with the money from the property transfer. That money no longer existed as it was used to pay down accounts payable. Lastly, Mr. Edge pointed out that the Town filed a number of data requests which BIPCo believed would be used by the Town to prepare rate design testimony from the Town's witness. This did

³⁵ *Id.* at 15-18.

³⁶ *Id.* at 18-30.

not materialize. Since a rate design study has already been done, Mr. Edge objected to the Division or BIPCo commissioning a new one.³⁷

VI. Division's Surrebuttal Testimony

Mr. Effron provided surrebuttal testimony in response to the rebuttal testimony submitted by Mr. Edge addressing eight of the issues upon which they disagreed. Those issues were management compensation, SCR and Engine Maintenance, Lobbying, Depreciation, Gross Receipts Tax, Federal Income Tax Expense, Rate Base Adjustments and Property Transfer. Mr. Effron first addressed the issue of Officers' Compensation, and noted that nothing offered by Mr. Edge would cause him to change his original position, namely, that the same method applied in the former docket, No. 3655, be adopted in this matter. Regarding "SCR and Engine Maintenance," Mr. Effron increased his original recommended allowance of \$200,000 to \$223,103, noting that this includes an average of the actual expenses from 2006, 2007 and 2008 to date as well as \$43,103 of annual amortized capitalized expenses. He did not change his position that BIPCo's request for lobbying expenses be denied, noting that the Commission has consistently excluded lobbying expenses from the cost of service.³⁸

Mr. Effron agreed with Mr. Edge's proposal to depreciate the new bucket truck over a period of ten years. He also adjusted his original calculation of pro forma gross receipts tax by including miscellaneous revenues in the revenues subject to the gross receipts tax. With regard to Mr. Edge's testimony on income taxes, Mr. Effron noted that he found Mr. Edge's calculation "confusing" since in his testimony, Mr. Edge accepted Mr. Effron's methodology, but Mr. Edge's rebuttal calculation did not reflect Mr. Effron's methodology. He agreed with Mr. Edge's

³⁷ *Id.* at 30-33.

³⁸ Division Exhibit 2, Surrebuttal Testimony of David J. Effron, April 9, 2008 at 1-4.

testimony that the accrued reserve in a restricted account for IRP and DSM should not be deducted from rate base. Mr. Effron pointed out that the accrued reserve related to the SCR and engine maintenance being deducted from rate base should be the balance averaged over the course of the most recent twelve month period available, ending February 29, 2008, as opposed to Mr. Edge's twelve month period that ended May 31, 2007.

As for the property transfer, Mr. Effron pointed out that there is no dispute that BIPCO included the property in rate base over the term of its ownership. He noted that determining whether the property is utility property depends on who bore the costs related to it. Whomever bore the costs related to the property should get the benefit of the gain on its sale. Mr. Effron's recommendation that ratepayers are entitled to 50% of the gain on the sale of property is conservative, and treatment of the gain as equity earning a zero percent return is reasonable. In light of the modifications made to his original testimony, Mr. Effron calculated a revenue deficiency of \$181,948.³⁹

VII. Town of New Shoreham's Surrebuttal Testimony

Mr. LaCapra again addressed the five issues that he discussed in his previous testimony. He maintained his position that the net gain from the sale of the real property should be directed to distribution upgrade. He noted that the property was always treated by BIPCo as utility property and included in rate base. Mr. LaCapra also disagreed with the Division's recommendation that the proceeds be split equally between the shareholders and the ratepayers. He stated that the fact that BIPCo alleges that the money has been spent is irrelevant as to whom the funds belonged to, and that BIPCo owes its customers the \$828,000. This money should be

³⁹ *Id.* at 4-12.

credited one of several ways, reducing rate base, reducing equity or treated as ratepayer contributed capital.⁴⁰

Regarding the distribution upgrade, Mr. LaCapra rebutted Mr. Edge's testimony that BIPCo is overextended regarding its borrowing capability, requiring it to postpone the distribution upgrade. He noted that this is in conflict with the Company's public service obligation and should take precedence over any payments or benefits given to the shareholders. He pointed out that approximately 60% of the total \$1.4 million distribution upgrade cost would be met by the gain on the sale of the property, and that the annual cost of the upgrade would be approximately \$190,000. Mr. LaCapra acknowledged that the upgrade may have to be primarily debt financed, unless additional stock is issued. This is because the Company's spending of the proceeds created a regulatory debt to its customers. Mr. LaCapra recommended that the Commission direct BIPCo to submit a plan for funding the distribution upgrade that includes a rate base reduction in the amount of the gain on the sale of land against the cost of the upgrade.⁴¹

Mr. LaCapra disagreed with Mr. Edge's assertion that the management compensation issue was resolved in Docket No. 3655. He pointed out that the settlement in that matter was limited to that single proceeding. He pointed out that Dr. Bodah's report evaluated companies much larger than BIPCo, and that one of the issues needed to be addressed was how many executive positions are needed at BIPCo. He recommended that there be one full-time senior executive position paid at a salary and benefits level consistent with what Dr. Bodah determined appropriate. He noted that a salary of \$100,000 with a \$30,000 benefit package would be fair for an executive position in addition to the General Manager. This approach would satisfy all of the

⁴⁰ Town Exhibit 2, Surrebuttal Testimony of Richard LaCapra, April 9, 2008 at 1-13.

⁴¹ *Id.* at 14-18.

issues he raised regarding management compensation, while leaving the allocation up to the owners of the Company. Mr. LaCapra stated that the difference in this \$130,000 amount and what the current actual salary and benefit expense is could be used for the meter replacement study, 2/3 of the cost of the annual distribution upgrade, and the Energy Officer position recommended by the Town.⁴²

Mr. LaCapra provided testimony in support of the Energy Officer position that was recommended by the consultant and that the Town requested be financed through the \$0.01/kWh surcharge on summer usage. He noted that BIPCo has an indifferent attitude towards conservation. He disagreed with the Company's desire to have one of its owners act as a green officer, pointing out that because of his ownership interest, this individual would not be able to serve in an objective capacity. Finally, Mr. LaCapra recommended that the Commission order a cost allocation and rate design study to be conducted by an independent third party at Company expense not to exceed \$24,000.⁴³

VIII. Hearing

Following notice, public hearings for the purposes of taking public comment were conducted on Block Island and at the Commission. On May 8, 2008, an evidentiary hearing commenced at the Commission's offices, 89 Jefferson Boulevard, Warwick, Rhode Island. The following appearances were entered:

FOR BIPCo:

Michael McElroy, Esq.

FOR DIVISION:

William K. Lueker, Esq.
Special Assistant Attorney General

⁴² *Id.* at 18-28.

⁴³ *Id.* at 28-33.

FOR TOWN OF NEW SHOREHAM: Alan D. Mandl, Esq.

FOR THE COMMISSION: Patricia S. Lucarelli, Esq.
Chief of Legal Services

BIPCo presented Walter Edge as its first witness. Mr. Edge testified regarding the sale of the real property that had been included in rate base, and noted that BIPCo made a formal filing that described the sale and the proceeds thereof.⁴⁴ He pointed out that the money realized from the sale of the property was used to pay down accounts payable, and that the gain was treated as an increase in equity which helped the Company's debt/equity ratio, which the Commission had previously requested that the Company work to improve.⁴⁵ Mr. Edge noted that currently the equity in the Company is more than twenty-five percent, which is significantly more than the four to five percent that BIPCo has experienced in past years.⁴⁶ He noted that this increase in equity was based on the proceeds from the sale of land, which almost doubled equity to where it is currently.⁴⁷ He was unable to identify any period of time when the property was excluded from rate base.⁴⁸ Mr. Edge testified that he would prefer that if there was to be any sharing of gain that it be as a reduction to rate base as opposed to adjusting equity which he believes would adversely affect BIPCo with respect to RUS.⁴⁹ He testified that if the Commission were to follow the Town's recommendation that all of the proceeds go to the ratepayers, BIPCo's equity would fall below twenty percent, and it would likely experience problems in borrowing additional money from RUS.⁵⁰

⁴⁴ Transcript of May 8, 2008 hearing ("Tr.1") at 49-50, 93.

⁴⁵ *Id.* at 50-51.

⁴⁶ *Id.* at 174-175.

⁴⁷ *Id.* at 175.

⁴⁸ *Id.* at 125.

⁴⁹ *Id.* at 61-62.

⁵⁰ *Id.* at 181-182.

Mr. Edge also discussed the owners of BIPCo, and testified that they are paid compensation as consultants on a salary basis.⁵¹ None of those officers have formal written job descriptions or contracts regarding their compensation.⁵² Mr. Edge also testified about the \$24,000 per year pension being paid to Mr. Edwards a former owner of the Company, and responded to questioning as to whether a written agreement existed to obligate the Company to pay this amount. He noted that BIPCo has an agreement with employees who reach a certain number of years combined service and age that those employees will be entitled to a \$1,000 per month pension, but acknowledged that there is no written agreement specifically identifying Mr. Edwards as being entitled to a pension. Likewise there were no formal minutes from the Board meeting identifying any document the Board used to rely on in support of granting Mr. Edwards this pension, and he testified that BIPCo had not funded Mr. Edward's pension.⁵³ He testified that because Mr. Edwards had been the President of the Company and the two previous general managers received the \$1000/month pension, the Board of BIPCo believed that Mr. Edwards was deserving of a little more money, and therefore approved \$2,000 per month.⁵⁴ Mr. Edge was also questioned about the other officers and whether they will be awarded pensions when they retire, and he responded that he did not know whether these gentlemen would receive pensions like Mr. Edwards.⁵⁵

Mr. Edge testified that the former President, Mr. Edwards, is the only retiree of the Company receiving healthcare coverage and justified this by indicating that Mr. Edwards was allowed to continue healthcare coverage after retirement because of a preexisting medical

⁵¹ *Id.* at 94.

⁵² *Id.* at 96.

⁵³ *Id.* at 104, 116, 155, 196-197.

⁵⁴ *Id.* at 104-105.

⁵⁵ *Id.* at 156-159.

condition in his family.⁵⁶ When asked, he acknowledged that this could have an affect on the premium paid by BIPCo.⁵⁷

Mr. Edge testified that BIPCo considered its officers to be independent contractors, and that payroll taxes and FICA are not paid on their behalf.⁵⁸ He indicated that there are no formal contracts between the individuals and the Company as to duties or compensation, and identified two of the three officers as part-time employees, at least one of whom receives other benefits in addition to salary.⁵⁹ Mr. Edge also testified about the “engine and SCR maintenance expense” amounts authorized in the last docket that were not spent, noted that BIPCo had a \$188,000 carry forward credit that was kept in a restricted account, and noted that spending was continuing to be lower than what was allocated.⁶⁰ He agreed with the Division expert, Mr. Effron that a rate base deduction for the accrued maintenance reserve was appropriate.⁶¹

Mr. Edge acknowledged that he was not aware of any instance where the Commission had approved lobbying expense.⁶² Regarding the prior rate case expense, he admitted that BIPCo had done nothing to attempt to modify the order in Docket No. 3655, after it was issued in September 2005, to attempt to recover that rate case expense, which it claims to have incurred in addition to the amount approved by the Commission.⁶³ Mr. Edge admitted that he and Mr. McElroy were paid for rate case expense from the prior docket with money that the Commission had not approved to be used for rate case expense, namely, from the money from the sale of the real property which he had identified as having been included in rate base.⁶⁴ He testified that he

⁵⁶ *Id.* at 165-166.

⁵⁷ *Id.* at 166-167.

⁵⁸ *Id.* at 107, 186.

⁵⁹ *Id.* at 107, 113-115.

⁶⁰ *Id.* at 63-65, 118-120.

⁶¹ *Id.* at 122.

⁶² *Id.* at 126.

⁶³ *Id.* at 129, Transcript of May 9, 2008 hearing (“Tr.2”) at 46.

⁶⁴ Tr.2 at 19-20.

would adjust his testimony to include continuation of the \$0.01 per kWh surcharge for the purpose of getting RUS to approve financing to improve the distribution system, which is something that needs to be done.⁶⁵ He identified a twenty-four month time frame as optimistic within which to start the upgrades necessary to the distribution system.⁶⁶

David Effron testified on behalf of the Division. He stated that the Division had no objection to the continuation of the one cent surcharge in the summertime to fund costs associated with the improvements to the distribution system, like the engineering costs and accounting costs associated with an RUS loan.⁶⁷ When questioned about the sale of the real property, Mr. Effron testified that he split the gain in half and treated the amount attributable to the ratepayers as a zero cost equity, which he described as being the same as making a rate base reduction for eighty percent of the gain.⁶⁸ This approach would not reduce equity, and it would not allow for a return on that portion of the equity that was zero cost.⁶⁹ He testified that this approach preserves value for the ratepayers, while recognizing that, because of the “clouded history” of the property when it was or wasn’t in rate base, some benefit accrues to the owners.⁷⁰ The result of Mr. Effron’s recommendation would reduce the Company’s revenue requirement by approximately \$40,000, which he described as not *de minimus*.⁷¹ Mr. Effron also testified that although the debt/equity ratio analysis is “a little outside [his] area” he did not believe Mr. Edge’s testimony regarding debt/equity ratio being one third equity/two thirds debt to be unreasonable.⁷²

⁶⁵ T.1 at 140-141, 148.

⁶⁶ *Id.* at 149-150.

⁶⁷ Tr.2 at 77.

⁶⁸ *Id.* at 85.

⁶⁹ *Id.* at 85-86.

⁷⁰ *Id.* at 93.

⁷¹ *Id.* at 95.

⁷² *Id.* at 88-89.

Dr. Casazza testified in his capacity as President of BIPCo. He testified regarding conservation and noted that certain customers availed themselves of conservation measures, while others, especially in the commercial area, were not motivated to do so.⁷³ He testified that Mr. McGinnis serves as a green officer, performing at least half of the duties listed by the Town as necessary for an Energy Advisor, and that he is currently studying and looking at providing wind power to the island. Dr. Casazza testified that he had no intention of hiring additional people to perform these duties, and that the \$50,000 proposed by the Town is money better spent on upgrading the distribution system, which the Company wants to “jump start” since the price of oil has escalated.⁷⁴

Dr. Casazza also testified regarding management compensation, and when asked to justify why Mr. McGinnis and Dr. Pezzimenti are paid the same amount, explained that the three owners “manage the company with significant consensus building.”⁷⁵ He noted the significant growth on the island and how the Company has kept up with that growth.⁷⁶ He also highlighted the qualifications of the officers and discussed the Company’s responsiveness to the Commission and to the Town.⁷⁷

Richard LaCapra testified on behalf of the Town. He noted that based on his experience, it would take approximately 90 to 120 days to prepare and submit a loan application to RUS.⁷⁸ He noted that he had no idea why commencement of work would not occur before the 24 months that Mr. Edge had testified to, unless there were some unique circumstances to cause this, and described Mr. Edge’s 24 - month estimate as extreme.⁷⁹ Mr. LaCapra described the distribution

⁷³ *Id.* at 149-156.

⁷⁴ *Id.* at 156.

⁷⁵ *Id.* at 157.

⁷⁶ *Id.* at 158.

⁷⁷ *Id.* at 159-160, 167-170.

⁷⁸ *Id.* at 184.

⁷⁹ *Id.* at 185.

system upgrades to include additional capacity, reconductoring, and changing out transformers.⁸⁰ Mr. LaCapra was also questioned about the Town's request to have the \$0.01 per kWh surcharge continued for the purpose of funding a Green Officer. He testified that he would consider another utility's assistance in this area to be an alternative to that request.⁸¹

IX. Commission Findings

At an open meeting on May 29, 2008, the Commission reviewed the evidence. The Commission discussed and deliberated on each of the issues that had been raised by the parties. The Commission decided unanimously to deny BIPCo's request for \$3,825 for lobbying expense. It is an established rate-making principle that lobbying expenses are not legitimate ratepayer expenses, and the Commission has consistently held such.⁸² In the instant case, BIPCo did not present sufficient evidence to the Commission that the \$3,825 was an expense that directly benefited the ratepayer. The Commission approved BIPCo's request to recover \$238,917 for Engine/SCR maintenance and to capitalize the \$43,103 of costs, finding them reasonable and appropriate.

BIPCo requested \$45,508 in rate case expense from the prior docket, No. 3655. The Company also proposed, two days prior to the open meeting, to increase the amount originally requested from \$165,000 to \$199,000. With regard to BIPCo's request for \$45,508 in rate case expense from the prior docket, a majority of the Commission voted to deny this request noting that to allow such would constitute retroactive ratemaking. A fundamental principle of utility regulation is the prohibition against retroactive ratemaking. This principle ensures ratepayers are not paying for costs associated with past service, but only for the costs of the service they receive. The Rhode Island Supreme Court has stated that "[o]ne of the central principles of

⁸⁰ *Id.* at 187.

⁸¹ *Id.* at 188.

⁸² Order No. 18316 (citing Order No. 17971).

ratemaking is that rates must be prospective. It is well settled that rates are exclusively prospective in nature and that future rates may not be designed to recoup past losses.”⁸³ In the instant matter, BIPCo is requesting that its ratepayers pay for a cost that occurred during the last docket in 2005 and 2006. At no time prior to the filing for this increase did it ever request a modification of the order in Docket No. 3655 to reflect the additional costs it had incurred for rate case expense. Therefore, BIPCo’s request for \$45,508 is denied.

Regarding, BIPCo’s request to increase the amount originally requested for rate case expense from \$165,000 to \$199,000, a majority of the Commission also denied this request by a two to one vote. BIPCo asserted that this extra expense was caused by the Town’s litigation of this matter. BIPCo was well aware of the Town’s vigorous defense of its position in the last docket and during the course of this investigation of this matter had ample opportunity to update its request for rate case expense. BIPCo chose not to do this until two days prior to the open meeting. This delay precluded any of the other parties, the Division or the Town, from conducting discovery or cross-examining BIPCo about the specifics of this approximately 17% increase in the original amount requested. Thus the Commission denied BIPCo’s request for the increase.

The Commission reviewed numerous documents and considered a considerable amount of testimony regarding BIPCo’s management and its compensation. The Commission believes that based on Dr. Casazza’s testimony, the three officers are employees of the Company and not merely independent contractors. Even under intense scrutiny and questioning, Dr. Casazza provided clear, detailed and consistent testimony about the three officers and the duties each perform. The Commission found the testimony of Dr. Casazza to be informative and credible. Neither the Division nor the Town presented any evidence to rebut Dr. Casazza’s testimony as to

⁸³ *Narragansett Electric Company v. Burke*, 415 A.2d 177, 179 (R.I. 1980).

the duties or amount of time spent by him, Dr. Pezzimenti or Mr. McGuinness, or to indicate that any of these three individuals were being improperly compensated. Furthermore, Dr. Bodah, an expert in the field of compensation, reported that the officers of the Company are paid at the low end of the compensation scale for owners of a utility of BIPCo's size. Considering the unrebutted testimony of Dr. Casazza regarding the amount of time, dedication and the nature of the duties of each of BIPCo's three officers, the Commission finds that the \$168,000 requested by BIPCo for management compensation is reasonable and appropriate. The Commission does not believe high level professional employees should have to record every moment of time they are working. The unrebutted testimony regarding the amount of time spent on Company business is sufficient for the Commission. However, in light of the challenges asserted by the Town, and in an effort to avoid future challenge, the Commission urges the Company to better document the activities and responsibilities of these three high level employees.

Even though the Commission will not require time records from BIPCo's three senior management level employees, the Commission will require written documentation describing the responsibilities of each of the officers in detail within ninety days of the Commission's decision. The Town asserted in its brief that salary and benefits received by the owners constitute affiliate transactions that require close scrutiny by the Commission. The Commission closely scrutinized these benefits by reviewing testimony and documents related to the salaries and benefits. In light of Dr. Casazza's testimony, regarding the time spent by the three owners of BIPCo on Company business, and Dr. Bodah's report, indicating that these owners are paid at the low end of the salary range for their counterparts at similar size utilities, the Commission believes these benefits, which include the free electricity⁸⁴, the use of Company vehicles, and the boat storage, are not unreasonable. The Commission finds that use of company vehicles should be recorded

⁸⁴ This is allowable under R.I. Gen. Laws §39-2-5.

and maintained by those employees who take advantage of the benefit of a company vehicle. Maintenance of vehicle usage records will ensure that ratepayers are only providing such benefit for business and not for personal use.

The Commission also considered the pension and healthcare benefits being provided to Mr. Edwards, the former President of the Company. BIPCo requested \$24,000 and \$15,121 in rates to pay his pension and health care benefits, respectively. The Commission closely scrutinized the pension issue. It is important to note that BIPCo initially requested a pension of \$24,000 per year for Mr. Edwards. The Commission does not believe this is appropriate or reasonable and therefore denies the \$24,000 annual pension request. No other retiree of the Company receives a pension in that amount, and it is not consistent with BIPCo pension policy. The Company justified its decision to give Mr. Edwards a pension by citing his exemplary service to the Company. No other party to the proceeding presented any evidence that the Company's justification for granting Mr. Edwards a pension was unreasonable or that Mr. Edwards, as a former employee, was not eligible for a pension. The Commission finds that, based on BIPCo's pension policy, employees are eligible if they have a combined age and years of service of 90 years, Mr. Edwards is entitled to a pension of \$1000 per month as are the other former employees who have the combined age and years of service totaling 90 years. However, since the former President is the only retiree receiving healthcare benefits, the Commission finds that this is an unreasonable expense to burden ratepayers with, as it appears to be a benefit for only one identified individual. Furthermore, as healthcare costs continue to rise, the Commission expects that in the next rate filing, the Company will show that it is requiring its employees to pay a share of their healthcare costs.

The Commission also deliberated on how the proceeds from the sale of real property should be treated. Neither the Company nor the Town was able to identify whether the property had consistently been included in rate base for the entire time of BIPCo's ownership. Because this cannot be determined, the Commission believes the fairest way to protect both the ratepayers' and the Company's interest is to split the gain in half. Shareholders will not be permitted to collect a rate of return on the portion of the proceeds attributable to the ratepayers. Thus, \$414,000 share attributable to ratepayers shall be included in the Company's equity but shall be allowed zero based return. The Commission has made this ruling based on the low equity capital structure of BIPCo, and the ruling shall not be considered Commission policy.

The Commission also considered the Town's request to continue the \$0.01 per kWh summer surcharge to fund an Energy Advisor position within the Company. In light of evidence heard that Mr. McGinnis currently performs some of the functions that were suggested to be performed by the proposed Energy Advisor, and that Mr. McGinnis could assume other duties suggested by the Town, the Commission does not believe that adding another position to existing staff would be in the best interest of the ratepayers. Therefore, the Commission denies this request. The Town spent considerable time discussing the deficiencies in BIPCo's distribution system. It is clear to the Commission that the distribution system is in need of upgrading and that the ratepayers will benefit more from having an upgraded distribution system than they would by having an additional position. The Town was very clear arguing that it desired the proceeds of the sale of the real property to be applied to upgrading the distribution system. Since none of the parties objected to the continuation of the \$0.01 per kWh summer surcharge or provided any evidence to the Commission that it was an unreasonable expense to ratepayers, the

Commission approves of its continuation, with the proceeds to be used for an engineering study of the distribution system. Any excess being used to initiate the distribution system upgrade.

Finally, the Commission considered the Town's request that BIPCo conduct a comprehensive review of customer classifications and development of a cost based rate design. To order this type of study would cause an additional increase in rates which the Commission does not believe will be in the best interest of ratepayers at this time. While the Commission denies this request, the Company shall look into this request and determine the cost and the time frame of such a study. The Company shall report the results to the Commission within ninety days of this order, and shall provide an estimate of the legal and accounting costs involved.

The Commission also considered a number of issues that the Town raised in its brief and notes that it did nothing during either its direct or rebuttal testimonies to address these issues, or to provide the Commission with any justification to deny any of these expenses. To note a few, the Town raised the issue of BIPCo not complying with the Division's Meter Testing Regulations. The Commission has no authority to enforce the Division's regulations. If the Town believes that BIPCo is not complying with these regulations, it should raise that issue with the Division. The Town also alleged that the second floor of BIPCo's office building should be included in rate base. The Town recognized that the property is not, and has never been, included in rate base. To order the transfer of this property to the Company at its original cost less accumulated depreciation, as suggested by the Town in its brief, is inherently unfair. Should there come a time when the Company desires to include this portion of the property in rate base, it should be fully appraised, purchased, and a detailed accounting should occur in order to ensure fair compensation to the owners of the property.

The Town also requested the Commission disallow the \$10,000 requested for the study of alternative methods for meter reading or, in the alternative, amortizing this expense over five years versus one year. BIPCo accepted the Division's recommendation to amortize this expense over three years. The Commission finds that the higher difference of \$1,333 per year is de minimus and accepts the Division's recommendation to amortize this expense over three years. Regarding BIPCo's request for \$13,999 for hazardous waste cleanup, the Commission finds that, in light of the fact that BIPCo has incurred hazardous waste clean-up costs in the test year and the two previous years, this amount is reasonable and appropriate. The Town also challenged Directors' expense noting that it should be reduced by \$3,184. While the Town asserted that the amount requested by BIPCo far exceeded the average of the last five years, it did not present any evidence establishing that the expenses requested by BIPCo were unreasonable or inappropriate. Thus, the Commission approves BIPCo's request for Directors' expense. Finally, the Town proposed to amortize the back payments made by Verizon and Block Island Cable over six years as opposed to BIPCo's treatment of removing them from rate year revenues. The Commission finds that because the Town did not develop this issue during the hearing or prior to in its prefiled testimony, neither BIPCo nor the Division had the opportunity to evaluate or cross examine the Town's witness on the assumptions made in the Town's calculations. Because of the lack of evidence presented by the Town, the Commission cannot accept the Town's position to amortize these revenue sources. The other issues raised by the Town in its brief were not sufficiently developed to provide a rebuttal of the evidence presented by BIPCo and the Division.

Accordingly, it is hereby

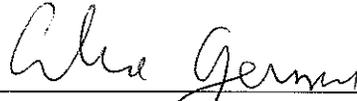
(19504) ORDERED:

1. Block Island Power Company's General Rate Filing made on November 9, 2007 is hereby denied and dismissed.
2. Block Island Power Company's annual revenues shall be increased by \$263,856 for a total rate year base revenue requirement of \$2,607,549.
3. Block Island Power Company shall not earn a return on \$414,000 included in its equity cost of capital from its share of the proceeds from the sale of real property.
4. Block Island Power Company shall continue the annual \$0.01 per kWh summer time surcharge with all revenue from this charge being limited to funding an engineering study of distribution system upgrades and the excess being limited to initiating distribution system upgrades.
5. Block Island Power Company's authorized return on equity is 10.5%.
6. Block Island Power Company shall restrict \$238,917 for Engine/SCR maintenance expense.
7. The proceeds from the sale of real property shall be divided equally between the ratepayers and the shareholders and that \$414,000 portion attributable to the ratepayers shall not be allowed any return on equity.
8. Block Island Power Company shall comply with all other findings and instructions contained in this Report and Order.

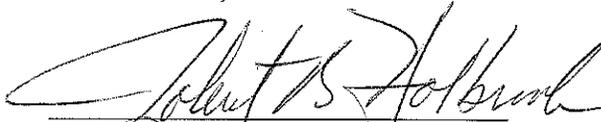
EFFECTIVE AT WARWICK, RHODE ISLAND ON JUNE 1, 2008.
PURSUANT TO AN OPEN MEETING DECISION ON MAY 29, 2008. WRITTEN
ORDER ISSUED NOVEMBER 24, 2008.

PUBLIC UTILITIES COMMISSION

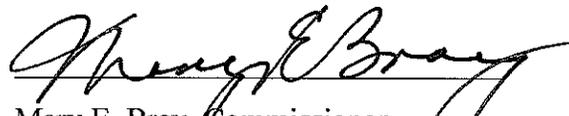




Elia Germani, Chairman



*Robert B. Holbrook, Commissioner



Mary E. Bray, Commissioner

*I concur with the decision but dissent to the \$100 per month pension for Mr. Edwards to be paid by ratepayers. Inasmuch that no contributions to his proposed pension during his employment by the Company, future ratepayers will be assessed to pay for services they are not receiving. This is not an appropriate expense for them to bear.

I also believe the expense of the prior rate case was a legitimate cost of doing business which the company was not aware of prior to the conclusion of Docket No. 3655.

Additionally, I believe that the \$34,000 additional expense presented by the Company prior to the Open Meeting for this docket is a legitimate rate case expense that should have been allowed in rates.