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December 30, 2009

Luly E. Massaro
Commission Clerk
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Block Island Power Company - \$.01 summer only restricted fund surcharge filing
for the Town of New Shoreham Project – Docket No. 4135

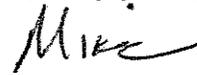
Dear Luly:

As you know, this office represents Block Island Power Company (BIPCo).

Enclosed for filing are the original and nine (9) copies of BIPCo's Objection to the Motion
of the Town of New Shoreham for Summary Disposition.

If you have any questions, please feel free to call.

Very truly yours,



Michael R. McElroy

MRMc:tmg
cc: Service List

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

BLOCK ISLAND POWER COMPANY : DOCKET No. 4135
SURCHARGE RATE FILING :

BLOCK ISLAND POWER COMPANY'S OBJECTION TO THE MOTION OF
THE TOWN OF NEW SHOREHAM FOR SUMMARY DISPOSITION

BLOCK ISLAND POWER COMPANY
By its attorney

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

BLOCK ISLAND POWER COMPANY : DOCKET No. 4135
SURCHARGE RATE FILING :

BLOCK ISLAND POWER COMPANY'S OBJECTION TO THE MOTION OF THE TOWN
OF NEW SHOREHAM FOR SUMMARY DISPOSITION

"Any charges incurred by the Block Island Power Company or its successor pursuant to this section shall be recovered annually in rates through a fully reconciling rate adjustment, subject to approval of the commission." (R.I.G.L. § 39-26.1-7(c))

INTRODUCTION

R.I.G.L. § 39-26.1-7 created a new section of the law entitled the "**Town of New Shoreham Project**." (the "Project"). The Project is part of Chapter § 39-26.1 entitled "Long-Term Contracting Standard For Renewable Energy." The Project was established "to enhance the electric reliability and environmental quality of the Town of New Shoreham." (R.I.G.L. § 39-26.1-7(a)).

I. R.I.G.L. § 39-26.1-7(a) – The Project

The first subsection of the new Project law is R.I.G.L. § 39-26.1-7(a). Pursuant to R.I.G.L. § 39-26.1-7(a), National Grid and Deepwater Wind have entered into a purchase power agreement (PPA) relating to an offshore wind project that will be located approximately three miles off the coast of New Shoreham (Block Island). The PPA is currently before the Commission for approval in Docket No. 4111. The first issue the Commission must determine in Docket No. 4111 is whether the National Grid/Deepwater Wind PPA is "commercially reasonable." (R.I.G.L. § 39-26.1-7(a)). Block Island Power Company (BIPCo) is an intervenor in Docket No. 4111.

If the Commission finds that the National Grid/Deepwater Wind contract is commercially reasonable, the Commission will then have other statutory tasks to perform, either in Docket No. 4111 or in future related dockets. These tasks include the following:

“To the extent that there are benefits for customers of the Block Island Power Company or its successor, the commission shall determine an allocation of cost responsibility between customers of [National Grid] and customers of Block Island Power Company or its successor. . . .” (R.I.G.L. § 39-26.1-7(a), emphasis added).

Please note that the above section deals with the customers of BIPCo.

In addition, in making the allocation of cost responsibility for the Project, the Commission must adhere to the following statutory mandate:

“The allocation of costs shall assure that individual customers in the Town of New Shoreham pay higher charges related to the project on their individual bills than any charges for the same project that may be included in individual bills of [National Grid].” (R.I.G.L. § 39-26.1-7(a), emphasis added).

Once again, please note that this provision deals directly with BIPCo’s customers.

Also, if the PPA is approved, the Commission must undertake what is in essence a specialized rate case for the Project in order to comply with the following statutory mandate for the Project:

“The commission shall provide for an appropriate rate design and billing method between [National Grid] and Block Island Power Company at the appropriate time.” (R.I.G.L. § 39-26.1-7(a), emphasis added).

This statutory provision therefore specifically requires that the Commission must adjudicate a specialized rate case that will culminate in “an appropriate rate design and billing method” for BIPCo (and National Grid).

II. R.I.G.L. § 39-26.1-7(b) – The Cable

The second portion of the Town of New Shoreham Project section of the law deals with the transmission cable between Block Island and the mainland. This cable is mandated by R.I.G.L. § 39-26.1-7(b):

“The solicitation shall require that each proposal include provisions for a transmission cable between the Town of New Shoreham and the mainland of the state.”

National Grid may “at its option” choose to own the cable. (R.I.G.L. § 39-26.1-7(b)). If National Grid opts to own the cable, then the Commission has another specific statutory responsibility as follows:

“Should [National Grid] own, operate, and maintain the cable, the annual costs incurred by [National Grid] shall be recovered annually through a fully reconciling rate adjustment from customers of [National Grid] and/or from the Block Island Power Company or its successor, subject to any federal approvals that may be required by law; provided, however, the parties shall use all reasonable efforts to obtain socialization of the costs of the cable in New England transmission rates administered by ISO New England, to the extent permitted.” (R.I.G.L. § 39-26.1-7(b), emphasis added)

Please note that this additional rate adjustment for the costs related to the cable is again specifically directed to the customers of BIPCo (and National Grid), and the law requires “the parties” (presumably including BIPCo) to use “all reasonable efforts” to obtain socialization of the costs.

The cable subsection of the Project law further provides that:

“The allocation of the cable costs shall be determined by the commission and assure that individual customers of the Town of New Shoreham pay higher charges related to the cable on their individual bills than any charges for the same charges that may be included in the individual bills of customers of [National Grid].” (R.I.G.L. § 39-26.1-7(b), emphasis added).

Once again, please note that this allocation of cable costs, similar to the allocation of the Project costs, directly impacts the customers of BIPCo.

III. R.I.G.L. § 39-26.1-7(c) – BIPCo’s Costs

The third subsection regarding the Town of New Shoreham Project is R.I.G.L. § 39-26-1-7(c). It deals with BIPCo’s costs incurred for the Project and it provides in pertinent part that:

“Any charges incurred by the Block Island Power Company or its successor pursuant to this section shall be recovered annually in rates through a fully reconciling rate adjustment, subject to approval of the commission.” (R.I.G.L. § 39-26.1-7(c), emphasis added).

On December 4, 2009, BIPCo filed a proposed 1¢, summer only, restricted fund surcharge rate filing. The purpose of this filing, as explained in the supporting testimony of Walter E. Edge, Jr., CPA, is to fund BIPCo’s participation in the Town of New Shoreham Project proceedings regarding newly developed renewable energy resources. As explained by Mr. Edge, this fund would generate approximately \$50,000 per year.

The Town of New Shoreham has objected to BIPCo’s surcharge filing and has filed a Motion for Summary Disposition, asking that BIPCo’s filing be “summarily dismissed” (Motion, at 9). BIPCo hereby objects to this Motion and instead asks that its filing be summarily approved after the oral argument/hearing scheduled for January 6, 2010.

IV. This filing is also authorized by R.I.G.L. § 39-3-11.

Before responding to the arguments made by the Town, it is important to note that BIPCo cited R.I.G.L. § 39-26.1-7(c) in its surcharge filing, but this rate surcharge filing is also authorized pursuant to the traditional rate filing statute, **R.I.G.L. § 39-3-11 “Notice of change in rates – Suspension of change – Hearings.”**¹ Under an R.I.G.L. § 39-3-11 rate filing, BIPCo is entitled to seek surcharge rate relief. Pursuant to the provisions of R.I.G.L. § 39-3-11, “the commission shall make such order in reference to any proposed rate, toll, or charge as may be proper.” (Emphasis added). Acting pursuant to R.I.G.L. § 39-3-11, this Commission has

¹ In fact, it is presumably pursuant to R.I.G.L. § 39-3-11 (not R.I.G.L. § 39-26.1-7(c)) that this Commission recently suspended BIPCo’s surcharge filing at open meeting.

previously approved surcharges and special rate increases for regulated utilities, including BIPCo.² Therefore, given the fact that BIPCo's filing is authorized under R.I.G.L. § 39-3-11, it is essentially irrelevant whether it is also authorized under R.I.G.L. § 39-26.1-7(c).

V. R.I.G.L. § 39-26.1-7(c) authorizes this filing.

R.I.G.L. § 39-26.1-7(c) deals quite clearly with "any charges" incurred "by the Block Island Power Company." (Emphasis added). The Town has repeatedly (and inaccurately) claimed in its motion that this statute allegedly contains: "An express enumeration of charges that may be recovered by BIPCo pursuant to R.I.G.L. § 39-26.1-7(c) (purchased power and transmission cable costs charged to BIPCo)" and that this alleged "express enumeration" of charges indicates a legislative intent to exclude other costs not listed. (Motion, at 5, emphasis added).

The problem with the Town's argument is that it is simply wrong. There is no such listing or "express enumeration" of charges that may be recovered by BIPCo anywhere in R.I.G.L. § 39-26.1-7.

In fact, just the opposite is true. R.I.G.L. § 39-26.1-7(c) says that "any charges" incurred by BIPCo pursuant to the Project shall be recovered through a rate adjustment. (Emphasis added).

Repeating a blatantly incorrect argument over and over can not change the clear language of the statute. The bottom line is that nothing in R.I.G.L. § 39-26.1-7 limits the recoverable charges incurred by BIPCo to the two charges referred to by the Town.³ R.I.G.L. § 39-26.1-7(c)

² The Town in its Motion "acknowledges that the Commission has authorized surcharges under special circumstances", including a BIPCo surcharge in Docket No. 1998. (Motion, at 7, fn. 6). The Commission also ordered special rate increases for Interstate Navigation Company in Docket 2484 (due to a tax increase) and in Docket 2127 (to implement a hazardous cargo tariff). The Division has done the same for Interstate due to a wharfage increase (D-89-10).

³ In fact, the terms "purchased power costs" and "transmission cable costs" do not even appear in the statute.

deals with any costs that in the first instance are the responsibility of BIPCo, as opposed to its customers.

VI. BIPCo has nothing in its current rates to pay for its participation in this Project.

R.I.G.L. § 39-26.1-7 was passed after BIPCo's last general rate case was completed. This Commission may take administrative notice of the fact that there is nothing in BIPCo's current rates that would provide the necessary funding for the legal and other professional fees that will be needed for BIPCo to participate in the regulatory proceedings that will become necessary in order to complete the Project, whether those proceedings are at the Commission, the Federal Energy Regulatory Commission (FERC), ISO New England, CRMC, the Town, or elsewhere. R.I.G.L. § 39-26.1-7(c) requires the Commission to allow a rate adjustment for "any charges incurred by the Block Island Power Company" relating to the Project. Therefore, the legal and professional fees incurred by BIPCo as an intervenor in Docket 4111 and Docket 4135, and any future proceedings related to the necessary actions needed to complete the Project, are properly funded through subsection (c) of this statute. Otherwise, there would be no funding available to allow BIPCo to participate in these proceedings.⁴

VII. Statutory Construction

In terms of statutory construction, we agree that this Commission should "interpret the statute literally and must give the words of the statute their plain and ordinary meanings." (Motion, at 4). We also agree that "there is no genuine issue of fact material to the decision" (Motion, at 1) because the issue to be decided is strictly one of statutory construction.

Both R.I.G.L. § 39-26.1-7(c) and R.I.G.L. § 39-3-11 authorize this Commission to approve the requested surcharge. Although the Town apparently wishes that R.I.G.L. § 39-26.1-

⁴ Unless, of course, BIPCo filed a full rate case that included seeking these funds under R.I.G.L. § 39-3-11. Such a full rate case would take close to a year to prepare and complete and would not only delay BIPCo's participation in the Project, but would in all likelihood increase total expense to BIPCo's ratepayers.

7(c) had been “specifically limited” by the General Assembly to “purchased power costs and transmission cable costs” (Motion, at 1-2), there is no such limiting language in R.I.G.L. § 39-26.1-7. Instead, R.I.G.L. § 39-26.1-7(c) was written by the General Assembly very broadly to encompass “Any charges incurred by the Block Island Power Company” related to the Town of New Shoreham Project as a whole. (Emphasis added).

The Supreme Court has approved the use of dictionaries to determine the plain meaning of statutes:

“When, as is the case here, a statute does not define a word, courts will often apply a common meaning as provided by a recognized dictionary. *See Defenders of Animals, Inc. v. Department of Environmental Management*, 553 A.2d 541, 543 (R.I. 1989); *see also Chambers v. Ormiston*, 935 A.2d 956 962 (R.I. 2007) (scrutinizing dictionary definitions to determine the meaning of statutory language); 2A Norman J. Singer & J.D. Shambie Singer *Sutherland Statutes and Statutory Construction*, § 47.28 at 468-69 (7th ed. 2007) (“Dictionaries * * * provide a useful starting point to determine what statutory terms mean * * * .”) *Planned Environments Mgt. v. Robert*, 966 A.2d 117, 123 (RI 2009).

Therefore, in determining the “plain and ordinary meaning” of this statute, we can look to *Black’s Law Dictionary*, 7th Ed. (1999), in which the word “charge” is defined in part as a “price, cost, or expense.” (at 227). Similarly, in *Webster’s New World Dictionary*, College Ed. (1968), the word “charge” is defined in part as a “cost; price; expense.” (at 246). And in the *American College Dictionary*, (1947), the word “charge” is defined in part as an “expense or cost.” (at 203). The phrase “any charges” is therefore an extremely broad term that certainly encompasses the legal and professional expenses that BIPCo will need to incur in order to actively participate in the proceedings needed to bring the Project to fruition.

Moreover, BIPCo’s filing of a proposed 1¢ summer only restricted fund surcharge (that will generate only approximately \$50,000 per year), is a good way to make this rate adjustment “fully reconciling.” The surcharge funds will be placed in a restricted account where they will be used only for legal and professional fees related to this Project. An accounting of the use of

the funds will be filed by BIPCo with the Commission and the Division on an annual basis with BIPCo's Annual Report (or more frequently if the Commission requests). The fund will therefore be used only for the express purposes of this Project. If there are any excess funds remaining at the completion of the Project, the Commission will determine how to best apply any such excess funds to the benefit of BIPCo's ratepayers.

VIII. Any charges incurred by BIPCo related to the Project are recoverable in rates.

The Town appears to be arguing that, because R.I.G.L. § 39-26.1-7(c) states that "any charges incurred by the Block Island Power Company or its successor pursuant to this section shall be recovered annually in rates" this law should be interpreted to mean that only "purchased power costs and transmission cable costs" are recoverable because of the phrase "pursuant to this section." Once again, the Town is wrong.

First, it is important to note how citations in the Rhode Island General Laws (such as R.I.G.L. § 39-26.1-7(c)) are structured. The first numerical reference (39) is to the Title. The second numerical reference (26.1) is to the Chapter. The third numerical reference (7) is to the Section. The fourth reference ((c)) is to the subsection. R.I.G.L. § 39-26.1-7 as a whole is entitled "**Town of New Shoreham Project.**" This new Section of the law falls under Chapter 26.1 entitled "Long Term Contracting Standard for Renewable Energy." Chapter 26.1 falls under Title 39 entitled "Public Utilities and Carriers." In other words, when this law refers to "this section," it is referring to the entire section of the law, which in this case is Section 7 of Title 39, Chapter 26.1 known as the "**Town of New Shoreham Project.**"

Accordingly, when R.I.G.L. § 39-26.1-7(c) states that "any charges incurred by the Block Island Power Company pursuant to this section shall be recovered annually in rates" (emphasis added), it is referring to Section 7, the "Town of New Shoreham Project," as a whole. It is therefore referencing "any charges" that are incurred by Block Island Power Company

pursuant to the “Town of New Shoreham Project,” which is the title of the section. It is certainly not referring to only two of the many charges that may be incurred by BIPCo in order to complete the Project.

If it had been the intent of the General Assembly to limit BIPCo’s rates recovery to “purchased power costs and transmission cable costs,” the General Assembly could easily have said so in R.I.G.L. § 39-26.1-7(c), but it did not. Instead of limiting recovery to only two charges that may be incurred by BIPCo pursuant to the Town of New Shoreham Project, the General Assembly made it clear that “any charges incurred” by BIPCo pursuant to the Project shall be recovered in rates.

IX. National Grid interprets this Section exactly as BIPCo does.

National Grid expects to incur over \$1 million of legal fees, engineering fees, consulting fees, etc. related to the Project, and expects to recover those costs in full pursuant to R.I.G.L. § 39-26.1-7, regardless of whether this Project goes forward or not (see Response 2-5 from National Grid to the Commission’s data requests). BIPCo agrees that, to the extent National Grid’s charges are just and reasonable, they are recoverable through rates under R.I.G.L. § 39-26.1-7, whether the Project goes forward or not. Similarly, BIPCo’s legal fees, engineering fees, consulting fees, etc. are also recoverable under R.I.G.L. § 39-26.1-7 provided they relate to the Project and are just and reasonable. If the Town’s extremely limited interpretation of this statute is upheld by the Commission, then National Grid would also be unable to recover its legal, engineering, and consulting fees for the Project. Such a decision could bring this Project to a halt.

X. BIPCo's ratepayers will benefit greatly from this Project.

BIPCo's ratepayers will benefit greatly by the General Assembly's establishment of the Project. The Project itself, as well as the cable connection to the mainland, will be paid for in substantial part by mainland electric ratepayers.⁵

It is anticipated that the net result of the Project will be a cable connection to the mainland that will allow BIPCo's ratepayers to draw power from the mainland at a cost significantly lower than what BIPCo ratepayers are currently paying for diesel generated power. Assuming the cost to BIPCo's ratepayers of BIPCo's participation in this Project is only \$50,000 per year, the savings to BIPCo's ratepayers should greatly exceed this minimal cost.⁶

XI. BIPCo's participation in the Project's proceedings is essential.

It is beyond dispute that BIPCo's participation in this Project is essential. Without the necessary financial support, BIPCo simply would not be in a financial position to participate in the Project.⁷ If BIPCo does not participate, there would be a significant missing piece which could endanger completion of the Project. This is evident from a number of items.

First, the statute itself requires the Commission to establish "an appropriate rate design and billing method" for BIPCo. BIPCo, of course, needs to be involved in any hearings related to BIPCo's rate design and billing methods.

Second, the Project itself has many areas in which BIPCo is directly involved. For example, in Deepwater Wind's Responses 2-8 to the Commission's data requests in Docket No.

⁵ Moreover, it is our understanding that the Town's participation in these proceedings (including its legal and professional fees) is being fully funded by Deepwater Wind. Therefore, the Town and its taxpayers have no out-of-pocket costs at all related to this Project.

⁶ The fact that BIPCo has proposed a summer only surcharge means that the impact on year-round islanders will be very small because the bulk of the surcharge will be paid by the summer homeowners and tourists and summer businesses on Block Island.

⁷ BIPCo is required to make very specific ratios for its over \$3 million in borrowing from the Rural Utilities Service (RUS). The expenditure of about \$50,000 each year, unless rates are increased by this amount, would make the achievement of these ratios impossible and put BIPCo in a default situation.

4111, Deepwater Wind makes it clear that the wind farm output will be connected into BIPCo's 34.5 kv substation on Block Island. The Project will also apparently include two onshore substation transformers—one to step up the voltage from the windmills, and another that will attach into the existing BIPCo bus, stepping the voltage down. This means, as explained in Response 2.8 to the Commission's data requests, that there will be an underwater cable running from the windmills to Block Island, then there will be underground cable (as well as an overhead line) installed on Block Island which will eventually connect the Project to BIPCo's facilities. There will also be a connection from Block Island to the mainland.⁸

This all means that there will be numerous issues associated with the various necessary facilities and interconnections. These issues will require that BIPCo obtain assistance in the form of legal, engineering, accounting, consulting and other professional expertise. There will also be proceedings in various forums dealing with the permitting and other issues necessary to complete these tasks.

Third, National Grid states in Response 2-6 to the Commission's data requests that:

“BIPCo would be responsible for paying the cost of interconnecting new load, with a portion of the costs potentially allocated to . . . Deepwater Wind.”

National Grid further states in this Response that:

“In order to avoid having the costs allocated solely to BIPCo and Deepwater Wind and, instead, have a substantial portion of the costs allocated to Narragansett Electric, an agreement and tariff must be proposed and filed with the FERC for approval. The Company expects this agreement and tariff would be reviewed by the Rhode Island Commission prior to any such filing.”

Obviously, there will be legal and professional fees that will be increased by BIPCo during this process.

⁸ It should also be noted that the Division has asked data requests both to Deepwater Wind and to National Grid that specifically deal with BIPCo. (See the Division's Requests 1-6 and 1-11 to National Grid, and the Division's Request 1-20 to Deepwater Wind.)

Additionally, in National Grid's Response 2.8 to the Commission's data requests, National Grid states that the cable connecting Block Island to the mainland, and the rates to be charged for transmission service over the cable, would be included in transmission rate base, and would be subject to FERC's exclusive jurisdiction because "BIPCo would be an unaffiliated transmission customer of National Grid taking transmission service over the cable in order to access ISO New England power markets."

Therefore, there can be no question that BIPCo's participation in the proceedings relating to the Project is essential. The following is only a sampling of possible issues:

- The allocation of Project costs;
- the allocation of cable costs;
- the design of BIPCo's rates;
- the establishment of a billing method to be used by BIPCo;
- the approval of various permits necessary for the construction of the Project, the cable, the related facilities (i.e., transformers) and the interconnections;
- engineering work;
- negotiation and review of contracts;
- negotiation and review of easements and pole attachment agreements for the underground and overhead lines;
- other proceedings, not only before this Commission, but possibly before FERC, CRMC, ISO New England, and the Town.

Many, if not all, of the above will require BIPCo's active cooperation and participation. The Town is not in a position, even with funding it is obtaining from Deepwater Wind, to represent the interests of BIPCo in these various matters.⁹

⁹ Moreover, the fact that the Town's funding is apparently coming 100% from Deepwater Wind calls into serious question the Town's impartiality in this matter. This unusual arrangement appears to BIPCo to present a clear conflict of interest and to seriously undermine the credibility of any position the Town may take in the Project proceedings.

CONCLUSION

There are no disputed questions of fact. The issue before the Commission is simply a question of statutory construction.

BIPCo respectfully submits that the Town's interpretation of this statute is in error, and that the plain language of the statute allows for the recovery of "any charges" incurred by BIPCo for this Project. The Commission should accordingly deny the Town's Motion for Summary Disposition.

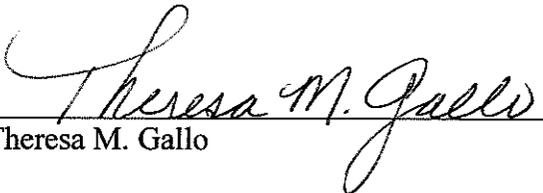
Moreover, in light of the testimony of Mr. Edge regarding the necessity of BIPCo's participation in this Project, and the reasonableness of the proposed surcharge (especially in relation to the similar fees being incurred by National Grid), BIPCo also respectfully submits that the Commission should, after the oral argument/hearing, approve BIPCo's 1¢ surcharge filing as filed.

Respectfully submitted,
BLOCK ISLAND POWER COMPANY
By its attorney


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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of December, 2009, I sent a true copy of the foregoing to the attached service list:


Theresa M. Gallo

**Docket No. 4135 – Block Island Power Co. – Request for a \$0.01 per kWh Summer Only
 Surcharge as a Fully Reconciling Rate Adjustment Pursuant to RIGL 39-26.1-7
 Service List as of 12/11/09**

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