

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: BLOCK ISLAND POWER COMPANY :  
SURCHARGE RATE FILING : DOCKET NO. 4135

ORDER

On December 7, 2009, Block Island Power Company (“BIPCo”) filed a request with the Public Utilities Commission (“Commission”) for a \$0.01 per kWh Summer Only Surcharge as a Fully Reconciling Rate Adjustment Under R.I.G.L. § 39-26.1-7 to be applied to all customer usage in June, July, August and September of each year through the fuel surcharge.<sup>1</sup> The purpose of the surcharge, the revenues from which would be deposited into a restricted account, were “for professional fees specifically related to all activities regarding the New Shoreham Project for newly developed renewable energy resources.”<sup>2</sup>

BIPCo included with its filing the Pre-Filed Testimony of Walter Edge, MBA, CPA. Mr. Edge believed a recently passed law, R.I.G.L. § 39-26.1-7(c) allowed BIPCo to recover its costs associated with the Town of New Shoreham Project, including administrative costs associated with participation in Commission dockets related to the proposed project.<sup>3</sup> Mr. Edge indicated that given all of the provisions of the new law that

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<sup>1</sup> BIPCo Proposed Fuel Adjustment Clause Rider, Sheet No. 1.

<sup>2</sup> *Id.*

<sup>3</sup> Pre-Filed Testimony of Walter Edge, p. 2. R.I.G.L. § 39-26.1-7 states: (a) On or before August 15, 2009, the electric distribution company shall solicit proposals for one newly developed renewable energy resources project of ten (10) megawatts or less that includes a proposal to enhance the electric reliability and environmental quality of the Town of New Shoreham. The electric distribution company shall select a project for negotiating a contract that shall be conditioned upon approval by the commission. Negotiations shall proceed in good faith to achieve a commercially reasonable contract. Should the distribution company and the selected party agree to a contract, the contract shall be filed with the commission no later than October 15, 2009 for commission approval. The commission shall review the contract and issue an order approving or disapproving the contract on or before December 31, 2009. If the parties are unable to reach agreement on a contract prior to October 15, 2009, an unsigned copy shall be filed by the electric distribution company prior to that same date, and the commission shall have the discretion to order the parties to arbitrate the dispute on an expedited basis. Upon approval of the contract, the provisions of § 39-

would affect BIPCo's customers, "that to protect the interest of its customers, BIPCo will have to be a party to any proceedings in which the costs relating to the Town of New Shoreham Project will be allocated and BIPCo's rates will be set and/or designed, as required by law."<sup>4</sup> Furthermore, Mr. Edge argued that the parties to the related dockets will require BIPCo's resources to evaluate and implement activities required by the statute.<sup>5</sup> Mr. Edge indicated that BIPCo was seeking a waiver from the general rate filing requirements because "this is a special, statutorily authorized rate filing."<sup>6</sup> Furthermore, he maintained that a separate surcharge is the most effective way to comply with the

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26.1-4 and the provisions of paragraphs (a), (b), (c), (d), and (f) of § 39-26.1-5 shall apply, and all costs incurred in the negotiation, administration, enforcement, and implementation of the agreement shall be recovered annually by the electric distribution company in electric distribution rates. 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 the electric distribution company and customers of Block Island Power Company or its successor after the cost estimates are filed with the commission, but the commission need not determine the final cost allocation at the time the commission considers and/or approves the contract between the electric distribution company and the project developer. 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 customers of the electric distribution company. The commission shall provide for an appropriate rate design and billing method between the electric distribution company and Block Island Power Company at the appropriate time.

(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. The electric distribution company, at its option, may propose to own, operate, or otherwise participate in such transmission cable project, subject to commission approval. The electric distribution company, however, has the option to decline to own, operate, or otherwise participate in the transmission cable project, even if the commission approves such arrangements. Should the electric distribution company own, operate, and maintain the cable, the annual costs incurred by the electric distribution company shall be recovered annually through a fully reconciling rate adjustment from customers of the electric distribution company 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 the ISO New England, to the extent permitted. The allocation of the cable costs shall be determined by the commission and assure that individual customers in the Town of New Shoreham pay higher charges related to the cable on their individual bills than any charges for the same project that may be included in individual bills of customers of the electric distribution company.

(c) 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 by the commission. If the electric distribution company owns, operates, or otherwise participates in the transmission cable project, pursuant to subsection 39-26.1-7(b) the provisions of § 39-26.1-4 shall not apply to the cable cost portion of the Town of New Shoreham Project.

(d) Any contract entered into pursuant to this section shall count as part of the minimum long-term contract capacity.

<sup>4</sup> Pre-Filed Testimony of Walter Edge, p. 3.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.*

statute which requires the costs to be reconciled annually. Because the extent of the level of participation that will be required is not known, Mr. Edge opined that the \$0.01 per kWh surcharge should mostly or fully cover the costs of participation in the currently pending Docket No. 4111.<sup>7</sup>

On December 15, 2009, the Town of New Shoreham (“Town”) filed a Motion to Intervene to which BIPCo did not object and a Motion for Summary Disposition which was later supported by the Division of Public Utilities and Carriers (“Division”)<sup>8</sup> and objected to by BIPCo. In its Motion, the Town argued that “R.I.G.L. § 39-21.1-7(c) does not authorize BIPCo to surcharge ratepayers for any costs other than purchased power costs and transmission cable costs that may be charged to BIPCo as provided for under R.I.G.L. § 39-26.1-7(a) and (b).”<sup>9</sup>

The Town argued that the purpose of subsection (c) which states, “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 by the commission,” is to provide BIPCo with a rate recovery mechanism for any charges made to BIPCo under subsection (a) which relates to cost responsibility for the benefits from the project and under subsection (b) which relates to the allocation of transmission cable costs charged to BIPCo from the Town of New Shoreham project.<sup>10</sup> Therefore, the Town maintained, the statute was clear because the specific reference to

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<sup>7</sup> *Id.* at 2.

<sup>8</sup> Letter from Leo J. Wold, Esq. to Luly Massaro, Clerk, 12/28/09. The Division also argued that BIPCo’s request was akin to single-issue ratemaking, something which is generally disfavored. *Id.* at 1.

<sup>9</sup> Town of New Shoreham Motion for Summary Disposition, pp. 1, 3-6.

<sup>10</sup> *Id.* at 2-4.

project benefits and transmission cable costs does not include other costs not specifically referenced, such as legal and professional fees.<sup>11</sup>

Finally, the Town argued that even if BIPCo's voluntary participation in the case may be "a good idea," it was not specifically authorized by the language of the statute and thus should be viewed as a general rate filing which did not comply with the Commission's Rules of Practice and Procedure.<sup>12</sup> For all of these reasons, the Town requested the Commission summarily dismiss the matter.<sup>13</sup>

On December 28, 2009, the Division filed a letter indicating that it concurred with Town's Motion that the rate request should be summarily dismissed because, according to the Division, R.I.G.L. § 39-26.1-7 does not permit BIPCo to recover any costs associated with the Company's participation in Commission dockets, but rather allows BIPCo to recover costs set forth in sections (a) and (b) of the statute. Furthermore, the Division argued that the request is akin to a general rate filing for a single-issue (legal and other professional expenses). Where, argued the Division, the Commission generally disfavors single-issue ratemaking, BIPCo's filing should be summarily dismissed.<sup>14</sup>

On December 31, 2009, BIPCo filed its Objection to the Motion of the Town of New Shoreham for Summary Disposition.<sup>15</sup> BIPCo argued that the R.I.G.L. § 39-26.1-7(c) reference to recovery of BIPCo's charges incurred pursuant to R.I.G.L. § 39-26.1-7(a)-(b) means recovery of charges incurred by BIPCo from activities related to the implementation of subsections (a) and (b), including those from outside legal counsel and

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<sup>11</sup> *Id.* at 4-7. The Town argued that the statute referenced purchased power costs, but nowhere in the statute is the term "purchased power costs" used.

<sup>12</sup> *Id.* at 7-8.

<sup>13</sup> *Id.* at 9.

<sup>14</sup> Letter from Leo J. Wold, Assistant Attorney General to Luly Massaro, Clerk, 12/28/09.

<sup>15</sup> BIPCo's Objection to the Town of New Shoreham Motion for Summary Disposition.

consultants, associated with BIPCo's participation in Commission dockets, negotiations of interconnection agreements, lease agreements, rights-of-way, seeking permits, rate design, and any other proceedings associated with the pending Purchase Power Agreement between National Grid and Deepwater Wind or the transmission cable from Block Island to the mainland of Rhode Island. BIPCo argued that its participation in each of the dockets that would come before the Commission to address benefit allocation, transmission cost allocation and rate design would be required. Furthermore, BIPCo noted, it would incur costs related to leases, rights-of-ways, interconnection agreements, permitting, etc.<sup>16</sup>

With regard to the necessity of implementing a fully reconciling surcharge, BIPCo indicated that its participation in the proceeding is essential due to the fact that there will need to be an interconnection to BIPCo's facilities in order to complete the proposed wind project, its ratepayers need to be protected, and there is nothing in current rates to pay for the participation in Docket No. 4111.<sup>17</sup> For all of these reasons, BIPCo argued that incurring these costs is necessary. Therefore, due to the necessity of its participation and the broad language of R.I.G.L. § 39-26.1-7(c) that BIPCo be entitled to recover any charges incurred, BIPCo argued that the plain language of the statute allowed for the implementation of the requested surcharge.<sup>18</sup>

Following notice, a public hearing was held at the Commission's offices, 89 Jefferson Boulevard, Warwick, Rhode Island, on January 6, 2010 for the purposes of oral argument. The following appearances were entered:

FOR BLOCK ISLAND POWER CO.: Michael McElroy, Esq.

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<sup>16</sup> *Id.* at 2-4, 5-6, 8-9 10-12.

<sup>17</sup> *Id.* at 6, 9-10.

<sup>18</sup> *Id.* at 6-9

FOR TOWN OF NEW SHOREHAM: Alan Mandl, Esq.  
Katherine Merolla, Esq.

FOR DIVISION: Leo Wold, Esq.  
Assistant Attorney General

FOR COMMISSION: Cynthia G. Wilson-Frias, Esq.  
Senior Legal Counsel

The Town's attorney stressed the fact that it read the language of R.I.G.L. § 39-26.1-7(c) to only allow BIPCo to recover costs specifically related to purchased power and transmission cable costs and not participation in various regulatory dockets. Ms. Merolla indicated that, unlike the language of the statute specifically allowing, under certain circumstances, The Narragansett Electric Company d/b/a National Grid ("National Grid") to recover all costs incurred in the negotiation, administration and enforcement of the contract that is the subject of Docket No. 4111, there was no such specific language relating to BIPCo.<sup>19</sup>

In response, BIPCo's attorney argued that, contrary to the Town's claim, nowhere in the statute are the terms "purchased power costs" or "transmission cable costs" used. Therefore, Mr. McElroy argued, the language "any charges incurred" must include those related to activities such as involvement in regulatory proceedings arising from R.I.G.L. § 39-26.1-7. Furthermore, he argued, the language relating to BIPCo is even broader than that cited by Ms. Merolla regarding National Grid's ability to recover costs.<sup>20</sup>

Finally, addressing the Division's concern, resulting from a BIPCo citation to the general ratemaking statute, R.I.G.L. § 39-3-11, Mr. McElroy noted that while single-issue ratemaking is generally disfavored, it has been allowed in the past under limited

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<sup>19</sup> Tr. 1/6/10 at 6-10.

<sup>20</sup> *Id.* at 11-15.

circumstances. He maintained that the fact the law had been recently passed and would provide the most benefit to summer residents, this proposal is sufficiently narrow and tailored to collect funds from the primary beneficiaries of the law and proposed wind project. Therefore, he argued that BIPCo's filing is appropriate, even if considered to be single-issue ratemaking.<sup>21</sup>

The Division's attorney argued that the only appropriate reading of the cost recovery provisions in R.I.G.L. § 39-26.1-7(c) related to BIPCo refer back to the specific provisions of R.I.G.L. §§ 39-26.1-7(a) and (b), namely costs arising from the wind project and the transmission cable between Block Island and the mainland of Rhode Island.<sup>22</sup> Therefore, he maintained that BIPCo has sufficient time to file for a general rate increase to recover those anticipated costs. Finally, he argued that the specific costs set forth by BIPCo, namely, interconnection or system upgrades, are not part of Docket No. 4111 and should not be addressed by the Commission until the future.<sup>23</sup>

At an Open Meeting held on January 13, 2010, the Commission considered the arguments of the parties regarding the appropriate statutory interpretation of R.I.G.L. § 39-26.1-7(c) and found by a vote of 2-1 in favor of the Town's Motion for Summary Disposition and dismissed BIPCo's request for the implementation of a summer surcharge. The majority concluded that the statute is clear that National Grid may recover administrative and other so called "soft costs" associated with the Town of New Shoreham project, assuming the power contract is approved. The Commission notes that provision related to the recovery of BIPCo's costs is written differently. Therefore, if the

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<sup>21</sup> *Id.* at 22-24.

<sup>22</sup> *Id.* at 25-27.

<sup>23</sup> *Id.* at 27.

Legislature had meant for BIPCo to be allowed recovery of “soft costs”, it could have used the same language.

The Commission agrees that the categories of costs/charges BIPCo incurs under the statute which are recoverable through a reconciling provision include: (1) Purchase Power Arrangements between BIPCo and a supplier on the mainland; (2) transmission-related costs for the cable and for transmission service; and (3) any benefits allocation of above-market costs of the PPA between National Grid and Deepwater Wind to BIPCo’s customers. These are clearly involuntary costs and *may* include the costs associated with filing for such rates under the law being reviewed by the Commission. However, the recovery of these costs through rates is not before the Commission in Docket No. 4111. Therefore, while BIPCo’s involvement in Docket 4111 is important, it is voluntary and allowing BIPCo’s request would be the first time a utility would be allowed to recover soft costs for participation in a docket that is not directly related to a rate filing and the Commission will not extend the provision in the statute to such costs absent clear language such as that which was provided for National Grid.<sup>24</sup>

Accordingly, it is hereby

(20180) ORDERED

1. The Town of New Shoreham’s Motion for Summary Disposition is hereby approved.

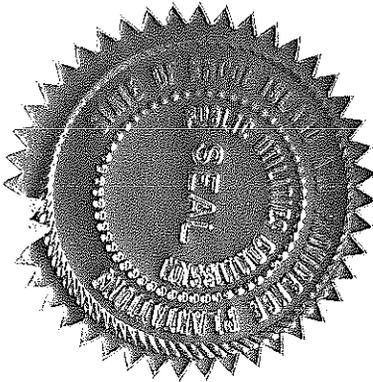
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<sup>24</sup> The Commission notes that since the rendering of this decision, R.I.G.L. § 39-26.1-7 was amended such that the disputed provision, R.I.G.L. § 39-26.1-7(c) is now at 39-26.1-7(g) and has been amended as follows: “Any charges incurred by the Block Island Power Company or its successor pursuant to this section or other costs incurred by the Block Island Power Company in implementing this section, including the cost of participation in regulatory proceedings in the state or at the federal energy regulatory commission shall be recovered annually in rates through a fully reconciling rate adjustment, subject to approval by the commission....” 2010 R.I. Pub. Laws 32 (Senate Bill 2010-2819).

2. Block Island Power Company's Request for a \$0.01 per kWh Summer Only Surcharge as a Fully Reconciling Rate Adjustment Under R.I.G.L. § 39-26.1-7 is hereby denied and dismissed.

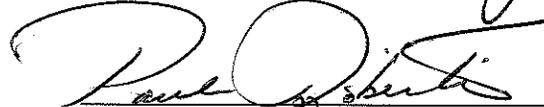
EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN OPEN MEETING DECISION ON JANUARY 13, 2010. WRITTEN ORDER ISSUED OCTOBER 25, 2010.

PUBLIC UTILITIES COMMISSION



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\*Elia Germani, Chairman

  
Mary E. Bray, Commissioner

  
Paul J. Roberti, Commissioner

\*Chairman Germani dissented from the majority, stating that the statute could be read to allow recovery through a reconciliation factor or not, but noted that BIPCo is a small company and he deemed its participation to be critically important and valuable to the proceeding in Docket No. 4111. Therefore, he supported approval of a surcharge to recover associated costs for BIPCo's participation in Docket No. 4111.

**NOTICE OF RIGHT OF APPEAL PURSUANT TO R.I.G.L. SECTION 39-5-1, ANY PERSON AGGRIEVED BY A DECISION OR ORDER OF THE COMMISSION MAY, WITHIN SEVEN DAYS (7) DAYS FROM THE DATE OF THE ORDER, PETITION THE SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW THE LEGALITY AND REASONABLENESS OF THE DECISION OR ORDER.**