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December 14, 2009

BY EMAIL AND FEDERAL EXPRESS

Luly Massaro
Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

Re: Block Island Power Company General Rate Surcharge Filing
Docket No. 4135

Dear Luly:

Enclosed please find for filing in the above matter an original and nine (9) copies of each of the following: (1) Motion to Intervene of the Town of New Shoreham; and (2) Motion of the Town of New Shoreham for Summary Disposition. Copies of this filing are being emailed to and served upon the service list.

Because the Company's rate surcharge proposal is based upon, but unauthorized under R.I.G.L. §§39-26.1-7 and 39-26.1-7(c), the Company's proposal must be summarily denied as a matter of law.

Thank you for your assistance in this matter.

Very truly yours,



Alan D. Mandl, Bar No. 6590

Enclosures
cc: Service List

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

BLOCK ISLAND POWER COMPANY)
SURCHARGE RATE FILING)
_____)

DOCKET NO. 4135

MOTION TO INTERVENE OF THE TOWN OF NEW SHOREHAM

Pursuant to Sections 1.13 and 1.16 of the Commission’s Rules of Practice and Procedure, the Town of New Shoreham (the “Town”) (1) moves to intervene in the above-captioned matter. In a companion filing, the Town moves for summary disposition of Block Island Power Company’s (“BIPCo”) above-captioned rate surcharge filing.

The Town Should be Permitted to Intervene

1. The Town is consumer of electric service provided by BIPCo. Town residents also are consumers of electric service provided by BIPCo.
2. The rate increase proposed by BIPCo in its December 4, 2009, filing, in the form of a surcharge, would increase rates paid by the Town, as well as residential and business property owners, by an indeterminate amount over an indeterminate period of time, for indeterminate proceedings and purposes.
3. The proposed general rate increase would directly impact the Town’s costs and, in turn, the Town’s taxpayers, as well as the economic well-being of the Town and its residents. For example, BIPCo’s proposed rate increase would impact the Town’s school budget, street lighting expenses and other municipally-run facilities, such as Town Hall. Local business and property owners alike would be adversely affected by the proposed rate surcharge.

4 The Town has been accorded intervenor status in past BIPCo rate-related proceedings before the Commission. Intervention in this proceeding has been authorized by the Town Council.

5. As explained below and in its Motion for Summary Disposition, BIPCo's filing should be summarily dismissed on legal grounds.

6. The Town maintains that R.I.G.L. §39-26.1-7(c) does not authorize the imposition of the proposed rate surcharge to cover the cost of BIPCo's intervention in Commission Docket No. 4111 or participation in other regulatory proceedings. This statute authorizes an annual reconciling rate adjustment only for purchased power and transmission cable "charges" incurred by and allocated to BIPCo pursuant to R.I.G.L. §§39-26.1-7(a) and 30-26.1-7(b). Further, no statutory basis for a waiver from the Commission's general rate filing requirements is afforded by R.I.G.L. §39-26.1-7(c) because, as stated above, R.I.G.L. §39-26.1-7(c) does not authorize a surcharge to recover BIPCo's legal and professional expenses.

7. Apart from the patent legal deficiencies that require summary rejection of BIPCo's proposed rate surcharge, it is unjust and unreasonable. It has not been justified as to amount, duration, and the proposed uses of funds. BIPCo has offered no limit on the amount that it might collect or the time period over which the surcharge would apply, which could be years. Nor has it adequately identified what services are needed, whether they are being procured in a cost effective manner, or the specific proceedings to be funded by the surcharge.

8. BIPCo's filing also flies in the face of Commission ratemaking practices. Professional and legal costs incurred by BIPCo already are built into its

existing rates. They are normal operating expenses that fluctuate from year to year, depending upon the extent to which outside services are provided and the cost of those services. Moreover, other normal operating expenses of the Company may change from year to year (for example, BIPCo's cost of service would be reduced if it ceased paying an affiliate for BIPCo's occupancy of a building owned by BIPCo itself). Future professional and legal costs cannot be viewed in isolation. These normal types of operating expenses are being recovered through BIPCo's current rates and should not also be recoverable through a rate surcharge.

9. The proposed rate surcharge cannot be justified based upon BIPCo's interest in cost allocation proceedings. Apart from the legal flaws in BIPCo's request, no purchased power or transmission cable charge cost allocation proceedings relating to BIPCo are currently pending. Purchased power costs to be allocated and charged to BIPCo under R.I.G.L. §39-26.1-7(a) may not arise at all and are at best premature (all Deepwater Wind power is being purchased by National Grid). BIPCo has yet to enter into any purchased power contract with any mainland power supplier (which presumably would be selected through its IRP and a competitive procurement process). Likewise, no cost allocation to BIPCo of transmission cable charges has been proposed by National Grid and Deepwater in Docket No. 4111-the ownership of the cable remains uncertain. No surcharge can be justified with regard to Docket No. 4111, or any future proceeding, yet to be named, that may or may not be relevant to BIPCo

10. BIPCo's voluntary decision to intervene in Commission Docket No. 4111 does not justify the proposed rate surcharge and avoidance of the Commission's general rate filing requirements.

11. The proposed surcharge is unnecessary to educate BIPCo about its own power supply (not at issue in any pending matter). Counsel for BIPCO also represents Constellation Energy in matters before the Commission. He is well-versed in power supply matters-no surcharge is needed to educate BIPCo counsel. Mr. Edge is not called upon for power supply expertise. Similarly, no surcharge is necessary to educate BIPCo about undersea transmission cables to the Town. BIPCo management and its professional consultants have spent years working on undersea transmission cable to the mainland projects. Recently, BIPCo prepared a grant application to the Rural Utilities Service to support construction of an undersea cable-complete with cost estimates and detailed engineering information.

12. BIPCo's proposed rate surcharge is unjust and unreasonable even to the limited extent that it has been described. BIPCo has not explained how it derived the rate surcharge level, or provided any supporting work plan or budget. BIPCo does not appear to have conducted any competitive bids for the unspecified services that it wants ratepayers to cover. The qualifications of outside vendors (counsel excepted) to perform specific work and whether that work is necessary and prudent have not been established by BIPCo. The role of BIPCo's owners/managers is unknown, but given their claimed expertise and attention to Company business, the need for and amount of any surcharge must be questioned. Collections would occur over a period of years as the Town of New Shoreham Project moves forward. The Town submits that the proposed surcharge is wasteful and imprudent. The interests of BIPCo can be adequately protected at a lower cost and through means other than BIPCo's ill-defined and open-ended general rate surcharge.

13. If this matter is not disposed of summarily, the Town will vigorously oppose BIPCo's rate surcharge on legal grounds and through evidentiary hearings. It reserves the right to conduct discovery and cross-examination, present testimony and submit a brief.

Town Intervention is in the Public Interest

14. Intervention by the Town is in the public interest. BIPCo serves but one community-the Town. The Town therefore has a critical interest in the outcome of this proceeding. The Town's participation as an intervenor will provide the Commission with diverse and local input regarding BIPCo's rate filing. No other party can adequately represent the unique interests of the Town in this proceeding.

15. Copies of all notices, pleadings, correspondence and other filings should be served upon the following:

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For the reasons above, the Town requests that the Commission grant its Motion to Intervene.

Respectfully submitted,

TOWN OF NEW SHORHAM

By its attorneys,



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Dated: December 14, 2009

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

BLOCK ISLAND POWER COMPANY)
SURCHARGE RATE FILING)
_____)

DOCKET NO. 4135

**MOTION OF THE TOWN OF NEW SHOREHAM FOR SUMMARY
DISPOSITION**

I. INTRODUCTION

On December 4, 2009, Block Island Power Company's ("BIPCo") proposed a rate surcharge to "cover legal and other professional costs incurred by BIPCo with respect to BIPCo's participation in RIPUC Docket No. 4111 and any related dockets or other proceedings regarding the Town of New Shoreham Project for newly developed renewable energy resources." (Edge Testimony at 1, lines 28-32). BIPCo has maintained that its proposed rate surcharge is authorized under R.I.G.L. §39-26.1-7(c). Pursuant to Rule 1.15 of the Commission's Rules of Practice and Procedure, the Town of New Shoreham ("Town") respectfully moves that the Commission summarily dispose of BIPCo's proposal.

II. SUMMARY OF ARGUMENT

Summary Disposition may be granted if the Commission determines that there is no genuine issue of fact material to the decision. BIPCo's proposed rate surcharge must be summarily rejected. R.I.G.L. §39-26.1-7 (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). The

General Assembly has specifically limited costs recoverable by BIPCo pursuant to R.I.G.L. §39-26.1-7(c), and did not authorize the use of this surcharge mechanism for the recovery of other BIPCo costs, such as legal and professional services, which are not “charges” imposed on it for purchased power or transmission costs under R.I.G.L. §§39-26.1-7(a) and (b).

Since BIPCo’s surcharge filing is predicated upon its being authorized under R.I.G.L. §39-26.1-7(c), it must be summarily dismissed.

III. ARGUMENT

A. THE PROPOSED RATE SURCHARGE IS NOT AUTHORIZED UNDER R.I.G.L. §39-26.1-7

1. The Town of New Shoreham Project Statute Authorizes a BIPCo Surcharge Only for the Collection of Purchased Power and Transmission Cable Charges Billed to BIPCo Pursuant to the Statute

a. Purchased power costs

R.I.G.L. §39-26.1-7 consists of three interrelated subsections. Under R.I.G.L. §39-26.1-7(a), the Commission is directed to review a power purchase agreement between an electric distribution company (National Grid) and a supplier of renewable energy (here, Deepwater Wind). Further, “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....”¹ Under R.I.G.L. §39-26.1-7(a), only purchased power costs may be charged to BIPCo, if at all.

b. Transmission cable costs

Under R.I.G.L. §39-26.1-7(b), in the event that a transmission cable between the Rhode Island mainland and Block Island is owned, operated and maintained by the electric distribution company (National Grid), “...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....” R.I.G.L. §39-26.1-7(b) authorizes recovery from BIPCo only of transmission cable costs incurred by National Grid and charged by National Grid to BIPCo.

c. The annual reconciling rate adjustment (rate surcharge)

R.I.G.L. §39-26.1-7(c) provides a rate mechanism for BIPCo’s recovery of purchased power and transmission cable costs charged to and incurred by BIPCo pursuant to R.I.G.L. §§30-26.1-7(a) and 39-26.1-7(b). Under R.I.G.L. §39-26.1-7(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.” (emphasis added). The only “charges” incurred by BIPCo pursuant to R.I.G.L. §39-26.1-7 and recoverable pursuant to R.I.G.L. §39-26.1-7(c) are: (1) purchased power cost charges allocated by the Commission to customers of BIPCo, pursuant to R.I.G.L. §39-26.1-7(a); and (2)

¹ R.I.G.L. §39-26.1-7(a) also provides: “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.”

transmission cable costs incurred by National Grid and charged to BIPCo pursuant to R.I.G.L. §39-26.1-7(b).

2. Under the Plain Meaning of the Statute, the General Assembly has Expressly Limited the Use of the Annual Surcharge for Recovery of Purchased Power and Transmission Cable Costs Charged to BIPCo

a. The plain meaning of the statute limits the types of costs recoverable under R.I.G.L. §39-26.1-7(c)

The General Assembly has expressly limited the use of the R.I.G.L. §39-26.1-7(c) surcharge for recovery of purchased power and transmission cable costs charged to BIPCo under R.I.G.L. §§39-26.1-7(a) and 39-26.1-7(b).

The Rhode Island Supreme Court has repeatedly held that where, as here, the language of a statute is clear and unambiguous, courts and agencies must interpret the statute literally and must give the words of the statute their plain and ordinary meanings. *Moore v. Ballard*, 914A.2d 487, 490 (R.I. 2007). It is only when a statute is unclear or ambiguous that a court or agency may look beyond the language of the statute. *Liberty Mutual Insurance Company v. Kaya*, 947 A.2d 869, 872 (R.I. 2008).

Under the plain language of R.I.G.L. §39-26.1-7, only power supply and transmission cable costs charged to and incurred by BIPCo under R.I.G.L. §§39-26.1-7(a) and 30-26.1-7(b) are recoverable by BIPCo pursuant to a R.I.G.L. §39-26.1-7 (c) rate surcharge. The statute is unambiguous.

When the General Assembly has authorized surcharges by statute, it has been specific about the costs to be recovered, as it was in R.I.G.L. §39-26.1-7. For example, the Division has been authorized and directed to implement gasoline and diesel price emergency surcharge programs for motor carriers of property. R.I.G.L. §§39-12-13(b)

and 39-12-13(c). Similarly, under R.I.G.L. §39-14-2.2(e), the General Assembly specifically authorized and directed the Division to implement a gasoline price emergency surcharge program for taxicabs and limited public motor vehicles.

The General Assembly's omission of BIPCo's voluntary legal and professional expenses from R.I.G.L. §39-26.1-7 precludes their recovery pursuant to R.I.G.L. §39-26.1-7(c). 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) indicates a legislative intent to exclude other costs not listed. *Murphy v. Murphy*, 471 A.2d 619, 622 (R.I. 1984). The General Assembly limited the types of costs that BIPCo can recover under the statutory surcharge to purchased power and transmission cable charges. Other types of BIPCo expenses were not intended to be collected pursuant to R.I.G.L. §39-26.1-7(c). The Commission cannot rewrite R.I.G.L. §39-26.1-7 to suit BIPCo and must apply the statute as written.²

The Rhode Island Supreme Court has followed and applied the principle of statutory construction, "Expressum facit cessare tacitum" (if some things are expressly mentioned, the inference is stronger that those omitted were intended to be excluded) and its companion, the venerable principle, "Expressio unius est exclusion alterius" ("The express mention of one thing implies the exclusion of another"). *Id. See also, Retirement Bd. of Employees' Retirement System of State v. DiPrete*, 845 A.2d 270, 297 (R.I. 2004)(statute should not be interpreted to include a matter omitted unless the clear

² *State v. DiCicco*, 707 A.2d 251, 253 (R.I. 1998). *Iselin v. Retirement Bd. of the Employees' Retirement System of Rhode Island*, 943 A.2d 1045, 1049 (R.I. 2008). Any Commission interpretation of R.I.G.L. §39-26.1-7 is subject to *de novo* review by the courts. *Town of Burrilville v. Pascoag Apartment Associates, LLC*, 950 A.2d 435, 445 (R.I. 2008). *Town of North Kingstown v. Albert*, 767 A.2d 659, 662 (R.I. 2001).

purpose of the legislation would fail without the implication).³ The list of actions in [a statute] is presumed to exclude actions not specifically listed ([cit.]), and the omission of [additional actions] from [the statute] is regarded by the courts as deliberate. [Cits.] *Allen v. Wright*, 644 S.E. 2d 814, 817 (GA. 2007).

b. Legal and professional costs incurred by BIPCo are not recoverable pursuant to R.I.G.L. §39-26.1-7(c)

The General Assembly has expressly limited the R.I.G.L. §39-26.1-7 (c) rate mechanism for recovery of purchased power and transmission cable costs charged to BIPCo pursuant to related subsections of the statute, R.I.G.L. §§39-26.1-7 (a) and 39-26.1-7(b). Legal and professional expenses incurred by BIPCo as a result of its participation in regulatory matters or its ordinary operations are not purchased power expenses or expenses for the transmission of electricity by other parties.

The FERC Uniform System of Accounts for Electric Companies distinguishes between expenses for purchased power (Account 555)⁴, transmission of electricity by others (Account 565), outside services employed (Account 923) and regulatory commission expenses (Account 928). Neither purchased power expenses nor expenses for transmission of electricity by others include legal and other professional expenses. Account 923 expressly provides for legal, accounting and engineering consultants' fees.

³ Given the interrelationship between the subsections of R.I.G.L. §39-26.1-7, the *raison d'être* for subsection 39-26.1-7(c) is the creation of a rate mechanism for recovery of purchase power and transmission cable costs charged to BIPCo under related subsections and nothing more. The purpose of the statute would not fail by applying the plain language of the statute and limiting the use of the rate mechanism for recovery of purchase power and transmission costs charged to BIPCo.

⁴ Account 555 Purchased power expense includes "...the cost at point of receipt by the utility of electricity purchased for resale." Account instructions require that "[t]he records supporting this account shall show, by months, the demands and demand charges, kilowatthours and prices thereof under each purchase contract and the charges and credits under each exchange or power pooling contract." Account 565 expenses for the transmission of electricity by others includes "...amounts payable to others for the transmission of the utility's electricity over transmission facilities owned by others."

Account 928 regulatory commission expenses expressly include legal, accounting and engineering fees incurred by the utility in connection with formal cases before regulatory commissions. *FERC Uniform System of Accounts*, 18 CFR Part 101.⁵ BIPCo has routinely provided annual regulatory account information consistent with the above-described accounting systems.

Given the express limitations on BIPCo cost recovery to purchased power and transmission cost charges, there is no room under R.I.G.L. §39-26.1-7 for the Commission to allow BIPCo to recover legal and professional costs associated with BIPCo's participating in Docket No. 4111 or any future dockets and proceedings, pursuant to the annual surcharge mechanism created under R.I.G.L. §39-26.1-7 (c).

**C. BIPCO HAS NOT COMPLIED WITH THE COMMISSION'S
GENERAL RATE INCREASE FILING REQUIREMENTS**

The rate surcharge requested by BIPCo is a general increase in its rates. The proposed surcharge would apply to all customers, including the Town. BIPCo admits that its rate surcharge constitutes a general rate filing by seeking a waiver from general rate filing requirements (Edge Testimony at 4, lines 27-29). Its requested waiver is without merit because, as explained above, its proposed rate surcharge is not "a special, statutorily authorized rate filing" under R.I.G.L. §39-26.1-7 (Edge Testimony at 4, line 29).⁶

⁵ The RUS requires borrowers like BIPCo to adhere to a system of accounts that mirrors FERC's Uniform System. *See*, 7 CFR Part 1767-*Accounting Requirements for RUS Electric Borrowers*; 7 CFR §1767.27 (containing Accounts 555 and 565 for purchased power expenses and expenses for transmission of electricity by others, respectively); 7 CFR §1767.31 (containing Accounts 923 and 928 for outside services and regulatory commission expenses to cover legal, accounting and engineering consulting expenses).

⁶ The Town acknowledges that the Commission has authorized surcharges under special circumstances, which are not present here. For example, in the context of a general rate case, in Docket No. 1998 (Order 13769, effective Nov. 1, 1991), the Commission was confronted with a situation where BIPCo required emergency rate relief to pay for environmental remediation expenses. In setting a revenue

Whether or not it is a good idea for BIPCo to participate in RIPUC Docket No. 4111 or other proceedings is irrelevant.⁷ Its proposed rate surcharge is not authorized under R.I.G.L. §39-26.1-7(c) and contrary to BIPCo's above-referenced testimony, R.I.G.L. §39-26.1-7 does not make BIPCo's filing a special statutorily authorized rate filing.

C. SUMMARY DISPOSITION IS NEEDED TO PROTECT RATEPAYERS AND CONSERVE AGENCY RESOURCES

Allowing this matter to go forward to hearings would contravene R.I.G.L. §39-26.1-7. Summary disposition is needed to protect ratepayers from paying an unauthorized rate surcharge. Summary disposition would foreclose future attempts by BIPCo to misapply R.I.G.L. §39-26.1-7(c) and their attendant costs. Proper application of the statute by the Commission also would conserve Town, Division and Commission resources. Summary disposition does not prevent BIPCo from electing to participate in Docket No. 4111 and other proceedings.

requirement for BIPCo, the Commission carefully scrutinized the current and likely levels of environmental remediation expenses as well as the time frame over which they would be incurred. In the context of the general rate case, the Commission chose to establish a time-limited surcharge to recover costs rather than build an uncertain level of costs into base rates. Here, no emergency exists and no expenses are being forced upon the Company. . The rationale for adopting a surcharge-in the context of a general rate investigation-does not apply here. BIPCo's request has not been made as part of a review of its overall revenue requirements, as was true in Docket No. 1998.

⁷ At pages 3 and 4 of his testimony, Mr. Edge offers reasons why BIPCo should be a party to future proceedings: (1) protection of ratepayers and (2) the need to gain familiarity with the financial, engineering and construction requirements that might be placed on BIPCo (presumably if a cable to the mainland were built and BIPCo purchased and/or sold power transmitted by that cable). Neither of these reasons for BIPCo participation, even if taken as true for purposes of the Town's Motion , provide any legal support for its proposed rate surcharge. The rate surcharge requested is not authorized under R.I.G.L. §39-26.1-7(c) and no special statutory basis exists for exempting BIPCo from general rate increase filing requirements, as Mr. Edge has claimed.

IV. CONCLUSION

For the reasons above, BIPCo's rate surcharge filing should be summarily dismissed.

Respectfully submitted,

TOWN OF NEW SHOREHAM

By its attorneys,



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