

generating units which were delivered by a special charter provided by Interstate Navigation Company. BIPCo was able to restore power to the entire island within forty-eight hours. However, as a result of this episode, BIPCo also incurred extraordinary costs for the nine-day period in July and will incur monthly costs into the foreseeable future. Such extraordinary costs are not currently included in BIPCo's rates. While BIPCo is an investor-owned utility, it has asserted that the rental costs of approximately \$100,000 for one month would exceed the dollar value of BIPCo's allowed return on equity for over an entire year. Therefore, BIPCo sought to include these costs in its fuel adjustment clause, commencing on bills rendered in August for the 9-day period in July and in future fuel adjustment clauses for the duration of the rentals.²

The fuel adjustment clause has been approved by the PUC and is calculated each month to cover the cost of financing fuel and urea inventories, transportation costs, as well as to cover the cost of fuel and urea usage. In addition, there is a monthly distribution system improvement charge in effect during the summer months for improvements to the distribution system. The charge is reviewed and approved by the Division each month following usage prior to the issuance of the bills. For example, July's fuel adjustment clause is approved in August for August bills.³

BIPCo requested that the following language be added to the calculation of its fuel adjustment clause for August and beyond:

The total cost for the month to rent auxiliary engines (including any components such as wiring and transformers) and the related installation and transportation costs (i.e., ferry, truck, driver, etc.) required for transportation of the rental equipment. This calculated engine rental cost will then be divided by .96 to provide for [gross receipts tax].⁴

² Pet. at 2; Bebyn Test. at 1-2, 6.

³ Attachment to Bebyn Test. (RIPUC No. 3900 - Fuel Adjustment Clause).

⁴ *Id.* at 1.

The August bills would be calculated with this addition to cover the nine-day period in July.⁵ According to BIPCo's witness, David Bebyn, based on July 2015 usage, the expected impact is an additional \$0.0195 per kWh. This estimate will be impacted by higher or lower usage in July 2016. Mr. Bebyn calculated that if the PUC were to delay July recovery to the September billing (August fuel adjustment clause), the additional charge would be \$0.116. According to Mr. Bebyn, throughout the 1990s and early 2000s, before BIPCo owned all of its engines, the PUC allowed similar rental charges for engines to be included in the fuel adjustment clause.⁶

On August 3, 2016, the Division submitted a memorandum from its Chief Accountant, Stephen Scialabba, summarizing the request. Mr. Scialabba noted that BIPCo's actual fuel costs are recovered in arrears after the proposed factor and supporting invoices are submitted to the Division for review and approval. Mr. Scialabba stated that the Division recommended that the proposed tariff language be approved for August 2016 pending further review of additional information including insurance recovery, the status of damaged engines, and balances in any BIPCo reserve account. Mr. Scialabba suggested that the approval sunset at the end of August.⁷

On August 4, 2016, at an Open Meeting, the PUC considered the record and ruled that expedited action on the matter is appropriate. Although this filing was made only six days prior to approval, R.I. Gen. Laws § 39-3-12(a) gives the PUC the authority to approve tariff changes with less than thirty days' notice and without a hearing upon a finding of good cause. This request clearly fits within that exception. The expense is sufficiently large to eliminate BIPCo's annual profit in only one month while expenses will be incurred over several months. This is a significant burden for a small investor-owned utility. Second, including the July costs in the fuel adjustment

⁵ Bebyn Test. at 7.

⁶ Bebyn Test. at 3-7.

⁷ Division Mem.; http://www.ripuc.org/eventsactions/docket/4635-DPU-Memo8_3_16.pdf.

clause on August bills more closely matches costs to the beneficiaries of the expense than would delaying to the September bills. Third, using July kWh sales reduces the burden on ratepayers due to the larger number of kWhs over which to spread the cost. Finally, the PUC notes that the Town of New Shoreham has specifically not objected to this treatment through correspondence by the Town Solicitor.⁸ For all of these reasons, BIPCo has met the burden of showing good cause existed to receive an expedited ruling.

The next issue is whether approval in August 2016 of BIPCo's request to include the charges on August bills for July consumption is a violation of the prohibition against retroactive ratemaking. Retroactive ratemaking can be defined as "seeking recovery for an expense that you could have sought recovery [for] before or [for something which] you became aware of after the fact and now seeking to recover it."⁹ The prohibition against retroactive ratemaking is a fundamental principle of utility regulation. As the Rhode Island Supreme Court has stated, "[o]ne of the central principles of 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."¹⁰ Furthermore, the rule against retroactive ratemaking "protects the public by ensuring that present consumers will not be required to pay for past deficits of the company in their future payments."¹¹ The third purpose behind the rule against retroactive ratemaking is to prevent utilities from using future rates to protect the financial investment of their stockholders.¹²

⁸ Email from Katherine Merolla, Town Solicitor, to Cynthia G. Wilson-Frias, Deputy Chief of Legal Services (Aug. 2, 2016).

⁹ Order No. 19145, *quoting* Tr. at 212 (Sep. 12, 2007).

¹⁰ *Providence Gas Co. v. Burke*, 475 A.2d 193, 197 (R.I. 1984).

¹¹ *Narragansett Electric Company v. Burke*, 415 A.2d 177, 179 (R.I. 1980).

¹² Order No. 19145 (Dec. 13, 2007) (In re: Providence Water Supply Board's Application to Change Rate Schedules, Docket No. 3832) at 58, n.16; [http://www.ripuc.org/eventsactions/docket/3832-PWSB-Ord19145\(12-13-07\).pdf](http://www.ripuc.org/eventsactions/docket/3832-PWSB-Ord19145(12-13-07).pdf).

Like all rules, the Supreme Court has recognized limited exceptions to the rule against retroactive ratemaking, noting that “no rule shall be blindly applied, however, without prior consideration of the underlying policy that the application of the rule in a particular instance will not undermine its original purpose.”¹³ For example, there is an emergency exception, where there is an extraordinary expense caused by an event that is unpredictable and not within the control of the utility. In one case, the Court found that the public interest in having the utility expend extra costs in order to quickly restore power after an extreme storm outweighed the rationale behind the prohibition on retroactive ratemaking.¹⁴

BIPCo’s request to amend the tariff retroactively clearly falls within the emergency exception. The failure of the piston and resulting fire were unexpected events. According to data responses to the PUC, Engine 22 was serviced one month prior to the failure and each engine is inspected each hour it is running from 7:00 a.m. to 1:00 a.m. each day. Therefore, at this time, there is no evidence BIPCo was at fault for this occurrence. As noted above, the magnitude of the expense was such that BIPCo’s shareholders would not be able to meet the burden of the rental and other associated payments without immediate rate relief. Therefore, BIPCo has met the burden of showing the existence of an extraordinary expense caused by an event that was unexpected. The public interest was clearly met by BIPCo procuring replacement engines as soon as possible without waiting for preapproval of rate relief from the PUC. Therefore, approval of BIPCo’s request does not violate the prohibition against retroactive ratemaking.

¹³ *Narragansett Electric Company v. Burke*, 415 A.2d at 178.

¹⁴ *Id.* at 179, stating (“the rule [prohibiting retroactive ratemaking] serves to protect present customers from paying for a utility’s past operating deficits. This aspect of the rule must be weighed against the interest of providing immediate service to customers when a destructive, unexpected storm occurs. On such an occasion the public interest in quickly restoring heat and electricity to the homes of customers must prevail...The next time a storm of this magnitude occurs, the company would have no incentive to hire outside line and tree crews to restore service efficiently and swiftly to customers if no reimbursement for extraordinary expenses would be forthcoming. Thus, application of the rule to expenses related to such an emergency situation so inextricably related to the public health and safety would serve to thwart the goal of effective customer service.”) *Id.* at 179-80.

There are many questions related to the costs and future recovery through insurance by BIPCo. There are also questions related to costs that are currently included in rates. Answers to these questions are important in order to ensure that there is no double recovery of costs and that ratepayers benefit from all rates and subsequent recovery. BIPCo will have to continue paying on the Rural Utilities Service loan that covers Engines 22 and 23. It will also have to meet the terms of the note that supports Engine 26. However, there are other ratemaking issues in place, such as whether the generating equipment is still used and useful and depreciation. Finally, because two of the damaged engines are included in the Rural Utilities Service loans, another layer of regulatory review will be occurring outside of the PUC process. For all of these reasons, the PUC initially ruled that the fuel adjustment clause should sunset after bills were issued in September 2016.

Allowing the inclusion of the proposed language for only two months allowed immediate relief, but also allowed for further review and an opportunity for the Division and PUC to conduct additional discovery. BIPCo was authorized to return to the PUC in September for an extension of the approval given in the initial decision.

On September 20, 2016, BIPCo returned to the PUC, filing a request for approval to continue recovering engine rental costs, auxiliary component costs, and required installation and transportation costs through the fuel adjustment clause. In its filing, BIPCo explained that it will only require the use of one engine after Labor Day due to the decreased load in the fall and winter months. On September 27, 2016, the Division submitted a memorandum recommending approval of the request, noting that BIPCo has received some portion of insurance proceeds, but investigation by the insurers is ongoing. In the memorandum, Mr. Scialabba indicated that the Division has scheduled a meeting with BIPCo to discuss the status of the insurance claim and how the insurance proceeds might be used to the benefit of customers. At an Open Meeting held on

September 29, 2016, the PUC reviewed the record and approved the continued recovery of engine rental costs, auxiliary component costs, and required installation and transportation costs through the fuel adjustment clause until further order of the PUC.

Finally, the PUC commends BIPCo for its swift action to obtain rental generating units in order to fully restore power to the island in less than forty-eight hours. While rolling blackouts were not pleasant for any of the residents of the island, balancing the system and providing power throughout the day to portions of the island without damaging the remaining equipment was important. The PUC also appreciates the assistance Interstate Navigation Company provided to BIPCo by providing charter service at the peak of tourist season.

Accordingly, it is hereby

(22564) ORDERED:

1. Block Island Power Company's Fuel Adjustment Clause filed on July 29, 2016 is hereby approved for effect on bills issued commencing in August 2016.
2. Insurance proceeds received by Block Island Power Company or its successor as a result of the July 22, 2016 fire shall be used to the benefit of ratepayers.

EFFECTIVE AT WARWICK, RHODE ISLAND ON AUGUST 4, 2016, PURSUANT TO OPEN MEETING DECISIONS ON AUGUST 4, 2016 AND SEPTEMBER 29, 2016.
WRITTEN ORDER ISSUED OCTOBER 7, 2016.

PUBLIC UTILITIES COMMISSION



Margaret E. Curran, Chairperson

Herbert F. DeSimone, Commissioner

Marion S. Gold, Commissioner

NOTICE OF RIGHT OF APPEAL: Pursuant to R.I. Gen. Laws § 39-5-1, any person aggrieved by a decision or order of the PUC may, within seven 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.