STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Rhode Island Division of
Public Utilities and Carriers
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March 20, 2017

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

In Re: Docket No. 4688–Block Island Power Company's Request for Declaratory Judgment

Dear Luly,

Please find the State of Rhode Island Division of Public Utilities and Carriers, (the "Division") Reply Memorandum to the Block Island Power Company's Request for Declaratory Judgment for filing with the Public Utilities Commission in the above captioned docket.

I appreciate your anticipated cooperation in this matter.

Very truly yours,

Jon G. Hagopian
Senior Legal Counsel

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: BLOCK ISLAND POWER COMPANY'S PETITION FOR DECLARATORY JUDGMENT **Docket No. 4688**

THE DIVISION OF PUBLIC UTILITIES AND CARRIERS REPLY MEMORANDUM TO BLOCK ISLAND POWER COMPANY'S PETITION FOR DECLARATORY JUDGMENT

The Rhode Island Division of Public Utilities and Carriers (Division) hereby submits the within memorandum in response to Block Island Power Company's (BIPCO) Petition for Declaratory Judgment pursuant to Commission Rule of Practice 1.10(C). The relevant issues surrounding the instant petition are outlined here.

ISSUES

Whether R.I. Gen. Laws Section 39-26.1-7 provides for the socialization of all costs associated with the wind farm project by the customers of National Grid, incurred by development of the Block Island Wind Farm and Cable and whether any of the costs claimed by BIPCO here must be borne by BIPCO's customers? More specifically, must the cost of a "backup transformer" and interconnection cost solely for service to BIPCO distribution facilities by reason of its interconnection to the BI Wind farm and Cable be the sole responsibility of BIPCO's customers to satisfy.

To answer this we must break the question down to first, glean the purpose of the controlling statutory law and then reach a conclusion with respect to the specific issues framed.

In 2009, the legislature crafted R.I. Gen. Laws §39-26.1-7, which is the enabling act for the development of what would become the nation's first commercial offshore wind farm, twelve (12) miles off the shores of the of the State of Rhode Island, adjacent Block Island (the BI Wind Farm or Block Island Wind Farm), within the territorial waters of the State. The main parties involved with the BI Wind Farm are the Narragansett Electric d/b/a National Grid (National Grid or the Company), owner of the undersea cable to its transmission and distribution lines to the electric grid; Deepwater Wind, the developer and owner of the offshore wind farm; Block Island Power Company, the host seller of the land for the wind farms substation; and finally the Town of New Shoreham host for the landing of the undersea cable from the wind farm. At all relevant times, BIPCO was a privately owned electric generating and distribution company providing electricity to approximately one (1000) thousand year round residents.[1] The Town of New Shoreham is a town chartered under the laws of the State of Rhode Island.

The relationships of these entities involved in the BI Wind Farm project is important to solving the issue of the proper allocation of cost recovery for BIPCO's claims. During the summer of 2012, National Grid and Deepwater

[1] The Town of Narragansett also hosts the landing of the wind farm's undersea cable to mainland of the State Rhode Island.

agreed upon a proposal, whereby National Grid would purchase the real estate rights, permits, and completed engineering work from Deepwater, and National Grid would construct, own and operate the Transmission Facilities as a transmission project regulated by the Federal Energy Regulatory Commission (FERC).

This approach was different from the original proposal, whereby Deepwater and National Grid attempted to negotiate an agreement which primarily provided for Deepwater to construct the Transmission Facilities and to sell the Transmission Facilities to National Grid when completed. Negotiations of the original sale proposal reached an impasse earlier in 2012 over the purchase price and National Grid's role in the construction of the Transmission Facilities.

The Transmission Facilities included approximately 20 mile 34.5kV submarine electric cable and related facilities connecting Block Island to the mainland electric grid. In addition, the Transmission Facilities included approximately 1 mile of terrestrial infrastructure (buried and overhead) on Block Island and approximately 4 miles of terrestrial infrastructure (buried) in Narragansett, RI. The Transmission Facilities also included a new substation on Block Island at the Block Island Power Company property and a switchyard in Narragansett, R.I., at the Rhode Island Department of Transportation facility located at Dillon's Corner.

The Disputed Facilities are certain equipment, such as wooden poles, overhead conductors, a switch, a circuit breaker, and a second, back-up

transformer that allows the BIPCO system to connect to the new substation built to connect the Deepwater Wind project to the cable to the mainland. The petition describes the positions of BIPCO and NGRID as to who should pay for the cost of these facilities. The essence of BIPCO's position is that the Disputed Facilities should be included in the definition of "related facilities" in R.I. Gen. Laws §39-26.1-7 entitled the "Town of New Shoreham Project". According to the statute, the cost of related facilities is recovered from all Rhode Island ratepayers. BIPCO's petition states that absent the statute, BIPCO, and ultimately its ratepayers, would be required to pay for the Disputed Facilities. NGRID's position is that the cost of the Disputed Facilities should be recovered from BIPCO's ratepayers.

APPLICABLE LAW

Title 39 Chapter 26.1 Section 7 entitled the Town of New Shoreham Project is the enabling act providing authority for the development of the BI Wind Farm Project. R.I. Gen. Laws § 39-26.1-7 (a) provides in pertinent part:

> (a) The general assembly finds it is in the public interest for the state to facilitate the construction of a small-scale offshore wind demonstration project off the coast of Block Island, including an undersea transmission cable that interconnects Block Island to the mainland..... The Narragansett Electric Company is hereby authorized to enter into an amended power purchase agreement with the developer of offshore wind for the purchase of energy, capacity, and any other environmental and market attributes, on terms that are consistent with the power purchase agreement..... The demonstration project subject to the amended power purchase agreement shall include up to (but not exceeding) eight (8) wind turbines with aggregate

> nameplate capacity of no more than thirty (30) megawatts, even if the actual capacity factor of the project results in the project technically exceeding ten (10) megawatts.

The provisions of 39-26.1-7 (f) provide *inter alia* for the construction of an undersea transmission cable from the mainland, Narragansett, RI to Block Island together with a means for project cost recovery and allocation structure as follows:

> (f) The project shall include a transmission cable between the Town of New Shoreham and the mainland of the state. The electric distribution company, at its option, may elect to own, operate, or otherwise participate in such transmission cable project. The electric distribution company, however, has the option to decline to own, operate, or otherwise participate in the transmission cable project. The electric distribution company may elect to purchase the transmission cable and related facilities from the developer or an affiliate of the developer, pursuant to the terms of a transmission facilities purchase agreement negotiated between the electric distribution company and the developer or its affiliate....., The revenue requirement for the annual cable costs shall be calculated in the same manner that the revenue requirement is calculated for other transmission facilities in Rhode Island for local network service under the jurisdiction of the federal energy regulatory commission..... The division shall support transmission rates and conditions that allow for the costs related to the transmission cable and related facilities to be charged in transmission rates in a manner that socializes the costs throughout Rhode Island. Should the electric distribution company own, operate, and maintain the cable, the annual costs incurred by the electric distribution company directly or through transmission charges 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. The allocation of the costs related to the transmission cable through transmission rates or

otherwise shall be structured so that the estimated impact on the typical residential customer bill for such transmission costs for customers in the Town of New Shoreham shall be higher than the estimated impact on the typical residential customer bill for customers on the mainland of the electric distribution company. This higher charge for the customers in the Town of New Shoreham shall be developed by allocating the actual cable costs based on the annual peak demands of the Block Island Power Company and the electric distribution company, and these resultant costs recovered in the per kWh charges of each company.....

(g) 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. 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.

(i) If the electric distribution company elects not to own the transmission cable, the developer may elect to do so directly, through an affiliate, or a third-party and the power purchase agreement pricing shall be adjusted to allow the developer, an affiliate or a third-party, to recover the costs (including financing costs) of the transmission facilities, subject to complying with the terms as set forth in the power purchase agreement between the developer and the electric distribution company.

DISCUSSION

First, it is important to note that there is no legal obligation imposed or set-forth in Title 39 or any other Rhode Island General Law requiring Block Island Power Company to interconnect to the Block Island Wind Farm or the bi-directional cable, from the National Grid's mainland electric transmission and distribution system, running between land of the Town of New Shoreham, on one end point of the of the twelve (12) mile cable and the town of Narragansett on the other end. The Block Island Power Company was perfectly able to continue with its business plan of generating its own electricity and distributing it to its customers.

In construing the scope of the statute here we need look no further than the next two cases. First, in Gott v. Norberg, 417 A.2d 1352, 1356 (R.I. 1980) the court opined that [w]e must give effect to ascertainable legislative intent whenever it is within legislative competence. *Vaudreuil v. Nelson Engineering and Construction Co., R.I.,* 399 A.2d 1220 (1979). In Daniels Tobacco Co. v. Norberg, 114 R.I. 502, 335 A.2d 636 (1975), we determined that the Legislature intended to deny interest on cigarette-tax refunds in the absence of an express provision. Gott v. Norberg, 417 A.2d at 1356 (R.I. 1980). The Court in Daniels, *supra* explained that [w]e rejected the plaintiffs' contention, finding that the repealed statute applied "only to taxes assessed on tobacco products and not on cigarettes, and that consequently no legislative intent (had) ever been evidenced to award interest on refunds of a cigarette tax * * *." *Id.* at 507, 335 A.2d at 639.

We determined that the Legislature's failure to provide for interest specifically on cigarette-tax refunds evidenced intent to deny interest on such refunds. *Id.*

Similarly, there is no reference in the R.I. Gen. Laws § 39-26.1-7 conferring a right to BIPCO to recover the costs of interconnection to the Block Island Wind Farm or the cable. The statute deals specifically with cost of construction and development of the wind farm and cable including, costs for of participation in regulatory proceedings. There is simply no reference to interconnection and the term should not be read into an otherwise clear and unambiguous statutory section. *See,* Burke-Tarr Co. v. Ferland Corp., 719 A.2d 1014, 1018 (R.I. 1999). The Court in Burke-Tarr Co., *supra.* reasoned that subterranean water lines could not be read into a statute which prohibited one from obtaining an easement by prescription for "telegraph, telephone, electric or other posts, wires, or apparatus" holding that "the language of that statute was conspicuously devoid of any reference to subterranean water lines, and hence bears no resemblance to the utilities that are mentioned". *Id.* In the case at bar, the same can be said for interconnection costs. A review of the R.I. Gen. Laws § 39-26.1-7 reveals clearly that the general assembly contemplated that the electric distribution, National Grid and the developer, here Deepwater Wind would cause the construction of a small-scale offshore wind demonstration project off the coast of Block Island, including an undersea transmission cable that interconnects Block Island to the mainland....., and should there be any cost incurred by the electric distribution company by reason of their ownership, operation or maintenance of the cable, those expenses were to

socialized throughout Rhode Island. Specifically, the annual costs incurred by the electric distribution company directly or through transmission charges 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. This section does not apply nor does it reference interconnection costs or equipment incurred by BIPCO. The authority here was limited by the very terms of the Statute. BIPCO's role was limited here although it benefits from interconnection to National Grid's bi-directional transmission cable, a voluntary act on its part.

The argument of BIPCO is strained when one reviews the relevant subsections of the R.I. Gen. Laws 39-27.1 on its face to glean the purpose of the General Assembly's mandate. It simply does not apply to interconnection costs of BIPCO, nor a backup transformer. These activities and expenditure are conspicuously devoid from the statute. It is clear from a review of subsections (f) and (g) of R. I. Gen. Laws 39-27.1-7 that the right conferred on BIPCO to recover costs is tied to those it might incur by reason of the activities of developing a wind farm or cable which are specified in the subsection (f) and not interconnection by BIPCO, a separate unspecified activity, not found in subsection (f). Therefore, in order to preserve the intent of the legislature in the case at bar, one should not disturb or read into subsection (f) in the manner suggested by BIPCO in its moving papers. In other words, the statute here is "clear" and "unambiguous" and therefore the language should be taken literally

and given there plain and ordinary meaning. Furthermore, there is no ambiguity in the expressed provision of subsection (f) which subsection (g) relates back to and therefore there is no legal basis to read into these provisions as requested by BIPCO. Finally, there is no "myopic literalism" being applied here by the Division, but rather merely a plain reading of the applicable statutory sections and subsections.

The Rhode Island Supreme Court has consistently held that "[i]n matters of statutory interpretation our ultimate goal is to give effect to the purpose of the act as intended by the Legislature." State v. Hazard, *see* Alessi v. Bowen Court Condominium, 44 A.3d 736, 740 (R.I.2012) (quoting Webster v. Perrotta, 774 A.2d 68, 75 (R.I.2001)). "[W]hen the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Id.* (quoting *Waterman* v. Caprio, 983 A.2d 841, 844 (R.I.2009)). However, the plain meaning approach must not be confused with "myopic literalism"; even when confronted with a clear and unambiguous statutory provision, "it is entirely proper for us to look to ' the sense and meaning fairly deducible from the context.' "In *re Brown*, 903 A.2d 147, 150 (R.I.2006) (quoting In re Estate of Roche, 16 N.J. 579, 109 A.2d 655, 659 (1954)); *see also* Mendes v. Factor, 41 A.3d 994, 1002 (R.I.2012)." Therefore, we must ' consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections.' "Mendes, 41 A.3d at 1002 (quoting Generation Realty, LLC v. Catanzaro, 21 A.3d 253, 259 (R.I.2011)); *see*

also, Alessi, 44 A.3d at 742; *Jerome v. Probate Court of Barrington,* 922 A.2d 119, 123 (R.I.2007). The Rhode Island Supreme Court in Brennan v. Kirby, 529 A.2d 633 (R.I. 1987) opined that a statute or enactment may not be construed in a way that would attribute to the Legislature an intent that would result in absurdities or would defeat the underlying purpose of the enactment, (City of Warwick v. Aptt, 497 A.2d 721, 724 (R.I. 1985)), nor may it be construed, if at all possible, to render sentences, clauses, or words surplusage. (State v. Gonsalves, 476 A.2d 108, 110-11 (R.I. 1984)). The Court in Brennan, stated [m]oreover, we have indicated that when apparently inconsistent statutory provisions are questioned, every attempt should be made to construe and apply them so as to avoid the inconsistency and should not be applied literally if to do so would produce patently absurd or unreasonable results. (State v. Goff, 110 R.I. 202, 205, 291 A.2d 416, 417 (1972)).The same principle should apply where apparent inconsistencies exist within the same statute or enactment. Williams v. Stoddard, No. PC 12-3664, Superior Court of Rhode Island, February 11, 2015.

It is clear from the text of the statute that related facilities are associated with the transmission cable that NGRID purchased from Deepwater Wind. This means that "related facilities" are equipment necessary for the operation and maintenance of the transmission cable built by Deepwater Wind and purchased by NGRID that runs from Block Island to the mainland. In response to data requests from the Division, BIPCO provided one-line diagrams that shows the substation built to connect the transmission cable, Deepwater

Wind, and BIPCO. These diagrams also show the Disputed Facilities. It is clear from these diagrams that the Disputed Facilities are not necessary for the operation and maintenance of the transmission cable. These diagrams show that the Disputed Facilities are necessary for BIPCO to connect to the transmission cable, but they would not be necessary for the operation and maintenance of the transmission cable, nor would the Disputed Facilities been built by Deepwater Wind and ultimately sold to NGRID.

CONCLUSION

For the foregoing reasons the Division urges the Commission to reject BIPCO's arguments in this matter. The Division can find no support as a matter of law for BIPCO's prayers for relief. BIPCO is responsible for the cost of interconnection, as their interconnection is voluntary. BIPCO's prayer for a back-up generator is not contemplated in the statute either and is purely discretionary on its part.

Division of Public Utilities and
Carriers
By its attorney,

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Dated: March 20, 2017

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of March 2017 that I transmitted an electronic copy of the within Memorandum to the attached service list and to Luly Massaro, Commission Clerk by electronic mail and one set hand delivered.

Docket No. 4688 – Block Island Power Co. - Petition for Declaratory Judgment **Service List as of 2/27/17**

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