

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: Block Island Power Company
General Rate Filing

: Docket No. 3655

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

On or about January 20, 2005, the Town of New Shoreham (Town) filed an Objection to Block Island Power Company's (BIPCo) Motion for Interim Relief. The Town coupled that Objection with a "Motion for Summary Disposition of Block Island Power Company's Motion for Interim Relief." BIPCo hereby objects to the Town's Motion for Summary Disposition.

STANDARD OF REVIEW

Rule 1.15(e) of the Public Utilities Commission's (Commission) Rules, controls summary dispositions. A summary disposition under Rule 1.15(e) is the Commission equivalent of summary judgment under Rule 56 of the Superior Court Rules of Civil Procedure.

Commission Rule 1.15(e) sets forth the standard for review on such a motion. It states that "if the Commission determines that there is no genuine issue of fact material to the decision, it may summarily dispose of all or part of the rate tariff filing." Similarly, Rule 56 of the Superior Court Rules of Civil Procedure provides that summary judgment may only be granted when "there is no genuine issue as to any material fact . . . and the moving party is entitled to judgment as a matter of law."

The Supreme Court has made it clear that “summary judgment is an extreme remedy that must be cautiously applied.” Canavan v. Lovett, ___ A.2d ___ (RI December 16, 2004 No. 2004-166), citing Johnston v. Poulin, 844 A.2d 707, 710 (RI 2004). Moreover, as the Court said in Canavan, the review of the evidence must be “viewed in the light most favorable to the non moving party [BIPCo],” citing Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1225 (RI 1996). As the Court said in M & B Realty, Inc. v. Duval, 767 A.2d 60, 63-64 (RI 2001), “to oppose a motion for summary judgment successfully, a party need only provide . . . evidence that, when viewed in light most favorable to that party, establishes the existence of a genuine issue of a material fact.”

As the Court explained in Rotelli v. Catanzaro, 686 A.2d, 91, 93 (RI 1996), “the purpose of the summary-judgment procedure is to identify disputed issues of fact necessitating trial, not to resolve such issues.” (Emphasis added). Finally, the Court has emphasized that the reviewing court “must look for factual issues, not determine them. The justice’s only function is to determine whether there are any issues involving material facts . . . the Court’s purpose during the summary judgment procedure is issue finding, not issue determination.” Capital Properties, Inc. v. State, 749 A.2d 1074, 1080 (RI 1999).

ARGUMENT

The Town has spent 10 pages of its Memorandum in opposition to BIPCo’s Motion for Interim Relief attempting to argue (without any supporting testimony) why BIPCo and the supporting interim relief testimony of Walter Edge, Jr., CPA, are allegedly wrong regarding the need for interim relief. In other words, after having attempted to dispute numerous issues of fact material to the interim relief decision, the Town then inexplicably

argues in two paragraphs on page 10 that “there is no genuine issue of fact material to the decision.” The Town’s own Memorandum clearly sets forth the nature and extent of the disputes the Town believes exist between the parties as to issues material to the interim relief decision. For example, disputed issues of fact material to the interim relief decision alleged by the Town in its Memorandum include:

1. Whether a financial emergency has been established by BIPCo (Memorandum, at 3),
2. Whether BIPCo’s inability to pay its vendors constitutes a financial emergency (Memorandum, at 4),
3. Whether BIPCo’s financial emergency is of its own making (Memorandum, at 4),
4. Whether a projected shortfall in future earnings constitutes an emergency warranting interim relief (Memorandum, at 5),
5. Whether that shortfall is of BIPCo’s own making (Memorandum, at 5),
6. Whether BIPCo’s financial emergency will interfere with the accommodations, convenience, and welfare of the public (Memorandum, at 5),
7. Whether BIPCo will be able to satisfy its RUS loan covenants (Memorandum, at 6),
8. Whether BIPCo’s pending capital improvements are a basis for interim relief (Memorandum, at 6),
9. Whether BIPCo has established the amount of interim relief to which it is entitled (Memorandum, at 9).

BIPCo understands that it is an often utilized legal practice to meet every claim with a “counter claim.” However, the Town spent 10 pages disputing various issues of fact material to the interim rate decision, then inexplicably argued that there are no disputed issues of fact material to the interim relief decision

The filing of this Motion for Summary Disposition, which has no basis and is contradicted by the Town’s prior objection, serves only to drive up rate case costs that will be passed through to BIPCo’s ratepayers and the Town’s taxpayers. This is a disservice to the Commission, the Division, and the ratepayers of Block Island that the Town purports to represent.

Accordingly, for the foregoing reasons, we respectfully submit that the Town’s Motion for Summary Disposition should be denied.

Respectfully submitted,
Block Island Power Company
By its attorney

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CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of January 2005, I mailed a true copy of the foregoing by first class mail to the following:

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BIPCo5:Rate-Objection

**Rebuttal Testimony to the Town's Opposition
Of and Motion for Summary Disposition
Of BIPCo's Motion for Interim Relief**

By

Walter E. Edge Jr. MBA, CPA

For

Block Island Power Company

Docket # 3655

January 2005

1 **Q. Please state your name and business address for the record.**

2 A. My name is Walter E. Edge Jr. MBA CPA and my business address is B&E Consulting,
3 21 Dryden Lane, Providence, Rhode Island 02904.

4

5 **Q. Are you the same Walter E. Edge Jr. that has previously filed prefiled and interim**
6 **testimony in this Docket #3655?**

7 A. Yes.

8

9 **Q. What is the purpose of this testimony?**

10 A. I have read the Town's filing in opposition to BIPCo's motion for interim relief (which
11 was requested by Commission Counsel) and I have a number of comments as to the
12 appropriateness and correctness of some of the Town's observations and arguments. Based
13 upon the Town's numerous filings to date, it appears to me that the Town intends to try to
14 make this the largest rate docket in the history of this small Power Company regardless of
15 the cost. The Town does not seem to care at all costs for its own legal counsel or the about
16 the rapidly escalating costs that BIPCo is incurring to address these burdensome and
17 wasteful filings. It also appears that the Town is either misinformed or does not care if its
18 arguments are reasonable or appropriate.

19

20 **Q. How would like to proceed with this testimony?**

21 A. It would be better for me and easier for the reader if we simply went through the Town's
22 filing in opposition to BIPCo's request for interim relief page by page and I will provide my
23 comments.

24

25 **Q. Do you have any comments on page one?**

26 A. Yes. I believe that the Commission has broad powers when it comes to granting
27 interim relief and it is up to the Commission to make the decision if the interim rate design
28 change we have suggested is appropriate in this case. BIPCo has provided testimony
29 (original prefiled and interim) that shows that the RUS loan default would most likely result
30 in a postponement of future borrowing from RUS or any other possible lender.

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This would result in a situation that would interfere with the accommodations, convenience, and welfare of the people. Without the new engine, BIPCo and its ratepayers would be faced with the uncertainty of brown outs and outages this coming summer due to lack of capacity at peak periods (usually weekends and holidays). This would not just be inconvenient, but could seriously disrupt the summer tourist business the island depends upon.

Q. Anything else on page one?

A. Yes. I don't believe that BIPCo's request should be reviewed in the same light as usual interim relief requests because BIPCo is not requesting "immediate" relief as suggested by the Town. In fact, BIPCo is simply requesting that some of the seven month suspension period be waived for the rate design change only. BIPCo has not suggested that the Commission approve immediate rate relief. In fact, the interim relief requested is to be effective for consumption May 1, 2005, over three months from now.

Q. Mr. Edge, do you have any comments relating to items on page two?

A. Yes I do. I disagree with the Town. BIPCo has "alleged extraordinary facts of immediate and irreparable injury". The facts are that BIPCo has filed for a general rate increase and provided the Commission with two options for how the needed revenue requirement can be collected from the ratepayers. It can be implemented either (1) across the board or (2) the Commission can extend the shoulder months (with a smaller across the board increase). If the Commission chooses the option to extend the shoulder months, then even with rate relief July 1, 2005, BIPCo will not make its RUS loan ratios for December 31, 2005 and will then be in default on its RUS loan.

BIPCo did not consider this possibility until December 2004 when I was putting the filing package together for this docket. I then realized that if the general rate relief was not granted until July 2005, BIPCo would not receive a substantial portion of the rate increase until after December 31st when it would be too late to make the RUS ratios.

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Because the shoulder month extension reduces the across the board impact of the general rate increase, BIPCo felt that the Commission, the Division and the Town would prefer the extension of the shoulder month option over a much larger across the board increase. Therefore we concluded not to remove the second option from consideration in this docket. Instead, I added to my original prefiled testimony an explanation of the problem and provided the Commission with a suggested solution. That solution was to allow BIPCo to implement the extension of the shoulder months at current rates for the month of May 2005. I concluded that, with that one early approval, BIPCo would probably make its RUS covenants for the year end December 31, 2005 if sufficient rate relief was granted effective July, 2005.

Apparently I confused the issue when I also pointed out that BIPCo could use the additional funds (from the May billing) to address a long standing cash flow problem in winter and early spring. This is a major problem, but until BIPCo's creditors take action it is not as serious a situation as the RUS loan default.

Q. So the reasonable recent unforeseen event was the fact that the Commission could choose the rate design change rather than the across the board increase option?

A. That is correct.

Q. What is the irreparable injury?

A. The irreparable injury is the fact that BIPCo will not make its RUS ratios if the Commission orders the extension of the shoulder months without providing the requested interim relief. If the Commission denies the interim relief BIPCo will have to consider withdrawing the suggestion to extend the shoulder month option.

Q. How would BIPCo make the RUS ratios if the rate increase were across the board starting July 1, 2005?

1 A. Given that BIPCo earns about 75% of its revenue in the months of June, July and
2 August, BIPCo will benefit from the large percentage increase (as filed 21%) in rates for the
3 July and August sales, something they wouldn't get with the extension of the shoulder
4 months option (as filed an 11% increase).
5 Further, BIPCo will benefit from the 21% increase in the months of September through
6 December instead of only 11%. I would expect that BIPCo would get between 65 and 70
7 percent of the rate increase by December 31, 2005.

8
9 If the extension of the shoulder months is approved, without the interim rate design relief
10 BIPCo has requested, then BIPCo will only recover about 55% of the rate increase before
11 December 31, 2005 due to the lower across the board increase. The shoulder month
12 increase for September and the lower across the board increase for the other months will not
13 off-set the lost additional revenue from July through December using the larger percentage
14 rate increase. Also BIPCo will not receive the largest percentage of the rate increase until
15 May 2006 which is too late for the December 31, 2005 RUS ratios calculation.

16

17 **Q. Anything else on page two?**

18 A. Yes. At the bottom of page two the Town quotes the Commission in Pawtucket Water
19 stating that "consecutive years of loses and a shortfall of revenues in the test year, even if
20 unforeseen, were not recent but rather a long lasting problem". This reference is
21 meaningless in this case because BIPCo never said that the need for interim relief was the
22 result of many years of losses or the loss in the test year.

23
24 On the last line of page two the Town quotes the Commission as stating that interim relief is
25 needed if "without interim rate relief, the system has been or will to a reasonable degree of
26 certainty be jeopardized in its functioning". BIPCo has shown, with a reasonable degree of
27 certainty, that if interim relief is not granted, BIPCo's functioning will be jeopardized this
28 spring and summer.

29

30 **Q. Do you have any comments regarding the items on page 3?**

1 A. Yes I do. I believe that the situation BIPCo is facing in this rate filing, resulting in the
2 need for interim relief, is a truly “exigent” and unique circumstance. In fact, I can’t
3 imagine this exact situation occurring for any other utility regulated by the RIPUC.
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6 The Town’s claim at the bottom of page 3 that “BIPCo bases its request for interim relief
7 upon its claim that is operating at a significant loss” is wrong. In fact, as stated earlier,
8 BIPCo has not claimed that losses have resulted in the need for interim relief but rather the
9 interim relief is needed to provide BIPCo with the opportunity to make its RUS financing
10 ratios at December 31, 2005.
11

12 **Q. Please provide your comments regarding page four.**

13 A. The Town makes the point that BIPCo could have filed its rate case sooner and uses Mr.
14 Edwards prefiled testimony as support for its position. In fact, if you read Mr. Edwards’
15 comment in his prefiled testimony you can see that Mr. Edwards made the statement using
16 20/20 hindsight. In 2003, BIPCo reviewed its financial information. After a dozen years
17 of profits, and with what was known at the time, BIPCo could not have known that it would
18 have a significant loss in 2004.
19

20 I find the implication by the Town that the BIPCo’s own “error” caused the need for interim
21 relief interesting and maybe true. If BIPCo wasn’t thinking of what was in the best interest
22 for its year round island ratepayers, it wouldn’t have proposed the extension of the shoulder
23 months, and there would probably not be a need for interim relief.
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25 The statement that BIPCo could have filed sooner to alleviate the fact that BIPCo has a
26 number of cash flow timing problems is wrong. As I stated in my original prefiled
27 testimony, rate relief will provide revenue but it will not fully address the cash flow
28 problems faced by BIPCo.
29

30 **Q. Do you have any comments regarding the issues on page 5?**

1 A. Yes, I believe that the need for interim rate relief was a “reasonably recent unforeseen”
2 event. I believe that the rate design option BIPCo provided to the Commission made the
3 reason for the interim relief unforeseen.

4
5 **Q. Do you have any other comments on page 5?**

6 A. Yes. The comment regarding the fact “that no specific information has been presented
7 to demonstrate” that BIPCo will not make the RUS coverage requirements is wrong.

8 Between my original prefiled testimony (which showed a loss in the test year and a
9 projected loss in the rate year), my interim relief testimony, and a little knowledge of
10 BIPCo’s operations as a regulated entity and the regulatory process, anyone can see that
11 BIPCo will not make its coverage allowances December 31, 2005 if it receives less than
12 60% of its rate increase during the months when it normally gets 85% of its revenues.

13
14 The fact that as much as 55% of the rate increase could be collected after December 31,
15 2005 if the rate increase is only the extension of the shoulder months and no across the
16 board increase makes the conclusion that I reached regarding BIPCo not making its RUS
17 ratios seem obvious.

18
19 **Q. Do you have any comments relating to page 6?**

20 A. Yes I do. I agree that the quarterly filing requirement that I expect from RUS is not a
21 basis for emergency rate relief. I provided the information only to give the Division and the
22 Commission the full picture of what I expect will happen. To make this point was petty.

23
24 The Town misunderstood and misinterpreted my testimony when it stated that “general rate
25 relief should enable the Company to satisfy the RUS with its 2006 operating results”. The
26 comment that they are referring to on page 6 was talking about the fact that BIPCo would be
27 made whole on the rate relief in May 2006 when the full impact of the rate relief was
28 received. My testimony at that point was not addressing RUS at all. Given that I now
29 know (and the Town knows but has ignored) that the criteria used by RUS is the average of
30 the best two year of the last three years, because BIPCo will miss the RUS financing ratios

1 in 2004 and 2005, without interim relief, the probability is great that BIPCo will be in
2 default with RUS at the end of 2006.

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4 **Q. Does that conclude your comments regarding page 6?**

5 A. Yes.

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10 **Q. Do you have any comments regarding page 7?**

11 A. Yes I do. BIPCo's experts in generation simply disagree with the analysis regarding
12 engine use in the Town's argument in the first paragraph on page 7. The Town's proposed
13 use of standby engines is impossible and inappropriate given the current status of the two
14 standby engines, one of which is not running. Attached hereto is an analysis of the situation
15 (Exhibit A).

16
17 **Q. Do you have any comments regarding the information on page 8?**

18 A. Yes I do. Clearly the Town does not know the difference between wages and return on
19 investment. No one with any knowledge of utility regulation, normal accounting, tax law,
20 or even general business knowledge would make the argument that salaries should not be
21 paid when the accounts payables are not being paid. I know of no company that stops
22 paying salaries when cash flow gets tight in order to pay vendors.

23
24 The second point that I would like to make is that if the management fees were not paid
25 during times of cash flow problems, but then paid when the summer revenues are received,
26 it would not help BIPCo to make its RUS financing ratios at year end. To make such an
27 incorrect statement shows a lack of understanding of accounting and the calculation of the
28 RUS financing ratios.

1 On the bottom of page 8, in the Town's footnote, the Town claims that Management's
2 original investment was \$200,000. This is not true and to say so is misleading the
3 Commission.

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5 **Q. Mr. Edge do you have any comments regarding page 9 information?**

6 A. I do not agree with the Town's accusation that BIPCo has not established the amount of
7 interim relief needed. BIPCo believes that it needs more than \$111,000, but is willing to
8 live with the revenue that it will get from the rate design change at current rates for May
9 2005.

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12 The analysis at the bottom of page 9 is simply wrong. Even with 100% approval of
13 BIPCo's requested rate relief effective July 1, 2005, if the interim rate design relief is not
14 granted, but the expansion of the shoulder months is approved by the Commission, then I am
15 of the opinion BIPCo will not make its RUS financing ratios. The Town has proffered no
16 expert testimony to challenge this fact.

17

18 **Q. Do you have any other comments?**

19 A. Only that the Commission should not summarily dismiss the Company's motion for
20 interim relief, because, as shown above, there are many disputed issues that the Commission
21 needs to address

22

23 **Q. Does that conclude your testimony?**

24 A. Yes.

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