

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: BLOCK ISLAND POWER COMPANY :
GENERAL RATE FILING : DOCKET NO. 3655

ORDER

On September 13, 2005, the Public Utilities Commission (“Commission”) issued an Order in the instant docket, approving a Stipulation and Settlement (“Settlement”) between Block Island Power Company (“BIPCo”), the Division of Public Utilities and Carriers (“Division”) and the Town of New Shoreham (“Town”). The Commission made a modification to the parties’ Settlement, specifically regarding Section 9. The parties had agreed that

In the next base rate filing, BIPCo will justify, how it pays its owners and/or management (management fees, management salaries, dividends, director’s [sic] fees, use of Company-owned or leased vehicles by owners and/or management, benefits provided to owners and/or management, etc., or some combination, and any other management-related transactions with affiliates) and show that its approach and the resulting payments are reasonable and in the best interest of ratepayers. Nothing in the foregoing language shall preclude the Town from filing a complaint with the Division or Commission on the issues set forth in Section 9.

In the Commission’s Ordering Paragraph 2, the Commission changed the language, “in the next base rate filing” to “within ninety (90) days following the issuance of the Commission’s written Order in this docket”. There was no objection from the parties to the language change.

Accordingly, on December 12, 2005, ninety days following the issuance of Commission Order No. 18364, BIPCo filed four documents (“Compliance Filing”): (1) Prefiled compensation compliance testimony of Walter E. Edge, Jr., MBA, CPA; (2) An analysis of executive compensation at the Block Island Power Company performed by

Matthew M. Bodah, Ph.D., dated November 30, 2005; (3) Resume of Matthew M. Bodah; and (4) Block Island Power Company position descriptions for President, Chief Operating Officer, Secretary-Treasurer, and General Manager dated December 1, 2005.

On December 22, 2005, the Town filed a Motion of the Town of New Shoreham for Summary Rejection of Block Island Power Company's Management Compensation Compliance Filing or, in the Alternative, for an Investigation of Block Island Power Company's Management Compensation Payments and Practices. The Town's argument was that the Compliance Filing did not conform to the mandates of the Commission's Order No. 18364. The Town asked the Commission to require BIPCo to provide the following information and to open an investigation regarding each issue to determine that: (1) the individuals being compensated are qualified to perform the services that comprise their respective job descriptions; (2) these individuals work a sufficient number of hours to justify the level of compensation that they are receiving; (3) the services performed provide sufficient benefit to ratepayers to support the level of payments being made; (4) compensation of a General Manager and several owners is reasonably necessary for BIPCo's operations, given its small size; and (5) the level of payments is comparable to payments to management of other small, island-based utilities. The Town also asked that the Commission order BIPCo to cease payments to the owners of BIPCo. Finally, the Town asked the Commission to open an investigation which would include discovery regarding the qualifications of management. The Town noted that "it raised its concerns about payments to owners from operating expenses during BIPCo's rate case

and regards them to be dividends in disguise, not earned compensation.”¹ The Town also expressed concern with the search process for a new General Manager.

On January 3, 2006, BIPCo filed an Objection of Block Island Power Company (BIPCo) to the Motion of the Town of New Shoreham Regarding BIPCo’s Compliance Filing. BIPCo argued that its Compliance Filing speaks for itself and that it is in compliance with the Commission’s Order. BIPCo opined that the Commission knows what it ordered and is able to determine whether or not the Compliance Filing provided the information the Commission was seeking. Finally, BIPCo argued that the Town is attempting to reopen the rate case and that its current request goes beyond the parties’ intentions when they signed onto the Settlement.²

On January 3, 2006, the Division filed a letter intended to express the Division’s position with respect to BIPCo’s Compliance Filing and the Town’s Motion. The Division believed that BIPCo had addressed each of the issues for which it was required to respond, noting that the quality of those responses is best left to the Commission’s determination. The Division noted that the management compensation level of \$135,000 was agreed to by all of the parties to the docket. This amount was built into BIPCo’s rates as part of the resolution to the docket, which was agreed to by all of the parties. Next, the Division asserted that the parties should focus on the ongoing Integrated Resources Planning study and not dilute that process with questions that were resolved as part of the rate filing. Finally, the Division believed that BIPCo should update the parties regarding the search for a replacement for BIPCo’s retiring General Manager.³

¹ Town’s Motion, p. 3.

² BIPCo’s Objection, pp. 1-2.

³ Letter to Luly E. Massaro from William K. Lueker, Special Assistant Attorney General, 1/3/06.

Commission Findings

On January 31, 2006, the Commission denied the Town's Motion at an Open Meeting. At the outset, a Compliance Filing is designed to provide data to the Commission in accordance with a prior Order to do so. A Compliance Filing is not designed to be a means to afford parties the opportunity to re-litigate settled issues. Furthermore, the Commission is fully capable of determining whether or not a Compliance Filing meets the requirements set forth in its Order.

The Commission notes that the Town is absolutely correct in its assertion that the arguments made in its filing address the same issues which were litigated and settled in the rate matter. The Town was a signatory to the Settlement which included the level of management fees which would be included in rates. BIPCo has made no effort to raise rates beyond the level which was approved by the Commission, neither by this Compliance Filing nor by any other filing. Therefore, the Town has had an opportunity to conduct discovery on these matters and could have chosen to fully litigate the issues, rather than settling with the other parties during the rate case. The issues addressed by the Town in its Motion are more appropriately addressed in the Company's next rate filing.

With regard to the substance of the Town's Motion as to whether or not the Compliance Filing meets the requirements of the Commission's Order No. 18364, the first set of issues included in the Compliance Filing addressed how owners and/or management are paid (include management fees, salaries, dividends, use of company vehicles, and benefits provided to owners and management). Walter Edge addresses the justification for paying owners acting as executive management as independent

contractors rather than employees. Using the same analysis, the General Manager is paid as an employee. The use of dividends is also discussed by Mr. Edge. He notes that \$135,611 is collected through rates to compensate BIPCo's President, Chief Operating Officer ("COO") and Chief Financial Officer ("CFO"). However, the Company plans to pay these three individuals \$168,000. He states that the 10.5% return on equity calculates to an allowed profit for the owners of the Company of \$90,671. The difference between the \$168,000 paid to the President, COO and CFO and the \$135,611 built into rates will be paid from those profits.⁴ The remainder will be reinvested into the Company.⁵

The Company hired a consultant to review the payment levels of the management and came to the conclusion that the salaries and benefits for the BIPCo management are at a reasonable level or slightly low. The consultant noted that company vehicles are used for business purposes and Mr. Edge noted that some limited personal use is allowed on the way to and from work. The Commission's Order did not require this report to include a company policy for vehicle use.

The second issue in the Compliance Filing related to any other management related transactions with affiliates. BIPCo has its financials audited annually and is in that process currently. BIPCo has specifically requested that the auditors review the reasonableness of related party transactions for FYE May 2005. BIPCo will be filing those documents when they are completed.⁶

The Commission also agrees with the Division's assertion that the parties should be focusing on the IRP and demand side management studies which were funded as part

⁴ Testimony of Walter Edge, p. 3.

⁵ *Id.* at 4.

⁶ The Commission has received the annual report which identifies all related party transactions. The analysis of the reasonableness of those transactions is under review by the Company's auditors.

of the rate case. To take away time and resources from that important task at this time would be counterproductive. Furthermore, the Commission has requested periodic reports from BIPCo regarding the search for a replacement for the General Manager and has received the first of the required responses.

The Commission is hopeful that the parties will be able to put aside what appear to be some personal differences and work cooperatively toward the common goals for which the IRP Study was funded. There is nothing illegal if BIPCo decides to use a portion of its return on equity to compensate the President, COO and CFO in an amount in excess of that which was built into rates with the understanding that the Commission always retains the authority to investigate the Company if the executive compensation is excessive. Mr. Edge stated that the difference between that which is being collected in rates for executive compensation and that which is being paid will come from the shareholders. Therefore, if the earnings of the Company, combined with the actual executive compensation, were to exceed the total amount which is built into rates, then the Commission, at that time, would initiate further proceedings.

Accordingly, it is hereby

(18570) ORDERED

1. The Town of New Shoreham's Motion for Summary Rejection of Block Island Power Company's Management Compensation Compliance Filing or, in the Alternative, for an Investigation of Block Island Power Company's Management Compensation Payments and Practices is hereby denied.
2. Block Island Power Company's Compliance Filing dated December 13, 2006, is hereby accepted for filing.
3. Nothing herein precludes the Commission from further investigation into the executive compensation of BIPCo at a future date.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN OPEN MEETING DECISION ON JANUARY 31, 2006. WRITTEN ORDER ISSUED APRIL 17, 2006.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman

Robert B. Holbrook, Commissioner

Mary E. Bray, Commissioner