

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

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

ORDER
DENYING MOTION OF BLOCK ISLAND SUSTAINABILITY COALITION
TO INTERVENE

On December 17, 2004, Block Island Power Company (“BIPCo”) filed for a general rate increase for effect January 16, 2005. On January 14, 2005, the Commission suspended the effective date of BIPCo’s filing in order to conduct a full investigation. On January 25, 2005, Mr. Christopher Warfel, on behalf of the Block Island Sustainability Coalition (“BISC”), filed a timely Motion to Intervene in accordance with Commission Rule of Practice and Procedure 1.13. On January 31, 2005, BIPCo filed a timely objection to BISC’s Motion to Intervene. On February 8, 2005, BISC filed a Response to BIPCo’s Objection. At its Open Meeting of February 17, 2005, the Commission considered the filings and denied BISC’s Motion to Intervene on the basis that BISC has not raised an interest in the instant docket which cannot be adequately represented by other parties to the docket and further, on the basis that without an attorney representing the coalition, BISC cannot legally participate under state law.

BISC defines itself as “an interested party representing customers of BIPCo who have long advocated for a sustainable approach to BIPCo’s planning and policies.”¹ Addressing each of BISC’s arguments in its Motion and Response to BIPCo.’s objection, the Commission first notes that BISC alleges that the Town of New Shoreham (“Town”) cannot represent BISC’s interests because it has ignored BISC’s requests for discussions of an Integrated Resource Plan (“IRP”) and Demand Side Management (“DSM”)

¹ BISC Motion to Intervene, p. 1.

program.² In fact, on October 4, 2004, the Town passed a Resolution requesting the Commission order BIPCo to develop and IRP and DSM program.³

BISC also alleges that no other party can represent its interests because the Town can only represent itself as a ratepayer.⁴ The Division of Public Utilities and Carriers (“Division”) represents the interests of all ratepayers and will be addressing an IRP and DSM proposal. If, as alleged by BISC, BIPCo management has not spent previously authorized funds on resource planning efforts, the Division and Town are certainly equipped to address such a concern and recommend appropriate action.⁵

With regard to BISC’s contention that it has filed a petition with the Division, including 200 signatures, requesting access to the state’s DSM and renewables programs, the petition requested “that BIPCo be required to participate in renewable energy and energy conservation programs.”⁶ The Town filed a very similar and more detailed Petition through its attorney with the Division.⁷ The matter has been stayed at the Division level until conclusion of the instant matter which will address a proposed DSM program.⁸

BISC has indicated it does not intend to hire an attorney because “to require that BISC do so, places an unfair burden upon Block Island ratepayers that the PUC should see as unreasonable and not consistent with the need to explore the wide-ranging

² *Id.* at 2.

³ Resolution of the Town of New Shoreham, adopted on October 4, 2004 and dated by the Clerk October 5, 2004.

⁴ BISC Motion to Intervene, pp.1-2.

⁵ See BISC Motion to Intervene, p. 2 (alleging previously allowed funds were not spent for the intended purposes).

⁶ BISC Response to BIPCo Objection, p. 2

⁷ Petition of the Town of New Shoreham, Division Docket No. 04-46.

⁸ Order No. 18132 (issued February 1, 2005).

implications that this docket encompasses.”⁹ First, the Commission has determined that DSM and IRP issues are appropriate to the instant rate matter. Second, Mr. Warfel is not an attorney and as such, cannot represent BISC before the Commission under the criminal statutes of Rhode Island and under the Commission’s Rules of Practice.¹⁰ The Commission does not make the criminal laws, but must follow them. Without an attorney, BISC cannot submit pre-filed testimony, cross examine witnesses, submit legal briefs, or otherwise participate in the docket in accordance with the Commission’s Order No. 17574 (issued October 10, 2003), stating “full intervention will only be allowed to a movant if that movant makes an affirmative showing that it will be filing pre-filed testimony.” As presented in its filing, BISC legally cannot participate as an intervenor because Mr. Warfel is not an attorney and cannot make the requisite filings on behalf of BISC. BISC can provide public comment.

If BISC still believes its interests will not be adequately represented, the Commission suggests that BISC contact the Attorney General’s office to determine whether Attorney General Lynch wishes to seek intervenor status to address BISC’s issue separately from the Division.

The Commission looks forward to the public comment of Mr. Warfel and the 200 members of the coalition that he purports to represent. He may request to be added to the email-only service list if he wishes to monitor the case.

Accordingly, it is hereby

⁹ BISC Response to BIPCo Objection, pp. 1-2.

¹⁰ Commission Rule of Practice and Procedure 1.4(a)(1) states, “Each party to and participant in a proceeding, other than individuals who appear pro se, shall be represented by an attorney, who shall enter an appearance in writing with the clerk.” Mr. Warfel has not filed for intervention pro se. R.I.G.L. § 11-27-2 (1) defines the practice of law as “The appearance or acting as an attorney, solicitor or representative of another person before any...commission...authorized or constituted by law to determine any question of law or fact...or the preparation of pleadings or other legal papers incident to any action or other proceeding of any kind before or to be brought before the court or other body.”

(18157) ORDERED:

1. The Motion of the Block Island Sustainability Coalition for Intervention is hereby denied.

EFFECTIVE AT WARWICK, RHODE ISLAND ON FEBRUARY 17, 2005,
PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDERED ISSUED
FEBRUARY 18, 2005.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman

Robert B. Holbrook, Commissioner

NOTICE OF RIGHT OF APPEAL: PURSUANT TO R.I.G.L. § 39-5-1, ANY PERSON AGGRIEVED BY A DECISION OR ORDER OF THE COMMISSION MAY, WITHIN SEVEN (7) DAYS FROM THE DATE OF THE DECISION OR ORDER, PETITION THE SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW THE LEGALITY AND REASONABLENESS OF THE DECISION OR ORDER.