

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: BLOCK ISLAND POWER COMPANY :  
WAIVER REQUEST UNDER TO R.I. GEN. : DOCKET NO. 4606  
LAWS § 39-1-27(g) :

REPORT AND ORDER

In Public Utilities Commission (PUC) Order No. 15461, the PUC authorized the Block Island Power Company (BIPCo or Company) to delay implementation of the 1996 Utility Restructuring Act's (URA) mandates until six months following the installation and operation of an undersea cable connecting the island to the mainland electric grid.<sup>1</sup> In seeking an exemption, BIPCo argued that its location, on an island twelve miles offshore and unconnected to the mainland electric grid, made it impossible for Block Island ratepayers to access the electric generation market.<sup>2</sup> An undersea electric cable is expected to be operational on or about December 31, 2016.

In this docket, in a filing made on March 7, 2016, BIPCo sought a waiver from certain requirements of the URA under R.I. Gen. Laws § 39-1-27(g). Specifically, BIPCo sought exemptions from: (1) the requirement to transfer ownership of generation facilities to an affiliated company; (2) the prohibition against selling electricity at retail; and (3) certain standards of conduct.<sup>3</sup> If the waiver were granted, BIPCo declared, it will continue to own its generation

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<sup>1</sup> Order No. 15461 (Nov. 26, 1997).

<sup>2</sup> Order No. 15175 (Jan. 14, 1997). In this order, the PUC authorized BIPCo a one-year exemption to allow the Company to seek amendments to the URA that would give the PUC authority to grant the exemption allowed in the November 26, 1997 order.

<sup>3</sup> BIPCo Pet. at 7; [http://www.ripuc.org/eventsactions/docket/4606-BIPCo-WaiverRequest\\_3-7-16.pdf](http://www.ripuc.org/eventsactions/docket/4606-BIPCo-WaiverRequest_3-7-16.pdf). The URA was designed to open competition in the marketplace, requiring electric utilities to provide retail access from competitive energy suppliers to all customers. The URA required each electric distribution company to transfer ownership of its generation facilities to a separate affiliate of the electric distribution company or to sell its generation to an unaffiliated entity. Following the transfer of ownership, electric distribution companies are prohibited from selling electricity at retail and from owning, operating, or controlling generating facilities, although such facilities may be owned by affiliates. Each electric distribution company is required to arrange for a standard offer energy supply for its customers, and that is not to be construed as selling electricity at retail. An affiliate or nonaffiliated owner of generation becomes a nonregulated power producer allowed to sell electricity generated from each of its facilities on either the wholesale or retail markets at market prices. After notice and public hearing, the PUC may exempt electric distribution companies otherwise subject to this paragraph from both the requirement to divest ownership of

facilities and use them to provide backup and reliability in the case of any discontinuance or loss of power from the mainland.<sup>4</sup> On July 14, 2016, after notice, a public comment hearing, and an evidentiary hearing, the PUC granted BIPCo's request for an exemption, finding it to be in the public interest.

In support of its petition, BIPCo filed testimony of David Bebyn, its rate consultant. Mr. Bebyn concluded that allowing BIPCo to retain ownership and control of its generation would be "better, simpler, less costly, and will provide [Block] Island with safety and the best likelihood of reliable and adequate service" at reasonable rates.<sup>5</sup> Focusing on potential loss of service from the mainland, Mr. Bebyn asserted that in such an event, generation would be immediately available just as it is now. He noted that if an unregulated entity were to own the generation, it would have no incentive to keep rates reasonable. For example, if the new owner was the only electric generation supplier on the island and there was a loss of service from the mainland, there would be no competition to keep the rates to a remote population of electric customers reasonable. Under the waiver request, BIPCo's tariffs would still remain subject to the PUC's review.

In further support of the public interest in maintaining one single company, Mr. Bebyn asserted that there would be additional ratepayer costs associated with divestiture that would not exist if ownership remained with BIPCo. For example, he opined that the Company would have a difficult time finding a buyer for the generation at fair market value. Selling at a cost below fair

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generation and transmission facilities and the prohibition against selling electricity at retail with respect to sales within its service territory. To do so, the PUC must determine that any such exemptions are in the public interest.

<sup>4</sup> *Id.* at 4-5. In its petition, BIPCo also opined that it may be able to participate in the wholesale energy market, allowing it to receive payments for being available to provide energy to the mainland of Rhode Island if called upon. However, as the docket progressed, it became apparent that BIPCo was far from determining whether participation in the wholesale market would be feasible or practical. The proposal was also subject to opposition from some islanders and concern from the Town of New Shoreham. Therefore, it was determined, and agreed to by the parties, that the PUC would consider the waiver request based solely on the ability to provide backup service and not consider whether participation in the wholesale market might be in the public interest at this time.

<sup>5</sup> Bebyn Test. at 1, 4.

market value would result in stranded costs to the seller (BIPCo). BIPCo would then be entitled to recover those costs from its ratepayers. This would be avoided by keeping a single entity. In addition, Rural Utility Services through whom BIPCo financed its generators, has several regulatory requirements that would also add costs to any divestiture. Therefore, he maintained, granting the waiver would result in a more favorable economic situation for ratepayers.

On May 12, 2016, the PUC conducted a hearing on Block Island for the purpose of hearing from the public on BIPCo's request. Seven members of the public plus BIPCo's chief operating officer spoke. None of the speakers opposed the waiver. One commenter questioned whether there had been any review of the magnitude and effect of any future capital expenses related to replacing the generation equipment in the future.

On June 17, 2016, the Division of Public Utilities and Carriers (Division) filed a Memorandum indicating that it had reviewed BIPCo's rationale and considered the unique circumstances surrounding BIPCo's request, namely its location twelve miles off the coast of the mainland of Rhode Island. The Division opined that the possibilities are real that there could be service interruptions from the mainland. The Division stated that "BIPCo is uniquely situated and uniquely interested in serving the needs of its customers, therefore, its continued ownership of generation assets makes sense."<sup>6</sup> Furthermore, the Division agreed with Mr. Bebyn that the costs associated with divestiture could be higher than maintaining a single company. Finally, the Division noted that the underlying purpose of the URA was to avoid interference by local utilities in the competitive wholesale market. The Division argued that these concerns are less germane to BIPCo's operations. Thus, the Division concluded that BIPCo's request for a waiver was reasonable and in the public interest.<sup>7</sup> Also on June 17, 2016, the Town of New Shoreham's

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<sup>6</sup> Division Mem. at 2; [http://www.ripuc.org/eventsactions/docket/4606-DPU-Position\\_6-17-16.pdf](http://www.ripuc.org/eventsactions/docket/4606-DPU-Position_6-17-16.pdf).

<sup>7</sup> *Id.* at 2-3.

Solicitor filed a position statement indicating that the New Shoreham Town Council had voted on May 18, 2016 not to oppose the waiver request.<sup>8</sup>

On July 14, 2016, the PUC conducted an evidentiary hearing at its offices in Warwick, Rhode Island. Mr. Bebyn responded to the concerns about future capital costs associated with the generating units, indicating that maintaining one regulated company with the generation assets would require PUC review of any future capital costs in the same manner as the current practice. In other words, if BIPCo were to approach the PUC in the future with a proposal to take on debt in order to replace a generating unit, nothing would change in terms of the PUC's jurisdiction over the rate recovery of costs incurred by the generation aspect of the business.<sup>9</sup> Similarly, the Department of Environmental Management (DEM) will still maintain its oversight role of the permitting process for the generation. Mr. Bebyn thought it was likely DEM would consider BIPCo's changed operational circumstances when issuing future permits.<sup>10</sup>

Mr. Bebyn testified that BIPCo would be required to develop new rates to provide for standard offer service and last resort service to customers who choose not to purchase generation from competitive suppliers. However, unlike with divestiture, the company will not be required to separate all of the assets into two separate sets of books with separate employees. Mr. Bebyn expressed concern with the complexity associated with divestiture given the nature of the conditions in the Rural Utility Services loan documents.<sup>11</sup>

At the conclusion of the hearing, the PUC considered the evidence and approved BIPCo's request, finding it to be in the public interest to allow BIPCo to retain ownership and control of its

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<sup>8</sup> Position of the Town of New Shoreham; [http://www.ripuc.org/eventsactions/docket/4606-Town-Position\\_6-16-16.pdf](http://www.ripuc.org/eventsactions/docket/4606-Town-Position_6-16-16.pdf).

<sup>9</sup> Tr. at 11-12 (July 14, 2016).

<sup>10</sup> *Id.* at 16-17.

<sup>11</sup> *Id.* at 14-16.

generating facilities for the purposes of selling emergency generation at retail within its service territory. Should BIPCo seek to participate in the wholesale market it must first return to the PUC for a review of its waiver request. Because the PUC is granting the request of BIPCo to retain generation, the standards of conduct requirements of R. I. Gen. Laws § 39-1-27.6(b)(1) do not apply.

Reliability of utility service is of utmost importance to ratepayers and this request by a utility on an island twelve miles from the mainland squarely addresses reliability. In the event power is interrupted because of a fault on the mainland, the undersea cable, or a piece of equipment on the island between the cable and the distribution system, BIPCo will be in the position of supplying the generation. For such an isolated population, it is clearly in the public interest to maintain a redundant power supply where the assets are already in place and in rates. The costs and rate recovery of such generation would continue to be subject to the jurisdiction of the PUC, ensuring continued just and reasonable rates.

The uncontroverted testimony was that divestiture would be extremely complex and costly for a company with only a \$5.2 million annual revenue requirement.<sup>12</sup> This cost might be justified if continued ownership of generation by the electric distribution company would interfere with the competitive supply market. However, the PUC is not now approving a plan that would allow the electric distribution company to compete with nonregulated power producers. Rather, BIPCo will only provide generation to retail distribution customers when supply is unavailable from the mainland, at a time when nonregulated power producers on the mainland would not be able to supply power. Therefore, the PUC finds that the competitive supply market will not be impeded by allowing BIPCo to retain its generation.

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<sup>12</sup> 2015 FERC Form 1, Annual Report of Major Electric Utilities at 114.

The PUC finds that maintaining the diesel generation will not adversely impact the goals of the Resilient Rhode Island Act because the generation will still be subject to DEM air quality permits. Given the emergency nature of the backup supply, it is inconceivable that DEM would not reduce the quantity of emissions once BIPCo is connected to the mainland and customers are receiving their energy supply over that line. Therefore, on balance, the PUC finds that the emissions from the BIPCo generation should be significantly reduced and not cause an adverse impact on the State's green energy goals.

Accordingly, it is hereby

(22565) ORDERED:

1. In its restructuring plan, the Block Island Power Company will be exempted from the Utility Restructuring Act, R.I. Gen. Laws § 39-1-27(c), requirement that it transfer its generating assets to affiliates.
2. In its restructuring plan, the Block Island Power Company will be exempted from the Utility Restructuring Act, R.I. Gen. Laws § 39-1-27(d), prohibition against selling electricity within its service territory for the purpose of providing emergency generation.
3. The Block Island Power Company shall not engage in the wholesale market without first seeking a review and modification from the Public Utilities Commission to the waiver granted by this Order.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO A BENCH  
DECISION ON JULY 14, 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 7 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.