

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PETITION FOR DECLARATORY : **DOCKET NO. 4688**
JUDGMENT FILED BY BLOCK ISLAND :
POWER COMPANY :

DECISION & JUDGMENT

I. Introduction

On February 1, 2017, the Block Island Power Company (BIPCo) filed a Petition for Declaratory Judgment (Petition) with the Public Utilities Commission (PUC or Commission) seeking a declaration¹ that the cost of constructing BIPCo’s interconnection to the electric grid, as well as the cost of purchasing a back-up transformer, should be socialized to all Rhode Island electric ratepayers² and not charged solely to BIPCo and BIPCo’s customers.³ The Narragansett Electric Company d/b/a National Grid (National Grid)⁴ moved to intervene on February 25, 2017, and filed an objection to BIPCo’s petition on March 15, 2017.⁵ On March 20, 2017, the Division of Public Utilities and Carriers (Division) filed its memorandum urging the Commission to reject BIPCo’s petition.⁶ At an Open Meeting on May 30, 2017, the PUC heard oral argument from all

¹ The declaration sought was pursuant to the Town of New Shoreham Project statute, R.I. Gen Laws § 39-26.1.
² In this document, “all Rhode Island electric ratepayers” refers to all BIPCo and all Narragansett Electric Company d/b/a National Grid electric customers and excludes Pascoag Utility District’s electric customers.
³ All filings in this docket are available at the PUC offices, located at 89 Jefferson Boulevard, Warwick, Rhode Island or at <http://www.ripuc.ri.gov/eventsactions/docket/4688page.html>.
⁴ The Narragansett Electric Company d/b/a National Grid (National Grid), a wholly owned subsidiary of National Grid USA, is a public utility primarily in the business of providing electric and gas distribution service in Rhode Island. Pursuant to state law, National Grid owns all National Grid USA transmission facilities located in Rhode Island. R.I. Gen. Laws § 39-26.1-7 refers to both “Narragansett Electric Company” and the “electric distribution company.” This Order will use the name “National Grid” when referring to “The Narragansett Electric Company” and the “electric distribution company” described in R.I. Gen. Laws § 39-26.1-7.
⁵ National Grid’s Objection (Mar. 15, 2017); [http://www.ripuc.ri.gov/eventsactions/docket/4688-NGrid-Objection\(3-15-17\).pdf](http://www.ripuc.ri.gov/eventsactions/docket/4688-NGrid-Objection(3-15-17).pdf).
⁶ Division’s Memo; [http://www.ripuc.ri.gov/eventsactions/docket/4688-DPU-ReplyMemo\(3-20-17\).pdf](http://www.ripuc.ri.gov/eventsactions/docket/4688-DPU-ReplyMemo(3-20-17).pdf).

the parties. At an Open Meeting on July 27, 2017, the PUC denied BIPCo's petition on a vote of two to one.⁷

II. The Town of New Shoreham Project

The Town of New Shoreham, also known as Block Island, is located approximately twelve miles south of mainland Rhode Island. Historically, Block Island did not have access to Rhode Island's mainland electric power grid. Electric utility service was provided to Block Islanders by BIPCo, an island-based private electric utility that generated its own electricity using diesel-powered turbines.⁸

In 2009, the Rhode Island General Assembly enacted the Town of New Shoreham Project statute, R.I. Gen. Laws § 39-26.1-7, to facilitate the construction of a small-scale offshore wind demonstration project off the coast of Block Island and include an undersea transmission cable connecting Block Island to the mainland. The legislature's stated goals in adopting the statute were: (1) to position the State to take advantage of the economic development benefits of the emerging offshore wind industry; (2) to promote the development of renewable energy sources that increase the nation's energy independence from foreign sources of fossil fuels; (3) to reduce the adverse environmental and health impacts of traditional fossil fuel energy sources; and (4) to provide the Town of New Shoreham with an electrical connection to the mainland.

The Town of New Shoreham Project statute authorized National Grid to enter into a power purchase agreement with the offshore wind demonstration project's developer.⁹ The legislation also directed the PUC to review the purchase power agreement, taking into account the State's intention to facilitate the development of a small offshore wind project in Rhode Island waters, as

⁷ Open Meeting Minutes (July 27, 2017); <http://www.ripuc.ri.gov/eventsactions/minutes/072717.pdf>.

⁸ BIPCo is exempted from the prohibition against electric distribution companies owning generation facilities. R.I. Gen. Laws § 39-27-1 (g).

⁹ R.I. Gen. Laws § 39-26.1-7 (a).

well as connecting Block Island to the mainland.¹⁰ The statute also provided that “all costs incurred in the negotiation, administration, enforcement, transmission engineering associated with the design of the cable, and implementation of the project and agreement shall be recovered annually” by National Grid.¹¹ The statute further required that the project include a transmission cable between the Town of New Shoreham and mainland Rhode Island, and provided National Grid the option to own, operate, or otherwise participate in the transmission cable project.¹² The statute authorized National Grid to make a filing with the Federal Energy Regulatory Commission (FERC) to “recover all of the costs associated with the purchase of the transmission cable and related facilities and the annual operation and maintenance.”¹³ Finally, the statute mandated the Division to represent the State of Rhode Island in the FERC proceedings and “to 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.”¹⁴

On January 15, 2015, National Grid purchased the engineering, permits, property rights, and other development work for the Block Island Transmission System project from the developer, Deepwater Wind Block Island LLC (Block Island Wind).¹⁵ Block Island Wind proceeded to construct the five-turbine, small-scale offshore wind demonstration project. National Grid constructed and now owns the substation on Block Island, as well as the undersea transmission

¹⁰ R.I. Gen. Laws § 39-26.1-7 (c).

¹¹ R.I. Gen. Laws § 39-26.1-7 (d).

¹² R.I. Gen. Laws § 39-26.1-7 (f).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ The Block Island Transmission System project also included a new 34.5 kV substation on the mainland, interconnecting the undersea transmission cable with National Grid’s existing network, as well as four miles of infrastructure and upgrades at two existing mainland substations.

cable and related facilities necessary to interconnect both BIPCo and the offshore wind demonstration project owned by Block Island Wind.

The energy generated by Block Island Wind's turbines is transmitted to the newly constructed substation located on Block Island. From there, some energy may be transmitted to BIPCo's distribution system; the rest is transmitted to the mainland via the undersea transmission cable.¹⁶ The new Block Island substation also services BIPCo's interconnection to the undersea transmission cable. BIPCo's interconnection to the undersea transmission cable enables BIPCo to purchase wholesale electricity for resale to its customers, to forego generating all its own electricity, and to essentially shut down its diesel generators.¹⁷

III. ISO-NE Tariff

The New England Power Company (NEP) is a wholly-owned subsidiary of National Grid USA. NEP's primary business is the transmission of electricity at wholesale to electric utilities and municipalities in New England. NEP's transmission facilities are subject to the operating authority of ISO New England Inc. (ISO-NE) and are available for open access transmission service under the rates, terms, and conditions of the ISO-NE Tariff.¹⁸ There are four executed service agreements on file with FERC that, under the ISO-NE Tariff, implement the rates, terms, and conditions of transmission and interconnection service for Block Island Wind and BIPCo.¹⁹ BIPCo is a party to only one of these four service agreements, TSA-NEP-83 (Local Service Agreement). BIPCo attached to its Petition a copy of this Local Service Agreement, to which BIPCo is the Transmission Customer, NEP is the Transmission Owner, and ISO-NE is the

¹⁶ The undersea transmission cable was energized and operational as of May 1, 2017.

¹⁷ It should be noted that BIPCo still has diesel generators and retains the option of generating its own power at those times that it cannot receive power from the mainland grid, such as when National Grid may need to do work on the cable.

¹⁸ National Grid's Memo at 2 (Mar. 15, 2017); [http://www.ripuc.ri.gov/eventsactions/docket/4688-NGrid-Objection\(3-15-17\).pdf](http://www.ripuc.ri.gov/eventsactions/docket/4688-NGrid-Objection(3-15-17).pdf).

¹⁹ *Id.* Attach. A

Regional Transmission Organization. No other entity is a party to BIPCO's Local Service Agreement.

Part I, Section 8 of BIPCO's Local Service Agreement incorporates the ISO-NE Tariff. Part I, Section 6 states: "Service may be subject to some combination of the charges detailed in Schedule 21 of the Open Access Transmission Tariff (OATT). The appropriate charges will be determined in accordance with the terms and conditions of Schedule 21."²⁰ Part II, Section 3.p states:

Service under this Local Service Agreement shall be subject to the following charges:

Any and all other applicable charges in accordance with the rates, terms and conditions of Schedule 21-NEP of the Tariff,²¹ including, without limitation:

- Monthly demand charges with PTF and non-PTF components²²
- Transformer surcharge
- Rolled-In Distribution Surcharge
- Direct Assignment for facilities in i. above
- Meter Surcharge
- Network load dispatch surcharge
- Block Island Transmission System (BITS) Surcharge (pursuant to Attachment 1).²³

As quoted above, the fourth bulleted item in Part II, Section 3.p includes "Direct Assignment for facilities in i above," which is a reference to Part II, Section 3.i of the executed Local Service Agreement. Part II, Section 3.i identifies BIPCo's interconnection facilities and associated equipment as: "One 34.5 kV breaker, One 34.5/4.16 kV/2.4 kV transformer, and a 5 kV insulated line to customer substation and associated equipment."²⁴ Further, as quoted above, Part

²⁰ The Open Access Transmission Tariff, or OATT, which is Section II of the ISO-NE Tariff. Schedule 21 and Schedule 21-NEP are separate schedules of the OATT.

²¹ Here Tariff refers to the ISO-NE Tariff.

²² PTF is an initialism for Pool Transmission Facilities.

²³ Attachment 1 to the Local Service Agreement is the Calculation of BITS (Block Island Transmission System) Surcharge.

²⁴ Petition Ex. 3 at 5. http://www.ripuc.ri.gov/eventsactions/docket/4688-BIPCo-PETITION-Corrected_2-1-17.pdf.

II, Section 3.p refers to Schedule 21-NEP of the ISO-NE Tariff, which BIPCo included as an attachment to its Petition. Section 22.1 of Schedule 21-NEP provides as follows:

In cases in which the Transmission Customer intends to interconnect new network load to the Transmission System or Distribution System, the interconnection: (i) shall require the construction of interconnection facilities and associated equipment and (ii) may require the construction or installation of facilities and/or associated equipment in addition to the interconnection facilities on the Transmission System or Distribution System or the transmission system of another utility. These interconnection facilities and additional facilities shall be the financial responsibility of the Transmission Customer, to the extent consistent with Commission policy.

Furthermore, Section 24.6 of Schedule 21-NEP states:

The Direct Assignment Facility Charge (DAF) compensates NEP for the annual costs of the facilities, expansions and upgrades that may be directly assigned by NEP or by the ISO, as appropriate, to the Transmission Customer. These costs may include, but are not limited to, the capital carrying cost, income tax, depreciation, operation and maintenance, administrative and general expenses and property tax. The Direct Assignment Facility Charge shall be calculated as specified in Attachment DAF to this Schedule.

As quoted above, Part II, Section 3.p of the Local Service Agreement identifies the various charges that shall be paid by the Transmission Customer and specifically indicates that a Direct Assignment Facility Charge shall be paid for the interconnection equipment identified in Part II, Section 3.i of the Local Service Agreement. Therefore, under terms of the Local Service Agreement and the ISO-NE Tariff and Schedules, BIPCo is responsible for the costs of its interconnection to NEP's transmission system and for the Direct Assignment Facility charge.

IV. BIPCo's Petition

In its Petition, BIPCo argued that the cost of its interconnection to the electric grid, as well as the cost of purchasing a back-up transformer, should be socialized to all Rhode Island ratepayers under R.I. Gen. Law §39-26.1-7 (f).²⁵ BIPCo claimed that while interconnection costs are, in most

²⁵ R.I. Gen Law §39-26.1-7 (f) provides as follows:

cases, charged to the interconnecting customer, the statute authorizing the Town of New Shoreham Project overrides the general interconnection tariff.²⁶ Specifically, BIPCo asserted, R.I. Gen. Laws § 39-26.1-7 (d) and (f) provided the statutory basis to require socialization of all BIPCo's interconnection costs; the term "related facilities" in the statute encompasses both BIPCo's

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, an unexecuted copy of which shall be provided to the division of public utilities and carriers for the division's consent to execution. The division shall have twenty (20) days to review the agreement. If the division independently determines that the terms and pricing of the agreement are reasonable, taking into account the intention of the legislature to advance the project as a policy-making matter, the division shall provide its written consent to the execution of the transmission facilities purchase agreement. Once written consent is provided, the electric distribution company and its transmission affiliate are authorized to make a filing with the federal energy regulatory commission to put into effect transmission rates to recover all of the costs associated with the purchase of the transmission cable and related facilities and the annual operation and maintenance. 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 be authorized to represent the State of Rhode Island in those proceedings before the federal energy regulatory commission, including the authority to enter into any settlement agreements on behalf of the state to implement the intention of this section. 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. In any event, the difference in the individual charge per kWh or per customer/month shall not exceed the ratio of average demand to peak demand for Block Island Power Company relative to the electric distribution company, currently at 1.8 to 1.0 respectively. To the extent that any state tariffs or rates must be put into effect in order to implement the intention of this section, the public utilities commission shall accept filings of the same and shall approve them.

²⁶ Petition at 7.

interconnection facilities and the back-up transformer²⁷ that BIPCo sought to have National Grid provide.

BIPCo contended that the Local Service Agreement only referred to one transformer as being part of the Direct Assignment Facility charge; therefore, the back-up transformer should not be included in the Direct Assignment Facility charge.²⁸ BIPCo also argued that Schedule 21-NEP is not specific to New Shoreham, but applies whenever a transmission customer asks to interconnect to the transmission system. BIPCo contended that the undersea cable and the National Grid substation on Block Island, the costs of which are rolled into the surcharge that is socialized among all Rhode Island electric ratepayers, are solely for the use of Block Island. Therefore, the costs of the back-up transformer and BIPCo's interconnection facilities, which are also for the sole use of Block Island, should similarly be included in the socialized surcharge.²⁹

BIPCo argued that R.I. Gen. Laws § 39-26.1-7 (f) “makes it clear that the project shall include a transmission cable between the Town of New Shoreham and the mainland” and that 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 costs throughout Rhode Island.”³⁰ BIPCo asserted that R.I. Gen. Laws § 39-26.1-7 (c) clearly contemplated interconnection.³¹

V. National Grid's Objection

National Grid argued that BIPCo's interpretation of the statute presented in the Petition was erroneous because it was inconsistent with the terms of the ISO-NE Tariff and FERC

²⁷ The transformer to be used by BIPCo is unique and is not one that could be used by National Grid in any other of its substations. BIPCo contended that because transformers may be damaged by a variety of factors and because this unique transformer could not be replaced in less than about six months, National Grid should provide a back-up.

²⁸ BIPCo Petition at 4.

²⁹ *Id.* at 6.

³⁰ *Id.* at 7.

³¹ *Id.*

precedent.³² National Grid asserted that BIPCo's interconnection facilities and the spare transformer qualify as Direct Assignment Facilities under the terms of the ISO-NE Tariff, consistent with FERC precedent, and therefore are BIPCo's direct cost responsibility.³³

National Grid further argued that BIPCo's interconnection facilities and spare transformer do not constitute "related facilities," so their costs should not be socialized to all Rhode Island customers. National Grid asserted that the term "related facilities" means the transmission cable project, which includes the substation, the undersea cable, and the related facilities necessary to connect Block Island Wind and BIPCo to the transmission system. Accordingly, the term does not extend to interconnection facilities that relate solely to BIPCo's interconnection to the transmission system.³⁴

National Grid contended that the language of the statute is clear and unambiguous. The reference to "transmission cable and related facilities" means facilities that relate to and are part of the transmission cable project that the statute authorized National Grid to "own, operate, or otherwise participate in."³⁵ National Grid argued that use of the conjunctive "and" in the phrase "transmission cable and related facilities" demonstrated the statutory intent that the related facilities referred only to the transmission cable and not to interconnection equipment or facilities.³⁶ National Grid asserted that to construe the language "transmission cable and related facilities" as including BIPCO's interconnection costs and spare transformer would be to re-write the statute.³⁷ Moreover, according to National Grid, construing the language in the manner suggested by BIPCo would lead to an absurd or otherwise unintended result.³⁸ National Grid noted

³² National Grid's Memo. at 1.

³³ *Id.* at 4.

³⁴ *Id.* at 7.

³⁵ *Id.*

³⁶ *Id.* at 9.

³⁷ *Id.*

³⁸ *Id.*

that Rhode Island customers are already sharing in the cost of the transmission cable, the use of which is shared by BIPCo and Block Island Wind.³⁹ This was a policy decision by the legislature. It would be nothing short of absurd, National Grid asserted, to require all Rhode Island electric ratepayers to share in the cost of facilities that serve only BIPCo's customers.⁴⁰

National Grid, additionally, disputed BIPCo's assertion that the undersea cable and the substation on Block Island are for BIPCo's sole use. It contended that the use and benefit of the cable and substation are shared by both BIPCo and the Block Island Wind Farm.⁴¹ Conversely, because BIPCo's interconnection facilities, listed under Part II, Section 3.i. of its Local Service Agreement—one 34.5Kv breaker, one 34.5/14.16Kv/2.4v transformer, and the 5Kv insulated line to BIPCo's substation—exist for the sole use and benefit of BIPCo and its ratepayers, they qualify as Direct Assignment Facilities.⁴²

National Grid opined that it is clear from the stated public policy of the statute that the legislature intended for the transmission cable to be part of the offshore wind project that would benefit not only the Town of New Shoreham, but the entire State. It would, therefore, be appropriate to socialize those costs. But, as BIPCo's interconnection costs and spare transformers do not benefit anyone but BIPCo's customers, it would contravene the statute to require socialization of these costs.⁴³

VI. Division of Public Utilities and Carriers' Reply Memorandum

The Division argued that BIPCo had no legal obligation to interconnect to the undersea transmission cable that was constructed to interconnect the windfarm with the mainland. BIPCo

³⁹ *Id.* at 10.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 6.

⁴³ *Id.*

could have continued to generate and distribute electricity to its customers.⁴⁴ Additionally, the Division asserted, nothing in the statute conferred on BIPCo a right to recover the costs of its interconnection. Such terms should not be read into an otherwise clear and unambiguous statute.⁴⁵

The Division contended that the statute only referenced socialization of costs incurred by National Grid “by reason of their ownership, operation, or maintenance of the cable” related to the construction of the wind farm.⁴⁶ The Division opined that interconnection by BIPCo is a separate, unrelated, and unspecified activity not mentioned in the statute.⁴⁷ The Division found it clear from BIPCo’s responses to the Division’s data requests that the disputed facilities, interconnection facilities, and spare transformer are not necessary for the operation and maintenance of the transmission cable. Moreover, the Division found that the disputed facilities were not built by Block Island Wind and sold to National Grid,⁴⁸ as required by the statute for cost socialization.⁴⁹

VII. BIPCo’s Reply Memorandum

On April 4, 2017, BIPCo filed a reply memorandum challenging National Grid’s and the Division’s objections. In this memo, BIPCo abandoned its initial arguments and presented a rebuttal based solely on statutory construction. BIPCo asserted that the sole issue before the Commission was whether the phrase “related facilities” as used in the Town of New Shoreham Project statute included interconnection to BIPCo and the backup transformer.⁵⁰

BIPCo further contended that the legislature purposefully included interconnection to Block Island as an integral part of the project and, therefore, the costs of interconnection and the spare transformer are “related facilities” as anticipated by the Town of New Shoreham Project

⁴⁴ Division’s Memo at 7.

⁴⁵ *Id.* at 8 (citing *Burke-Tarr Co. v Ferland Corp.*, 719 A.2d 1014, 108 (R.I. 1999)).

⁴⁶ Division Memo at 8.

⁴⁷ *Id.* at 9.

⁴⁸ *Id.* at 12.

⁴⁹ *Id.* at 8.

⁵⁰ BIPCO’s Reply Memo. at 2 (Apr. 4, 2017).

act.⁵¹ BIPCo maintained that since the term “related facilities” is not defined in the statute, the PUC should give those words their plain and ordinary meaning. BIPCo argued that the term “related facilities” is broad-based and when the legislature wishes to denote a narrowly-defined application in a statute, it does not use a comprehensive phrase such as “related facilities.”⁵²

BIPCo claimed that its interconnection facilities—wooden poles, overhead lines, a switch, and circuit breaker—are simply an extension of National Grid facilities and, therefore, are “related facilities,” eligible for cost socialization.⁵³

VIII. Commission Findings

At an Open Meeting on May 30, 2017, the parties made oral arguments to the Commission. At a subsequent Open Meeting, on July 27, 2017, the Commission considered and discussed the parties’ respective arguments and, voting two to one, ruled that the interconnection costs and standby transformer costs were not related facilities that should be socialized to all Rhode Island ratepayers. Rather, the Commission determined, the costs should be imposed solely upon BIPCo as the interconnecting transmission customer.

Dissenting, Commissioner DeSimone described the statute as a “really big deal” and “bold move” for Rhode Island.⁵⁴ He contended that the General Assembly had designed The Town of New Shoreham Project statute as a single purpose statute, the costs of which were intended to be borne by all Rhode Island ratepayers, not just Block Island residents.⁵⁵ He argued that while there was no definition of “related facilities” in the statute, the statute served two overarching purposes: (1) facilitating the construction of a small-scale wind farm off Block Island, and (2) connecting

⁵¹ *Id.* at 1.

⁵² *Id.* at 4.

⁵³ *Id.* at 5.

⁵⁴ Meeting Tr. at 6 (July 27, 2017).

⁵⁵ *Id.*

Block Island to the mainland via an undersea electric cable.⁵⁶ He contended that the Division's and National Grid's positions, that Block Island was not obligated to connect to the new undersea cable, flew in the face of the statute's clear goal and purpose to connect Block Island to Rhode Island's mainland electric grid.⁵⁷ Noting that the cable costs would total upwards of \$23 million per year for twenty years, he said it simply made no sense to contend that Block Island's connection to the cable was optional.⁵⁸ Moreover, he noted, if BIPCo were to continue to run diesel generators, that would frustrate and run counter to the statute's stated goal of reducing adverse environmental and health impacts from traditional fossil fuel energy sources.⁵⁹

Commissioner DeSimone acknowledged that in a typical case of interconnection, the customer pays the interconnection costs.⁶⁰ However, he asserted, there is a big difference between a solar developer who decides to interconnect and is required to pay those costs the developer caused, and BIPCo, which comprises ratepayers who had no choice in the matter.⁶¹ He noted further that the statute does not explicitly say that BIPCo and its ratepayers are financially responsible for the interconnection costs.⁶² Commissioner DeSimone explained that if BIPCo was assessed the cost of interconnection to the cable, those costs would have to be passed through to Block Island ratepayers, as a form of involuntary assessment.⁶³ He further observed that, as a practical matter, there was no way for BIPCo to have chosen **not** to interconnect. To have BIPCo continuing to run noisy, polluting diesel generators while its customers had full view of the spinning turbines producing clean energy, was simply never a realistic option.⁶⁴

⁵⁶ *Id.* at 3

⁵⁷ *Id.* at 4.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 17.

⁶¹ *Id.* at 19.

⁶² *Id.*

⁶³ *Id.* at 20.

⁶⁴ *Id.* at 24.

Commissioner Gold agreed with the Division’s analysis that R.I. Gen. Laws § 39-26.1-7(f) did not confer an obligation on BIPCo to interconnect. But, she acknowledged that BIPCo had an economic incentive to interconnect.⁶⁵ She asserted that the legislative goal of reducing fossil fuel use was met by the creation of the windfarm, even if BIPCo had elected not to interconnect to the cable.⁶⁶ She was concerned that socializing BIPCo’s interconnection costs could be used as precedent to trigger adverse ramifications for other interconnection customer costs in New England.⁶⁷ Commissioner Gold explained that requiring customers to pay for their own interconnection costs, as required by the ISO-NE Tariff, was not unreasonable. In this particular case, she noted, the majority of the costs of the overall project—the cable and related transmission facilities—were already socialized across the state.⁶⁸

Chairperson Curran found that the statute was consistent with how the wholesale energy markets are conducted.⁶⁹ She noted that socialized costs directly relate to the wholesale market, as governed by FERC’s rules and regulations and under the ISO-NE Tariff.⁷⁰ She argued that the statute required socialization of the cable costs under transmission regulations, but that the costs for BIPCo to interconnect to the transmission system remained with BIPCo as an interconnecting customer. She noted that this result was no different than for any other generating customer on the mainland who wanted to sell energy into the wholesale market and would be responsible for the costs of interconnection to the grid.⁷¹ Moreover, given that National Grid’s electric ratepayers

⁶⁵ *Id.* at 14-15.

⁶⁶ *Id.* at 16.

⁶⁷ *Id.* at 20.

⁶⁸ *Id.* at 23-24.

⁶⁹ *Id.* at 12.

⁷⁰ *Id.*

⁷¹ *Id.* at 13.

derive no benefit from Block Island’s interconnection, she queried whether it would be appropriate to impose Block Island’s interconnection costs on all National Grid’s customers.⁷²

The statute, R.I. Gen. Laws § 39-26.1-7 (f), uses the term “related facilities” three times. Each time, it is within the conjunctive phrase “the transmission cable and related facilities.” The statute says, first: “[t]he 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 facilitates purchase agreement negotiated between the electric distribution company and the developer or its affiliate.” Next, it provides: “[o]nce written consent is provided, the electric distribution company and its transmission affiliate are authorized to make a filing with the federal energy regulatory commission to put into effect transmission rates to recover all of the costs associated with the purchase of the transmission cable and related facilities and the annual operation and maintenance.” Finally, it states: “[t]he 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 costs throughout Rhode Island.”⁷³

In each of these references, the transmission cable and related facilities are treated as a package of items. Moreover, the first use of this conjunctive phrase isolates the equipment and infrastructure as items that National Grid, “the electric distribution company,” may elect to purchase from the developer. As the Division noted, the transmission facilities purchased by National Grid from Block Island Wind included approximately twenty miles of 34.5 kV submarine electric cable; one mile of terrestrial infrastructure, both buried and overhead, on Block Island; four miles of terrestrial infrastructure buried in Narragansett, Rhode Island; the undersea cable; a

⁷² *Id.* at 25.

⁷³ R.I. Gen Laws §39-26.1-7 (f).

new substation on Block Island; and a switchyard located in Narragansett.⁷⁴ National Grid could not have elected to purchase BIPCo's interconnection facility, including the backup transformer, from the developer, Block Island Wind. The record shows that BIPCo's interconnection facilities are a facility separate from the transmission cable and related facilities. Furthermore, BIPCo's Local Service Agreement is between BIPCo, NEP, and ISO-NE, and does not include Block Island Wind or the transmission cable and related facilities.

As the majority found, it is clear from the text of the statute that the "related facilities" associated with the "transmission cable" that National Grid was permitted to purchase from the "developer or affiliate of the developer"⁷⁵ includes only those facilities necessary to serve the developer's project, the Block Island Wind Farm. Such "related facilities," therefore, exclude the disputed facilities, which are BIPCo's interconnection facilities and are solely related to serving BIPCo. As such, BIPCo's costs for its interconnection are not eligible for socialization to all Rhode Island ratepayers under R.I. Gen. Laws § 39-26.1-7 (f).

Accordingly, it is hereby

(23824) ORDERED:

The Block Island Power Company's Petition for declaration that the cost for its interconnection and a back-up transformer may be socialized under R.I. Gen. Laws § 39-26.1-7 (f) is hereby denied.

⁷⁴ Division memo at 3.

⁷⁵ R.I. Gen Laws §39-26.1-7 (f)

EFFECTIVE AT WARWICK, RHODE ISLAND ON JULY 27, 2017 PURSUANT TO AN OPEN MEETING DECISION ON JULY 27, 2017. WRITTEN RULING ISSUED MAY 6, 2020. RULING FILED WITH THE SECRETARY OF STATE'S OFFICE ON MAY 6, 2020.

PUBLIC UTILITIES COMMISSION



Margaret E. Curran

Margaret E. Curran, Chairperson

Marion A. Gold

Marion Gold, Commissioner

*Herbert F. DeSimone, Jr., Commissioner

*Note: Commissioner DeSimone participated in this matter but was unavailable for signature.

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 seven 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.