

**STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BLVD.
WARWICK, RI 02888**

IN RE: BLOCK ISLAND UTILITY)
 DISTRICT’S APPLICATION) **Docket: D-22-01**
 FOR AUTHORIZATION TO)
 INCUR DEBT)

Application Filed: January 12, 2022

Hearing Date: February 14, 2022

REPORT AND ORDER

On January 12, 2022, the Block Island Utility District (“BIUD” or “Company”) filed an application with the Division of Public Utilities and Carriers (“Division”) for Authorization to Incur Debt pursuant to R.I. Gen. Laws § 39-3-15, § 39-3-17, § 39-3-18 and Rule 1.14 of the Division’s Rules of Practice and Procedure (815-RICR-00-00-1). In accordance with the application, BIUD seeks to incur \$1,800,000 in debt for the purposes of repaying a line of credit (\$300,000) and undertaking a systemwide voltage conversion project (\$1,500,000).

The Division conducted a duly noticed hearing on February 14, 2022. The following counsel entered their appearances on the Record:

For BIUD: Leah J. Donaldson, Esq.

**For the
Advocacy Section:** Gregory Schultz, Spec. Assist. Attorney General

BIUD'S Direct Case

BIUD presented two witnesses in support of its application: Jeffrey M. Wright, President of BIUD and David G. Bebyn, CPA, President of B&E Consulting, LLC. Mr. Wright provided an overview of what he characterized in his testimony as “two loan structures.”

Loan A – 9007: \$300,000

Purpose: Permanent Financing of Asset Valuation Payment

Term: Up to 30 years with a one-year draw period

Loan A – 9008: \$1,500,000

Purpose: Financing Voltage Conversion Project

Term: Up to 31 years with a one-year draw period; however, the amortization and term of any advance will not exceed 30 years

As of December 16, 2021, the interest rate to fix these advances to maturity would be approximately 3.92%. *Wright Direct Testimony at 5.* After effective discounts, BIUD estimates the interest rate on these loans would be approximately 3.42%. *Id.* These estimated rates remained unchanged as of the day of hearing.

According to Mr. Wright, BIUD plans to use The National Rural Cooperative Finance Corporation (“CFC”) as its lender. *Wright Direct Testimony at 3.* CFC, Mr. Wright testified, is BIUD’s sole lender and is a \$25 billion member-owned cooperative association incorporated under the laws of the District of Columbia that provides loans to its rural electric members to acquire, construct and operate electric distribution, generation and transmission systems and related facilities. *Id.* CFC is currently rated (A-) Stable by Standard and Poor’s, A1 (Stable) by Moody’s and A+ (Stable) by Fitch. *Wright Direct Testimony at 3-4.*

Although the other lenders BIUD had explored had offered “slightly better rates,” CFC was the only lender “willing to finance the purchase of an unsecured line of credit which was needed to bridge the time between closing [and the time] BIUD could file for long term debt approval.” *Wright Direct Testimony at 4.* CFC also “maximizes” BIUD’s discounts and provides “many no-fee support services such as CEO and Board training, cost of service studies and long-range financial forecasting.” *Id.*

Of further significance, Mr. Wright testified that CFC only monitors one covenant: Modified Debt Service Coverage (“MDSC”). *Wright Direct Testimony at 6.* CFC requires a MDSC level of 1.35 in the highest two out of the past three years. *Id.* Based on CFC financial modelling of BIUD *pro forma* financials, BIUD has adequate funding to meet this covenant after the two new loans are issued. *Id.* As a result, Mr. Wright opined, “there will be no

increase [in revenue and/or rates] required to fund the debt service from these two loans.” *Id.*

The \$300,000 for Loan A – 9007 is the product of a contractual obligation that BIUD made when it purchased the assets of the Block Island Power Company by agreement dated January 19, 2019. *Id.* The contractual obligation was triggered when the Rhode Island Superior Court issued a decision dated August 6, 2021, valuing the McGinnes Trust share at \$1,715,000, plus interest, exceeding the \$900,000 paid for the share. *Id.*; *Wright Direct Testimony, Attachment JMW-2.* The Asset Purchase Agreement between the Block Island Power Company and BIUD provides, in pertinent part:

...however, in the unlikely event that the fair value of the Trust Shares is determined to be more than \$900,000 by agreement, by the final judgment of a court of competent jurisdiction, or otherwise, Buyer will pay directly to the Trust any amount over said \$900,000 up to a maximum of \$300,000 (“Contingent Liability Assumption”). This dubious Contingent Liability Assumption is offered by Buyer as an inducement to Seller to consummate the transaction as contemplated by this Agreement.

Wright Direct Testimony, Attachment JMW-1, Section 6.5.¹

The \$1,500,000 for Loan B – 9008 is intended to finance a capital project—systemwide voltage conversion—that BIUD has been committed to for decades. *Wright Direct Testimony at 7.* According to Mr. Wright, voltage conversion “will reduce the phase current on each line, allowing the additional

¹ According to BIUD at hearing, the Town paid the remaining \$515,000 shortly after the Superior Court’s decision in the summer of 2021.

load to be added or reduce/eliminate existing overloads, improve voltage regulation, and reduce system losses.” *Id.* In addition, the conversion will “noticeably improve power quality and virtually eliminate the ‘brownouts’ that members experience when one phase of a two-phase plan is faulted during outages.” *Id.*

BIUD’s application identifies the scope of work and provides a budget of the major cost components of the conversion project. *Wright Direct Testimony at 8.* On December 18, 2021, at a regular meeting of BIUD’s Board of Commissioners (“Board”), the loans were presented to the Board. *Wright Direct Testimony at 9.* On December 27, 2021, at a special meeting, the Board authorized BIUD to obtain Loan A – 9007 and Loan A – 9008 from CFC. *Wright Direct Testimony, Attachment JMW-4.*

BIUD’s second witness, David G. Bebyn, CPA, provided expert testimony regarding the application that BIUD filed with the Division. Mr. Bebyn corroborated the purpose of the loans as well as the use of the loan proceeds. *Bebyn Direct Testimony at 3.* Mr. Bebyn also provided amortization tables utilizing the interest rates of 3.92% and 4.50% for the two loans. *Id.* At the former interest rate, the debt service on Loan A – 9007 and Loan A – 9008 will be designed to include level annual payments of less than \$17,100 and \$85,300, respectively over 30 years with no balloon payments at the end of each loan’s 30-year period. *Bebyn Direct Testimony at 4 & Attachment DGB-1 & 3.* At either interest rate, Mr. Bebyn testified, his schedules show that BIUD

has sufficient rates in place to pay the debt service on both loans. *Bebyn Direct Testimony at 4.*

In Docket No. 4975, BIUD informed the Commission that payment of the \$300,000 loan was contingent on the outcome of the Superior Court litigation. *Id.* In the event of an adverse ruling (as indeed happened), part of the capital funding (\$400,000 per yr.) would be used to pay the debt service on the \$300,000 loan. *Id.*

With respect to the \$1.5 million loan, BIUD's rate filing in Docket No. 4975 provided \$62,441 for engineering expenses in the rate year to start the voltage conversion project. *Id.* Once the engineering of the project was completed, these funds would be used to pay the debt service on the \$1.5 million loan. Any additional funding required to service the debt on this loan would come from the capital fund account as well. *Id.*

Like Mr. Wright, Mr. Bebyn observed that CFC required BIUD to maintain a MDSC at a level of 1.35 for two of the past three years. *Bebyn Direct Testimony at 5.* Mr. Bebyn, proceeded to opine that BIUD would be able to satisfy the 1.35 MDSC test. *Id.* CFC's Compass financial modelling "resulted in factors in excess of 1.86 based upon a maximum rate of 4.5%." *Id.* As the projected interest rate would be well below that maximum rate level—Mr. Bebyn projected a subsidized rate of approximately 4.00%—BIUD should not have any problem maintaining the MDSC at the required level. *Id.*

In sum, Mr. Bebyn opined that BIUD "has worked hard to secure below-market financing which provides a low interest rate and maximum

flexibility in terms of payment.” *Id.* Accordingly, Mr. Bebyn believed that the proposed loans were “in the best interest of ratepayers” and should be approved by the Division. *Id.*

Advocacy Section’s Recommendation

At the conclusion of the hearing, the Advocacy Section provided the Division with its recommendation regarding BIUD’s application. Based on its review, the Advocacy Section believed BIUD’s filing met all the requirements set forth in the Division’s Rules of Practice and Procedure; the amount, term and proceeds of the proposed loans were fully explained; and that BIUD possesses the necessary revenues to repay the requested loans. Accordingly, the Advocacy Section believed the loans were reasonable, in the best interest of ratepayers and should be approved by the Division.

Findings

After a careful examination of the Record, the Division finds that the purposes, terms and proposed amounts of the requested loans are reasonably required for the purposes set forth in the application and are in the best interest of ratepayers. Loan A – 9007 (\$300,000) is reasonably required by virtue of the final Judgment of the Rhode Island Superior Court that valued the McGinnes Trust Share at \$1,715,000 (Attachment JMW-2) and BIUD’s contractual obligation under Section 6.5 of the Asset Purchase Agreement (Attachment JMW-3). Loan A – 9008 (\$1,500,000) is reasonably required to

allow load to be added to BIUD's system and to reduce/eliminate existing overloads, improve voltage regulation, and reduce system losses.

The projected interest rate before discounts (approximately 4.00%) and the terms of both loans (payment over 30 years with no balloon payment) are also reasonable as is the sole covenant that BIUD must maintain a MDSC at a level of 1.35 for two of the past three years. Even at an interest rate of 4.50%, CFC financial modelling projects a MDSC at 1.86, well over the minimum threshold.

BIUD, moreover, possesses sufficient funds in current rates to pay the projected annual debt service on both loans as exhibited by amortization tables annexed to BIUD's application (Attachments DGB 1 & 2), and, by virtue of funding the Company has already obtained in Docket No. 4975 for its capital fund accounts and for the voltage conversion project.

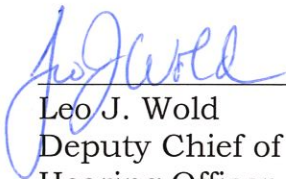
Lastly, the Advocacy Section performed a careful review of BIUD's filing and opined that the amount, term and proceeds of the proposed loans were fully explained and that BIUD possesses the necessary revenues to repay the requested loans. Based on its review of the proposed loans, the Advocacy Section recommended their approval.

Accordingly, it is

(24310) ORDERED:


1. That BIUD'S January 12, 2022 Application for Authorization to Incur Debt under R.I. Gen. Laws § 39-3-15 is approved as filed;
2. That the Division limits approval of BIUD's application to the purposes, amounts, character, and terms of the issues identified in the record; and
3. That the Division's approval of BIUD's application is subject to BIUD's use of the sources previously approved by the Public Utilities Commission to pay both loans, or if subsequently required, by additional sources approved by the Commission for such purpose.

**DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND, FEBRUARY 22,
2022.**



Leo J. Wold
Deputy Chief of Legal Services
Hearing Officer

APPROVED:



Linda George, Esq.
Administrator



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NOTICE OF AVAILABILITY OF JUDICIAL REVIEW
(PROVIDED PURSUANT TO R.I.G.L. § 42-35-12)

Please be advised that if you are aggrieved by this final decision (report and order) of the Rhode Island Division of Public Utilities and Carriers (“Division”) you may seek judicial review of the Division’s final decision by filing an appeal with the Rhode Island Superior Court. You have thirty (30) days from the mailing date (or hand delivery date) of the Division’s final decision to file your appeal. The procedures for filing the appeal are set forth in Rhode Island General Laws, Section 42-35-15.

Proceedings for review may be instituted by filing a complaint in the Superior Court of Providence or Kent Counties. Copies of the complaint must be served upon the Division and all other parties of record in your case. You must serve copies of the complaint within ten (10) days after your complaint is filed with the Superior Court.

Please be advised that the filing of a complaint (appeal) with the Superior Court does not itself stay enforcement of the Division’s final decision. You may, however, seek a stay from the Division and/or from the Court.

The judicial review shall be conducted by the Superior Court without a jury and shall be confined to the record. The Court, upon request, shall hear oral argument and receive written briefs.