

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PRUDENCE FERRY INC. – TARIFF ADVICE : DOCKET NO. 3656

ORDER

I. Travel

On December 23, 2004, Prudence Ferry, Inc. (“Prudence Ferry”) filed with the Public Utilities Commission (“Commission”) a proposed tariff advice requesting a change to the commuter ticket eligibility requirement. Eligibility is currently non-transferable and allows a customer to purchase a 10-pack or 20-pack of tickets which expire 30 and 60 days respectively from the date of purchase.

The proposed change to the commuter tickets would only allow “holders of a Rhode Island driver’s license with a Prudence Island address (zip code 02872) on the license” to be eligible for commuter tickets.

On January 12, 2005, the Division of Public Utilities and Carriers (“Division”) submitted a letter to the Commission recommending the Prudence Ferry filing be suspended for further investigation. The Division expressed concern that the Tariff Advice was really seeking a *de facto* rate increase without a full proceeding. Additionally, the Division expressed concern that the change in eligibility might unfairly disadvantage Rhode Islanders who do not possess a Prudence Island license, but who still commute to and from the island on a regular basis.

On January 19, 2005, Prudence Ferry submitted a letter to the Commission in response to the Division’s recommendation. Prudence Ferry argued that the proposed change is akin to the commuter rates approved for Interstate Navigation Company in 2004. Prudence Ferry argued that the rate should not be viewed as a “frequent tourist”

ticket, but rather, as a service to those customers who need lifeline service to and from the island. Prudence Ferry also disputed the Division's claim that the Company was seeking a *de facto* rate increase through the elimination of the current eligibility requirements.

On January 25, 2005, after reviewing the Tariff Advice, the Division's recommendation, Prudence Ferry's response, and numerous letters and electronic mail messages sent by members of the public, the Commission suspended the effective date of the Tariff Advice pending further investigation.

On March 14, 2005, the Division filed a Memorandum authored by Stephen Scialabba, Chief Accountant, Division of Public Utilities and Carriers, in support of its position that the Tariff Advice would constitute a rate increase without a full rate filing.¹

II. Hearing

On March 16, 2005, the Commission conducted a duly noticed public hearing at its offices, 89 Jefferson Boulevard, Warwick, Rhode Island, for purposes of hearing public comment. Seven members of the public provided comment regarding the impact of the proposed change in eligibility requirements. The Division's attorney argued that consideration of the Prudence Ferry's filing would be erroneous as a matter of law because the filing exceeds the limited nature of what the Commission's Rules of Practice and Procedure allow in a Tariff Advice. The purpose of that Rule, according to Division Counsel is to provide for an additional service or to make a minor change. He argued

¹ The Division's Memorandum was marked as an exhibit for identification only at the hearing, as were other documents submitted by Prudence Ferry at the hearing.

that Prudence Ferry is not seeking to add a service and that its proposed tariff amendment is not minor.²

Prudence Ferry's attorney indicated that the Company would be willing to allow Portsmouth residents to utilize the commuter rate. He argued that approval of this rate would simply create consistency between Prudence Ferry and Interstate Navigation Company. He also proceeded to argue that Prudence Ferry has been treated unfairly over recent years by the Commission and Division and that denial of the Company's request would be discriminatory treatment of ratepayers.³

The Division's attorney argued that there are substantive differences between the decision in Interstate Navigation Company's full cost of service rate filing and Prudence Ferry's pending request. Furthermore, the Division's attorney maintained that Prudence Ferry has been treated fairly when it has appeared before the Commission and in fact, has not even appeared before the Commission in several years, during which, Prudence Ferry has not even filed its required annual reports.⁴

In response, Prudence Ferry's attorney stated that it is not required to file annual reports and either way, such questioning by Commission legal counsel regarding the status of the annual reports was not germane to the subject matter of the hearing. Regardless, argued Prudence Ferry's attorney, the Company is not required to file the annual reports because of a letter it had received from Division legal counsel in the past.⁵

² Tr. 3/16/05, pp. 4-6.

³ Id. at 15-17.

⁴ Id. at 17-19.

⁵ Id. at 20.

III. Commission Findings

On April 7, 2005, the Commission conducted a duly noticed open meeting to decide whether or not to proceed with an investigation of Prudence Ferry's filing. The Commission denied Prudence Ferry's request to alter the eligibility requirements for commuter tickets.

The Commission noted that Division filed a Memorandum and has argued in opposition to the filing opining that as a matter of law, this type of filing is inappropriate under the Commission Rules of Practice governing a tariff advice. The Division reasoned that that the request exceeds the allowed conditions under which such a filing is allowed. The Commission agrees with the Division that Prudence Ferry's filing is not proposing to "provid[e] for new rules, or otherwise add to their tariff schedules without amending existing tariffs...[or to] file minor changes to existing schedules..." Therefore, the filing is inappropriate as a Tariff Advice.⁶

The Commission notes that in its order approving Prudence Ferry's last rate filing, it stated that "the Commission believes that regular ferry customers are most entitled to discounted rates..."⁷ Addressing the expiration period of the commuter tickets, the Commission found "that this extended expiration date will be beneficial to both regular ferry customer and daily commuters."⁸ The Commission did not specify applicability to residents, but rather, to regular ferry customers. Finally, the Commission specifically rejected a request for "resident rates."⁹ Therefore, it appears that, contrary to

⁶ See Commission Rule of Practice and Procedure 1.9(c). Furthermore, Prudence Ferry's filing is not appropriately termed a change to Terms and Conditions because it is a change to the Passenger Rates tariff.

⁷ Order No. 14235 (issued July 16, 1993), p. 21.

⁸ *Id.*

⁹ *Id.* at 31.

Prudence Ferry's initial argument, the commuter ticket was considered to be a frequent rider ticket, even if those riders were "frequent tourists."

The Commission is persuaded by the members of the public who commented that restricting the eligibility requirement to only those customers with a Prudence Island zip code would adversely affect the regular ferry customers who are seasonal. Furthermore, the Commission is concerned that the requested change may provide Prudence Ferry with additional revenues absent a rate filing. If the issue is a concern that ineligible people are using the commuter tickets, the Company is responsible for enforcing the non-transferability provisions of its tariffs.

The Company's attorney argued that it has not had a rate increase in twelve years and is being punished for it. Prudence Ferry further argued that "this has been a subtle prejudice here against Bruce Medley" and "if it isn't granted I think it would be discriminatory."¹⁰ Prudence Ferry has attempted to exceed the authority provided by the Commission Rules of Practice and Procedure for a Tariff Advice and as such, the request has been denied. There is no discrimination against ratepayers in maintaining rates that have previously been found just and reasonable through a full cost of service rate proceeding.

The Commission's decision in this matter does not in any way prevent Prudence Ferry from filing a rate case. If Prudence Ferry has been operating below its allowed ROE, then the only thing keeping Prudence Ferry from seeking a rate increase is Prudence Ferry. However, one reason for the Company's decision not to file for a rate increase could be its continued noncompliance with the Commission's Rules Governing the Filing of Annual Reports by Water Carriers, the end result of a rulemaking

¹⁰ Tr. 3/16/05, p. 17.

proceeding in which Prudence Ferry was an active participant. Until Prudence Ferry files its Annual Reports for the past two fiscal years, under the Commission's Rules of Practice and Procedure, it may not file for a rate case. There is no discrimination in expecting all regulated public utilities to understand and comply with the Commission's rules and regulations.

Accordingly, it is hereby

(18230) ORDERED:

1. Prudence Ferry, Inc.'s Tariff Advice, filed on December 23, 2004, is hereby denied and dismissed.
2. Prudence Ferry, Inc. shall comply with all other findings and instructions contained in this Order.

EFFECTIVE AT WARWICK, RHODE ISLAND ON APRIL 7, 2005
PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED
MAY11, 2005.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman

Robert B. Holbrook, Commissioner