

STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

IN RE: Island Hi-Speed Ferry, LLC : Docket No. 3669

OBJECTION OF INTERSTATE NAVIGATION COMPANY d/b/a THE BLOCK ISLAND
FERRY TO PETITION OF ISLAND HI-SPEED FERRY, LLC. FOR EXEMPTION FROM
COMMISSION RULES OF PRACTICE AND PROCEDURE, PART TWO

Island Hi-Speed Ferry (IHSF) has filed a Petition seeking a waiver of all of the filing requirements of Part Two of the Commission's Rules of Practice and Procedure (Rules) to the extent that they apply to IHSF's simultaneously filed Petition seeking modifications of its rate orders, as amended. The Petition for modifications of its rate orders asks the Commission to allow IHSF to establish three new rates below IHSF's \$26 regulatory rate floor in the form of a season's pass for \$500 and two group tour discounts ranging from 20% to 30% off of its regular \$29 round-trip ticket price.

Interstate Navigation Company (Interstate) hereby objects to the Petition seeking a waiver from all of the provisions of Part Two of the Rules. Putting aside (solely for the purpose of this objection) the fact that all of the requested rate changes would violate IHSF's Certificate of Public Convenience and Necessity (CPCN) which requires no less than a \$26 round-trip ticket rate, and also putting aside (solely for the purpose of this objection) the fact that these changes, if adopted, would completely change the form of regulation for IHSF recently adopted by this Commission, which can best be described as a \$26 rate floor to protect Interstate against unfair predatory pricing from IHSF, Interstate believes that many of the requirements of Part Two of the Commission's Rules need to be complied with.

At least partial compliance as set forth below is necessary for the parties to evaluate the rate changes sought by IHSF, and for the Commission to investigate and rule on the propriety of the proposed rate changes. Without compliance with a number of the requirements of Part Two, the parties and the Commission will be in the dark regarding the reasonableness and the impact of the proposed rate changes. The parties will also be in the dark regarding whether IHSF has demonstrated a need for changes, not only to its form of regulation, but to its rates.

If implemented, these changes would put IHSF into direct head-to-head competition with Interstate. If these new rates are approved, IHSF will be marketing to Interstate's core islander commuters and its tour group, which make up a substantial portion of Interstate's revenues. Although direct rate competition with Interstate might be appropriate if Interstate were operating its own fast ferry, Interstate remains at this time the fully regulated conventional lifeline to Block Island.

As shown by the testimony of Walter E. Edge, Jr., Mr. Edge has calculated that the revenue loss which would be suffered by Interstate and its ratepayers as a result of the rate change proposals being made by IHSF would be in excess of \$123,000. This loss would be difficult, if not impossible, for Interstate to absorb. Accordingly, Interstate would probably have to file for a rate increase if the Commission approved IHSF's rate change requests. Therefore, because these rate change requests would put IHSF in direct competition with Interstate for its core customers, including its island commuters and its summer group tours, and because of the negative revenue impact this would have on Interstate's lifeline services, and because IHSF is asking for not only a change in its rates, but a change in its form of regulation, Interstate believes that a number of

the requirements of Part Two need to be met. Unless the Commission and the parties know how much money IHSF is earning (or losing), then the Commission and the parties will not know whether there is a good reason to allow a change in the form of IHSF's regulation or to allow IHSF to establish new rates below the \$26 regulatory rate floor, thereby reducing revenues to the lifeline year-round ferry service.

IHSF has the statutory burden of proving that it needs the rate changes. That burden can only be met if IHSF shows, with facts and figures, a demonstrable need for the new rates. The only way to make that demonstration is to show that IHSF is earning insufficient revenues. The only way for the Commission and the parties to know if IHSF is earning insufficient revenues is for IHSF to comply with a number of the requirements of Part Two.

R.I.G.L. § 39-3-12 provides in pertinent part that “at any hearing involving any proposed increase in any rate, toll, or charge, the burden of proof to show that the increase is necessary in order to obtain a reasonable compensation for the service rendered shall be upon the public utility” (Emphasis added). See also United States v. Public Utilities Commission, 393 A.2d 1092 (1978) and New England Telephone & Telegraph Company v. Public Utilities Commission, 446 A.2d 1376 (RI 1982). It has also been established that a utility has the statutory burden of proof with respect to every component element of its request for a rate change. Valley Gas Company v. Burke, 406 A.2d 366 (1979).

IHSF argues in its Petition for a waiver of the Rules that it is not proposing a rate “increase” and therefore Part Two of the Commission's Rules should not apply. However, IHSF is proposing rate changes in the form of three brand new rates, a \$500

season's pass, and two substantially discounted group rates, which it has never had before. By its own calculations in its Petition, these rates would result in passengers traveling at much less than the \$26 rate floor established by both the Division and the Commission in previous dockets as a protection against predatory pricing competition against Interstate and its ratepayers.

IHSF admits that Part Two of the Rules applies when the utility's "overall revenue requirements are at issue." Certainly IHSF would not be proposing these rate changes unless IHSF believed that these new rates would generate an increase in overall revenues. In addition, IHSF would presumably not be proposing these new rates unless it felt that it needed additional overall revenues to meet its revenue requirements.

The Supreme Court has ruled that is entirely within the province and experience of the Commission to determine the nature and type of factual information that must be supplied by the utility in order to obtain a rate change, (New England Telephone & Telegraph Company v. Public Utilities Commission, 446 A.2d 1376 (RI 1982)), and that the Commission is fully empowered to prescribe as a threshold requirement precise cost information that a utility must submit with a rate change filing in order to meet its statutory burden of proving that the requested overall revenue increase is necessary and that the proposed rate design is non-discriminatory. Id. Under R.I.G.L. § 39-3-11(a), the Legislature has made it clear that:

"No change shall be made in the rates, tolls, and charges which have been filed and published by any public utility . . . except after thirty (30) days notice to the commission and to the public published as provided in § 39-3-10, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rates, tolls, or charges will go into effect. Whenever the commission receives notice of change or changes proposed to be made in any schedule . . . the

commission shall hold a public hearing and make investigation as to the propriety of the proposed change or changes.”

Also, R.I.G.L. § 39-3-11(b) provides that:

“Upon receipt from a common carrier of persons and/or property upon water of a notice of any change proposed to be made . . . the commission shall give notice as it may prescribe of the pendency of the proposal and of the time and place of hearing thereon to the mayor and also any city manager of each city, and to the president of the town council and also any town manager of each town in which the carrier picks up or discharges passengers. The commission shall also publish a notice of the hearing at least ten (10) days prior to the date thereof in a newspaper of general circulation in each city or town in which the carrier picks up or discharges passengers.”

We have seen no evidence that these statutory provisions have been complied with.

It must be remembered that IHSF has never had a commuter rate or a group rate and these proposed rates would be new rates for IHSF. It is clear from a review of R.I.G.L. § 39-3-11 that any proposed change in rates requires that this statutory process be adhered to and that the proposed changes be appropriately investigated by the Commission. In order for the Commission to know if the proposed change are reasonable and necessary and in the public interest, the Commission and the parties must know (1) how much revenue IHSF is anticipating will be generated from the proposed rate changes, (2) why it would be reasonable to allow IHSF to charge rates that are less than the \$26 rate floor, and (3) what IHSF’s current financial situation is to determine whether or not it would be appropriate to allow IHSF to ignore the rate floor and directly compete with Interstate for year-round commuter and group customers.

With specific regard to the requirements of Part Two of the Commission's Rule, Rule 2.1 states in pertinent part that:

"The purpose of these regulations is to improve the efficiency of the Commission's procedures for the review of proposed rate schedule changes and the conduct of such hearings as may be required, to raise their quality and to increase their speed. To accomplish this objective, the regulations require each company to furnish supporting testimony and exhibits in the case of any proposed rate schedule changes and to furnish specific information and exhibits where a general increase in rates is proposed under the applicable statutes. In connection with the latter, the regulations require each company to present its case-in-chief, to the extent feasible, in a standard format. (Emphasis added).

Accordingly, that Part Two of the Rules applies both to "proposed rate schedule changes" as well as to "a general increase in rates." Although Rule 2.2 makes a reference to "changes in rates" that constitute "a general rate increase in which the respondent utility's overall revenue requirements are at issue," in the case of the new rate proposals put forth by IHSF in this matter, these new rates are presumably intended by IHSF to increase its overall revenue, and they certainly fall within the intent of this Rule. For example, in IHSF's first rate case, it argued to the Commission that it could simply "file and run," and the Commission had no jurisdiction to have hearings concerning the filing of initial rates. IHSF lost that argument. These new rates proposed by IHSF are essentially the same as the initial rates proposed by IHSF. These new rates have never been reviewed by the Commission and have never been utilized by IHSF. Despite having lost the "file and run" argument before this Commission and having lost the "file and run" argument before the Supreme Court (See In Re: Island Hi-Speed Ferry, LLC., 746 A.2d 1240, 1243-44 (RI 2000)), IHSF apparently again seeks to "file and run" with its newly proposed rates, without complying

with the Commission's rate filing Rules. This Commission rejected that argument the first time IHSF made it, and the Supreme Court upheld this Commission's ruling in this regard stating in pertinent part as follows:

“Next we shall consider whether the Commission has the power to investigate the propriety of the initial rate filing of a public utility. . . . The petitioner Hi-Speed argued that under §§ 39-3-10 and 39-3-11, the Commission lacked subject matter jurisdiction to investigate such a filing. Instead, Hi-Speed argued that § 39-3-10 is essentially a ‘file and run’ statute which allows a public utility to establish its own rates, and that § 39-3-11 empowers the Commission to hear and make investigation as to the appropriateness of filed rates only when a public utility proposes changes in its rates. For the following reasons, we disagree with both contentions.” (Footnotes omitted).

Note that IHSF admitted that before the Supreme Court that this Commission does have jurisdiction to “hear and make investigation as to the appropriateness of filed rates” whenever a public utility “proposes changes in its rates.” (at 1244, emphasis added). Clearly, IHSF has now proposed “changes” in its rates (in fact IHSF has proposed three new rates), which the Commission is statutorily obligated to investigate as to their reasonableness and appropriateness to the public. That investigation can only be made with the submission of sufficient data from IHSF. Otherwise, the Commission will be reviewing this matter in the dark.

It is Interstate's position that the following Part Two Rules should be met by IHSF in this rate change filing:

1. Rule 2.4, which requires a notice of the filing to be published.
2. Rule 2.5(a), which requires the current and proposed rate schedules.
3. Rule 2.5(b), which requires the applicant to file a direct case in support of the rates applied for in the form of prepared written testimony and exhibits.

4. Rule 2.6(a), which requires test year cost of service schedules.
5. Rule 2.6(b), which requires a proposed rate year.
6. Rule 2.6(c), which requires adjustments to the test year.
7. Rule 2.7, which requires attestation of financial data.
8. Rule 2.8(b), which requires cost of service schedules for the test year and the proposed rate year.
9. Rule 2.8(h), which requires work papers detailing the test year and the rate year revenues by source, tariff, rate class, etc.
10. Rule 2.8(i), which requires for each rate class, the effect of the proposed rate changes.
11. Rule 2.8(r), which requires a summary of transactions with affiliated companies, officers, and stockholders during the test year.
12. Rule 2.8(t), which requires a schedule of debts.
13. Rule 2.8(w), which requires a summary of the status of compliance and reporting required by prior Commission orders.

Interstate recognizes that IHSF is regulated with a \$26 rate floor and is not regulated as to the amount of profit or return on rate base that it can earn. Accordingly, there are a number of items in Part Two which are not needed, unless the Commission were to decide to revert back to traditional rate base rate of return rate making for IHSF, as it does for Interstate. Therefore, Interstate agrees that the other Part Two requirements not listed above may be waived.

However, unless financial information is provided that the Commission can analyze that demonstrates that IHSF anticipates in the rate year a revenue shortfall that

needs to be addressed by the proposed new rates, then IHSF will not have satisfied its statutory burden of proof that the proposed new rates are appropriate or reasonable to the ratepayers. Moreover, without a projection from IHSF as to the revenues to be generated from the proposed new rates, which would compete directly with Interstate's rates for commuters and groups, it will not be possible for the Commission and the parties to know the potential impact on Interstate and its ratepayers and whether or not it would be reasonable to risk the negative impact on Interstate by allowing these new rates to go into effect.

For example, with regard to group rates, Interstate is only allowed a promotional group rate discount of 15%. IHSF is asking for a group rate discount off of its current rates of 30% in certain months and 20% in other months. Moreover, if a ratepayer purchases a \$500 season pass and is a commuter, such as someone working on the island but living on the mainland, and that person rides the IHSF ferry five times a week, the effective round-trip ticket price for that person would be only \$4.35 (\$2.18 each way), as compared to the regulatory \$26 round-trip price floor.

There is also nothing in IHSF's proposal which would limit the use of the Season's Pass to the purchaser of the pass. This could lead to abuse of the pass that would increase losses to Interstate. Interstate only allows single round-trip Commuter Tickets to be sold on the island to islanders who can demonstrate residency. If IHSF has no controls on the pass, it could be passed around (or even re-sold or "rented") to others, resulting in additional loss of revenue sales to Interstate.

For the foregoing reasons, Interstate respectfully submits that IHSF should be required to comply with so much of Part Two of the Commission's Rules as will allow

the Commission, the Division, and the parties to effectively evaluate from a financial standpoint the appropriateness and reasonableness of the new rates proposed by IHSF in terms of both (1) whether IHSF has a financial need to implement these new rates that will directly compete with Interstate, and (2) what the potential negative impact will be on Interstate, the lifeline carrier, if these rates are implemented.

Respectfully submitted,
Interstate Navigation Company
By its attorney

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April 2005, I mailed and e-mailed a true copy of the foregoing by first class mail to the following:

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Prefiled Direct Testimony
of
Walter E. Edge Jr., MBA, CPA

Re: Petition of Island Hi-Speed Ferry
for Modification of Rate Orders
Docket No. 3669

April 8, 2005

1 **INTRODUCTION**

2

3 **Q. Will you state your name and business address for the record?**

4 A. Yes. My name is Walter E. Edge Jr. MBA, CPA and I am the President of the firm of B&E
5 Consulting LLC (B&E) at 21 Dryden Lane, Providence, Rhode Island 02904.

6

7 **Q. Mr. Edge, have you testified before the Rhode Island Public Utilities Commission**
8 **(PUC) and the Rhode Island Division of Public Utilities and Carriers as an expert**
9 **accounting witness prior to this docket?**

10 A. Yes, many times. I was formerly the chief rate analyst for the Division of Public Utilities
11 and Carriers (DPU or Division) for five years and while in that position I was required to testify
12 on numerous occasions relating to all of the utilities that the R.I. PUC regulates. In addition to
13 my testifying experience at the R.I. PUC, I have also testified before a Rhode Island Grand Jury,
14 the Rhode Island Superior Court, Federal Courts in R.I. and Massachusetts, the Federal
15 Communications Commission (FCC) and the Power Authority of the State of New York
16 (PASNY).

17

18 **Q. Since leaving the DPU have you testified before the R. I. PUC?**

19 A. Yes I have. During the last thirteen years I have provided consulting services (expert
20 testimony, etc.) through the firm Bacon & Edge P.C. to Interstate Navigation Company
21 (Interstate), Block Island Power Company, Narragansett Bay Commission, Providence Water
22 Supply Board, Newport Water, Pawtucket Water Supply Board, Stone Bridge Fire District, North
23 Smithfield Water, Prudence Island Ferry, and Osram Sylvania Company.

24

25 **Q. What is your knowledge of Interstate?**

26 A. I presented expert testimony for Interstate in its last three full rate filings Docket # 3573,
27 Docket #2484, and Docket #1935 (Commission) and Docket D-89-7 (Division). Docket #1935
28 and Docket D-89-7 became a joint Docket because of an issue of regulatory jurisdiction.

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Q. Mr. Edge, do you have additional knowledge and experience relating to Interstate Navigation Company?

A. Yes. I presented expert testimony for Interstate in its cargo service rate hearings in Docket # 2127. Also, B&E has prepared Interstate's PUC annual report for the past dozen years and I reviewed each of the reports before filing. I also filed testimony on Interstate's behalf relating to Island Hi-Speed Ferry's (IHSF) Division and Commission filings.

Q. What is the purpose of your testimony in this filing?

A. Interstate Navigation Co. requested that I review the IHSF Petition for Modification of Rate Orders filed in March of 2005 to determine the probable impact that the requested change in rates would have on Interstate's revenues. My testimony will provide the Commission with calculations relating to Interstate's Block Island Commuter Passenger Tickets (Islanders), the recently approved Discount Commuter Books (i.e. the Advance Ticket Discount, Rule 95), and the recently approved Group Ticket Discount (i.e., Group Discounts, Rule 90).

Q. What has IHSF requested?

A. First, IHSF has requested that they be permitted to sell a Season's Pass for \$500 which would allow unlimited trips on the IHSF high speed vessel during the company's entire season (mid May through mid October about 23 weeks). IHSF calculates that the effective rate of these tickets (assuming one trip per week) is \$21.73 per round trip. However, if the individual purchasing the Season's Pass is someone who works on the island and travels to the island five days a week, then the effective round trip ticket price would be \$4.35, or only about \$2.18 each way. It is my opinion that IHSF's proposed \$500 Season's Pass would completely wipe out Interstate's revenue from its Discount Commuter Books, which totaled \$18,705 in 2004.

Moreover, Interstate sells approximately 10,000 Islander Commuter Passenger Tickets from mid May till mid October at a round trip rate of \$10.00 per adult (about \$100,000 of revenue).

1 Islanders that travel to the mainland more than once a week during the IHSF operating season
2 would in my opinion purchase the IHSF Season's Pass.

3 I have calculated that the \$21.73 once a week rate that IHSF is proposing to ride their faster,
4 more luxurious boat would compare favorably to Interstate's \$20.00 commuter rate for two round
5 trips per week on Interstate's slower boats. Of course, the fact that the IHSF Season's Pass
6 would allow more than two trips a week would provide additional value to the IHSF Season's
7 Pass in that the per ride price decreases with each additional trip. That value is not included in
8 the Interstate Block Island Commuter rate which is \$10.00 per trip and the total cost to the
9 customer increases with each additional trip.

10

11 **Q. What is the impact on the Interstate islander commuter revenue?**

12 If half of the Block Island Commuter Tickets sold to islanders during the IHSF season were sold
13 to islanders who travel more than once a week off the Island, and they chose to go to the IHSF
14 Season's Pass instead, the lost revenue to Interstate would be about \$50,000.

15

16 **Q. Did IHSF request any other rate changes?**

17 A. Yes they did. IHSF also wants to implement two different Group Discount rates. The two
18 round trip rates are \$20.30 for May, June, September and October and \$23.20 during the months
19 of July and August.

20

21 **Q. How will the proposed IHSF Group Discount rates impact Interstate?**

22 A. The Division and the Commission protected Interstate from IHSF by establishing a regulatory
23 rate floor for IHSF of \$26.00 round trip. All of the rates proposed by IHSF in this docket crash
24 through that floor.

25

26 **Q. But Mr. Edge, didn't Interstate just get approval for Group Discount rates?**

27 A. Yes they did. Interstate was allowed to give a 15% promotional Group Discount on its
28 current rates for groups of 25 or more. Given that Interstate's current round trip rate is \$14.30,

1 the promotional Group Discount rate is \$12.15. A similar 15% discount on the current IHSF
 2 \$29.00 round trip rate would yield a Group Discount ticket price of \$24.65. However, the rates
 3 IHSF is proposing for Group Tickets (\$20.30 and \$23.20) are much less than \$24.65.
 4 At \$20.30, the IHSF Group discount would be 30%. At 23.20, the IHSF Group discount would
 5 be 20%. Interstate's rate protection would be lost and IHSF would not only go below the \$26
 6 floor, it would receive a 20% to 30% Group discount when Interstate is limited to a 15% Group
 7 discount. The following chart shows the comparative amounts for the Group discount rates.

Months	IHSF Rates	Interstate Rates	\$ Difference	% Difference
	\$29.00	\$14.30	\$14.70	103%
July & Aug.	\$23.20	\$12.15	\$11.05	91%
M, J, S, O	\$20.30	\$12.15	\$8.15	67%

9
 10 M, J, S, O represents May, June, September and October

11

12 **Q. Have you calculated the lost revenue for Interstate from this Group discount rate**
 13 **proposed by IHSF?**

14 A. Yes, I have estimated the lost revenue as follows:

15	Interstate's Group revenue 2004	\$109,487.65
16	Estimate lost customer base to IHSF	<u>50%</u>
17	Lost revenue	<u>\$ 54,743.82</u>

18

19 **Q. In your opinion, what would the total estimated lost revenue be for Interstate if the**
 20 **IHSF rate change requests are granted?**

21 A. The total that I have estimated is \$123,449 calculated as follows:

22	1. Loss of Discount Ticket Books Revenue	\$ 18,705
23	2. Loss of Commuter Ticket Revenue	50,000
24	3. Loss of Group Ticket Revenue	<u>54,744</u>
25		<u>\$123,449</u>

26 Given Interstate's constant loss of passengers, since 2001, and the fact that Interstate just had to

1 increase rates by 20%, this significant additional loss would be difficult, if not impossible, for
2 Interstate to absorb and Interstate would probably have to file for a rate increase to its base rates
3 if the Commission approves IHSF's requests.

4

5 **Q. Does that conclude your testimony?**

6 A. Yes it does.