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December 19, 2006

Luly Massaro
Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

Re: Interstate Navigation Company-Docket No. 3672

Dear Luly:

The Town of New Shoreham ("Town") has reviewed the modified Settlement Agreement filed on December 14, 2006, by Interstate Navigation Company and the Division of Public Utilities and Carriers.

The Town understands that the modified Settlement Agreement constitutes the settling parties' responses to the Commission's record requests made at the December 12, 2006, public hearing in this matter. The Town further understands that the settling parties have elected to rely upon the Division's December 11, 2006 letter accompanying its responses to Commission information requests as their joint brief in support of the modified Settlement Agreement.

On December 15, 2006, the Commission afforded the Town an opportunity to submit a brief no later than seven days after the December 12th hearing transcript is filed with the Commission. I understand that the hearing transcript was filed on December 18, 2006.

After reviewing the hearing transcript and modified Settlement Agreement, the Town submits an original and nine copies of this letter in lieu of a brief on the following issues in this case.

Several concerns raised by the Town in its Opposition have been addressed through modifications to the Settlement Agreement (e.g., incorporation of existing service commitments). Other issues were reasonably explained by settling party witnesses during the December 12, 2006 hearing (e.g., rough justification of the inflation factor, rough justification for exclusion of productivity factor, operation of the earnings below floor provision). The Town would have preferred annual earnings sharing calculations, but takes comfort in modifications that allow the

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Commission to terminate the Settlement Agreement or conduct a cumulative earnings review before the end of the 5 year Rate Plan. (Sections III.D.1.a and V).

The Town also regards as improvements over the original Settlement Agreement the modifications dealing with the acquisition premium (Section IV.A.1), and the establishment of a zero profits floor on fast ferry operations for purposes of the 5 year earnings sharing provision (Section IV.A.1).

The Town places considerable weight on the substantial benefits associated with the previously uncontested portions of the Settlement Agreement and on the modifications which have been made in response to Commission requests. As noted below, the Town remains very troubled by fast ferry-related Exogenous Events triggering traditional service rate increases, but has decided to defer to the Commission's judgment on that issue and note its disagreement with this aspect of the modified Settlement Agreement.

Exogenous Events Based on Fast Ferry Operations

Section III.A. of the modified Settlement Agreement expressly allows for the use of the Rate Plan to increase traditional ferry rates based on an Exogenous Event related to fast ferry operations. The triggering fast ferry Exogenous Event must "adversely impact[]...the ability of the traditional service to provide safe, reasonable, and adequate services and facilities per RIGL §39-2-1(a)..."¹

Fast ferry operations are being conducted through a separate division with rates determined separately by the Commission. It does not appear proper to the Town for traditional ferry ratepayers to be charged with Exogenous Event costs that, in the first instance, should be covered by separate fast ferry rates or by Interstate's shareholders.

Interstate would be adequately protected in the absence of this Rate Plan fast ferry cost recovery mechanism by its right to request future Commission action if it encounters any unexpected difficulties with its fast ferry venture that materially impact traditional service.² At

¹ This language practically guarantees the need for additional fact-finding and makes the interval between a March 1st filing and an expected June 1st rate change based on that filing even more problematic for the Commission and other parties.

² Indeed, the modified Settlement Agreement, Section V, recognizes the Commission's authority to terminate the Settlement Agreement if the Commission deems termination to be in the public interest. *See*, R.I.G.L. §§39-1-1; 39-3-12; 39-4-2; 39-4-10; 39-4-11. *Providence Gas Co.*, Docket No. 2581(March 6, 1998) (price stabilization plan within authority of Commission to approve, given its discretion to adopt a particular method of ratemaking so long as it is not confiscatory).

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that time, the Commission would be able to assess the specific circumstances presented and determine what type of regulatory action should be taken.³

If this objectionable provision were being considered by itself, the Town would not hesitate to request that it be rejected. The Town respectfully urges the Commission to decide whether this provision, taken together with the rest of the modified Settlement Agreement, satisfies its legal standards under Section 1.27 of its procedural regulations governing the approval of settlements.

Commission Suspension Authority Must be Clarified

The settling parties have limited the Commission's suspension powers only to those instances where a filing is made after September 1 (the proposed language allows filings on or before November 15) and only for 120 days. In the case of any filing made on or before September 1, the modified Settlement Agreement is silent about Commission suspension powers. The Commission should explain in its Order whether any rate filing made under Section III.B.3 regarding earnings below floor rate adjustments is subject to the Commission's full statutory power to suspend. The Town is concerned that Commission suspension powers not be eroded.⁴

Section III-E-1 Should be Clarified in the Commission's Order

As the Town stated during the December 12, 2006, hearing, it does not object to the Division retaining its existing discretion to review future fast ferry rate filings and decide-at that time-whether it is appropriate to recommend to the Commission that the rate filing be accepted without suspension. The Town does object to the Commission approving any preemptive limitation on the exercise of the Division's powers to undefined "extraordinary circumstances" in advance of Division review of specific rate filings. The Division's statutory role in rate setting exists in all circumstances, not just "extraordinary circumstances." Any limitation on its statutory duties and powers in advance under Section III.E.1 of the modified Settlement Agreement seems contrary to regulatory policy and should not be approved.⁵

³ There may be alternatives to traditional service rate increases that the Commission would want to consider. Interstate itself has mentioned a series of actions that it would consider in the event of trouble with its fast ferry operations. These include the sale of the *MV Athena* and the use of traditional service retained earnings. The modified Settlement Agreement does not require Interstate to exhaust all reasonable alternatives to seeking a traditional service rate increase due to a fast ferry-related Exogenous Event.

⁴ It appeared from its record request that the Commission wanted all of these filing to be made by September 1 or all of these filings to be made expressly subject to its full powers of suspension and investigation. Moreover, if this provision does not operate to the Commission's satisfaction, it can take that into account in deciding whether the Rate Plan should be terminated under Section V. If the Commission has reserved the power to terminate the Rate Plan, certainly it should retain the power to suspend any rate filing.

⁵ The Town has questioned the propriety of including fast ferry rate-setting terms in this traditional ferry service rate case, but does not object to the modified Settlement Agreement on that ground at this time. It reserves its rights

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However, if the Commission regards this provision as merely reciting the Division's existing standard practices when it comes to the review of utility rate filings, it should make a clarifying finding to this effect. It should further clarify that whether extraordinary circumstances exist is solely up to the Division and its determination is not a matter for dispute between Interstate and the Division if the Division seeks a substantive review and suspension of a fast ferry rate filing.

If the Commission allows this language to remain in an approved modified Settlement Agreement, it should make a finding and ruling that its approval of such language does not constitute a determination by the Commission of any rights that the Town may have with regard to Interstate's existing fast ferry rates or future fast ferry rate filings made by Interstate and may not be used as a basis for contesting the Town's participation in any future fast ferry proceeding.⁶

Additional Findings Requested Based on the Hearing

1. Rate Adjustments After Expiration of Rate Plan

The Town requests that, in accordance with the statements of the settling parties during the December 12th hearing, the Commission clarify and find that the ban on special rate adjustments under Section III.C after expiration of the Rate Plan, be interpreted as including earnings below floor, inflation and Exogenous Events-not just Exogenous Events.

2. Exogenous Event Rate Filings Do Not Cover 2006 Costs

The Commission should make a clarifying finding that Exogenous Event rate adjustments cannot be based upon costs incurred prior to January 1, 2007 (or other effective date of the new traditional service rates). The Division's witness stated at the December 12, 2006 hearing that the Division did not intend the Settlement Agreement to permit such a rate adjustment.

3. Insurance Proceeds and Third Party Recoveries

During the December 12, 2006 hearing, Mr. Edge acknowledged that insurance proceeds and third party recoveries associated with any traditional service Exogenous Event would offset the rate impact of the Exogenous Event.

regarding fast ferry rates and future fast ferry rate filings and does not accept the characterization of fast ferry service used in the modified Settlement Agreement.

⁶ Upon approval of the modified Settlement Agreement or other Commission resolution of this matter, there will be an undeniable linkage between traditional ferry service rates and fast ferry rate-setting during the term of the Rate Plan. The level of fast ferry rates is important to traditional ferry service customers because their rates are directly affected by fast ferry rates and profits. For example, Interstate may seek traditional service rate increases if fast ferry pre-tax profits drop its overall ROE below 5.5%. It may use actual fast ferry pre-tax profits to reduce or eliminate its earnings sharing obligations under the Rate Plan.

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The Town requests that the Commission make a finding and ruling that provides for the use of such insurance proceeds and third party recoveries to offset the effects of a related Exogenous Event rate change.

Conclusion

The Town joins in asking that the Commission resolve the issues in this case as soon as practicable. Prompt action is needed to (1) enable Interstate to implement the uncontested rate increase and restructure its fuel cost recovery mechanism in a timely manner, assuming that the settling parties do not withdraw their modified Settlement Agreement based on any further modifications or conditions adopted by the Commission; or (2) allow more time for this investigation to go forward with hearings and briefing if the settling parties decide to reject any Commission-imposed modifications or conditions.

Respectfully submitted,

TOWN OF NEW SHORHAM

By its attorney,



Alan D. Mandl, Bar No. 6590

cc: Service List
bcc: Nancy Dodge-Town Manager
Town Council

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 2006, I served a copy of the foregoing Letter in lieu of Brief of the Town of New Shoreham in Docket No. 3762 upon all parties by mailing a copy of said Letter by first class mail, postage prepaid, and caused a copy of the same to be emailed to all parties.

A handwritten signature in black ink, appearing to read "Alan D. Mandl", written over a horizontal line.

Alan D. Mandl, Bar No. 6590