

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: A&R MARINE CORP. d/b/a :
PRUDENCE & BAY ISLANDS TRANSPORT : DOCKET NO. 4499
INITIAL RATE FILING :

ORDER

On February 28, 2014, the Division of Public Utilities and Carriers (Division) granted A&R Marine Corp. d/b/a Prudence & Bay Islands Transport (A&R Marine) authority to operate as a common carrier of persons and property upon water between Bristol, Rhode Island and Prudence Island and Hog Island in Portsmouth, Rhode Island.¹ On April 16, 2014, A&R Marine filed with the Public Utilities Commission (PUC) a petition and proposed initial tariff for service between Bristol, Hog Island, and Prudence Island. According to A&R Marine's petition, the initial tariff was consistent with A&R Marine's commitment that it would initially charge the same rates as Prudence Ferry, Inc.²

Noting that Prudence Ferry, Inc. has a lease with the Town of Bristol for the use of its dock which ends on June 14, 2014, A&R Marine posited that it would become the lifeline carrier as of June 15, 2014 when it hoped to obtain an exclusive lease for docking facilities from the Town of Bristol.³ The proposed tariff, according to A&R Marine, would need to be in place by June 15, 2014 in order to ensure uninterrupted service to isolated populations. Establishing initial rates at the same level as the current lifeline carrier would be the most practical way of accomplishing that goal.⁴ A&R Marine requested the PUC waive the requirement that the rate

¹ Report & Order No. 21363, at 75 ¶ 1 (issued Feb. 28, 2014).

http://www.ripuc.org/eventsactions/docket/D_13_105_report%20and%20order.pdf. A Certificate of Public Convenience and Necessity will be issued upon A&R Marine's satisfaction of certain conditions. *Id.* at 75-76 ¶ 2.

² A&R Marine Pet. at 1.

³ *Id.*

⁴ *Id.* at 2.

filing meet the requirements set forth in Rule 1.9 and Part Two of the PUC's Rules of Practice and Procedure, and allow the tariff to go into effect without suspension, finding good cause exists to waive a hearing.⁵ A&R Marine noted that R.I. Gen. Laws § 39-3-11 requires a hearing for a change in rates. The proposed tariffs, however, set forth an initial rate and are not higher than Prudence Ferry.⁶ Thus, the one-way single fare adult ticket would be the same, \$2.85 plus an applicable fuel surcharge as approved by the Division pursuant to R.I. Gen. Laws § 39-12-13, regardless of which ferry would be providing service.

On April 29, 2014, at a duly noticed open meeting, the PUC considered whether or not to suspend A&R Marine's tariff filing for further investigation. The PUC discussed the fact that A&R Marine's initial rates are not different from Prudence Ferry, Inc's rates. Noting that the Division did not revoke Prudence Ferry, Inc.'s Certificate of Convenience and Necessity when authorizing A&R Marine to provide service, the PUC concluded that the two carriers are currently competitors. Consistent with the longstanding policy of the PUC, where there is evidence of sufficient competition in a particular market, the PUC typically does not conduct a full investigation. However, even if A&R Marine becomes the only ferry service between Bristol, Hog Island, and Prudence Island, and therefore, by definition, the lifeline service, ratepayers will not be harmed from the continuation of the currently effective rates applicable to Prudence Ferry, Inc. Furthermore, given the possibility that A&R Marine may become the lifeline carrier, the PUC found it imperative to ensure that A&R Marine be in a position to obtain any financing necessary to fulfill the Division's conditions for issuance of a Certificate of Public

⁵ Rule 1.9(b) of the PUC's Rules of Practice and Procedure states: "Rate Change Filings. In addition to the requirements of Rule 1.9(a), any filings for a general change in rate schedules pursuant to R.I.G.L. § 39-3-11 shall be accompanied by the documents and information required by Part Two of these rules." Part Two of the rules include the submission of significant financial data as well as other required information.

⁶ Pet. at 2.

Convenience and Necessity. Thus, the PUC found no reason to suspend the tariffs. The effective date of the tariffs will be May 17, 2014.⁷

Discussing whether a waiver of the hearing requirement in R.I. Gen. Laws § 39-3-11(a) was necessary, the PUC noted that the provision applies to rate changes and is silent with regard to an application for approval of initial rates. Nothing precludes PUC review of initial rates, however.⁸ In fact, in 1998, the PUC suspended the effective date of Island Hi-Speed Ferry, LLC's initial rates for a high-speed summer ferry service between Galilee and Block Island which stood to compete with Interstate Navigation Company, Inc., the incumbent year-around lifeline carrier. Given this prior regulatory action, though not bound by precedent, the PUC determined that it should rule on whether good cause exists under R.I. Gen. Laws § 39-3-12 to waive any investigation and hearing requirements in R.I. Gen. Laws § 39-3-11(a) that might be required.

The Division has the authority and responsibility to determine whether A&R Marine should be granted a Certificate of Public Convenience and Necessity. As part of that review, the Division reviewed the adequacy of the existing service provided by Prudence Ferry, Inc. In its order granting A&R Marine authority to operate, the Division referenced several declarations and actions by Prudence Ferry, Inc.'s principal, Bruce Medley, during the prior year resulting in

⁷ The PUC Clerk had scheduled a pre-hearing conference to be held by PUC legal counsel on April 29, 2014, following the open meeting, to set a schedule. The notice of pre-hearing conference included a deadline for intervention of May 6, 2014. On April 29, 2014, Prudence Ferry, Inc. filed a Motion to Intervene. Given the PUC's ruling at the open meeting, the docket is closed and there will be no ruling on the Motion to Intervene. During the open meeting, the PUC referred to a decision it made in Docket No. 3495, to deny intervention to Interstate Navigation Company, Inc. when it sought to intervene in an Island Hi-Speed Ferry matter, suggesting that Prudence Ferry, Inc. may not have a right to intervene in A&R Marine's rate case. Order No. 17452 (issued May 9, 2003).

⁸ The Rhode Island Supreme Court specifically addressed "whether the [PUC] has the power to investigate the propriety of the initial rate filing of a public utility." The Court held, "the [PUC] has subject matter jurisdiction to determine the propriety of the initial rate filing of a public utility, particularly where, as in this case, the Division's Certificate of Public Convenience and Necessity is conditioned upon the initial rate filing approval of the [PUC]." *In re Island Hi-Speed Ferry, LLC*, 746 A.2d 1240, 1243-44 (R.I. 2000). It follows, therefore, that the PUC could suspend the rates and conduct a full investigation which would include a hearing.

uncertainty regarding the continuation of Prudence Ferry, Inc.'s operations.⁹ According to the Division, "on the matter of adequacy [of existing service], the Division would agree that the 'uncertainty' surrounding the continuation of [Prudence Ferry, Inc.'s] ferry services to Prudence Island must be considered a relevant component in the evaluation of the adequacy of the existing ferry services that [Prudence Ferry, Inc.] currently provides between Prudence Island and Bristol."¹⁰ The Division concluded that the uncertainty of continued operations remained a concern.¹¹ Taking the Division's findings together with the representations of A&R Marine that (1) the lease between the Town of Bristol and Prudence Ferry, Inc. expires on June 14, 2014 and (2) A&R Marine is seeking a lease with the Town of Bristol for effect June 15, 2014, the PUC finds that it is necessary to put rates in effect expeditiously. This is necessary to insure continued service to an isolated ratepayer population. It is particularly appropriate given that the rates contain no immediate increase to those ratepayers. Additionally, A&R Marine's contemplated operations will extend service to Hog Island when Prudence Ferry ceases service.¹² The PUC sees no reason to delay A&R Marine's rate approval to establish service to both islands.

The PUC has the authority and responsibility to determine whether the rates charged are just and reasonable. As in the Island Hi-Speed Ferry case, A&R Marine does not yet have test year expenses upon which to base rates. While the PUC could require A&R Marine to file pro forma financials and conduct a rate proceeding, the PUC questions whether the cost of such a proceeding would be beneficial to ratepayers where A&R Marine has agreed to charge rates that have been in place for approximately twenty years. Moreover, A&R Marine will likely need to

⁹ Order No. 21363 at 67-70.

¹⁰ *Id.* at 70.

¹¹ *Id.*

¹² Order No. 17494 (issued June 20, 2003). In 2003, the Division allowed Prudence Ferry to cease service to Hog Island until such time as the owner of the dock added Prudence Ferry to its insurance policy for indemnification purposes. Service has not recommenced.

file a rate case after it has operated long enough to gather enough data to develop more accurate pro forma expenses based on some real test year experience. Therefore, the PUC finds that requiring a full investigation into A&R Marine's rate proposal at this time would afford no benefit to ratepayers.

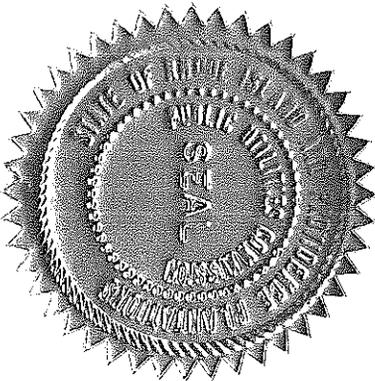
Accordingly, it is hereby

(21487) ORDERED:

A&R Marine Corp. d/b/a Prudence & Bay Islands Transport's tariffs, filed with the Public Utilities Commission on April 16, 2014, are hereby approved.

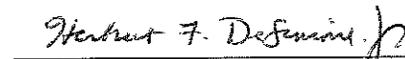
EFFECTIVE AT WARWICK, RHODE ISLAND ON MAY 17, 2014 PURSUANT TO AN OPEN MEETING DECISION ON APRIL 29, 2014. WRITTEN ORDER ISSUED JUNE 9, 2014.

PUBLIC UTILITIES COMMISSION




Margaret E. Curran, Chairperson


Paul J. Roberti, Commissioner


Herbert F. DeSimone, Jr., Commissioner

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.