

Schacht & McElroy

Michael R. McElroy
Leah J. Donaldson

Attorneys at Law

Michael@McElroyLawOffice.com
Leah@McElroyLawOffice.com

Members of the Rhode Island
and Massachusetts Bars

21 Dryden Lane
Post Office Box 6721
Providence, RI 02940-6721

(401) 351-4100
fax (401) 421-5696

April 29, 2016

Luly Massaro, Clerk
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

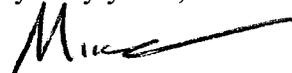
Re: A & R Marine Corp., d/b/a Prudence & Bay Islands Transport
Rate Change Application – Docket No. 4586

Dear Luly:

As you know, this office represents A & R Marine Corp., d/b/a Prudence & Bay Islands Transport (A & R).

Enclosed for filing are the original and nine (9) copies of A & R's Motion to Dismiss or Strike the Town of Portsmouth's request that no rate increase be imposed on the Town, or in the alternative, for Summary Disposition of the Town of Portsmouth's request.

Very truly yours, -



Michael R. McElroy

MRMc:tmg

cc: Christy Hetherington, Esq.
Andrew M. Teitz, Esq.
Terrence Tierney, Esq.
Kevin P. Gavin, Esq.
Stephen Antaya
David Bebyn, CPA
Service List

A&R Marine Corp. – Docket No. 4586 - General Rate Filing
Updated 2/23/16

Name/Address	E-mail Address	Phone
A&R Marine Corp.: Michael McElroy, Esq. Schacht & McElroy PO Box 6721 Providence RI 02940-6721	Michael@McElroyLawOffice.com ;	401-351-4100
David Bebyn	dbebyn@beconsulting.biz ;	
Stephen Antaya	stephena@antaya.com ;	
Daniel Antaya	armarineinc@gmail.com ;	
Division of Public Utilities & Carriers: Christy Hetherington, Esq. Dept. of Attorney General 150 South Main St. Providence, RI 02903	CHetherington@riag.ri.gov ;	401-222-2424
	Jmunoz@riag.ri.gov ;	
	dmacrae@riag.ri.gov ;	
John Spirito, Esq. John Bell Steve Scialabba	john.spirito@dpuc.ri.gov ;	
	john.bell@dpuc.ri.gov ;	
	steve.scialabba@dpuc.ri.gov ;	
David Effron Berkshire Consulting 12 Pond Path North Hampton, NH 03862-2243	Djeffron@aol.com ;	603-964-6526
Town of Portsmouth Terence Tierney Law Office of Terence Tierney 35 Touro Street Newport, Rhode Island 02840	Tierneylaw@yahoo.com ;	401-316-4566
Kevin P. Gavin, Esq. Law Office of Kevin P. Gavin 31 Harrington Avenue Portsmouth, Rhode Island	KPgavin@aol.com ;	401-683-2044
File original & 9 copies w/: Luly E. Massaro, Commission Clerk Public Utilities Commission 89 Jefferson Boulevard Warwick, RI 02888	Luly.massaro@puc.ri.gov ;	401-780-2107
	Cynthia.WilsonFrias@puc.ri.gov ;	
	Alan.nault@puc.ri.gov ;	
Andrew M. Teitz, Esq. Bristol Assistant Town Solicitor	andyteitz@utrlaw.com ;	
Michael Sheehan	mike@michaeljsheehan.com ;	
Mary Bennett	mb@marybennett.com ;	
Cathy Homan	catlari@aol.com ;	
Eric Bengston	bengston@comcast.net ;	

Frank & Nan Journak	<u>jurnak@verizon.net;</u>	
Cynthia Ives	<u>cynsislandglass@yahoo.com;</u>	
Bob Kenerson	<u>mrose24@verizon.net;</u>	
Paul & Emily Edwards	<u>Woodland295@charter.net;</u>	
Charlie & Barbara Worcester	<u>cworcester@cox.net;</u>	
	<u>bsworcester@cox.net;</u>	
Ed O'Rourke	<u>orourkej@gmail.com;</u>	
Gene Trupin	<u>Genetrupin@yahoo.com;</u>	

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: A & R MARINE CORP., d/b/a : DOCKET No.: 4586
PRUDENCE & BAY ISLANDS TRANSPORT :

**MOTION OF A & R MARINE CORP. d/b/a PRUDENCE & BAY ISLANDS
TRANSPORT TO DISMISS OR STRIKE THE TOWN OF PORTSMOUTH'S
REQUEST THAT NO RATE INCREASE BE IMPOSED ON THE TOWN
OR IN THE ALTERNATIVE FOR SUMMARY DISPOSITION
OF THE TOWN OF PORTSMOUTH'S REQUEST**

INTRODUCTION

The Town of Portsmouth has intervened in this rate filing. In prefiled direct testimony filed on March 2, 2016 on behalf of the Town by Richard Rainer, Town Administrator, the Town stated that it was “requesting a discount for municipal employees and vehicles using the ferry for essential governmental services that would maintain the rates currently charged to the Town for such passengers and vehicles.” (at 7). In other words, by asking that the Town’s rates be maintained at the same rates currently charged, the Town is asking that no portion of the rate increase be applied to the Town. If this request were granted and no increase was placed on the Town vehicles or passengers, a substantial shift would need to occur, and the remaining ratepayers would be required to pay more than their fair share of the rate increase.

However, the Town’s request is not something that this Commission can grant unless A & R Marine Corp. (A & R) asks the Commission to implement this special discounted rate (and the Division approves). A & R has not made such a request, and no approval of the Division has been obtained. Therefore, the Commission is without authority to grant the Town’s request and we respectfully submit that it should be dismissed as a matter of law.

ARGUMENT

R.I.G.L. § 39-1-1(b) provides in pertinent part:

It is hereby declared to be the policy of the state to provide fair regulation of public utilities and carriers in the interest of the public . . . to provide just and reasonable rates and charges for such services . . . **without unjust discrimination, undue preferences or advantages . . .**” (Emphasis added).

R.I.G.L. § 39-2-2(a) provides in pertinent part:

If any public utility . . . shall directly or indirectly . . . charge, demand, collect, or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it in, or affecting, or relating to the transportation of persons or property between points within this state . . . than it charges, demands, collects, or receives from any other person, firm, or corporation for a like and contemporaneous service, under substantially similar circumstances and conditions, the public utility shall be guilty of **unjust discrimination which is hereby prohibited and declared to be unlawful . . .**” (Emphasis added).

R.I.G.L. § 39-2-3(a) provides in pertinent part:

If any public utility shall make or give any undue or unreasonable preference or advantage to any particular person, firm, or corporation . . . the public utility shall be guilty of a misdemeanor . . .”

R.I.G.L. § 39-2-4 provides in pertinent part:

It shall be unlawful for any person, firm, or corporation knowingly to solicit, accept, or receive any rebate, concession, or discrimination in respect to any service in, affecting, or relating to the transportation of persons or property . . .”

These provisions are collectively known as the “anti-discrimination provisions” of the Public Utility Act. There are, however, exceptions to the anti-discrimination provisions. Although there is an exception that allows for special rates to be given to a town for public purposes, there are two prerequisites. The first is that the utility must request the special rates. The second is that the Division must grant approval for the special rates after finding that the special rates are just and reasonable or required in the interest of the public and are not unjustly

discriminatory. In this regard, R.I.G.L. § 39-2-5 entitled “Exceptions to anti-discrimination provisions” provides in pertinent part that:

The provisions of §§ 39-2-2 – 39-2-4 shall be subject to the following exceptions:

(2) With the approval of the division **any public utility may . . . grant special rates . . . to any town . . . for public purposes . . . in cases where the same shall seem to the division just and reasonable, or required in the interests of the public, and not unjustly discriminatory.** (Emphasis added).

This Commission has previously ruled that the Commission is “powerless to act” on a similar request from the Town of Portsmouth for a discounted rate. In the case of *In Re: Prudence Ferry, Inc.*, Docket No. 2090, Order No. 14235 issued on July 16, 1993, this Commission ruled as follows:

Portsmouth’s Request for Municipal and Senior Citizen Rates

The town of Portsmouth has requested that the Commission require PFI [Prudence Ferry, Inc.] to charge a discounted rate for the transportation of senior citizens and town of Portsmouth equipment and employees.

As a general proposition, the Commission may not approve discriminatory rates for special ratepayer classes (R.I.G.L. Section 39-1-1-(3)(b)). Exceptions to this axiom do exist, however, under Rhode Island General Laws, Section 39-2-5. Further, elderly persons and municipalities do qualify as valid exceptions. There is one major criterion, **the utility must propose the discount rate** for the exempted rate class(es) before the Commission can consider its propriety. **The Commission is without authority to unilaterally mandate such discounts.** In the instant case no such proposal has been proffered. This fact leaves the Commission powerless to act on Portsmouth’s requests. (Emphasis added).

A & R believes it would be patently unfair for the Town of Portsmouth to bear no portion of the rate increase proposed in this matter. Accordingly, A & R has not requested that the Division or this Commission approve any discounted rates for the Town.

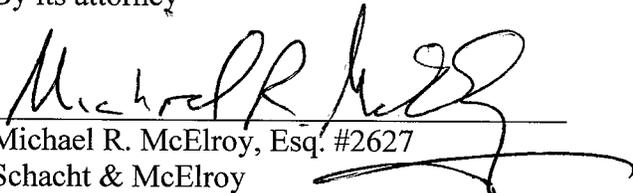
Accordingly, because A & R has not proposed any discounted rates for the Town, and because the Division has not approved any discounted rates, the Commission cannot “consider

its propriety” because “the Commission is without authority to unilaterally mandate such discounts.”

Therefore, we respectfully submit that the Town of Portsmouth’s request for a special rate should be denied and dismissed.

Respectfully submitted,
A & R MARINE CORP. d/b/a
PRUDENCE & BAY ISLANDS TRANSPORT
By its attorney

Dated: April 29, 2016


Michael R. McElroy, Esq. #2627
Schacht & McElroy
21 Dryden Lane
P.O. Box 6721
Providence, RI 02940-6721
Tel: (401) 351-4100
Fax: (401) 421-5696
Michael@McElroyLawOffice.com

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April, 2015, I sent a copy of the foregoing to the attached service list.


Theresa Gallo