

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

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

**REPORT AND ORDER**

**I. Introduction**

On November 6, 2015, A&R Marine Corp., d/b/a Prudence & Bay Islands Transport (A&R Marine) filed with the Public Utilities Commission (PUC or Commission) a request to increase its revenue requirement by \$564,409, or 96.5%.<sup>1</sup> This was A&R Marine's first request for a rate change since it began service in September 2014.<sup>2</sup> Because A&R Marine was commencing new service and had no historical data, in accordance with its May 2014 representations to the Division of Public Utilities and Carriers (Division) that it would adopt the rates then in effect, it filed initial tariffs that mirrored those of its predecessor, Prudence Island Ferry.<sup>3</sup> The PUC approved those on April 29, 2014.<sup>4</sup> On November 19, 2015, the PUC suspended the effective date of the requested rate change beyond December 6, 2015 in order to fully investigate the propriety of A&R Marine's proposed rate increase.<sup>5</sup> On December 11, 2015, the Town of Portsmouth (Portsmouth) filed a Motion to Intervene which was unopposed and became effective on December 21, 2015.<sup>6</sup>

Following an exchange of discovery, two public comment hearings, and an evidentiary hearing, the PUC approved a \$480,756 increase in A&R Marine's revenue requirement, or 87.04%, for a total cost of service of \$1,065,632. This amount included an allowed return on

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<sup>1</sup> Bebyn Test. at 3; [http://www.ripuc.org/eventsactions/docket/4586-A&R-RateFiling\\_11-6-15.pdf](http://www.ripuc.org/eventsactions/docket/4586-A&R-RateFiling_11-6-15.pdf). On December 2, 2015, A&R Marine amended its proposed rate schedules to add new Prudence Islander Resident discount rates. Bebyn Supp. Test. and revised tariffs; [http://www.ripuc.org/eventsactions/docket/4586\\_M\\_Amend.pdf](http://www.ripuc.org/eventsactions/docket/4586_M_Amend.pdf).

<sup>2</sup> Bebyn Test. at 2.

<sup>3</sup> Order No. 21487, 1 (Docket No. 4499) (June 9, 2014).

<sup>4</sup> Order No. 21487.

<sup>5</sup> Open Meeting Minutes (Nov. 19, 2015); <http://www.ripuc.org/eventsactions/minutes/111915.pdf>.

<sup>6</sup> Portsmouth Mot. to Intervene; <http://www.ripuc.org/eventsactions/docket/4586-Portsmouth-Intervene.pdf>.

equity (ROE) of 10.0% resulting in an overall rate of return of 7.63%. In approving A&R Marine's rate schedules, based largely on public comment in opposition to the Prudence Islander Resident discount, the PUC rejected the discount rate in favor of a simpler frequent user card rate proposed by the Division.

## **II. Proposed Rate Increase**

In support of its rate filing, A&R Marine submitted the prefiled direct, supplemental, and rebuttal testimony of David Bebyn, its rate consultant. Mr. Bebyn did not perform an allocated cost of service study as A&R Marine chose to propose an across-the-board increase for all regulated rates. The result of A&R Marine's calculations and proposals was to increase rates by 102.19%.<sup>7</sup>

Mr. Bebyn noted that the rates in effect at the time of the rate filing were over twenty-two years old and stated that they were inadequate to meet current operating expenses and generate an appropriate return on equity.<sup>8</sup> He advised that Prudence Ferry, Inc., the former ferry company operating between Bristol, Rhode Island and Prudence Island, Rhode Island, had not maintained major infrastructure. As a result, A&R Marine constructed a new dock on Prudence Island at a cost of over \$1.6 million, had purchased a primary vessel with upgrades costing approximately \$1.4 million and a backup vessel for \$220,000. According to Mr. Bebyn, A&R Marine also made improvements to the Bristol dock, customer service, and ticketing with a mix of debt and equity.<sup>9</sup>

Mr. Bebyn made eleven normalizing adjustments to the Test Year (October 1, 2014 to September 30, 2015) revenues and expenses to reflect a more "normal" year of operations. As a result, the adjusted Test Year revenue was \$584,877 and expenses were \$830,830 representing a

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<sup>7</sup> *Id.* at 13.

<sup>8</sup> Bebyn Test. at 2.

<sup>9</sup> *Id.* at 2-3.

normalized Test Year loss of \$245,953. A review of Mr. Bebyn's schedules reflected that A&R Marine was not seeking to recover those losses in the Rate Year (July 1, 2016 to June 30, 2017).<sup>10</sup> Next, Mr. Bebyn projected a \$63,010 increase in expenses over the normalized Test Year, resulting primarily from three things: an increase in fuel expense, new wharfage expenses resulting from leases between A&R Marine and the Towns of Bristol and Portsmouth, and rate case expense.<sup>11</sup> Explaining that "[i]nvestment in rate base times the weighted cost of capital and debt is used to compensate stockholders and pay the utility's long term debt interest," Mr. Bebyn calculated a rate base of \$2,886,770; a capital structure of 62% equity and 38% debt; and proposed an 11% ROE resulting in an overall rate of return of 8.83%.<sup>12</sup> Mr. Bebyn indicated that he relied on the ROE set in Interstate Navigation Company's most recent rate case and opined that A&R Marine had a higher risk profile, making the proposed ROE "conservative."<sup>13</sup>

### **III. Public Comment**

Two hearings were scheduled for the sole purpose of taking public comment. The first was conducted on Prudence Island on February 4, 2016 during the day. The second was conducted at the PUC on March 15, 2016 in the evening. At the hearings, the PUC heard from approximately 20 people. It received written comments from several others throughout the course of the proceeding. Overall, the commenters were pleased with the level of service they were receiving. They specifically noted the ease of making travel arrangements since the implementation of a new, more modern, reservation system. However, they expressed concern with the overall magnitude of the proposed increase. They also questioned the reasonableness of the items underlying the proposed increase: capital investments in a new vessel and office building; the number of

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<sup>10</sup> *Id.* at DGB-9.

<sup>11</sup> *Id.* at 7-9, DGB-9.

<sup>12</sup> *Id.* at 10-11, DGB-12.

<sup>13</sup> *Id.* at 11.

employees; the requested return on equity; and the classification of certain vehicles, particularly pick-up trucks and SUVs, in the proposed rate schedules. While there was some disagreement among the commenters about the proposed Prudence Islander Resident discount, the majority opposed it, citing a concern that such a classification would create an “us versus them” mentality on the island between year-round and part time residents.<sup>14</sup>

#### **IV. Discussion of the Disputed Issues and Findings**

During the course of the proceeding, the PUC received written testimony from the Division and Portsmouth on areas of agreement and disagreement. Discovery was exchanged and an evidentiary hearing was conducted on May 10, 2016. Live testimony was provided by Stephen Antaya, A&R Marine’s President; Mr. Bebyn; and David Effron, the Division’s rate consultant.<sup>15</sup> Several issues remained outstanding and are discussed below.

##### **A. Capital Structure/Return on Equity**

A&R Marine used its actual capital structure comprising 62% equity and 38% debt for purposes of calculating the authorized rate of return.<sup>16</sup> Mr. Effron demurred and proposed a proxy capital structure of 50% debt and 50% equity. He argued that an equity structure consisting of 62.34% equity was inappropriate for determining the authorized rate of return, noting that equity is the most expensive form of capital.<sup>17</sup> In his surrebuttal testimony, Mr. Effron observed that while Mr. Bebyn continued to disagree with the level of ROE, he had not contended the proxy

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<sup>14</sup> See Tr. (Feb. 4, 2016 & Mar. 15, 2016).

<sup>15</sup> On April 25, 2016, Portsmouth propounded its first set of data requests at 4:36 p.m. The responses were due on May 16, 2016; the evidentiary hearing was scheduled for May 10, 2016. Portsmouth did not request an expedited response date. On May 4, 2016, A&R Marine filed a timely objection to all of the data requests on the basis that they were untimely, unreasonable, oppressive, burdensome, and expensive. A&R Marine also filed more specific objections to some of the data requests. Chairperson Curran ruled that several requests were irrelevant to the proceeding, others were unduly burdensome, and that others could be responded to through cross examination. Tr. at 40-58 (May 10, 2016 – Morning Session).

<sup>16</sup> Bebyn Test. at Schedule DGB-12

<sup>17</sup> Effron Test. at 7-8.

capital structure was unreasonable.<sup>18</sup> At the hearing, A&R Marine conceded to the Division's capital structure position.

A&R Marine originally proposed setting its ROE based on Interstate Navigation Company's ROE approved in its most recent rate case. Mr. Bebyn had characterized that level as "conservative," given the smaller size of A&R Marine as compared to Interstate Navigation Company.<sup>19</sup> Mr. Effron, the Division's witness countered that while Interstate Navigation is much larger, its capital structure is very different from A&R Marine's. Whereas A&R Marine's actual capital structure was 62% equity and 38% debt, Interstate Navigation Company had only 26.2% equity and 73.8% debt. Mr. Effron explained that, as a general matter, Interstate Navigation Company's debt to equity ratio would be viewed as more risky than A&R Marine's.<sup>20</sup>

In his rebuttal testimony, still supporting an 11% ROE, Mr. Bebyn contended that the rate should be based on the business and financial risks to the utility with capital market conditions considered. He claimed that the risk and availability of debt was more critical to a small company whose debt is backed by the owners' personal guarantee by the owners.<sup>21</sup> In his surrebuttal testimony, Mr. Effron, in surrebuttal, maintained that "it is a well-established principal of finance that the lower the equity ratio, the greater the financial leverage, the greater risk to equity investors, and the higher the cost of attracting equity investment."<sup>22</sup> Based on this principle, Mr. Effron asserted that if an 11% ROE is reasonable for a company with only 26% equity, a lower ROE is reasonable for a company with twice the equity level.<sup>23</sup> At the commencement of the hearing, A&R Marine agreed to the Division's position on the ROE.

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<sup>18</sup> Effron Surrebuttal at 2.

<sup>19</sup> Bebyn Test. at 10-11.

<sup>20</sup> Effron Test. at 8-9.

<sup>21</sup> Bebyn Rebuttal at 2-3.

<sup>22</sup> Effron Surrebuttal at 3.

<sup>23</sup> *Id.*

The PUC found that the record supported setting the ROE at 10% using a proxy capital structure of 50% debt and 50% equity. The PUC has used a utility's actual capital structure in setting rates, unless that capital structure is not reasonable for rate-setting purposes. If the actual capital structure is not reasonable for rate-setting purposes, the Commission may impute a capital structure consistent with the market's expectations for a regulated utility.<sup>24</sup> Mr. Efron testified that A&R Marine's actual capital structure is not appropriate for determining the authorized rate of return for a regulated utility because it is too heavily weighted toward equity, the most expensive form of capital. Therefore, use of the proposed proxy capital structure is reasonable. Additionally, based on the lower risk asserted by Mr. Efron, the PUC found that an allowed ROE of 10% is reasonable in this case. According to Mr. Efron, his proposal would result in a weighted average rate of return of 7.63% compared to Interstate's 5.53% weighted average rate of return.

## **B. Depreciation**

Depreciation expense is allowed to reflect the recognition that “[f]ixed assets, plant assets, plant, equipment, etc. are assets that will not last indefinitely.”<sup>25</sup> During each year, a portion of the cost of these assets is being “used up.”<sup>26</sup> The portion being used up is reported as depreciation.<sup>27</sup> Thus, depreciation expense allows shareholders to recover their investment over the useful life, reflecting each year during which the asset is considered used and useful for ratemaking purposes.<sup>28</sup> The PUC has consistently used the straight-line depreciation method in rate setting. This method assumes the

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<sup>24</sup> *Blackstone Valley Electric*, Order No. 13877 (1992) (using actual capital structure); *The Narragansett Electric Company*, Order No. 14857 (1995) (settlement using actual capital structure); *The Narragansett Electric Company*, Order No. 16200 (2000) (settlement using imputed capital structure); *In re New England Gas Company*, Docket No. 3401 (2002) (settlement using imputed capital structure).

<sup>25</sup> *Glossary of Utility Finance and Accounting Terms used in our Seminars*, FAI's Public Utility Finance and Accounting Seminars Seminars for Professionals Concerned with Electric, Gas and Water Companies, <http://financialaccounting.com/glossary.pdf> (page last visited May 30, 2017).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *See* Tr. at 42, 70 (May 10, 2016 – Afternoon Session).

same reduction in useful life each year during the life of the asset. Setting the useful life or service life of an asset affects the time it takes for investors to recover their initial investment through rates.

In this case, the major assets reviewed by the witnesses were the two vessels and their improvements, the new building, and the dock. A&R witness Bebyn and Division witness Effron initially disagreed on the service life for the vessels. Mr. Bebyn proposed fifteen years for both the vessel and improvements.<sup>29</sup> Mr. Effron, conversely, recommended twenty years for both the vessels and improvements.<sup>30</sup> Mr. Bebyn countered that while the vessels were reported to have a useful life of fifteen to thirty years, improvements have a service life of only five to ten years. Therefore, Mr. Bebyn asserted that averaging the midpoint of vessel service life with the midpoint of the improvement service life would result in a fifteen year service life.<sup>31</sup> Mr. Effron responded that the cost of the improvements to the Herbert Bonner vessel were almost twice the cost of the vessel and, therefore, were “clearly more than equipment or interim replacements with relatively shorter lives.”<sup>32</sup> Thus, he argued, it was reasonable to assume that the life of these retrofits should equal the useful life of the vessel.<sup>33</sup>

The two witnesses agreed that a reasonable depreciation life for the building was forty years. Mr. Bebyn, in his rebuttal testimony, accepted a reasonable life for the new dock of twenty-five years.<sup>34</sup> At the hearing, Mr. Bebyn testified that A&R Marine accepted the Division’s recommendation to set the depreciation schedule for the vessels and improvements at twenty years.<sup>35</sup>

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<sup>29</sup> Bebyn Test. at 9; DGB-11.

<sup>30</sup> Effron Test. at 6.

<sup>31</sup> Bebyn Rebuttal at 2.

<sup>32</sup> Effron Surrebuttal at 2.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 1; Bebyn Rebuttal at 2; Tr. at 40-41 (May 10, 2016 – Afternoon Session).

<sup>35</sup> Tr. at 41 (May 10, 2016 – Afternoon Session).

The PUC accepted the agreed-to service lives as reasonable, being particularly persuaded by Mr. Effron's testimony that the vessel improvement costs were more substantial than replacement items with relatively shorter lives.

### **C. Office Supply Expense & Depreciation - Adjustments**

In its initial filing, A&R Marine projected an office supply expense of \$10,500. During discovery, A&R Marine realized that rate year office expense had been overstated due to the inclusion in this line item of \$3,451 of expenditures that should have been capitalized but which were erroneously expensed. Therefore, to correct this misclassification of expenditures, office supply expense should be decreased by \$3,451 and depreciation expense should be increased by \$690.<sup>36</sup> After review of the record, the PUC found that these two adjustments are appropriate for a net reduction of \$2,761 to rate year expense.

### **D. Purchase Price/Fair Market Value of Vessels**

Through PUC discovery, it was revealed that the purchase price of the Prudence Ferry vessel was \$220,000 whereas the appraisal placed the fair market value at \$140,000.<sup>37</sup> The PUC often reviews appraisals in determining the fair market value of property and assets in its review of reasonableness of a purchase price for recovery in rates. On cross examination, Mr. Antaya explained that the \$220,000 purchase price included not just the vessel, but also the ramp, I-beams to support the ramp, and winches and the machinery to run the ramp. These additional items allowed A&R Marine to commence service with the vehicles more quickly than it otherwise could. In addition, Mr. Antaya indicated that A&R Marine had hired a broker to conduct a search for a

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<sup>36</sup> A&R Marine Response to PUC-4-3.

<sup>37</sup> Portsmouth questioned the reasonableness of the treatment of sale proceeds by the seller, the owner of the Prudence Ferry, Inc., the former certificate-holder and operator of ferry services between the mainland and Prudence Island. However, the review of sales between utilities falls under Division jurisdiction and the Division determined it did not have jurisdiction over the review of the sale between Prudence Ferry, Inc. and A&R Marine Corp. and the proceeds therefrom. Therefore, the PUC will not review the treatment of sale proceeds by a former utility, having found such inquiry to be irrelevant to this rate proceeding. Tr. at 76-91 (May 10, 2016 – Morning Session).

vessel but the broker had been unable to find a vessel that would satisfy its needs. According to Mr. Antaya, the Prudence Island was ready for operation with only minor work necessary to obtain a Coast Guard Certificate of Inspection. Due to the unavailability of other suitable vessels, A&R Marine had to pay a premium to procure the Prudence Island.<sup>38</sup>

The PUC found Mr. Antaya's explanation to be credible and reasonable, particularly because time was of the essence in providing full ferry service to Prudence Island. While the PUC does not intend to depart from its practice of reviewing appraisals and fair market value for newly purchased assets, in this instance, Mr. Antaya provided two credible and relevant reasons for departure from strict adherence to that practice.

#### **E. Electric Expense**

In its initial request, A&R Marine forecasted rate year electric expense of \$6,458 based on its Test Year expense.<sup>39</sup> However, in its response to PUC discovery, A&R Marine identified a misallocation of expenses and reduced its request to \$5,102.<sup>40</sup> Through cross examination at the hearing, it appeared the pro forma electric expense was still overstated.<sup>41</sup> The most recent twelve-month period showed an electric expense of \$2,574. However, Mr. Bebyn suggested that the most recent twelve-month period may not be representative of a normal year and that review of the electric expense over a longer period of time would be more appropriate.<sup>42</sup>

As a result, A&R Marine was asked to and did provide further information at the hearing to calculate the average kilowatt-hours (kWh) consumed over a two-year period for the months which were available. A&R Marine then provided the pro forma costs based on this average using

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<sup>38</sup> Tr. at 51-53 (May 10, 2016 – Afternoon Session).

<sup>39</sup> Bebyn Test. at DGB-9.

<sup>40</sup> A&R Marine's Response to PUC-4-2.

<sup>41</sup> Tr. at 44-46 (May 10, 2016 – Afternoon Session); PUC Ex. 8, PUC Ex. 9.

<sup>42</sup> Tr. at 49 (May 10, 2016 – Afternoon Session).

updated electric costs. A&R Marine had usage information for the months of November 2014 through April 2016, a full two years for Bristol and only one year for Prudence. Its calculation resulted in a pro forma rate year electric expense, updated for current electric rates, of \$2,917.<sup>43</sup> The PUC approved the calculation used in developing the response to the record request. Although the result was somewhat higher than the cost over the most recent twelve-month period, it is appropriate because it maximizes the use of actual data and captures some fluctuations in weather that occur year over year.

#### **F. Advertising Expense**

In its initial filing, A&R Marine included a rate year expense of \$3,436 based on the Test Year expense, which included designing the website. During discovery, however, it was revealed that the \$3,436 was entirely related to website maintenance. According to Mr. Antaya on cross-examination, the rate year expense was probably overstated, but he could not provide a more accurate figure. He indicated that website design requires work by the website vendor, but that several things can be done in-house such as notices, cancellations, and the listing of new rates.<sup>44</sup> The cost of maintaining the website was estimated at \$600 annually plus the cost of design updates. The PUC found that, based on the limited information in the record, the only amount supported in the record is the \$600 annual fee for the website. Therefore, this was the only amount allowed in the rate year expense for advertising. If this amount proves insufficient, in its next rate case, A&R Marine will be better positioned to support a request for increased expense based on more years of experience.

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<sup>43</sup> A&R Response to RR-1. The average usage included two years of kWh sales for the months November 2014 through April 2016 in Bristol and sales for the months of May 2015 through October 2015 in Prudence.

<sup>44</sup> Tr. at 53-56 (May 10, 2016 – Afternoon Session).

### **G. Insurance Expense**

In its rebuttal testimony, A&R Marine estimated a rate year insurance expense of \$16,760 based on updated estimates. In a subsequent response to a record request, A&R Marine calculated a slightly reduced insurance expense of \$16,446, based on more recent invoice quotes.<sup>45</sup> A majority of the PUC found that the most accurate figure in the record was the most recent figure which was based on invoice quotes.<sup>46</sup> Thus, a \$314 reduction was made to A&R Marine's rebuttal request.

### **H. Telephone Expense**

A&R Marine projected a telephone expense of \$4,176 which included three landlines, a fax line, and DSL for the purpose of processing credit card transactions.<sup>47</sup> According to Mr. Bebyn, no employees have been issued company phones.<sup>48</sup> While conceding on cross examination by Portsmouth that there could be some cost savings of perhaps, approximately \$1,000 in the telephone expense if A&R Marine chose not to accept credit cards, Mr. Bebyn testified that credit cards provide a significant convenience to customers.<sup>49</sup> A review of A&R Marine's website shows that reservations are not completed online until payment is made, either through credit card or a Captain's Card (gift certificate). Where the public comment was entirely positive about the website and its capabilities for reservations, the PUC will not question A&R Marine's management decision to operate its business this way nor the cost of the technology required to accept credit cards. In a time when most businesses accept credit cards and many individuals use credit and debit cards for everyday transactions, it would make no sense to preclude A&R Marine from

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<sup>45</sup> A&R Marine's response to RR-2.

<sup>46</sup> Commissioner DeSimone dissented on the basis that the invoice quotes still were not final bills and the small reduction was unnecessary.

<sup>47</sup> DGB-9; Tr. at 113 (May 10, 2016 – Morning Session).

<sup>48</sup> Tr. at 113 (May 10, 2016 – Morning Session).

<sup>49</sup> *Id.*

holding reservations on credit cards. It would be inappropriate to require a utility to operate so far outside of what is expected in the competitive market.

### **I. Rate Case Expense**

In its initial filing, A&R Marine estimated rate case expense of \$90,000 amortized over three years resulting in a rate year expense request of \$30,000.<sup>50</sup> As is typical practice for the PUC, the parties were asked to update the rate case expense prior to the Commission's decision. No party objected to the PUC receiving and relying on this information. On Wednesday, May 18, 2016, A&R Marine provided the PUC and parties with an updated schedule showing a final rate case expense of \$99,899.<sup>51</sup> Amortizing this amount over three years yields an annual allowance of \$33,300. The PUC found this amount to be based on the most recent evidence available and to be reasonable.

### **J. Discounted Tickets**

In its supplemental filing, A&R Marine proposed nine different rate classes for passengers and vehicles. In addition to the passenger ticket rates, the other rate classes included an Islander Resident passenger car with driver and Islander Resident SUV, Van, Pickup with driver. Following mixed public comment that was primarily in opposition to a separate Islander rate and in opposition to a separate rate for SUVs, vans and pickups,<sup>52</sup> the Division proposed six rate classes for passengers and vehicles: Adult One Way, Child One-Way, Frequent User – 10 Trip Book, Frequent User – 20 Trip Book, Passenger Car with Driver, and Frequent User Passenger Car with Driver – 6 ticket book which applies to cars, SUVs, Vans, and Pickups. The Division did not

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<sup>50</sup> Bebyn Test. at DGB-9.

<sup>51</sup> A&R Marine Response to RR-3.

<sup>52</sup> Tr. at 14, 23, 26, 31, 33-35, 40, 45, 54-55 (Feb. 4, 2016).

recommend changes to the truck rate classes for one ton and above trucks, trailers, boats, bikes, mopeds, or freight. At the hearing, A&R Marine accepted the Division's proposal.

After a review of the record, the PUC found that the Division's proposal was similar to A&R Marine's proposed rate classes but much less complex. It will be simpler and cleaner to administer and easier for customers to understand. Absent a new allocated cost of service study to support a new Islander rate, the PUC found that it was reasonable to continue with the Frequent Discount Rate based on the PUC's previous findings in prior cases to justify the discount. The Division's Frequent User rates result in slightly lower per-trip rates than A&R Marine's. Therefore, the PUC found the Division's proposal to be reasonable.

#### **K. Town of Portsmouth Municipal Rate**

In his direct testimony on behalf of the Portsmouth, Town Manager Richard Rainer requested that no portion of the final approved rate increase be assigned to municipal workers or vehicles traveling to Prudence Island on town business.<sup>53</sup> Through Mr. Bebyn, A&R Marine rejected this proposal on the basis that it would be unfair to treat one ratepayer differently from the others.<sup>54</sup> In response, Mr. Rainer continued to press for a municipal rate. He argued that Mr. Bebyn had not disputed Portsmouth's position that the PUC has already recognized that a discounted ferry rates to Portsmouth on ferries serving Prudence Island would not be a discriminatory practice. Nor, according to Mr. Rainer, did Mr. Bebyn dispute that that municipalities can qualify as valid exceptions to the anti-discriminatory provisions of R.I. Gen. Laws § 39-2-5. According to Mr. Rainer, Mr. Bebyn's rebuttal testimony failed to counter Portsmouth's claim that it constitutes a unique ratepayer class that provides essential government services to island residents as well as many valuable, indirect benefits to A&R Marine's

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<sup>53</sup> Rainer Test. at 7; [http://www.ripuc.org/eventsactions/docket/4586-Portsmouth-Rainer\\_3-2-6.pdf](http://www.ripuc.org/eventsactions/docket/4586-Portsmouth-Rainer_3-2-6.pdf).

<sup>54</sup> Bebyn Reb. at 4; [http://www.ripuc.org/eventsactions/docket/4586-A&R-Bebyn\\_3-30-16.pdf](http://www.ripuc.org/eventsactions/docket/4586-A&R-Bebyn_3-30-16.pdf).

operations. Mr. Rainer further asserted that A&R Marine had, in discovery, determined the impact of providing discounted rates to Portsmouth and that they are not substantial.<sup>55</sup>

At the hearing, A&R Marine proposed a Motion to Dismiss or Strike the Town of Portsmouth's Request that No Increase be Imposed on the Town or in the Alternative for Summary Disposition of the Town of Portsmouth's Request. Portsmouth objected. The PUC allowed oral argument. Counsel for A&R Marine argued that based on a prior PUC decision interpreting the language of R.I. Gen. Laws § 39-2-5 (exceptions to anti-discrimination provisions), the PUC could not approve Portsmouth's request because the request had not originated from A&R Marine and had not been reviewed and found to be reasonable by the Division. Furthermore, counsel argued, it would be "patently unfair" to allocate no portion of the rate increase to Portsmouth.<sup>56</sup>

Counsel for Portsmouth argued that the language of R.I. Gen. Laws § 39-2-5 is subordinate to the general ratemaking and supervisory powers of the PUC. Counsel maintained it was irrelevant that the utility failed to propose the discount if such a discount would be reasonable. According to counsel, no party disputed the uniqueness of Portsmouth as a municipal user of the ferry. Finally, counsel argued that the case cited by A&R Marine's counsel was based on an erroneous interpretation of the law.<sup>57</sup>

Counsel for the Division did not dispute any of the statutory or caselaw cited by A&R Marine or Portsmouth. But she did note that the statute clearly contemplates a reasonableness review of any such discount by the Division as the ratepayer advocate. According to counsel, the

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<sup>55</sup> Rainer Surr. at 3-4; [http://www.ripuc.org/eventsactions/docket/4586-Portsmouth-Rainer\(4-25-16\).pdf](http://www.ripuc.org/eventsactions/docket/4586-Portsmouth-Rainer(4-25-16).pdf). In his testimony, Mr. Rainer relied on a March 18, 2016 filing made by A&R Marine in response to an inquiry by Portsmouth. However, a review of A&R Marine's response shows that it had been asked about and had provided an analysis of different proposals than the one Portsmouth identified. A&R Response to Portsmouth March 15, 2016 public hearing request; [http://www.ripuc.org/eventsactions/docket/4586-A&R-Reply-Portsmouth\\_3-21\\_16.pdf](http://www.ripuc.org/eventsactions/docket/4586-A&R-Reply-Portsmouth_3-21_16.pdf).

<sup>56</sup> Tr. at 7-10 (May 10, 2016 – Morning Session).

<sup>57</sup> Tr. at 13-19 (May 10, 2016 – Morning Session).

Division had not conducted sufficient analysis to advise the PUC whether such a municipal discount rate would be just and reasonable.<sup>58</sup>

The statute at issue, R.I. Gen. Laws § 39-2-5(2), states:

With the approval of the division any public utility may give free transportation or service, upon such conditions as the public utility may impose, or grant special rates therefor to the state, to any town or city, or to any water or fire district, and to the officers thereof, for public purposes, and also to any special class or classes of persons, not otherwise referred to in this section, 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.<sup>59</sup>

The PUC has previously ruled, in Docket No. 2090, *In re: Prudence Ferry, Incorporated, Application to Change Rate Schedules*, that while this section allows for an exemption from the anti-discrimination axiom precluding the PUC from approving discriminatory rates for special ratepayer classes, the prerequisite for PUC review and approval of such exemption is that “the utility must propose the discount rate.”<sup>60</sup> The section also requires the Division to determine whether the proposal would be just and reasonable, be required to meet the interests of the public, and not be unjustly discriminatory. Neither of those two prerequisites were met in this case. A&R Marine did not propose the special rate and the Division did not analyze any proposal to determine whether it met the standards set forth in the statute.<sup>61</sup>

Portsmouth asked the PUC to find that its decision in 1993 was flawed and that review and approval of a special rate for a special class of customers should not be dependent upon a privately held company’s discretion of whether to propose a special rate. However, the PUC did not need to reach this question because a review of the record showed that there was insufficient evidence

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<sup>58</sup> Tr. at 20-21 (May 10, 2016 – Morning Session).

<sup>59</sup> R.I. Gen. Laws § 39-2-5(2).

<sup>60</sup> Order No. 14235 (July 16, 1993).

<sup>61</sup> See Tr. 92-97 (May 10, 2016 – Morning Session), discussing the rationale for a Frequent User discount and noting that no Cost of Service Study had been conducted to analyze a municipal discount.

for the PUC to determine whether a municipal rate would be just and reasonable.<sup>62</sup> As Division counsel indicated, the Division had not performed an analysis of whether the rate would fall within the parameters of the statute's exception to the anti-discrimination provisions. Neither had Portsmouth presented a witness in support of its position through a cost of service study. The PUC cannot approve a proposal it finds to be unsupported by the record.

In its next general rate filing, A&R Marine shall file a full allocated cost of service study and at that time, may consider whether to propose a special municipal rate. If at that time, Portsmouth wishes to seek a municipal rate, it should be prepared to present expert evidence supporting such a proposal. The Division will then be in a better position to analyze any municipal-rate proposal under the parameters of the anti-discrimination provision. Should A&R Marine choose not to offer a municipal rate in its next rate case, Portsmouth makes its case for one, and the Division approves it, it will then be up to the PUC to determine whether the utility's failure to offer any municipal rate alone is an absolute bar to the PUC adopting a municipal rate.

#### **L. Earnings Report**

This case involves A&R Marine's first full rate case following commencement of operations. With only one year of data available, normalization of expenses is difficult and projections of pro forma expenses can be challenging. At the hearing, both witnesses for A&R Marine and the Division's witness agreed with PUC staff that it would neither be unreasonable nor overly burdensome for A&R Marine to submit an earnings report commensurate with its annual report.<sup>63</sup> And then the PUC would be able to track not only expenses and revenues, but also the utility's earnings. This will provide additional information for the PUC to consider in carrying out its ongoing responsibility to ensure just and reasonable rates.

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<sup>62</sup> Tr. at 59-62 (May 10, 2016 – Morning Session); PUC Open Meeting Minutes (May 20, 2016).

<sup>63</sup> Tr. at 39-40, 58-59, 70-71 (May 10, 2016 – Afternoon Session).

### **M. Compliance Tariffs**

On May 25, 2016, A&R Marine filed compliance tariffs and schedules to incorporate the PUC's May 20, 2016 findings. On May 26, the Division filed a recommendation finding that the compliance tariffs were consistent with the PUC findings. At an Open Meeting held on May 27, 2016, the PUC reviewed the filings and after noting certain typographical errors in the tariff filings that needed to be addressed, the PUC approved the compliance tariffs with the edits incorporated.<sup>64</sup> The approved rate increase was \$480,756 over test year revenues of \$552,328. This increase, when added to miscellaneous revenues of \$32,548, yielded a total cost of service of \$1,065,632, representing an increase in total rates of 87.04%. Rates were approved for use of the ferry commencing on May 28, 2016.

Discussing the effect of the approved rate changes on tickets purchased in advance, the PUC noted that A&R Marine had clearly stated in its response to PUC Data Request 2-1, that it would be charging the incremental difference between the advance ticket price and the higher tariffed rate after it was approved. While perhaps not the best business decision for customer relations concerns, the response was in the record and had not been challenged. It remained A&R Marine's responsibility to address any customer complaints.

This case included thoughtful public comment that both informed the PUC and contributed to the development of a more complete record. There were a number of written comments, all of which were reviewed, that clearly demonstrated the significant time Prudence Island residents and users of the ferry devoted to preparing such thoughtful and targeted comments. Recognizing that this was a request for a large increase, the PUC looked for any way to meet the concerns raised by

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<sup>64</sup> PUC Open Meeting Minutes (May 27, 2016); <http://www.ripuc.org/eventsactions/minutes/052716.pdf>. The first, in Schedule E, Item 240. 5 12 should be revised to 5½. In Rule 9, line four, "Vehicles under 1 ton that are over this length will pay and additional \$3.65 per foot over 18" should be revised to "Vehicles under 1 ton that are over this length will pay an additional \$3.65 per foot over 18."

the people who offered comments. Unfortunately, the evidence fully supported the steep increase. Certainly, much of the size of the increase can be attributed to the peculiarity of the prior operator in not seeking a rate increase for many years.

It should also be noted that many public comments contained praise for the current operator. Indeed, after viewing the old dock when the PUC went to Prudence Island for public comment and observing it to be in a complete state of disrepair, it was fortunate that Mr. Antaya stepped up to fill a gap in service. Moreover, while not included in the rates approved by the PUC in this case, the record showed that Mr. Antaya suffered a loss of approximately \$287,000 in setting up and in providing lifeline ferry service for this picturesque little-known Rhode Island community.

Accordingly, it is hereby

(22814) ORDERED:

1. The General Rate Filing made by A&R Marine Corp. d/b/a Prudence & Bay Island Transport on November 6, 2015 is hereby denied.
2. A&R Marine Corp. d/b/a Prudence & Bay Island Transport is allowed an increase in rates of \$480,756 for a total cost of service of \$1,065,632.
3. A&R Marine Corp. d/b/a Prudence & Bay Island Transport's rates allowed by this order are approved for use of the ferry commencing on May 28, 2016.
4. A&R Marine Corp. d/b/a Prudence & Bay Island Transport's rates use an approved proxy capital structure of 50% Equity and 50% Debt with an approved return on equity of 10.0%.
5. A&R Marine Corp. d/b/a Prudence & Bay Island Transport shall file an annual earnings report 120 days after the close of the fiscal year commensurate with the filing of its Annual Report.

6. In its next general rate filing, A&R Marine Corp. d/b/a Prudence & Bay Island Transport shall include an allocated cost of service study.
7. A&R Marine Corp. d/b/a Prudence & Bay Island Transport shall follow all other orders and instructions contained in this order.

EFFECTIVE AT WARWICK, RHODE ISLAND ON MAY 28, 2016 PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED JUNE 2, 2017.

PUBLIC UTILITIES COMMISSION

  
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Margaret E. Curran, Chairperson

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\*Paul J. Roberti, Commissioner

  
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Herbert DeSimone, Commissioner



\*Commissioner Roberti concurred with the decision but is unavailable for signature.

**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 (7) 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.