



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903  
(401) 274-4400 - TDD (401) 453-0410

*Peter F. Kilmartin, Attorney General*

May 18, 2016

*VIA DELIVERY & ELECTRONIC MAIL*

Luly E. Massaro, Commission Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, Rhode Island 02888

**Re: Docket 4586 – A & R Marine Corp. D/B/A Prudence & Bay Islands Transport  
General Rate Filing**

Dear Ms. Massaro:

Attached for filing in the above captioned docket, please find an original and nine (9) copies of the Division's responses to the Town of Portsmouth's First Set of Data Requests.

The Division represents that it has made every effort to diligently answer these data requests to the best of its ability and knowledge in the spirit of cooperation and responsiveness. That said, however, the Division has genuine concerns over the relevance of the majority of the requests and the information sought by Portsmouth as relates to the instant Docket No. 4586. This concern is further accentuated in light of a host of Commission rulings on relevancy (wherein objections on relevancy were sustained) rendered at the May 10<sup>th</sup> Hearing regarding the same subject matter(s). Moreover, the Commission's stated policy "to encourage the timely use of discovery as a means toward effective presentations at hearing and avoidance of the use of cross-examination at hearing for discovery purposes[,]" see Public Utility Commission Rules of Practice and Procedure Rule 1.18(a), is not furthered by the instant responses. Accordingly, and additionally, the Division does not consent to the instant responses, nor the companion requests, to be admitted as evidence in Docket No. 4586, consistent with Public Utility Commission Rules of Practice and Procedure Rule 1.18(c)(6).

Please note that this filing shall be provided to the service list via electronic mail only. Thank you for your attention in this matter.

Very truly yours,

Christy Hetherington  
Special Assistant Attorney General

Enclosure  
cc: Service List

**STATE OF RHODE ISLAND**  
**PUBLIC UTILITIES COMMISSION**

**In re: A & R Marine Corporation, d/b/a/  
Prudence and Bay Islands Transport**

**Docket No: 4568**

**Division of Public Utilities and Carriers' Responses to the**  
**Town of Portsmouth's First Set of Data Requests**  
**Directed to the Division**

P 1- 1 Please state whether the Division agrees that Portsmouth provides essential governmental services to the residents and businesses of Prudence Island, including A & R Marine Corporation.

Response 1-1. Based on a review of the pre-filed testimony of the Portsmouth Town Administrator, the Division understands that the Town provides police and fire services, emergency medical services, trash removal, recycling, snowplowing, road repair and maintenance.

P 1-2 Please state whether the Division agrees that Portsmouth provides direct benefits to A & R Marine Corporation by providing police and fire protection, and emergency medical services, and trash removal services for the passengers and crew of the ferry A & R operates.

Response 1-2. The Division understands that Prudence Island is part of the Town of Portsmouth, and as such, provides Town services to Prudence Island.

P1-3 Please confirm that the Public Utilities Commission (hereafter "Commission") has previously determined that a utility providing discounted ferry rates to the Town of Portsmouth would not violate the provisions of R.I. General laws 39-2-5.

Response 1-3. In the Prudence Ferry Company's last rate case, Docket 2090, Order No. 14235, page 13, effective 6/8/93, the PUC said:

"As a general proposition, the Commission may not approve discriminatory rates for special ratepayer classes (R.I.G.L. Section 39-01-1-(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."

P1-4 Please confirm that no provision of the Rhode Island General laws prohibits the Commission from ordering a utility to provide discounted rates on ferries for Town of Portsmouth vehicles and passengers performing essential governmental services.

Response 1-4. Objection. This data request states and solicits a legal conclusion to which no response is necessary. Without waiving said objection, the Division understands that Rhode Island General Laws § 39-2-5(2) governing "Exceptions to anti-discrimination provisions" allows a utility to provide free or special rates to specified classes subject to Division approval.

P1-5 Please confirm that the Division agrees the Commission may order a utility to provide discounted rates on ferries to Prudence Island for Town of Portsmouth vehicles and passengers even if the ferry operator objects to such discounts.

Response 1-5. Please see response to Portsmouth 1-3.

P1-6 Please state whether the Division agrees that permitting A & R Marine Corporation to have sole discretion to grant or deny proposed resident discounts would interfere with the Commission's and/or the Division's authority to regulate the conduct of public utilities.

Response 1-6. Please see the response to Portsmouth 1-3.

P1-7 Please confirm that over one-third of the proposed rate increase requested by A & R Marine relates to depreciation charges.

Response 1-7. The Division is unable to confirm this statement. The Company's filed depreciation expense accounts for approximately 18% of its total revenue requirement (Schedule DJE-2 accompanying Mr. Effron's Direct Testimony). The Division has not calculated how much of the requested rate increase relates to increases in depreciation charges.

P1-8 Please describe what action, if any, is taken by the Division when a ferry operator that is subject to DPUC and PUC jurisdiction is given a depreciation allowance for a ferry, and a dock, and such ferry and dock become fully depreciated, but the utility does not seek a rate increase.

Response 1-8. In the Spring of 2014, Division staff reviewed Prudence Ferry Inc.'s earnings for the prior reported 4 years, 2009-2012 through a review of the filed Annual Reports to the PUC. PFI was the ferry operator at the time, and had been since approximately 1984. At the time of the review, PFI's rates had been in effect since June 6, 1993. Over the course of the ensuing 21 year period between 1993 and 2014, Prudence Ferry never filed for a rate change. The Division's review determined that in 3 of the most recently reported years the Company had a

very small operating profit, and had an \$11,072 operating loss in 2012. No action was deemed required.

P1-9 Was the rate established for the last ferry operator to Prudence Island based in part on its cost incurred for a ferry, and a dock in Bristol ?

Response 1-9. Based on a review of a depreciation schedule from Docket 2090, the depreciation schedule included a Bristol dock, dock improvements, a boat and boat improvements.

P1-10 Please confirm that if a utility is given a depreciation allowance for a ferry and/or dock that later becomes fully depreciated, but the regulated utility does not thereafter seek a rate increase the utility is essentially “over collecting” rates from existing ratepayers.

Response 1-10. The Division is unable to confirm this statement. Whether or not a regulated utility is “over collecting” rates from existing ratepayers would depend on an analysis of whether its earned return on equity exceeds its cost of equity.

P1-11 Please confirm that the Division’s understanding is that the previous provider of ferry service to Prudence Island, i.e., Prudence Ferry Inc., recently sold a fully depreciated asset (i.e., a dock) for approximately \$800,000 to the Town of Bristol, and also recently sold a fully depreciated asset (a ferry) to A & R Marine Corporation.

Response 1-11. The Division cannot confirm that assets sold by Prudence Ferry, Inc. were fully depreciated at the time of sale. The Division became aware of the dock sale through media reports sometime in late 2013. The A & R testimony in the instant docket describes that A&R purchased a back-up vessel for \$220,000, which the Division believes was acquired from PFI sometime around September of 2014.

P1-12 Please confirm that the Division’s understanding is that none of the proceeds from the sale of such fully depreciated assets of Prudence Ferry, Inc., has been returned to the ratepayers using ferry service to Prudence Island.

Response 1-12. The Division cannot confirm that assets sold by PFI were fully depreciated at the time of sale. The Division cannot confirm that none of the proceeds has been returned to the ratepayers insofar as it understands that Prudence Ferry, Inc., continued to operate after the sale of certain assets and may have used the proceeds from said sale to fund the Company’s operations up until the time the service ceased operating.

P1-13 Please confirm that the Division’s position is that when a utility is allowed to include assets in rate base and later sells such assets after being fully depreciated the rate payers have an equitable interest in the sale proceeds of such assets.

Response 1-13. The Division agrees that as a general ratemaking principle, when a utility is allowed to include assets in rate base and later sells such assets the ratepayers have an equitable interest in the sale proceeds of such assets, assuming assets were sold at a gain.

P1-14 Please confirm that the Division's understanding is that A & R Marine seeks in this proceeding to use revenues derived from ferry rates to fully depreciate the cost of the same vessel which Prudence Ferry, Inc. also fully depreciated using ratepayer revenues, and then sold without returning any sale proceeds to ratepayers.

Response 1-14. The Division cannot confirm whether the vessel sold was fully depreciated. See also response to 1-12.

P1-15 Please produce any correspondence, electronic communications, data, work papers or information relating to the Division's consideration of action relating to the potential recovery of proceeds from the sale by Prudence Ferry, Inc. of fully depreciated assets that were included in its rate base.

Response 1-15. Objection. This data request is overbroad, irrelevant, or not reasonably calculated to lead to the discovery of admissible evidence on the issues presently before the Commission in the instant Docket 4568. This request seeks records that are protected by work product, attorney-client and/or deliberative process privileges. A privilege log has been provided. Without waiving said Objections, see Exhibit A.

P1-16 Please describe any action the Division has taken to attempt to recoup the proceeds of the sale of fully depreciated assets included in rate base for Prudence Ferry, Inc., but subsequently sold, and if no action has been taken state the legal and factual basis for such decision.

Response 1-16. Objection. This data request is not reasonably related to the issues presently before the Commission in the instant Docket 4568. This request seeks explanations and conclusions that are protected by work product, attorney-client and/or deliberative process privileges. Without waiving said Objections, the Division can represent that, to date, it has not initiated any affirmative agency/court action, litigation or docket related to recovery of proceeds of the sale of fully depreciated assets included in rate base for Prudence Ferry, Inc. Although the basis and deliberative rationale for the Division's actions and/or inactions are protected, the Division represents that contributing factors, as with any of its decisional reviews, include considerations of likelihood of success on the merits, precedent, litigation strategy, anticipated defenses, cost-benefit analysis and factual and numerical unknowns within the context of the particular facts and circumstances under review.

P1-17 Please state whether the Division believes A & R Marine would be able to continue to operate its ferry to Prudence Island if the Commission grants Portsmouth's request to maintain current rates for municipal vehicles and passengers performing essential governmental services.

Response 1-17. See response to 1-3 and 1-5. The Commission has determined it cannot unilaterally grant Portsmouth's request.

P1-18 Please confirm that the Division's understanding is that if the proposed ferry rates are implemented, and remain in effect after the point in which its vessel and dock are fully depreciated, A & R would thereafter be receiving annual revenues that would exceed its cost of service due to the lack of offsetting depreciation expenses.

Response 1-18. The Division is unable to confirm this statement. Whether A & R is receiving annual revenues that would exceed its cost of service in any particular circumstances would depend on an analysis of whether its earned return on equity exceeds its cost of equity.

P1-19 Please confirm that it is the Division's understanding that when a utility is given a depreciation allowance for vessels and a dock that become fully depreciated but the utility does not request a rate change the utility may then be collecting revenues that exceed its cost of service.

Response 1-19. The Division agrees that when a utility is given a depreciation allowance for vessels and a dock that become fully depreciated but the utility does not request a rate change the utility *may* then be collecting revenues that exceed its cost of service. It is also possible that the utility may not be collecting revenues that exceed its cost of service, depending on whether its earned return on equity exceeds its cost of equity.

P1-20 Please confirm that the Division's understanding is that when revenue is collected from ratepayers under a rate decision has no offsetting expenditure due to the full depreciation of assets such revenue is allowed to be retained by the utility as profit.

Response 1-20. The Division is unable to confirm this statement, as the Division does not fully understand the hypothetical circumstances described in the statement. However whether revenue collected from ratepayers is retained by the utility as profit depends on whether the utility's revenues exceed its expenses.

P1-21 Please confirm that the (sic) a possible reason why the previous provider of ferry service to Prudence Island did not seek a rate increase for twenty years was that the Commission's Order gave it a depreciation allowance for a vessel and dock, which thereafter became fully depreciated, and revenues collected thereafter went to the regulated utility's bottom line profit.

Response 1-21. The Division cannot confirm why or why not the prior ferry operator did not seek rate relief between June of 1993 and September of 2014, when the Company ceased operations.

P1-22 Please state whether the Division agrees with the expert testimony provided by Danial (sic) Bebyn in Docket D-13-05 (sic) (entitled In Re: A & R Marine Corporation) to the effect

that if Prudence Ferry, Inc., made a rate filing at the Commission after having sold a fully depreciated dock the company would “be obligated to give that money back to the ratepayers.”

Response to 1-22. The Division could not locate the partial quote referenced in the question in the record of D-13-105 and could not therefore review the context in which the statement was made. In general, the Division agrees with the premise that if a utility asset is sold for a gain, the gain is amortized prospectively in the cost of service over some period.

P1-23 Please confirm that the Division’s understanding is that Prudence Ferry, Inc., after having sold fully depreciated assets that were included in its rate base, has relocated its business to Fall River, Massachusetts, and no longer is required to make a rate filing with the Commission in order to operate a ferry service to Prudence Island that originates from Massachusetts.

Response 1-23. The Division cannot confirm that assets sold were fully depreciated at the time of sale. The Division has no information as to the current operations of PFI. A ferry company operating between two states is not subject to the jurisdiction of the PUC or Division.

P1-24 Please confirm that the Division does not expect Prudence Ferry, Inc., to file a rate case with the Commission now that it is engaged in a business involving the potential interstate operation of a ferry to Prudence Island originating from Massachusetts.

Response 1-24. Prudence Ferry is no longer regulated by the Commission and no longer has a Certificate from the Division of Public Utilities and Carriers to operate a ferry service. Therefore we would not expect PFI to file a rate case.

P1-25 Please confirm that the Division’s grant of A & R Marine’s request for issuance of a Certificate of Public Convenience and Need was based in part on the company’s expert testimony that after its first year of operation it would require a rate increase of approximately six %.

Response 1-25. Division Order No. 21363 in D-13-105 speaks for itself. The grant of A & R’s request for issuance of a CPCN was based on a finding that the applicant met the two-prong requirements of demonstrating that it was fit, willing and able, and that public convenience and necessity required its operations.

P1-26 Please confirm that the Division agrees that Portsmouth provided direct assistance to the operation of A & R Marine’s ferry service by applying to the Coastal Resources Management Council for permits required to construct a ferry landing facility on Prudence Island, and that without such assistance from Portsmouth A & R would have had to incur substantial additional costs for acquisition or lease of other landing facilities on the island.

Response 1-26. Order No. 21363 in Docket D-13-105, Application by A&R Marine, states on the bottom of page 53, “Portsmouth has even spent \$18,000 conducting surveys on Prudence Island (near PFI’s dock) for the purpose of assisting the Applicant in locating a desirable area for

installing a new dock.” Regarding the second part of the question, the Division does not have first-hand knowledge of the cost A&R would have incurred absent Portsmouth’s assistance noted in the answer.

P1-27 Please confirm that A & R Marine’s request for rate relief is based on costs incurred after approximately only one year of operations.

Response 1-27. A&R commenced operations in September 2014. The test year in this case is the twelve months ended September 30, 2015, which approximates the first full year of operation. That test year has been adjusted and normalized to reflect ongoing operations.

P1-28 Please confirm that although Portsmouth uses the A & R Marine ferry every working day, year-round, it would not be eligible for the ferry discount plan proposed by A & R.

Response 1-28. The Division cannot confirm that Portsmouth uses the ferry every working day, but if Town personnel or vehicles were frequent users of the ferry service and therefore could reduce the effective cost of an average ticket through the use of the multiple ticket books for passengers and /or vehicles, the Division believes that would be appropriate, as frequent users support the ferry’s operations.

P1-29 Please confirm that a commuter pass discount rate would allow frequent users of the ferry such as Portsmouth to obtain the same discount that would be available to all passengers.

Response 1-29. The commuter pass discount tickets are non-transferable. To the extent that a particular municipal worker, and/or a particular municipal car, plans to travel frequently between Prudence Island and the mainland, then presumably said worker/car would qualify for the same discount available to all qualified passengers.

P1-30 Please confirm that the Division considers ferry service to Prudence Island to be a “lifeline” that is critical to the health, safety and welfare of the public.

Response 1-30. The Division acknowledges that the sole source of access to an island community by ferry constitutes a lifeline service.

P1-31 Please confirm that the Advocacy Section urged the Division to grant A & R Marine’s application for a CPCN after considering the expert testimony of Danial Bebyn with respect to the need for a rate increase of approximately 6 percent after the first year of operation.

Response 1-31. The Advocacy Section supported A & R’s certificate application for all the reasons detailed in the Division’s Order in Docket D-13-105 on pages 46-52: The Advocacy Section’s Final Position. A referenced potential 6% future rate increase was not listed in the Division’s Order as a reason the Advocacy Section supported the filing. The Advocacy Section believed the applicant was “fit, willing, and able”. The Advocacy Section was also concerned that the incumbent carrier, PFI, announced his intent to terminate his operation and that service

to the Island needed to be maintained. Please see the Order for a complete description of the position.

P1-32 Please confirm that the Division's Order granting a CPCN to A & R Marine described the potential need for a rate increase much larger than 6 percent if A & R operated in direct competition with the previous ferry service provider, but that A & R had no such direct competition in its first year of operations.

Response 1-32. Confirmed.

P1-33 Please confirm that the Division's Order granting a CPCN to A & R Marine contains a finding that A & R's owner believes he has the financial resources and business experience to provide a successful ferry service to Prudence Island, with or without the previous provider of ferry services competing with A \* (sic) & R Marine.

Response 1-33. Yes. See page 56 of Division Order No. 21363 in Docket D-13-105.

**Exhibit A**

**Privilege Log for A & R Marine Corp., d/b/a Prudence & Bay Islands Transport Rate  
Change Application, Docket No. 4586**

The Division of Public Utilities and Carriers objects to providing the following documents on the grounds that these documents contain work product, deliberative process and/or attorney-client privilege.

1.     Date:             10/12/13  
       From:            Terence Mercer, Associate Administrator, Motor Carriers Section - DPUC  
       To:               Steve Scialabba, Chief Accountant, DPUC  
       Item:             Memorandum  
       Subject:         Prudence Ferry, Inc., Investigation – Request for fiscal review and  
                          analysis re: itemized/summarized issues governing adequacy of service,  
                          propriety of asset sale and reasonableness of rate structure.
  
2.     Date:             3/24/14  
       From:            John Bell, Assistant to the Chief Accountant, DPUC  
       To:               Terence Mercer, Associate Administrator, Motor Carriers Section – DPUC  
       Item:             Memorandum  
       Subject:         Response to 10/12/13 Memorandum/Inquiry with summary of analysis,  
                          concerns, outstanding issues and recommendations.
  
3.     Date:             1/7/15, 1:48 PM  
       From:            Steve Scialabba, Chief Accountant, DPUC  
       To:               Leo Wold, Assistant Attorney General  
       Item:             Email  
       Subject:         Re Prudence Ferry, Inc., Sale of Assets and consultant services.

4.     Date:           1/21/15  
From:           Leo Wold, Assistant Attorney General  
To:             John Spirito, Chief of Legal Services, DPUC  
CC:             Steve Scialabba, Chief Accountant, DPUC  
Item:           Letter with Attachments  
Subject:        Cover letter referencing research materials for review, analysis and opinion.
5.     Date:           1/21/15, 4:14 p.m.  
From:           John Spirito, Chief of Legal Services, DPUC  
To:             Leo Wold, Assistant Attorney General  
Item:           Email  
Subject:        Acknowledgement of receipt of letter with attachments
6.     Date:           1/22/15, 1:07 PM  
From:           Leo Wold, Assistant Attorney General  
To:             John Spirito, Chief of Legal Services, DPUC  
CC:             Christy Hetherington, Special Assistant Attorney General  
                  Terence Mercer, Associate Administrator, Motor Carriers Section – DPUC  
                  Steve Scialabba, Chief Accountant, DPUC  
Item:           Email  
Subject:        Mr. Wold’s legal research, summary and analysis of the issues re: Prudence Ferry, Inc.

7.     Date:            2/19/15, 9:59 AM  
       From:            Dave Effron, Berkshire Consulting  
       To:              Leo Wold, Assistant Attorney General  
       Item:            Email  
       Subject:         Prudence Ferry reference to issues and timeline.
8.     Date:            2/23/15, 8:49 AM  
       From:            John Spirito, Chief of Legal Services, DPUC  
       To:              Leo Wold, Assistant Attorney General  
                          Steve Scialabba, Chief Accountant, DPUC  
       Item:            Email with forward  
       Subject:         Re: Prudence Ferry, Inc., impressions.