



June 19, 2020

To: Luly Massaro
Commission Clerk

From: Christy Hetherington, Esq.
Special Assistant Attorney General
On behalf of the Division of Public Utilities and Carriers

Re: Docket 5034, Interstate Navigation Company's Fast Ferry Rate Filing

Interstate Navigation Company's Request for Expedited Rate Relief and Waiver

On May 27, 2020, Interstate Navigation Company ("Interstate" or "Company") filed a rate change application with the Public Utilities Commission ("Commission") seeking an increase in passenger rates for its seasonal fast ferry¹ service between Point Judith and Block Island. Interstate cites the coronavirus pandemic as cause for the request. The filing seeks expedited approval for rates to become effective within thirty (30) days, with a waiver/exemption from suspension, hearing and investigation requirements provided in RIGL § 39-3-11 and § 39-3-12. Interstate published notice to the public of this proposed rate increase. As filed, Interstate also proposes to discontinue two discounted ticket types, the frequent user booklet and the volume discount. In support of its filing, Interstate provided direct testimony from David G. Bebyn, C.P.A, President of B & E Consulting, LLC. Mr. Bebyn explains that the coronavirus pandemic has necessitated that Interstate run its fast ferry at reduced passenger capacity.² Given this, the Company hopes the rate increase will enable its operations to remain economically viable with continued coverage of expenses such as fuel, crew, insurance, maintenance and repairs. Further, Mr. Bebyn explains that these rate adjustment measures are aimed at allowing the Company to continue making a profit, and that the profit will continue to be used to subsidize the traditional lifeline rates.³

¹ The fast ferry service is also referred to as "high speed" service.

² See Docket 5034, Bebyn's Direct Testimony filed May 27, 2020, at p. 3.

³ Id.

As explained in the filing, Interstate seeks to increase the fast ferry passenger rates as follows:

Type Ticket	Current Rates	Proposed Rates
Adult One Way	\$19.50	\$25.00
Adult Round Trip	\$37.00	\$50.00
Child One Way	\$12.75	\$15.00
Child Round Trip	\$21.50	\$30.00

Additionally, Interstate proposed in its filing to stop selling the frequent user booklet and to stop offering the volume discount.⁴ As explained in Interstate’s response to the Commission’s first set of data requests (PUC 1-1), the logistics of these discounted tickets are such that each ticket contained within a booklet, or sold to a group in advance, allows the passenger to show up at the dock without prior reservation or notice. Given the Company’s expectation that most fast ferry runs will be sold out through the advanced online reservation during the period of limited passenger capacity, Interstate hopes to avoid customer upset by discontinuing sale of these booklets, thereby limiting the likelihood of a customer appearing at the docks unable to board the fast ferry as anticipated. As further explained in its second set of data responses to the Commission (PUC 2-1, amended response), the Company indicates it will honor outstanding and unused frequent user tickets sold last year, provided that ticket holders present to the ticket window, subject to available capacity on the fast ferry; alternatively, the ticket holder may ride the traditional ferry, or wait until the next fast ferry run with availability. Notice will be provided to booklet holders of these changes on Interstate’s website and at the ticket booth. The Company states that there are no outstanding volume discount tickets.

The Division of Public Utilities and Carriers (“Division”), recognizes the nature of Interstate’s fast ferry as a purely discretionary service. Likewise, the Division acknowledges the regulatory history in which the Division has agreed, pursuant to the approved Settlement in Interstate’s 2006 General Rate Filing in Docket 3762, to accept (not object to) changes to Interstate’s fast ferry rates, terms and conditions, with thirty (30) days notice and without a comprehensive rate proceeding, except in “extraordinary circumstances.”⁵ After careful review of Interstate’s proposed rate increase, and

⁴ Interstate Navigation Company’s current tariff provides for a frequent user booklet rate of \$348.50 for ten (10) adult (ages twelve (12) and up) round-trip fast ferry rides, and \$200.00 for ten (10) child (ages five (5) to eleven (11)) round-trip fast ferry rides; the volume discount allows groups of twenty-five (25) or more to purchase adult round-trip tickets two (2) weeks or more in advance of travel on a date certain at a reduced ticket price.

⁵ See Section III.E. at p.10, Amended Settlement in Docket 3762, approved by the Public Utilities Commission by Order No. 18957 (issued 5/11/07); see also, Commission Order No. 22415 (issued 5/20/16) (approving Interstate Navigation Company’s last fast ferry rate increase and citing the Division of Public Utilities and Carriers’ deference to the terms of the 2006 settlement agreement with the Company).

its proposed discontinuance of the frequent user booklet and volume discount – paying careful attention to ensure that consumers are afforded reasonable notice of these changes with fair accommodation – the Division has no objection to Interstate’s new rates for effect in thirty (30) days without the requirements of a full rate case. Although the circumstances surrounding the coronavirus pandemic that has led to this rate filing are anything but ordinary, there are no extraordinary circumstances within this rate filing to cause the Division to object. Accordingly, the Division recommends that the Commission approve the revised rates as filed.

All this being said, although the instant rate request satisfies the criteria for an abbreviated and expedited proceeding, and the proposed new passenger rates, though high, are not objectionable per se given that the fast ferry services are purely discretionary, the Division cannot help but examine the underlying rate structure by which the fast ferry operates. To be sure, the fast ferry does not directly provide lifeline services to the isolated island community, and the Company historically has been allowed flexibility in setting its fast ferry rates, so long as these are not anti-competitive in nature.⁶ Nevertheless, because the fast ferry profits are directly allocated to subsidizing the lifeline service, the two services are inextricably linked. The Division supports measures that ensure the viability of the lifeline service so long as the subsidy rate mechanisms relied upon are not grounds to limit competitive services from entering the market. The following section provides the Division’s comments on the issue:

Comments Regarding Interstate Navigation Company’s Fast Ferry Rate Structure

The Commission has recognized in previous decisions that the Interstate Navigation Company (“Interstate”) and the Town of New Shoreham (“Town”) have strenuously objected to and actively labored against the introduction of any additional ferry services between Block Island and the mainland. This first came to the Commission’s attention in 1999, in Docket 2802, after the Commission concluded that Interstate’s and the Town’s participation in Island Hi-Speed Ferry’s (“IHSF”) initial rate case appeared more “about impeding IHSF from going into business, than about actually establishing just and reasonable rates for IHSF.”⁷ IHSF had just been approved by the Division to provide high-speed or “fast” ferry service to Block Island and was before the Commission seeking approval for its initial tariff. In Docket 2802, the Commission reached the following conclusion:

“...it became abundantly clear to the Commission that the Town and Interstate believed that they could keep their opposition to IHSF’s operating authority viable by arguing in support of the lowest rates possible for IHSF. This strategy, if successful, could permit the Town and Interstate to request that the Division reopen its docket for the purpose of revisiting the ‘cost

⁶ See Interstate Navigation Company’s reference to this concept in its Motion Seeking Expedited Approval, at p. 2.

⁷ See Order No. 15816, issued on March 31, 1999.

differential' issue, and perhaps convincing the Division that IHSF's operating certificate ought to be rescinded."⁸

In a subsequent decision in 2003, a docket opened to approve a form of regulation and set rates for IHSF, the Commission highlighted language from a Rhode Island Supreme Court decision, stemming from Interstate's and the Town's appeal of the Commission's decision in Docket 2802, wherein the Court made the following observation about the Commission's decision to permit Interstate and the Town to intervene in IHSF's rate case:

In light of the Commission's concern about the intervenors' motives, and in light of the precarious position in which Hi-Speed was placed by having to defend against its competitor before the Division and again before the Commission, the wisdom and appropriateness of the interventions in this case was questionable.⁹

The Commission taking guidance from the Court's comments about allowing Interstate and the Town to intervene in IHSF's rate case and based on its learning experience from Docket 2802, denied party status to Interstate and the Town. In support of its decision to deny Interstate's motion to intervene, the Commission held that it "does not require Interstate's participation in order to make a reasoned decision about an appropriate form of regulation for IHSF, nor does the Commission require Interstate's participation to ensure that it will set just and reasonable rates for IHSF that do not result in unfair competition or discrimination." With respect to the Town's motion to intervene, after rejecting the Town's argument that it had a statutory right to intervene, the Commission cited the Town's hostile stance against IHSF's authority to operate in Docket 2802 as a reason for denying intervention in this case.¹⁰ The Town was similarly denied party status by the Commission the following year in a new docket filing by IHSF seeking a revision in its rates.¹¹

Notably, after IHSF appeared as a potential competitor to Interstate, Interstate attempted to unilaterally add a high-speed ferry to its fleet operations to further impede IHSF's entry into the market. The Division's denial of this attempt by Interstate to circumvent the regulatory licensing process was later affirmed by the Rhode Island Supreme Court. In its decision, the Court held that it was proper for the Division to classify high-speed ferry services as distinguishable from traditional ferry services for licensing purposes. The Court held that before Interstate could

⁸ Id. The Commission noted in a footnote that "according to the Division's report and order... the Division determined that Interstate and IHSF could co-exist and remain financially strong if a sufficiently large 'round-trip cost differential between Interstate and Hi-Speed (\$13.00 vs. \$26.00) were established."

⁹ See Order No. 17452, issued in Docket 3495, on May 9, 2003, citing In re Island Hi-Speed Ferry, 746 A.2d at 1246.

¹⁰ Id.

¹¹ See Order No. 17819, issued in Docket 3599, on May 5, 2004.

provide high-speed ferry services of its own it was required to demonstrate to the Division that its proposed high-speed ferry operation “would benefit public convenience and necessity....”¹²

Ultimately, the Commission was able to establish a form of regulation for IHSF’s high-speed ferry services. But rather than treating the high-speed service as a traditional utility by fixing a specific rate accompanied by a revenue cap, the Commission decided to differentiate the seasonal discretionary high-speed services provided by IHSF from the slower-speed year-round “lifeline” services provided by Interstate by limiting the regulation of IHSF’s rates to only a “price floor.”¹³ In its reasoning, the Commission compared IHSF’s discretionary service to a “competitive local exchange carrier (“CLEC”) in the telecommunications sector because consumers have the discretion to choose a CLEC service.”¹⁴

Throughout the aforementioned dockets, it became clear to the Commission that Interstate and the Town, for apparently different reasons, were unwaveringly against the introduction of any new ferry competition between the Rhode Island mainland and Block Island. Further, with respect to the high-speed services that were originally offered by IHSF, before it sold its ferry business to Interstate, the Commission recognized that high-speed ferry service to Block Island was purely discretionary and therefore not subject to traditional rate regulation. Instead, the Commission likened such services to the competitive services offered from CLECs. This rate treatment still exists for Interstate’s present high-speed ferry services to Block Island. But the Division feels that such rate treatment for Interstate’s high-speed services may no longer be in the broader public interest; perhaps the time has come to reevaluate this CLEC-type rate treatment for Interstate’s high-speed ferry operations.

In support of this concern, the Division must call attention to Interstate’s and the Town’s actions in Division Docket D-13-51. This docket was established in July 2013 in response to an application filing by Rhode Island Fast Ferry, Inc (“RIFF”) seeking authority to operate as a seasonal “fast ferry” water carrier of passengers between Quonset Point, North Kingstown and Old Harbor, New Shoreham. Not unexpectedly, Interstate and the Town opposed the introduction of this new ferry service to Block Island. This persistent opposition resulted in significant delays to the adjudication of RIFF’s application, which was granted on September 22, 2016, and is now directed to efforts in Superior Court to overturn the Division’s finding that the introduction of RIFF’s fast ferry service would satisfy a presently unmet public need.

The major argument being used by Interstate and the Town in their opposition to RIFF’s planned services is that RIFF’s high-speed ferry services will invariably siphon-off ridership from Interstate’s high-speed ferry, and because Interstate’s high-speed ferry shares its profits (under a Commission-approved revenue sharing rate structure) with its sister lifeline ferry services, the resulting competition will degrade lifeline service between Block Island and the mainland. Interstate and the Town insist that if RIFF is successful in getting its boat in the water, lifeline

¹² Interstate Navigation Company v. Division of Public Utilities and Carriers, 824 A.2d 1282 (R.I. 2003).

¹³ See Order No. 17619, issued in Docket 3495, on November 25, 2003.

¹⁴ Id.

services will need to be scaled back and/or lifeline rates will have to be dramatically increased. Interstate pled, “[I]f the [RIFF’s license to operate] is granted, Block Island’s 80 year old ‘bridge’ to the mainland could collapse.”¹⁵ The Division has rejected this argument as flawed in its lack of empirical support and based on a finding that the public’s need for RIFF’s proposed services is of paramount importance.¹⁶

The Division raises this issue and concern now so that the Commission is made aware that the CLEC-type rate treatment for Interstate’s high-speed ferry service now before you comes with implications for pending and potentially future competitive high-speed ferry services to Block Island. When IHSF was providing such high-speed services, the choice for ratepayers was a choice between IHSF’s more expensive high-speed ferry and Interstate’s less expensive slow-speed lifeline ferry. That choice no longer exists. Today, Interstate controls both modes of ferry services and is back, with the Town, advocating for monopolistic control over non-lifeline ferry services.

Accordingly, the Division raises this issue to allow the Commission to weigh in on this anti-competitive practice by Interstate and the Town of basing their opposition to any competition by relying on the revenue-sharing CLEC-style rate structure presently in place for Interstate’s high-speed ferry operations. Although the Division does not object to the rate increase proposal currently before the Commission, the Division believes the public interest would benefit from the Commission’s thoughts on the subject raised herein and/or to decide whether the time has come to consider a different approach to setting rates for Interstate’s high-speed ferry services.

¹⁵ See Interstate Navigation Company’s Motion for Intervention in Division Docket D-13-51, at p. 3. Interstate Navigation also argued that “[i]n a worst case scenario [were a competitive fast ferry service to enter the market and ‘skim the cream’ of Interstate’s business], Interstate’s rates could be forced so high that Interstate would be unable to recover its costs from declining traffic and could be forced to dramatically reduce service, lay off employees, sell vessels, etc.” Id.

¹⁶ See Order No. 22548, issued in Division Docket D-13-51, on September 22, 2016.