

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: INTERSTATE NAVIGATION COMPANY : DOCKET NO. D-05-06

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POST-HEARING MEMORANDUM  
OF INTERSTATE NAVIGATION COMPANY

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Respectfully submitted,  
Interstate Navigation Company  
By its attorney

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INTRODUCTION

Interstate Navigation Company d/b/a/ the Block Island Ferry (Interstate) ran a fast ferry (hydrofoil) service for about 2 ½ years from Point Judith to Old Harbor, Block Island in the early 1970's. However, since that time no fast ferry service has existed between Point Judith and Old Harbor. Moreover, to our knowledge, no fast ferry service has ever existed between Newport and Old Harbor.

Pursuant to RIGL § 39-3-3, Interstate is seeking Certificates of Public Convenience and Necessity (CPCN) to operate a fast ferry in the summer season between Point Judith, Old Harbor, and Newport. The fast ferry would make three runs a day from each location. The approximate 350 passenger fast ferry would also be capable of carrying about 6 cars or a small amount of freight. The freight deck would also be large enough to accommodate Block Island's ambulance. To obtain the CPCN, Interstate must demonstrate that the public convenience and necessity requires the proposed service, and that Interstate is fit, willing, and able to provide the service.

In 2001, Island Hi-Speed Ferry, LLC (IHSF) commenced fast ferry (catamaran) service between Point Judith and New Harbor, Block Island. New Harbor and Old Harbor, as found by this Division in Docket 98-MC-16, are located on "different side[s] of the Island" (order, at 34). As this Division stated in that order, "although New Harbor and Old Harbor are separated by less than 1 ½ miles, the evidence suggests that to the average visitor with no car and no bicycle, the two harbors

are worlds apart” (at 34). The Division quoted with approval the following testimony of IHSF’s witness, Lawrence Kunkel:

“Q: Well, the location between New Harbor and Old Harbor is only about a mile and a quarter away, correct?”

A: To people that travel to Block Island, that is probably the equivalent of 20 miles.”  
(at 34)

On September 17, 1999, at the request of IHSF, this Division gave IHSF a three-year head start on fast ferry service to Block Island. The Division prohibited Interstate from entering the fast ferry market from May 1, 2000 through April 30, 2003. The three-year moratorium was enacted “during the infancy” of the fast ferry market (order, at 19). That moratorium period has now expired. IHSF has run continuously every summer from 2001, and if this CPCN request is granted, Interstate would get its boat in the water in 2006 at the earliest. As a result, IHSF will have a minimum five-year head start on establishing fast ferry service to Block Island.

IHSF continues its current six-run per-day operation from Point Judith, whereas Interstate is proposing to have only three runs per day from Point Judith. The other three runs would be from Newport. In addition, only one of Interstate’s runs from Point Judith would be at peak travel times. Interstate’s 7:45 a.m. run and its 5:00 p.m. run will carry very few passengers. Only Interstate’s 11:50 a.m. run would be during the peak travel periods. IHSF, however, will continue to run at 8:00 a.m., 10:00 a.m., 12:00 p.m., 2:00 p.m., 5:30 p.m., and 7:30 p.m. (see Interstate Exhibit 9).

Interstate is proposing to serve three separate and distinct fast ferry markets. The first market is the Point Judith to Old Harbor service that will focus on Interstate’s existing passengers. A survey of Interstate’s passengers, prepared by tourism economist Dr. Timothy Tyrrell, has established that there is significant demand among Interstate’s existing passengers for this service. Approximately 39% of Interstate’s surveyed customers responded that at a \$30 round trip rate, they

would switch from Interstate's conventional ferry to Interstate's fast ferry from Point Judith to Block Island. Interstate will target its own passengers in developing this service.

Interstate wants to meet this expressed need of its customers. In doing so, Interstate has projected a profit of almost \$500,000 per-year, 100% of which Interstate's owners have pledged will be put back into the company to benefit the lifeline service and its ratepayers. This will keep rates low as possible, and will reduce future rate increases caused by the steady and continuing loss of passengers on the lifeline service since 2001 to IHSF, Block Island Express (the New London fast ferry), and the Quonset Point to Martha's Vineyard fast ferry, as testified to by Interstate and by Dr. John Stutz, the Advocacy Section's witness.

Moreover, Interstate's owners have committed that they will absorb any losses which may occur if Interstate's profit projections turn out to be inaccurate. Therefore, no losses will be passed through to Interstate's ratepayers. Accordingly, this is a no-lose proposition for Interstate's ratepayers. They will get the full benefit of any profits, and they will not run the risk of any losses.

The second market that will be served by Interstate is a brand new market that has never been served before. This will give people living on or visiting Block Island in the summer the opportunity to leave Block Island at three different times of the day and go over to Newport for the day or a portion of the day and return the same day.

The third market addressed by this application is the expansion of the virtually dormant Newport to Block Island market. Newport is heavily attended by over 3 million tourists per year. It is a wonderful tourist destination, and many of those tourists want to travel from Newport to Block Island. However, such a trip currently involves spending four hours on the open ocean, and involves a commitment of an entire day. Interstate believes that reducing the two-hour ride each way to only 50 minutes each way, and increasing the number of daily runs from one to three, will

entice many tourists from Newport to travel to Block Island. In fact, about 80% of those people that responded to Interstate's survey said they would take Interstate's fast ferry, even at twice the current rate.

Interstate is proposing the same type of rate floor form of regulation (which will, of course, have to be approved by the Public Utilities Commission) that the Commission has approved for IHSF. In order to protect IHSF, Interstate has agreed that it will not run its Point Judith service at less than the rates offered by IHSF for its fast ferry service from Point Judith to New Harbor.

The Division's Advocacy Section witness (Dr. John Stutz) and every other witness who testified in this case (with the exception of Mr. Kunkel and an engineer for IHSF), supported this application. Every witness who was asked (including Frederick Nolan, the operations manager for IHSF, and Dr. Stutz), testified that Interstate is fit, willing, and able to operate this proposed service. Every witness who was asked, including Mr. Nolan of IHSF and Dr. Stutz, (with the exception of Mr. Kunkel and the IHSF engineer), agreed that there is an expressed public need for the fast ferry services being proposed by Interstate. Finally, every witness who was asked, including Mr. Nolan of IHSF and Dr. Stutz, (with the exception of Mr. Kunkel and the IHSF engineer), agreed that Interstate's proposed service and IHSF could coexist, provided a "level playing field" was established between the two entities. Interstate is agreeable to establishing such a level playing field, and has, in fact, proposed a schedule that allows IHSF an advantage because IHSF will continue to run its six runs per-day from Point Judith (with two runs during the peak period), whereas Interstate will run only three runs per-day and only one run in the peak period. Interstate has agreed not to change this schedule without Division approval.

Fast ferry service is exploding, not only throughout the Northeast, but throughout the world. Currently, Interstate is stuck in the slow lane. Fast ferry services are drawing customers away from

Interstate and the lifeline service is suffering. Interstate's lifeline rates increased by 20% in 2004, primarily due to loss of summer tourists. In today's environment, people want speed in every aspect of their life, and they are willing to pay for that speed, whether it be speedier internet access or speedier ferry service. Those who are willing to pay higher rates for fast travel will benefit Interstate's lifeline service by keeping rates down. As demonstrated by the summary of the supporting evidence, Interstate has shown that Interstate's proposal is required by the public convenience and necessity and that Interstate is fit, willing, and able to provide the proposed service. We therefore respectfully request that the CPCN be approved.

#### STANDARD OF REVIEW

1. **PUBLIC INTEREST IS IN THE TOUCHSTONE IN THE CPCN ANALYSIS.** The dominant purpose animating the pertinent part of Title 39 is evident: "to provide fair regulation of public utilities and carriers in the interest of the public . . . ." R.I.G.L. § 39-1-1(b) (emphasis added). This public interest principle informs any public convenience and necessity analysis, too. See, e.g., Breen v. Division of Public Utilities, 59 R.I. 134, 135, 194 A. 719, 720 (1937); Abbott v. Public Utilities Commission, 48 R.I. 196, 197-98, 136 A. 490, 491 (1927). The public convenience and necessity inquest, however, is not a narrow test capable of mechanical application. Rather, it is a multi-dimensional inquiry, requiring the Division to weigh and consider a mix of elements in championing the public interest. See, e.g., Breen, 59 R.I. at 135, 194 A. at 720; Abbott, 48 R.I. at 197-98, 136 A. at 491; see also In re Island Hi-Speed Ferry, LLC, Division Docket No. 98 MC 16, slip op. at 8 (Aug. 25, 1998) (emphasizing that "[t]he issue of public convenience and necessity is complex, and many factors must be taken into consideration," adding that "[o]f utmost importance is that it be considered in the context of the public interest").

The phrase "public convenience and necessity" generally lacks a "well defined and precise meaning." Abbott, 48 R.I. at 197, 136 A. at 491. But the Division is duty-bound to hew to the

following precepts: "Public convenience" means "something fitting or suited to the public need." Id. at 198, 136 A. at 491 (emphasis added). Additionally, "necessity" is not used in its lexicographical sense of indispensably requisite, for if it were, no CPCN would ever issue. See id. Instead, "necessity" means "reasonably requisite." Id. (emphasis added). So "necessity" is relative rather than absolute. See id. And it has different shades of meaning in different contexts. See id.

In Abbott, the Court proclaimed that the agency should ponder:

"the existing means of transportation, as to its substantial character and its probable permanence, also the investment of capital made by the owners of such existing means, the nature of the service that is being rendered and, if such service is adequate, what will be the probable effect of admitting competition into a field now adequately served, and what effect such competition will probably have upon the receipts of existing lines of transportation, and as to whether, in the face of further competition, the adequacy of the existing service will be continued." Id. at 198-99, 136 A. at 492.

But the Court later dramatically recalibrated the public convenience and necessity calculus, declaring that protecting existing carriers from competition is not the dominant consideration in a CPCN examination. See, e.g., Breen, 59 R.I. at 134, 194 A. at 720; Yellow Cab Co. v. Public Utility Hearing Board, 73 R.I. 217, 225, 54 A.2d 28, 33 (1947). Existing carriers have no "legal right" to maintain a monopolistic stranglehold on "the services rendered." Interstate Navigation Co. d/b/a Block Island Ferry v. Division of Public Utilities and Carriers of the State of Rhode Island, C.A. Nos. 98-4804 & 98-4766, slip op. at 9 (R.I. Super. Ct. Aug. 31, 1999) [Interstate] (discussing Yellow Cab Co.). So "protecting existing investments . . . from even wasteful competition must be treated as secondary to the first and most fundamental obligation of securing adequate service for the public." Breen, 59 R.I. at 135, 194 A. at 720 (quotations omitted & emphasis added). Ultimately, "[i]f the totality of the evidence demonstrates that the Applicant's service would be beneficial to the public interest, even after weighing the impact on existing carriers," the Division

will grant the CPCN. In re Island Hi-Speed Ferry, LLC, Docket No. 98 MC 16, slip op. at 12. (emphasis added)

The Division's approach in granting IHSF a CPCN is instructive. For nearly 70 years Interstate has been Block Island's "lifeline," ferrying voyagers and cargo (food, fuel, medicine, building materials, and other necessities) to and from the mainland. Interstate's summer-passenger service (relied on by tourists) runs at only 20% capacity. But its summer-tourist business heavily subsidizes its year-round freight and local-passenger lifeline endeavors. Of course, Interstate has done all this as a fully regulated utility: under the watchful eye of the Public Utilities Commission, Interstate can only charge its customers fair and reasonable rates and receive a fixed return on equity, both set by the PUC.

Enter IHSF, which petitioned the Division for a summer-only/passenger-only CPCN in 1998. Interstate and the Town of New Shoreham produced substantial evidence that IHSF's venture would pick off Interstate's summertime tourists, jeopardizing Interstate's ability to deliver its crucial year-round lifeline services. However, after discussing the Abbott/Breen line of cases, the Division ruled:

“That the general public should be denied the opportunity to avail itself of the Applicant's service in order to insulate Interstate Navigation from all risk of revenue erosion is a concept that the Division cannot embrace, especially given the current trends toward competition and the increasing availability of consumer choice in numerous industries subject to regulation by both the Division and the Commission.” In re Island Hi-Speed Ferry, LLC, Docket No. 98 MC 16, slip op. at 36. (emphasis added)

So the Division issued IHSF its CPCN. Clearly, "competition" and "consumer choice" are now the Division's watchwords.

2. **THE ICC PARADIGM DOES NOT CHANGE THIS APPROACH.** The Hearing Officer has suggested to the parties that there may be ICC cases limiting the Division's consideration of the

"interaction/competition between different modes of transportation services" in deciding "whether the public needs" Interstate's proposed fast ferry service.<sup>1</sup>

Based on its recent email, IHSF apparently contends that the ICC's decision in Pan American Bus Lines Operation, 1 M.C.C. 190 (1936) [Pan American], and its progeny, The Short Line, Inc. v. United States, 290 F. Supp. 939 (D.R.I. 1968) [Short Line], do just that. As will be seen, however, the ICC paradigm does no such thing.

Neither Pan American nor Short Line address the issue raised by the Hearing Officer in his email to the parties concerning what role the "interaction/competition" between disparate transportation services has in the CPCN equation. Pan American announced a tripartite test for granting a CPCN based on the statutory requirements of the 1935 federal Motor Carrier Act.<sup>2</sup> But those statutory requirements are not identical to Rhode Island's current statutory requirements. In fact, 53 Stat. 899 provided in part that "regulation of modes of transportation" shall be "so administered as to recognize and preserve the inherent advantages of each..." There is no such requirement in Rhode Island law (see e.g. RIGL § 39-1-1), and this protectionist federal declaration

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<sup>1</sup> Recently, the Rhode Island Supreme Court mentioned that a high-speed ferry "requires different equipment, it provides faster service and it operates on the water in an entirely different way than a standard ferry does." Interstate Navigation Co. v. Division of Public Utilities and Carriers of the State of Rhode Island, 824 A.2d 1282, 1288 (R.I. 2003) (adding that "[b]ecause Interstate's original CPCN did not and could not have contemplated the new, high-speed technology, Interstate's use of such a substantially different service would be a material alteration of the scope specified in its original CPCN"). But what is "high" speed? Consider the following: IHSF initially proposed a catamaran that only traveled about 26-28 knots (30-32 mph). The high-speed hydrofoil Interstate used in the 1970s traveled in excess of 26 knots (30 mph). Interstate's latest monohull vessel makes about 18 knots (about 21 mph). The speed of IHSF's "new" catamaran is about 33 knots (about 38 mph). Some new-generation monohull vessels can reach speeds of 47 knots (54 mph) or more. New catamarans and trimarans can travel over 60 knots (69 mph). So, is "high" speed defined subjectively in relation to the boat speed of whatever vessel IHSF puts in the water? Or is it defined objectively by reference to evolving technology and the fastest high-speed boat currently available? The Court did not say.

<sup>2</sup> The Pan American test was "[1] whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; [2] whether this purpose can and will be served as well by existing lines or carriers; and [3] whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest." 1 M.C.C. at 203.

of policy was later changed, giving way to a policy of encouraging competition, when Congress passed the 1980 Motor Carrier Act, as discussed below.

Moreover, the Pan American test, which the ICC decreed "is not to be regarded as controlling upon future cases, except to the extent that circumstances in all respects similar are present," id. at 209 (emphasis added), provides no instruction at all for resolving the disparate-transportation question. More importantly, this ICC test does not fit within well-established Rhode Island law: Pan American and old federal law placed importance on protecting existing ventures from competition. Rhode Island makes this only a secondary consideration. See, e.g., Breen, 59 R.I. at 135, 194 A. at 720; In re Island Hi-Speed Ferry, LLC, Docket No. 98 MC 16, slip op. at 36. Pan American and old federal law also assigned controlling force to an existing carrier's capacity to meet the proposed public need. Rhode Island does not. See In re Island Hi-Speed Ferry, LLC, Docket No. 98 MC 16, slip op. at 43 (rejecting Interstate's claim that it should be given first crack at running a high-speed ferry "to the Island, assuming that the Division were inclined to grant a license to [IHSF]"); accord Interstate, C.A. Nos. 98-4804 & 98-4766, slip op. at 9 (discussing Yellow Cab Co.).

There is another important reason why the Pan American-like cases do not change the standard of review just described. Before laying the ICC to rest in 1996, see ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, Congress resolved to encourage competition and efficient transportation in the motor carrier industry by modifying the standards used by the ICC. The 1980 Motor Carrier Act changed the ICC's routine, altering the public convenience and necessity test by reducing the evidentiary requirements on applicants for a CPCN and increasing the burden of proof on protesting parties. Under this regime, an applicant need only make "a *prima facie* showing that the proposed service would serve a useful public purpose." See Motor Carrier Act of 1980, Report of the House of Representatives Committee on Public Works and Transportation, H.R. Rep. No. 1069, 96th Cong., 2d Sess. 2 (1980), reprinted in 1980 U.S.C.C.A.N. 2283, 2284 (emphasis added). After that, the protestant had to show that the proposed service "is inconsistent with public convenience and necessity." Id. These amendments ushered in a new era

of competition and greater consumer choice, with the ICC no longer working to limit the number of carriers. And nothing in these amendments would compel the Division to disregard the public interest impact Interstate's fast ferry will have on its traditional ferry service. If anything, the pro-competition nature of these amendments (typified by the lessening of applicant's the burden of proof) would tip the scales in Interstate's favor.

3. **IN DECIDING THE CPCN ISSUE, RHODE ISLAND PRECEDENT PERMITS THE DIVISION TO CONSIDER THE PUBLIC-INTEREST EFFECT INTERSTATE'S PROPOSED FAST FERRY SERVICE WILL HAVE ON THE LIFELINE SERVICES.** In

Rhode Island, the Division regularly weighs the interaction/competition between different services in conducting its public convenience and necessity analysis. After all, in granting IHSF its CPCN, the Division pondered the interaction/competition between Interstate's traditional ferry service and IHSF's proposed high-speed ferry service. See, e.g., In re Island Hi-Speed Ferry, LLC, Docket No. 98 MC 16, slip op. at 12-31. The Division also analyzed these ferry services against "the airline services out of Westerly, Rhode Island." Id. at 22. And the public interest (competition, more diverse services at economical rates, greater choices for the consumer, *etc.*), not protecting competing business interests, drove the Division.

Complying with these precedents, the Division ought to issue Interstate its requested CPCN. The presentation of evidence set forth below proves that Interstate's running of a fast ferry meets the public interest test. To summarize succinctly, it is unchallenged that an Interstate fast ferry will turn about a \$500,000 profit (assuming the PUC agrees again with Dr. Stutz and adopts Interstate's proposed rate floor). Interstate's owners have pledged to pour all of that profit into the lifeline ferry service to control rates on its conventional ferry service for the benefit of its ratepayers. Interstate's owners have also promised to absorb any losses associated with its fast ferry service. They will not pass the losses on to the rate-paying public.

Ultimately, the push for "competition" and "consumer choice" trumpeted by the Division in giving IHSF its CPCN points unerringly to Interstate's satisfying the public interest test, too. And,

following the decisional law set forth above, any of the IHSF-imagined adverse economic consequences it surmises might befall its services (surmisal debunked during the hearing) is trumped by public need. See, e.g., Breen, 59 R.I. at 135, 194 A. at 720; In re Island Hi-Speed Ferry, LLC, Docket No. 98 MC 16, slip op. at 36. Interstate is therefore entitled to the CPCN it seeks.

### SUMMARY OF SUPPORTING EVIDENCE

1. **APPLICATION FOR CPCN.** On December 6, 2004, Interstate submitted a CPCN application (Interstate Exhibit 1) for authority to operate a passenger and freight high-speed water vessel (ferry) between (1) Point Judith and Old Harbor, Block Island and (2) between Newport and Old Harbor, Block Island (at 3). Interstate noted in its application that it currently holds three CPCN's for conventional passenger and freight ferry transportation between (1) Point Judith and Block Island, (2) Newport and Block Island, and (3) Newport and Point Judith, which were all issued in 1954 (at 4). Interstate is proposing to operate a new INCAT designed fast ferry to be built by Gladding-Hearn Shipbuilding. The vessel would be about 30 meters (about 125 feet) long and would carry approximately 350 passengers and about 6 vehicles. It would have 4 engines and water jets, a ride control system, and would travel at about 30-31 knots (about 35 miles per hour) (at 4).

Interstate has been operating passenger, vehicle and freight ferries since the early 1930's in various locations in the Northeast, but now operates only in Rhode Island (at 4-5). Interstate currently operates a passenger vehicle and freight "lifeline" ferry year-round between Point Judith and Block Island, and also operates a summer passenger ferry from Newport to Block Island (at 4-5). Interstate had \$2,197,477 of cash on hand as of May 31, 2004. The new vessel would cost about \$6,000,000. The total value of Interstate's investments as of May 31, 2004, was \$16,353,541.

2. **TIMOTHY TYRRELL, Ph.D.** Dr. Tyrrell, Tourism Economics Professor at the University of Rhode Island, submitted expert testimony in support of Interstate's application (Interstate Exhibit 5). Dr. Tyrrell has been studying the tourism industry in Rhode Island since 1980 (at 1). His attached resume identifies him as a "tourism economist" (Exhibit A). He has provided consulting services to various public and private entities and has conducted tourism research studies in Rhode Island and throughout the world. He developed a tourism industry monitoring program in Rhode Island and other states. Dr. Tyrrell developed and has maintained Rhode Island's state tourism database since 1983 for the Rhode Island Economic Development Corporation and the Governor's Office. Dr. Tyrrell has performed economic impact analyses of tourism for Block Island and the City of Newport. He has served as an advisor/consultant to many governmental entities, including the Governor's Advisory Council on Tourism. He has published many articles, papers, and reports, including two Block Island tourism studies for the Department of Environmental and Natural Resource Economics Office of Travel, Tourism, and Recreation at the URI. He received the Governor's Award from the State of Rhode Island. He teaches various courses in tourism economics at URI.

Dr. Tyrrell was utilized as an expert witness by IHSF in Docket 98-MC-16 when IHSF received its CPCN. Dr. Tyrrell was qualified as an expert on tourism in that Docket (at 1). Dr. Tyrrell was not compensated for the survey work that he performed for Interstate (at 1). During the summer of 2004, Dr. Tyrrell worked with Interstate to design a passenger survey for Interstate: "to determine the interest of Interstate Navigation Company's current passengers in having a high speed ferry alternative from the same company." (at 1)

Dr. Tyrrell made sure that:

“the questionnaire was written according to best current practices in order to obtain an unbiased estimate of the percentage of Interstate Navigation Company’s ridership that would switch to a high speed alternative if offered by Interstate Navigation Company.” (at 2).

Dr. Tyrrell concluded that “Interstate’s survey procedures were reliable and unbiased.” (at 2)

In addition, Dr. Tyrrell expressed the expert opinion that:

“the results reported to me by Interstate Navigation Company, which are that from 35% to 43% of Interstate’s current passengers would switch to a high speed ferry alternative if Interstate offered one, in my opinion, are both reliable and conservative figures.” (at 2)

Dr. Tyrrell’s testimony was unchallenged.

3. **SUSAN E. LINDA.** Susan E. Linda is President of Interstate. Her prefiled testimony is Interstate Exhibit 2. She testified that when IHSF sought its CPCN for a fast ferry, she thought there was no public need for fast ferry travel to Block Island that would cost about twice normal rates, but: “I was wrong. I did not realize how important speed has become to ferry customers, and how much they are willing to pay for it.” (at 4).

Mrs. Linda has seen the success of IHSF, the new Block Island Express fast ferry from Connecticut, and the new Quonset to Martha’s Vineyard fast ferry, “and I now believe that the future of the ferry business is in providing fast ferry service.” (at 4) She wanted to determine “if our current customer base would be interested in having Interstate provide fast ferry service between Point Judith, Newport, and Block Island (Old Harbor) at about twice the conventional rate.” (at 4-5) Mrs. Linda “enlisted the help of Timothy Tyrrell, Ph.D., an economist at URI and a tourism expert, to draw up a survey of our customers.” (at 5) Mrs. Linda testified that:

“I was surprised that 35% of the responders (representing 43% of passengers surveyed because of the size of groups the responder was traveling with) traveling from Point Judith to Block Island (Old Harbor), and 73% of the responders (representing 86% of passengers surveyed) travelling from Newport to Block Island, said that they would have taken a fast ferry (at about double the rate) if Interstate had

made one available. The Point Judith customers surveyed were Interstate customers who had chosen not to travel on IHSF's fast ferry." (at 5)

Those statistics were given to Walter Edge CPA, and "he calculated that a fast ferry service would be immediately financially successful and in fact would help keep the life line rates down." (at 5) In the over 40 years she has been in the ferry business, Mrs. Linda has become aware of prospective customers that would like to travel to Old Harbor, Block Island, but because of seasickness issues, have avoided the trip (at 5). A fast ferry would result in less time on the open seas, and the special stabilizing (ride control) design of the fast ferry would provide a smoother and quieter ride, resulting in less motion sickness, which would encourage people who previously avoided going to Old Harbor to try the new fast ferry service (at 5-6).

Mrs. Linda also testified that:

"The addition of a small car/freight deck on the fast ferry will allow better service to those customers that can afford to take their car on the fast ferry at more than double the price. Six percent (6%) of those surveyed said they would take their cars on an Interstate fast ferry at a rate of \$200 round-trip. While this percentage seems low, at a \$200 rate, this represents significant revenue. This car deck will also provide fast transportation for ambulances, homeland security activities, and the quick delivery of essential parts and supplies for key island businesses such as the power company, water company, and sewer company." (at 6)

Mrs. Linda testified that Interstate is fit, willing, and able to provide the proposed service because Interstate has been continuously running a ferry business to Block Island for over 60 years and has the financial capability to borrow the monies needed to build the fast ferry, as well as the management needed to operate a successful service (at 7).

Although Mrs. Linda testified that she thought the ferry would be immediately profitable, she said that if the new operation was not profitable, then she had three options to insulate the ratepayers from any losses. The first would be to cover the losses from the stockholders' retained earnings (at 8). The second would be to charter the fast ferry (at 8). The third would be to sell the

fast ferry (at 8). The proposed shipbuilder, Gladding-Hearn Shipbuilding, informed her that vessels of this type and size can be chartered for in excess of \$30,000 per-month and that INCAT fast ferries in the United States “have sold for about 8% more than the price at which they were purchased, even though the vessels had been used for a number of years.” (at 8)

There are 1900 fast ferries worldwide, and there are at least 12 high-speed ferries currently operating in nearby Rhode Island, Connecticut, and Massachusetts (at 9 and Exhibit SL2). Mrs. Linda admitted that “Interstate was late in recognizing this quickly developing trend” for fast ferries (at 9), but that “in order to retain our customers so that our lifeline rates are not driven out of sight, we need to service the expressed need of our customers for fast ferry travel.” (at 9).

She also testified that:

“An important point to recognize is that for each of Interstate’s existing customers that takes our new fast ferry instead of our conventional ferries, that is the equivalent of adding a new customer to our customer base because the rate would be approximately twice the current rate. This is a method that we can use to increase our revenues by simply servicing our existing customers’ needs.” (at 9-10)

Mrs. Linda believes that “our service and IHSF can coexist.” (at 10) IHSF runs to New Harbor, but Interstate’s fast ferry would run to Old Harbor (at 10). Interstate will market its fast ferry “to our existing customers and to open new markets” (at 10). She explained:

“As shown by the survey that we conducted, many of our existing customers who have already made the choice to travel with Interstate and have rejected IHSF would prefer to travel with us by fast ferry to Old Harbor, even at twice the fare. The number is quite significant. These are the customers that we primarily intend to service with this fast ferry. ...we will not be attempting to market ourselves to IHSF’s well-established customer base.” (at 10)

There is no fast ferry service to Old Harbor from either Point Judith or Newport. Interstate’s customers “have expressed a significant desire to have such a service in place, and we are prepared to provide that service” (at 10). The current once per-day slow ferry from Newport to Block Island

takes 2 hours each way. It would be replaced with three high-speed ferry trips per day that would only take about 50 minutes:

“Newport is a wonderful tourist destination, and if we provided a high speed ferry vessel that could get from Newport to Block Island in less than an hour, that rode in a fast, comfortable fashion, and provided two or three trip options per day coming and going, we believe we would expand our Newport to Block Island market.” (at 11)

Mrs. Linda also explained that:

“There is a completely untapped market of those who vacation on Block Island for a week or two. They could now travel by high speed ferry to Newport for the day and return. They could shop, have lunch, see the mansions, etc., and return to Block Island all in the same day in a short, comfortable 50-minute trip. Currently, that is not possible. We believe this is a significant untapped market that would be opened for the first time.” (at 12)

Mrs. Linda is already in discussions with her lender regarding financing for the new boat.

This is the same lender that financed the \$8,000,000 construction of the M/V *Block Island* for Interstate and the \$3,000,000 reconstruction of the M/V *Carol Jean*, as well as \$3,100,000 for the recent acquisition of the M/V *Anna C.* Interstate was:

“particularly hard hit this summer when Block Island Express started fast ferry operations from New London and picked upon customers coming from the south that would normally travel to Point Judith. ...[I]n order to stop the loss of summer tourist passenger traffic and stop the increase in our rates to lifeline customers due to this loss...we need to hold on to our remaining summer tourist passengers and address their clearly expressed interest in a fast ferry to Old Harbor. Those passengers are willing to pay significantly more for the increased comfort and speed. We should take advantage of that and use the profits from the fast ferry service to reduce lifeline rates, or at least hold down increases in those rates.” (at 12-13)

Mrs. Linda was cross-examined on June 14, 2005. She testified that if the Division grants Interstate’s CPCN application as filed, “Interstate would not object to the Division’s eliminating the condition in Island Hi-Speed’s CPCN that it use New Harbor as its Block Island terminus” once Interstate gets its new boat in the water. (at 180)

4. **JOSHUA LINDA.** Mr. Linda, Vice President of Interstate, filed direct testimony (Exhibit 3) and rebuttal testimony (Exhibit 11). In his direct testimony, Mr. Linda testified that he has a Bachelor's Degree in Business Management, is a Coast Guard licensed captain, and has been working with Interstate for over 20 years in various capacities. He described the characteristics of the proposed fast ferry. It would be a passenger-vehicle catamaran ferry that would carry about 350 passengers and about 6 vehicles (at 2), and "stability would be greatly improved over our conventional vessel by the installation of an active trim tabs ride control system." (at 2) The ferry would have a top speed of about 30-31 knots fully loaded. This compares to IHSF's higher top speed of about 33 knots. Interstate's fastest conventional vessel, the *M/V Block Island*, has a top speed of about 18 knots (at 2). The estimated cost is about \$6 million (at 3-4). Estimated crew costs will be about \$6,000 per-week, plus taxes (at 3-4 and see Exhibit JL-1). Interstate plans to run three trips per day between Point Judith and Old Harbor (30 minutes) and three trips a day between Newport and Block Island (50 minutes). (see page 4 and Exhibit JL-2).

Mr. Linda believes that Interstate is fit, willing, and able to run this new operation. He has worked most of his adult life on Interstate's boats and his parents, Raymond and Susan Linda, have spent a combined 75 years working in the ferry business. (at 5) Mr. Linda believes the fast ferry service will be successful from day one for a number of reasons, including the fact that "the fast ferry business is the cutting edge of the ferry business worldwide. Ferry passengers have repeatedly expressed a strong preference for fast ferry travel instead of conventional travel, even if it means they must pay twice as much (or more) to utilize the fast ferry service." (at 5) In 2001, IHSF instituted its fast ferry service from Point Judith to New Harbor, and it was "an instant success and has continued to be a successful operation for the last four summers." (at 5) He also pointed out that one of IHSF's founders split from IHSF "and started a new fast ferry operation from Quonset

Point to Martha's Vineyard. Once again it was an instant success. In fact, I have been informed that within approximately a year of commencing operation, Mr. Donadio was able to go from leasing the high speed ferry vessel to purchasing it." (at 6)

In 2004, a fast ferry service was started from New London to Old Harbor (Block Island Express). It replaced Nelseco Navigation's conventional ferry. As Mr. Linda explained:

"In the summer of 2003, Nelseco Navigation only carried approximately 15,000 passengers from New London to Old Harbor. The trip took about 2 hours on the M/V *Anna C*. In 2004, Nelseco Navigation sold the M/V *Anna C* to Interstate and stopped providing service from New London. That service was provided in the summer of 2004 by Block Island Express using a single fast ferry. The fast ferry was an instant success and carried approximately 80,000 one-way (40,000 round-trip) passengers in its first year of operation." (at 6).

Mr. Linda also looked at the first year of operation (2004) for the new fast ferry from New Bedford to Martha's Vineyard. He explained that the route is very similar to Interstate's route because it has both a fast ferry and a conventional ferry run by the same company. The fast ferry was put on the run for the first time in the summer of 2004, and shortened the trip from two hours to one hour. Mr. Linda testified that:

"published reports show that 75% to 80% of the company's customers moved to the fast ferry instead of the traditional ferry in its first year of service, despite the increased ticket cost of almost twice the conventional rate. ...In fact, the fast ferry was so successful in its first year of service, that the New England Fast Ferry Company, which operates the run, has recently announced that it is building a second fast ferry so that in the summer of 2005, two fast ferries will be operating continuously all day." (at 7)

Mr. Linda testified that the Massachusetts Steamship Authority (SSA), which operates ferries from Cape Cod to Martha's Vineyard and Nantucket, carried 123,164 passengers on its fast ferry to Nantucket, and 233,821 on its conventional ferries to Nantucket. In other words, 35% of the SSA travelers chose the fast ferry (about the same percentage as identified in Interstate's survey) even though the SSA fast ferry is much more expensive than the conventional ferry (at 7).

Mr. Linda was cross-examined on his prefiled direct testimony on June 14, 2005. He testified that all of Interstate's captains are capable of running a high-speed catamaran (at 36). His plan is to hire Captain Grant Parker as Interstate's high-speed trainer. As Mr. Linda testified, "Captain Parker was very instrumental in setting up Fox Navigation's catamaran service...I believe he [is] the only IMO [the International Marine Organization] high-speed rated trainer in the country. He's currently a consultant working with the Navy, training their captains with the new high-speed catamarans that they're putting in service out on the West Coast, and I have spoken with Grant Parker in the past and he has expressed some strong interest in helping us get the captains trained and getting the operation going." (at 38-39)

With regard to possible impact on IHSF, Mr. Linda testified that he expected only a minimal impact:

"Our Block Island to Newport Service will have no impact on IHSF. Our Point Judith to Block Island service may have a minimal impact on IHSF. We currently plan to run three runs per day from Point Judith, as opposed to six runs from Point Judith for IHSF, and we will be marketing the Point Judith run to our existing customers, not IHSF customers. None of our runs will go to New Harbor, which is the destination of IHSF's customers." (at 46-47)

Mr. Linda testified that Interstate has done regular head-counts of IHSF's operation, and its busiest run is IHSF's 10:00 run when Interstate will not have a high-speed ferry available. The "prime-time" is between 9:30 and 11:00 in the morning (at 54). Interstate's only run near prime-time would be its 11:50 a.m. run. Its other two runs are early in the morning (7:45 a.m.) and late in the afternoon (5:00 p.m.).

Mr. Linda's rebuttal testimony is Interstate Exhibit 11. He was responding to the testimony of Mr. Frederick Nolan of IHSF (discussed infra) and pointed out that Interstate did not factor in winter charter revenues when Interstate estimated the revenues for its proposed service (at 1).

With regard to Caribbean winter charters, Mr. Linda feels that the possibility of securing a winter charter seems good because of the addition of the open car deck on Interstate's proposed fast ferry:

"This feature will enhance the appeal of our vessel in passenger/cargo trade between the islands which I understand is in high demand." (at 1)

Further, with regard to possible winter charters in Florida, Mr. Linda testified that:

"The possibility of a charter with the operator of the casino vessel off of Tampa Florida is still viable. Even though the casino vessel owner has acquired two vessels to shuttle passengers, I understand that additional chartered vessels may be needed in the future." (at 1)

Finally, with regard to the resale of fast ferries, Mr. Linda testified that high-speed vessels in general have a good record of strong resale values, but with regard to the small harbor ferries currently for sale in New York Harbor, those ferries have very little capacity and are not suitable for Interstate's purpose (at 8). He is unaware of any suitable ferries for sale or summer lease that would suit Interstate's needs on the proposed Block Island runs (at 2).

Mr. Linda was cross-examined on his rebuttal testimony on July 11, 2005. He testified that Interstate was prepared to live by the schedule proposed in his testimony to start with:

"We're going to run that schedule if we are granted a license...It is a tentative schedule, but we are going to run with that schedule to start with." (at 71)

He assured the Hearing Officer that if Interstate wanted to change the schedule, Interstate would "come back to the Division to get it changed." (at 75)

In response to questions regarding moving the 11:50 a.m. run from Point Judith to 12:15 p.m., Mr. Linda stated that:

"Our schedule set up is if we held that trip back another half an hour, it would interfere with our Newport run." (at 72)

He explained that it would interfere with Interstate's planned afternoon layover for cleaning, maintenance, and resting the crew (at 79-81).

5. **WILLIAM A. MCCOMBE**. Mr. McCombe testified on June 13, 2005. He is Interstate's Company Security Officer and is the former Block Island police chief. He was a police officer on Block Island for 24 years and has been a resident of Block Island for 25 years (at 19). He testified as a resident of the Block Island community in support of the proposed ferry because it:

"can transport an ambulance...I think that would be very advantageous and it would be a great option for any Medivacs. ...New England Airlines...is no longer able to accommodate that. To do the air transportation with Lifeflight, they can run anywhere between three and \$5,000. I think if this service was available, it would give additional options for Medivacs...[I]t certainly opens up another avenue for transportation not only for the visitors but people living there year-round." (at 19-20)

6. **JAMES HURTON**. Mr. Hurton testified on June 13, 2004. He represents the Narragansett Chamber of Commerce, and testified that:

"It is our position that the addition of the high speed ferry that would leave from Point Judith and go to Old Harbor would be a benefit to the businesses, especially those in the Galilee area. Anything that can bring additional traffic to the area would be a definite positive for people that own the restaurants, the hotels, the gift shops, et cetera." (at 25-26)

He has observed the loading and unloading of ferries and believes that the loading and unloading operations are being handled safely in Galilee (at 31).

7. **KATHLEEN SZABO**. Ms. Szabo testified on June 13, 2005. She is the Executive Director of the Block Island Chamber of Commerce, and has been for 14 years. She testified that:

"I'm here to speak in support of Interstate's motion for a high speed ferry out of Point Judith and Newport. Over the past 14 years, I've seen an increase in people wanting to come out of Newport, and being the ferry takes two hours that they reconsider traveling that direction. It would be beneficial for Block Island residents and visitors that are there for some time to take a day trip over to Newport and come back the same day instead of spending the night if they don't want to. If they're

renting a house on the island for a week looking for something else to do, that would certainly be very beneficial, and also for us islanders who would have to go to Newport and would also have to get in our cars to go to Newport could take that ferry. And from Point Judith I am assuming it would take about a half an hour. We have a lot of people who do construction on the island, and that would be easier for them to get to their destination and to their jobs quicker.” (at 32-33)

She does not think that if Interstate and IHSF operated at the same rate, Interstate would have a competitive advantage as a result of going to Old Harbor because, “I think people travel both ways...people want to go to either harbor.” (at 33-34)

She does not feel it would be beneficial from the point of view of the Chamber of Commerce to have all ferries land at Old Harbor because “I think spreading it around is easier on the town.” (at 35) She explained that New Harbor has many of the same features that Old Harbor does in regards to restaurants within walking distance, rental boats, car rentals, moped rentals, charter fishing boats, etc. (at 37) She also explained that “you will have people that will take the [IHSF] high speed ferry just because of that [New Harbor] location. There are lots of hotels in the area...[Y]ou have the Narragansett, the Hygea, Barrington, the Paine’s Harbor View.” There are also several restaurants and bars for light lunch (at 38). Quite a few people bring their boats and dock at the moorings in New Harbor, the majority of Block Island moorings are located in Old Harbor, as well as the marinas, and many of these people live on their boats (at 39). She agreed that for the people who live on their boats that are docked in New Harbor, traveling to the mainland on IHSF’s ferry out of New Harbor is more convenient for them (at 40).

In terms of figures, she estimated that 60% of Block Island businesses are in Old Harbor and 40% are in New Harbor (at 41). She also explained that there are special events in New Harbor, such as Race Week, which attracts hundreds of boats, art festivals, and fishing tournaments, and that the New Harbor season is the same as the Old Harbor season, running from Memorial Day through Columbus Day (at 41-43).

8. **EDWARD CUNNIE.** Mr. Cunnie testified on June 13, 2005. He is an engineer for IHSF. He reinforced Interstate's testimony that IHSF has developed a loyal customer base since beginning operations in 2001:

"Customers I speak with applaud our efforts and love our service. In the first year when we started, I think the speed was the important factor, but I think over the four-year time here, the actual service itself, whether it's the air-conditioning or the carpets, the friendliness of the crew or whatever it may be, I think has kind of superceded that. I think our service has a stellar track record..." (at 72-73)

9. **MARK BRODEUR.** Mr. Brodeur's prefiled direct testimony is Interstate Exhibit 8. Mr. Brodeur is the Director of Operations for the State of Rhode Island Tourism Division. He testified that there is a public need and it would be convenient for the public if Interstate operated a fast ferry between Galilee and Old Harbor (at 2). He explained that "the service would provide the island with an increase in tourists, which would result in positive economic impact." (at 2)

He also testified that he felt that there was a public need and it would be convenient for Interstate to operate a fast ferry service between Newport and Old Harbor (at 3) and:

"This would be a positive for the tourism industry as a whole. The tourism season on the island would begin earlier and end later if there were a more convenient connection between Newport and Block Island. This would positively impact the economy on the island." (at 3)

He further explained with regard to Newport that :

"I believe the present 2 hour crossing is a deterrent. A faster crossing would make a substantial difference...Newport tourists would feel that Block Island was an extension of the destination if they did not have to drive to Point Judith and were able to quickly transport to the island from the mainland." (at 3)

In his opinion, "Interstate Navigation Company offers substantial experience supported by a professional and knowledgeable staff. In my opinion, they are the most likely candidate to take on this endeavor." (at 4)

Mr. Brodeur was cross-examined on June 13, 2005. He praised IHSF for providing excellent service and for helping to make New Harbor a destination in and of itself (at 78-79). In response to a question from counsel for IHSF as to whether or not the Tourism Division was of the position that IHSF was adequately serving the public need for high-speed ferry service to Block Island, Mr. Brodeur testified that:

“I think there is need for additional service...I do feel that [IHSF is]...doing a good job out to New Harbor. I...think a high-speed ferry to Old Harbor would also be an advantage...I feel that there are two different products...[T]here would be a response and a market for faster [service] into [Old] Harbor as well.” (at 79-80)

Mr. Brodeur also testified that the Rhode Island Tourism Division sees “a distinction between the market to New Harbor and Old Harbor” (at 80-81). Mr. Brodeur feels that “both destinations [Old Harbor and New Harbor] can be marketed and are marketed as two different destinations that reside on the island, both of them with their unique features...I do think that there definitely is an ability to coexist offering these two products.” (at 81, emphasis added)

With regard to the increase in tourism:

“My personal opinion and the fact that the accessibility from Newport which has...tourists that stay for an entire week, it would give them another opportunity to come out to the island or an easier access to the island and increase the soft time during the season which would be Monday through Thursday.” (at 85-86)

With regard to the Point Judith portion of Interstate’s proposed run, Mr. Brodeur testified that:

“My thought on how will this affect the Galilee portion of the proposal would be that it would affect mostly Interstate’s own customers.” (at 86)

With regard to the potential impact on IHSF, if Interstate’s proposal from Point Judith were approved, Mr. Brodeur expressed the opinion that “I agree [the impact on IHSF] would be minimal”

(at 88). Mr. Brodeur also reinforced his opinion that Interstate is the most likely candidate to provide high-speed service between Point Judith and Old Harbor, because:

“They have the experience, they have the infrastructure, the access, they’ve always provided outstanding service, they’re responding to their customers’ needs according to their survey. It would seem to me to be the best choice at this point.” (at 91)

Under questioning from the Hearing Officer, Mr. Brodeur made it clear that he was supporting Interstate’s application for high-speed service from both Point Judith and Newport (at 94), and he did not think that Interstate would displace IHSF with proper marketing (at 94).

10. ALAN D. SLAIMEN. Mr. Slaimen’s prefiled direct testimony is Interstate Exhibit 6. He is the Transportation Contract manager for Collette Vacations in Pawtucket (at 1). There is “very much” a public need for a fast ferry service between Galilee and Old Harbor (at 2). He explained that “saving time is something we all want. The highlight of the Island is the Island, not the ferry. Get me to my destination faster, safer, and on time is a win win.” (at 2) With regard to the proposed Newport ferry, “it would be a welcome service for visitors who come to Newport...It now becomes a better day trip for them.” (at 3) He testified that Interstate is fit, willing, and able to operate the proposed fast ferry service because “I think the history they have operating today is proof enough they can handle anything in a professional manner. I feel it would be a natural step for them.” (at 4)

Mr. Slaimen was cross-examined on June 13, 2005. He previously coordinated a tour that included Block Island from 1995 to 1998, but because of “the time frame getting on and off the island and seasickness” the Block Island portion was discontinued, and in 1998, that portion of the tour moved to Boston; it does not presently go to Block Island (at 98-99). If Interstate’s fast ferry was added from Newport, Collette Vacations would probably reinstitute the Block Island portion of their program (at 105).

With regard to the Newport service, he feels “it’s a great feature” and “knowing that the people now have an avenue to get back and forth to Block Island from there is excellent.” (at 103-104) Visitors to Newport are “always looking for options to do different things and many times they want to go to the Cape and we want to keep them in Rhode Island” and the fast ferry from Newport would do that (at 104).

11. **DAVID LARAWAY.** David Laraway’s prefiled testimony is Interstate Exhibit 7. At the time he filed his testimony, Mr. Laraway was a resident of Block Island, self-employed in the construction business (at 1). He feels there is a public need for a fast ferry operated by Interstate from Point Judith to Old Harbor in order to get to his destination more quickly (at 2). Interstate is fit, willing, and able to operate such a fast ferry service because “they have grown, and are more efficient. Also, they have tried a high speed years ago.” (at 3). Mr. Laraway was cross-examined on June 13, 2005. He is now living off-Island, but is traveling to the Island every day to work (at 109).

12. **EVAN SMITH.** Mr. Smith testified on June 14, 2005. Mr. Smith is the President of the Newport County Convention and Visitors Bureau. He is in his 16<sup>th</sup> season. He testified in support of Interstate’s proposed Newport to Block Island service (at 63-64). Newport receives about 3.5 million visitors per year (at 64), and about 1 million visitors go through their Visitor Center each year. “Our visitor service personnel field many, many questions about Block Island and the travel to Block Island and reaching Block Island” (at 65). He testified that “potential travelers who have an interest in going to the Island to visit the Island are looking at the time enhancement. The current travel time is two hours...and many times [visitors] opt out of that travel choice based on the limited amount of time that they have” (at 65-66).

He explained in more detail why he supports the Newport service:

“The interest in coming to Newport would be heightened because of the ease of travel time. There will be residual benefits for us in that I believe the people would stay and see historic Fort Adams, see the Museum of Yachting, perhaps take in meals in Newport, Rhode Island, other revenues, gas revenues, parking revenues, other peripheral revenues will give birth to this area. But I think that new service will attract new visitors to our area...[O]ne of the things we are conscious about is developing new products to keep our tourism program fresh...[W]e believe the connecting service to Block Island will create new packaging opportunities...” (at 66-67)

He then summed up his position as follows:

“I think that the proposed expanded service to three times from Newport in a high-speed capacity cutting the travel time down from two hours to one hour, actually a little bit less than one hour, would be a very, very attractive service to us and would actually bring new revenues into Newport and benefit Block Island at the same time.” (at 68)

He also stated that “the option for Block Islanders coming in that direction to visit Newport is of interest to us.” (at 70)

He rejected the notion that Interstate’s proposal would cannibalize an existing tourist base:

“Every time a new hotel opens, there are challengers saying there will be cannibalization and the market share grows. Every time a new restaurant opens, [there are] challengers saying there will be cannibalization and our market share grows. To speak to that element of free enterprise...is historically speaking inconsistent...if you look at hotels, restaurants, attractions, boat service, etc.” (at 73-74)

**13. PUBLIC COMMENT IN SUPPORT OF INTERSTATE’S PROPOSAL.** Public comment was accepted in the form of sworn testimony (that was not subjected to cross-examination) from Joy A. Marx of Landmark Tours and Cruises (public comment 1); Nancy Reese of Starr Tours (public comment 2); Thomas D. Donnelly of Celebration Tours (public comment 3); David Eaton of Conway Tours (public comment 4); Karen Smith of Enjoyable Journeys (public comment 5); Leone Leone of Aldo’s Bikes on Block Island (public comment 6); Robert J. Closter, Jr., the Town of New

Shoreham's Recreation Director (public comment 7); Frank Reeves (public comment 8); and Merrill Slate (public comment 9).

14. **WALTER E. EDGE, JR., MBA, CPA.** The prefiled direct testimony of Mr. Edge is Interstate Exhibit 4. Mr. Edge specializes in utility regulation and expert rate and accounting testimony (at 1). He has many times been qualified as an expert witness in numerous filings before the Division and the Commission (at 1). He is a CPA and has a Bachelors Degree in Accounting and a Masters Degree in Business Administration (at 1). Mr. Edge was previously employed for five years as the chief accountant and rate analyst for the Rhode Island Division of Public Utilities and Carriers (at 2).

Mr. Edge reviewed the results of the survey of Interstate's passengers prepared by Dr. Tyrrell (at 3). Interstate is fit, willing, and able to run the proposed fast ferry service: "the answer is unequivocally yes" (at 3). There is a need for the fast ferry services proposed by Interstate:

1. The addition of a fast ferry will slow down or eliminate passenger losses incurred as a result of competition from two fast ferries currently traveling to Block Island and a fast ferry traveling from Quonset Point to Martha's Vineyard (at 4).
2. Interstate's survey has determined that "a significant percentage of its own current customers traveling to Old Harbor have expressed a need for a fast ferry service so that they can have a choice of service." (at 4)
3. The reduction in travel time will make it easier for people who suffer from seasickness to travel to the Island with their families and friends (at 4).
4. The proposal will make it more convenient for the elderly to travel to Old Harbor and will give them the choice of the fast ferry or the conventional ferry (at 5).

With regard to the Newport service, Mr. Edge explained that this “opens the door for an entirely new customer base not being serviced at this time.” (at 5)

The proposed fast ferry “will be significantly different from any of the existing fast ferries currently serving Block Island” because Interstate will build a fast ferry “that will have a small freight/car deck that will provide choice to Interstate’s current customers to travel with their vehicle on a fast ferry to Block Island and return. Currently this option does not exist for the public.” (at 6)

This car/freight deck “will allow Interstate to address urgent needs of the island such as for ambulance transport, medical supplies, critical parts needed for island businesses (such as Block Island Power Company, the Sewer Commission, and the Water Department), 911 type emergencies, etc.” (at 6)

Financially, Interstate can afford this new fast ferry. The ferry “will not only pay for itself, it will help subsidize the other rates charged by Interstate to help keep life line rates lower.” (at 7) Interstate is proposing to charge the same rates as IHSF (or more) for its fast ferry services (currently \$29 per adult round-trip) but never less than IHSF, because Interstate believes that the same price floor form of regulation imposed on IHSF “is appropriate for Interstate’s fast ferry service rates.” (at 7).

Mr. Edge explained that:

“for every current Interstate customer that chooses to take the new Interstate fast ferry, Interstate will get additional revenue double what is currently collected. In other words, for every current customer choosing to take Interstate’s new fast ferry service Interstate will be getting revenue equal to two customers.” (at 9)

Mr. Edge prepared an analysis (WEE1) that projects revenues and expenses. He shows that Interstate will make about \$497,781 per year of profit each year on its proposed fast ferry service, even with no revenues from off-season charters, and that these funds can be used to subsidize current rates (at 9-10 and WEE1). It is not necessary to go through Mr. Edge’s calculations in any

detail because at no time was Mr. Edge's calculation of profit challenged by any witness in this docket. Therefore, the projected \$497,781 profit calculation stands uncontested (assuming the PUC authorizes Interstate to operate its fast ferry at no less than IHSF's rates).

Interstate will also try to sell the M/V *Nelseco*, which is currently used on the Newport run. The after-tax proceeds from that sale could be used to pay down the debt on the new fast ferry, which would make the cash-flow projections from the fast ferry operation even greater (at 12). Mr. Edge explained how "the benefit of running the Fast Ferry will be passed to the current ratepayer base." (at 12) More importantly, Interstate's management has decided that it "is willing to take the business risk of the Fast Ferry not being profitable" and as a result, any money lost on the fast ferry operation "would not be passed on to the ratepayers." (at 13)

Although Interstate does not expect to lose money, if there was a fast ferry loss, and if it was determined that whatever was causing the loss could not be turned around to make the operation profitable, than Interstate could sell or charter the new fast ferry (at 13). Moreover, if the Division feels it was necessary to do so, "Interstate is prepared to lease the new Fast Ferry from a related entity, either Nelseco Navigation Company or some other company owned and operated by the Linda family" to further insulate the ratepayers (at 14).

Mr. Edge does not believe the proposal would adversely impact IHSF:

"Hi-Speed Ferry provides transportation from Point Judith to New Harbor (not Old Harbor) and to passengers in a previously un-served or underserved 'niche market'. Interstate intends to offer its Fast Ferry service predominantly to its own customer base and those few individuals (and their traveling companions) that wish to go to Old Harbor and due to age or physical impairment are unable to travel to Old Harbor through New Harbor.

As for the Newport runs, Island Hi-Speed Ferry does not run from Newport to Block Island, and therefore the Newport run should have no impact on Hi-Speed's operation. ...Interstate believes that this new Fast Ferry service will have more of a positive impact on Interstate's current operations...than it will impact Hi-Speed Ferry's operations to New Harbor. It is important to point out that Hi-Speed Ferry

has been operating successfully for a number of years now and they have developed a loyal customer base that Interstate does not intend to serve.” (at 15).

In cross-examination on June 13, 2005, Mr. Edge testified that Interstate’s customers “declined each of the past three years” and that “based on common sense, it appears that it happened due to additional [high-speed] competition.” (at 115). Mr. Edge testified that “based on my professional opinion and reviewing financial information for the last 40 years” that “I’m certain that if Interstate Navigation gets a fast ferry and competes head to head with the other fast ferries, it will stop losing customers to fast ferries.” (at 127).

Mr. Edge does not believe that any excess capacity in the high-speed ferry market is going to be a negative factor in Interstate’s entering in the market:

“because I have a survey provided by my client...that survey was prepared by an economist. The information in that survey says that we’re not going to get the majority of our customers out of this...underused market. We are going to get our customers out of our own customer base who choose to go on our own boat now and who choose to go on our boat in the future, and by getting them to switch from...our conventional to our fast ferry we double the revenue, and in fact, basically double our number of customers without getting another customer...” (at 140).

Mr. Edge projected that about 70% of Interstate’s fast ferry revenue will be generated from Interstate’s own customer base (at 145). Mr. Edge also testified that:

“In this analysis, the owners of Interstate Navigation Company do not get a penny of the profit out of this fast ferry. ...Because the owner of this company, Sue Linda, chose 100 per cent of the profits are going to go to the lifeline ratepayers...” (at 160-161)

The motivation for the PUC to allow Interstate to run its fast ferry at the same rates as IHSF “might be that they want to maximize the amount of money that is available for the life line rates” (at 162). If the PUC set the lowest possible rate base rate of return rates, the fast ferry rate for Interstate would be about \$20 round-trip, but if Interstate “put our boats on the water at \$20, I believe that would hurt Island Hi-Speed Ferry, and I don’t think the Commission wants that to

happen, so I don't believe they'll do that." (at 173-174) With regard to what would happen if the Commission totally deregulated all fast ferry rates and allowed the two fast ferry companies to "compete head to head," then Interstate "could reduce its rates by as much as probably three or \$400,000 worth of revenue and still be viable, and I don't think that's a fair way to go either." (at 174) He pointed out that in IHSF's rate case, a rate base rate of return calculation would have resulted in about a \$13 rate, but the PUC approved the \$26 rate, so he saw "no reason why the Commission would choose to use rate base rate of return calculations for the [Interstate] high-speed ferry because the intent here is not to put any money into the stockholders' pockets but to help the life line...[T]he Commission will look at this and say we want to maximize the cross-subsidization and not minimize it." (at 175)

With regard to whether there would still be a need for a price floor if Interstate's CPCN request were granted as filed, Mr. Edge conceded that there would be no need for a price floor if Interstate received its CPCN license and put its boat in the water (at 180-181), but that "I think the price floor would stabilize the market a bit." (at 181)

In order to assure that the ratepayers would get the full subsidy from the profit and would not be subjected to any losses, Mr. Edge testified that the fast ferry would be a separate division of Interstate and "the profit from the high speed ferry" division will be "moved over to the monohull conventional service." (at 183)

In response to questioning from the Hearing Officer, Mr. Edge testified that the break-even price for Interstate's fast ferry would be about \$20 per round-trip ticket (at 200-201), and therefore the ability to cross-subsidize the life line service is based on the PUC approving a rate of more than \$20, everything else being equal (at 202). He also emphasized that the success of the proposal is based on getting both the Newport and the Point Judith legs approved (at 204).

Mr. Edge's rebuttal testimony is Interstate Exhibit 10. He pointed out that his calculation of profit did not utilize income from either off-season charters or the resale value of high-speed ferries (at 1), and that even without off-season charters there will be almost \$500,000 available to subsidize Interstate's life line rates (at 1). Mr. Edge explained that:

"Nothing in either Mr. Nolan's or Mr. Kunkel's testimony suggest any changes to my revenue or expenditure calculations for Interstate's fast ferry, other than the fact that my projected revenue amounts may be too conservative (low) and Interstate may actually get more revenue should IHSF customers choose to travel to Old Harbor on Interstate's fast ferry. This would result in even a greater subsidy for the life line rates." (at 2)

Mr. Edge also testified in response to Mr. Kunkel's testimony that:

"I believe that the two Interstate services will flourish, and although the customers who choose Interstate's fast ferry will benefit from the faster more convenient service, the Interstate life line customers will be the overall financial beneficiaries of the new Interstate fast ferry." (at 3)

In response to Mr. Kunkel's claim that Interstate's life line service could go out of business, Mr. Edge explained that Interstate's life line service has no competition in the transport of vehicles and freight (at 4) and even if Interstate's boat carried no passengers other than islanders, the life line service would remain in place to transport life line supplies to the island (at 4). With regard to the public interest, Mr. Edge explained that:

"Interstate's fast ferry proposal is in direct response to the public survey that Interstate took that showed that about 35% or more of Interstate's current customers wanted a fast ferry service to Old Harbor, therefore the proposal is in the public interest. Further, since all the profits will be funneled to the lifeline service, the lifeline customers (public) interest will be served. The only public interest that Interstate's decision could be contrary to is that of the IHSF owners and its consultants. Mr. Kunkel's assertion on page 8 that IHSF would be forced into bankruptcy implies that even IHSF customers (part of the public) would prefer to take the proposed Interstate fast ferry and therefore their interests would also be served." (at 5)

\* \* \*

"Interstate is already in a 'competitive crossfire', with BI Express on one side and IHSF on the other. However, the difference is that Interstate is currently out gunned by the fast ferry operations that provide faster and more luxurious service. In order

to protect the lifeline service and give Interstate the proper guns for the fight, Interstate needs to compete on an even playing field and needs a fast ferry.” (at 6)

Mr. Edge also filed surrebuttal testimony, Exhibit 12:

“Mr. Kunkel has not responded at all to my rebuttal testimony. As he did with his prefiled direct testimony that was filed after my prefiled direct testimony, he offers no alternatives to my calculations or proof that any of my calculations, observations, or findings are incorrect. ...The fact that Mr. Kunkel does not challenge my calculations that show that Interstate’s fast ferry will make about \$500,000 of profit in the first year of operations results in my testimony standing as unchallenged.” (at 1)

Mr. Edge then explained “numerous problems” he had with the conclusions Mr. Kunkel drew from the IHSF passenger survey, including date errors (at 2), numbering errors (at 2), duplication errors (at 2-3), scheduling errors (at 3), New Harbor errors (at 3), speed errors (at 4), and preference errors (at 4). The major error Mr. Edge pointed out regarding the survey is a major omission regarding the difference in the schedules:

“The surveys did not address the major scheduling differences between the two fast ferries. This is a significant weakness that I believe renders the survey results virtually meaningless. Anyone filling out the survey would have to assume (because it was not stated otherwise) that both fast ferries would be available at similar times when they wanted to go to the Island, and therefore the choice would be simply which harbor on Block Island they wanted to travel to. However, when we compare the two fast ferry schedules we find that Interstate will only have one fast ferry run in prime time...I found that many of those surveyed stated that the schedule was the most important thing when choosing between the two fast ferries. The fact that Interstate will only be running three runs a day (and only one in prime time) whereas IHSF has six runs per day (with two runs at prime time) I believe invalidate the results of the survey.” (at 3)

15. **JOHN STUTZ, Ph.D.** Dr. Stutz is the expert witness for the Division Advocacy Section. His prefiled testimony is Advocacy Exhibit 1. Dr. Stutz has testified 185 times before 42 different public regulatory bodies, including 26 appearances in Rhode Island, all as an expert witness. He earned his Ph.D. in Mathematics from Princeton University and was an Associate Professor of

Mathematics at Fordham University. He has provided testimony on behalf of the Division in two matters relating to rate regulation of IHSF in Commission Dockets 3495 and 3573.

Dr. Stutz and the Advocacy Section fully support Interstate's CPCN application. As Dr. Stutz stated in his testimony:

"I have reviewed the standard for granting a CPCN provided by the Division in a recent decision. I have also reviewed and analyzed the testimony and discovery responses provided by Interstate. Based on my review and analysis, I recommend that the requested CPCN be granted by the Division." (at 1-2)

Dr. Stutz noted that the Division, in its order dealing with IHSF's CPCN, stated that consideration of a CPCN request involves a two part standard. First, the Division determines whether the public convenience and necessity require the proposed services. Second, the Division determines whether the applicant is fit, willing, and able to provide the proposed services (at 3). Dr. Stutz noted that the Division has ruled that:

"public service is the basic issue to be considered in granting a certificate of public convenience and necessity...[P]rotecting existing investments from even wasteful competition is secondary to the fundamental obligation of securing adequate service for the public." (at 3)

Interstate's proposed fast ferry will provide "services which are not currently available", including "faster and more comfortable service to Old Harbor," and "faster and more comfortable service to and from Newport" (at 4).

Mr. Edge's testimony shows that "shifts in Interstate's current passenger traffic to fast ferry service is the major anticipated effect of the proposed fast ferry. Demand for fast service among Interstate's existing customers is supported by the results of a survey. Demand for improved service to and from Newport is supported by the experience of the Company's testimony, particularly that of Ms. Linda." (at 4)

For day-trippers, “there is a savings in travel time and consequent increase in the time for a visit to Block Island or Newport. This, plus the increase in comfort, makes the attractiveness of fast ferry service between Newport and Block Island clear.” (at 5)

Dr. Stutz testified that Interstate is fit, willing, and able to provide the services being proposed based on his review of the evidence (at 5). He pointed out that the information provided by Interstate regarding Interstate’s ability to finance the new boat, for example, was provided “in much greater detail than was required when IHSF was granted its CPCN.” (at 5)

Dr. Stutz was directly asked whether he recommended that the CPCN be granted, and his unequivocal response was “Yes, I do.” (at 6)

Dr. Stutz explained that in making this recommendation to grant Interstate’s requested CPCN, he has considered the likely economic impact of the proposed fast ferry on both Interstate and IHSF (at 6). He testified that “fast ferry service provides potential economic benefits to Interstate.” (at 6) He prepared schedule JS3 showing that for the period through 2001, “the trend in Interstate’s passenger traffic was upward” with “an average of 5,155 passengers...added each year.” (at 6) However, he pointed out that “since 2001 [when IHSF started service] all of the gains made between 1996 and 2001 were lost.” (at 6) He testified that “the proposed fast ferry is, in part, a response to that loss. Interstate expects addition of a fast ferry to boost the revenue per ‘existing’ passenger, and to add revenues based on new service.” (at 6)

Dr. Stutz conceded that part of Interstate’s traffic “may come at the expense of IHSF” (at 6), but noted that:

“In considering this point, it is important to note that IHSF and Interstate will land at different points on Block Island. Interstate’s acceptance of the same “rate floor” as IHSF, were it to lead to comparable pricing for passenger service for both fast ferry services by the Commission, will prevent Interstate from attracting IHSF customers who are satisfied with IHSF’s service by offering lower fares. Finally, I would note that, in the IHSF order, the Division made it clear that even wasteful competition

may be acceptable if it is accompanied by expanded and improved public service, as is likely the case here.” (at 6-7, emphasis added)

Because the PUC has adopted Dr. Stutz’ rate recommendations in the two previous PUC dockets dealing with IHSF, it is likely that the PUC will again accept Dr. Stutz’ rate floor recommendations for Interstate’s fast ferry. Interstate is willing to accept such a rate floor.

Dr. Stutz was cross-examined on his direct testimony on June 15, 2005. In his cross-examination, Dr. Stutz reaffirmed that he understands the Division’s decision on CPCN ferry applications to mean that “public need takes precedence over impact upon existing carriers” (at 28). Dr. Stutz also agreed that the phrase “public convenience and necessity” means “beneficial to the public interest” (at 33-34).

Dr. Stutz defined the concept of “predatory market entry” as “a strategy where one enters a market, not to succeed in that market, but rather to adversely affect another party...in that market.” (at 52) He concluded that Interstate’s proposed entry in the high-speed market is not predatory, testifying as follows:

“It didn’t seem to me to be justified to assume that the applicant was acting in a predatory fashion because the applicant has a sound business case for entry. I also took note of the fact that the Division in its order indicated that in the Division’s opinion the applicant had been considering this market for some time...even before Island Hi-Speed was on the scene.

\* \* \*

All I can say is it doesn’t look predatory to me; in fact, it looked like a well-documented business decision.” (at 53-55)

When counsel for IHSF asked Dr. Stutz “do you agree that Interstate’s proposed entry into the Block Island high speed ferry market would be predatory?”, Dr. Stutz flatly stated “No” and explained “I didn’t see evidence of [predatory] intent. I saw...a business case.” (at 65)

With regard to passenger capacity, Dr. Stutz testified that seasonal ferries “have a very high level of capacity relative to their average ridership” and he did not agree with Mr. Kunkel’s opinion about excess capacity (at 55). With regard to Mr. Kunkel’s claim that IHSF would be forced out of business, Dr. Stutz again disagreed:

“I actually think it’s quite uncertain whether [Interstate’s] entry would force one or the other of those firms out of business or, on the other hand, improve the situation for all concerned.” (at 66)

With regard to the impact on Interstate’s life line rates, Dr. Stutz testified that “the impact was likely to be positive, that is, to control the increase in rates for other services, and I base that on my review of Mr. Edge’s calculations.” (at 67)

Dr. Stutz reaffirmed that he concluded that Interstate was “fit, willing, and able” to operate the proposed service (at 75), and he agreed that Interstate has demonstrated that there is a public need for high speed ferry service from Point Judith to Old Harbor (at 75-76), and that IHSF is not serving that public need by running to New Harbor (at 75-76):

“Q. Now, do you agree that Interstate has demonstrated that there is a public need for high speed ferry service from Point Judith to Old Harbor?

A. Yes.

Q. And is Island Hi-Speed Ferry serving that public need by going to New Harbor?

A. I think the evidence shows that it’s not.” (at 75-76)

With regard to rates for Interstate’s high-speed ferry, Dr. Stutz testified for the Division when the PUC established the price floor for IHSF. He agreed that Interstate’s proposal that Interstate operate its fast ferry utilizing a price floor set at the rates utilized by IHSF would be an appropriate method of regulation for Interstate’s fast ferry, stating that, “I would say in general I think a situation of parity with respect to the rates is probably appropriate.” (at 84-85)

Dr. Stutz also explained that IHSF had two years of profits followed by one year of losses, but he would not be comfortable rendering an opinion based on the one year showing a loss that IHSF was in any financial difficulty “because there can be extraordinary expenses in one year. Without knowing the structure of the revenues and expenses, I couldn’t conclude very much except that that was the net result of what happened in that year or part of the year.” (at 86) (This was the year in which IHSF established its Puerto Rico winter service).

In further explaining how he believed that there could be a benefit to IHSF from Interstate entering the high-speed ferry market, Dr. Stutz testified:

“We could be seeing the next step in a market where essentially all the passenger traffic goes high speed and the evidence for that, of course, is the survey results which show that people who are currently traveling at low speed might be willing to travel at high speed. Well, once enough of the market goes high speed, maybe all of it will go high speed. Were that to occur, and assuming no further boats were added, then there might be additional customers for all.” (at 87)

Specifically addressing IHSF’s claim that it would go out of business if the CPCN is granted to Interstate, Dr. Stutz addressed the issue as follows:

“[IHSF going out of business] could be good in the sense that what one has is an arrangement which the travelers prefer. I mean, that’s the sense in which it would be good. It certainly wouldn’t be good for the owners of Island Hi-Speed Ferry. But insofar as the focus is on the desires of the travelers in the market with Interstate, and the travelers choose Interstate and Block Island Express and Island Hi-Speed Ferry went out of business, I would assume that that is a legitimate expression of the market so one usually takes that to be good.” (at 89-90)

Dr. Stutz also denied that it was “irrational” for Interstate to be seeking a high-speed ferry CPCN as Mr. Kunkel testified. Dr. Stutz testified that Interstate has shown:

“evidence of an unmet demand which it appears to me they are somewhat uniquely positioned to meet. So they have evidence from the surveys of a demand to go from Point Judith to Old Harbor on a high speed boat, and they have a business case that shows there’s profit to be made and that could cross-subsidize their other traffic. ...They have similar evidence with respect to the run to Newport and they also have, it seems to me, a rationale for believing that the Newport traffic might be more attractive if they had a high speed boat. And again, there seems to be some money in

the full operation, so it doesn't seem irrational to me, it seems to me what one looks for in a business case." (at 90)

In response to direct questioning by the Hearing Officer, Dr. Stutz stated that he believed Interstate's proposal to be "in the public interest", and that Interstates proposal "would satisfy a public need" (at 91). He further explained that satisfying the public need would benefit both the unmet fast ferry demand and Interstate's life line service, testifying as follows:

"I think that it satisfies the needs of customers who want the fast service and are willing to pay for it because of the cross-subsidization and also because of the offers of insulation from investment risk. I think on balance it likely will benefit the operation as a whole, and therefore, will benefit the lifeline service by controlling rate increases." (at 91-92)

When asked by the Hearing Officer which group would get the better benefit, Dr. Stutz testified that "I think both benefit. They're hard to compare because they benefit in different ways." (at 92) Dr. Stutz said that the only group that might not benefit from this would be "those who have a strong preference for having New Harbor as a point of debarkation" (at 95) as well as "the Block Island Express customers" from Connecticut (at 96).

Dr. Stutz submitted surrebuttal testimony which was marked as Advocacy Exhibit 2. The purpose of the surrebuttal testimony was to respond to Mr. Kunkel's rebuttal testimony.

First, Dr. Stutz stated that Interstate's request to enter the high-speed ferry market was not irrational (at Mr. Kunkel claimed) because:

"Interstate has expertise in the ferry business. Mr. Edge, Interstate's witness in this proceeding, showed that Interstate's proposed high-speed ferry could obtain revenues from a number of sources. Support for about two-thirds of these revenues came from a survey of Interstate's customers. Based on his comparison of revenues to costs, Mr. Edge concluded that Interstate's proposed high-speed ferry service was likely to be profitable. Entering an area in which Interstate has expertise and in which it expects to earn a profit is rational." (at 1)

Dr. Stutz was cross-examined on his surrebuttal testimony on July 11, 2005. Dr. Stutz explained that he believed that both Interstate and IHSF could coexist if the CPCN request was

granted “because one possibility is that more of the existing passengers, and perhaps some new passengers, will seek to travel on high speed boats. It may be possible for both boats to carry them profitably. “ (at 57) He further explained that if Interstate’s CPCN request was denied, that Interstate “is likely to lose passenger revenues” (at 58-59) and as a result, Interstate “would probably seek rate relief” (at 59).

Dr. Stutz feels that Block Island Express is more of a threat to IHSF than Interstate’s proposed fast ferry operation (at 60). With regard to whether there would be more harm in denying Interstate’s request for a CPCN than in granting it, Dr. Stutz testified:

“I think there would certainly be more harm to the lifeline service. I suppose it depends on how you construe the harms. So, for example, granting it under certain circumstances could lead to Island Hi-Speed Ferry going out of business; that’s the ultimate harm economically to a corporation. But from the standpoint of someone who looks at the regulation, I see the protection of the lifeline service as paramount, so I tend to see that harm as greater, even though I would acknowledge that there isn’t, in my mind, any likelihood that granting or not granting would drive Interstate out of business.” (at 61, emphasis added)

Dr. Stutz testified that denying Interstate’s request for a CPCN would harm the public who would not have access to high-speed ferry service to Old Harbor unless IHSF were able to go into Old Harbor (at 62), and no evidence that IHSF is able to go into Old Harbor was presented in this Docket.

Dr. Stutz was also critical of the survey IHSF performed of its customers. First, the survey was administered in the off-peak months of May and early June (at 62). Therefore, Dr. Stutz could not conclude that IHSF had obtained a representative survey sample of IHSF’s primary customers (at 62-63). Second, Dr. Stutz was critical of IHSF’s survey because IHSF’s customers were not informed as to whether or not there would be an Interstate fast ferry at the dock available to take them at the time they wanted to go. He testified that this lack of information “makes it hard to interpret...the survey results because presumably you’re on a high speed boat because time matters

to you. If you were told that you could cross the dock, but there might be a wait, you might get a very different result.” (at 63-64)

16. **JOHN T. SAVOIE.** John T. Savoie, First Warden of the Town of Block Island, submitted testimony which was marked as Town Exhibit 1. Although the Town Council took “no formal position” in this matter, they set forth their concerns in Mr. Savoie’s letter/testimony. The Town would like to “preserve passenger choice” and is also “vitaly interested in the viability of winter service and the ability to generate sufficient revenues in the summer to help support that winter service.” (at 1)

With regard to Interstate’s application, Mr. Savoie testified that “anything that potentially aids Interstate’s competitiveness, and income, in the summer seasons has to be supported, as it can only strengthen the year round service.” (at 1) Mr. Savoie sought “assurances that the conventional ferries – that transport our food supplies and all our services such as trash, sludge, fuel, oil, school trips, etc. – will not be decreased in the future in favor of any high speed ferry runs” (at 1). (Interstate provided that assurance to the Town in writing.) Mr. Savoie also testified that “fast transport to the mainland for our ambulance when weather only permits boat travel is welcomed by our medical and Rescue personnel. The difference in time between conventional and fast ferry transport could be critical in those situation where our Life Star helicopter transport is grounded because of weather.” (at 1-2) Mr. Savoie urged the Division to “recognize that our issues stem from our need to protect and strengthen the year round service which is currently offered only by Interstate Navigation.” (at 2)

Mr. Savoie was cross-examined on July 11, 2005. With regard to Interstate’s written commitment in data responses that it would keep all of its conventional runs because it needs them

in order to carry freight cars, trucks, etc., First Warden Savoie said that in his experience, Interstate honors its commitments, and in light of this written commitment, “that makes me happy” (at 14).

He testified that he would be concerned if the life line ferry subsidized the fast ferry, but in light of Interstate’s written commitment that any losses from the fast ferry would be absorbed by the stockholders of Interstate and not the ratepayers, he said this commitment alleviated his concerns in this regard (at 34).

17. **FREDERICK L. NOLAN, III.** Mr. Nolan is the Operations Manager of IHSF, and his testimony is IHSF Exhibit 10. He testified that the demand for winter charters is currently not strong since 9/11, and the ferry resale market has also suffered (at 3-5). He conceded that he had no reason to doubt that fast ferry vessels have historically sold for about 8% above their initial purchase price (at 6), but feels there has been a downturn in the market (at 6-7). He noted that there were originally only two options for United States construction of fast ferries, but there are now currently at least 8 shipyards in the United States that construct high-speed ferries, and none have backlogs (at 7).

Mr. Nolan was cross-examined on June 22, 2005 First, Mr. Nolan conceded that he did not understand when he drew up his testimony that Interstate had not included any charter revenues as part of Mr. Edge’s financial profit projections (at 19-20). He confirmed the information set forth in SL1 regarding the resale of high-speed ferry vessels (with two relatively minor changes) (at 22-23), and agreed that in general, used fast ferry vessels sell for about 8% above their initial purchase price (at 21). He also confirmed that all of the fast ferries in Rhode Island, Connecticut, and Massachusetts set forth on SL2, prepared by Susan Linda, were still operating (at 25) and a number of them have come into being since 2001 (at 26-29). He agreed that the fact that there are now 8

shipyards with no backlogs building high-speed ferries puts Interstate in a position to “get a good bid price on constructing the boat” (at 29-30).

Mr. Nolan agreed that there is no high-speed ferry providing service from Point Judith to Old Harbor, and that “there is an expressed public desire for a high-speed ferry operation from Point Judith to Old Harbor” (at 34). In fact, he stated that IHSF would like to serve the Old Harbor market (at 34). The problem, of course, is that if IHSF switches from New Harbor to Old Harbor before Interstate gets its fast ferry in the water, Interstate will lose a large part of its summer passenger market, leading directly to an immediate, and substantial, rate increase for the lifeline. Therefore, any consideration of removing the New Harbor requirement for IHSF’s CPCN must wait until after Interstate puts its fast ferry in the water.

Mr. Nolan conceded that the three-year moratorium prohibiting Interstate from operating a high-speed ferry has expired and that by the time Interstate gets a high-speed ferry boat in the water, if the Division grants the CPCN application, IHSF will have had, at a minimum, a five year head-start on fast ferry service to Block Island (at 37-38).

Importantly, Mr. Nolan testified that he really had no problem with the Division granting Interstate the requested CPCN, provided IHSF’s current operating restrictions were relaxed:

“Q. Basically, though, you would like to have a monopoly on high speed ferry service to Block Island.

A. No. We’d like to stay competitive with Interstate and provide the public options.

Q. Well, do you have any problem with...this Division granting Interstate a high speed ferry license to operate from Point Judith to Old Harbor?

A. I would prefer that if the [Division] were to grant the license, that it would relax the restrictions on Island Hi-Speed Ferry...relative to rate regulation, location of operation. I think we’d like to look very closely at operating at Old Harbor.

Q. If those restrictions were relaxed, you'd feel comfortable engaging in level field competition with Interstate?

A. We would." (at 38-39)

With regard to their current runs, Mr. Nolan testified that at 8:00 they take about 30-40 passengers, at 10:00 about 149, at 12:00 about 100, at 2:00 about 20-30, at 5:30 about 80, and at 7:30 about 20 (at 41-42). Mr. Nolan agreed that Interstate's 7:45 a.m. and 5:00 p.m. runs are outside of the peak times (at 43) and that Interstate's only proposed run that is near the peak travel time is the proposed 11:50 a.m. run (at 43).

Mr. Nolan conceded that the IHSF survey (that Mr. Kunkel claimed demonstrated that IHSF could lose as much as 72% of its ridership if Interstate was granted a CPCN), did not let the IHSF customers who were being surveyed know that Interstate would only have three fast ferry runs available for the entire day, as opposed to six runs like IHSF has. Mr. Nolan conceded "that factor wasn't in the survey" (at 44). Also, Mr. Nolan conceded that because the 10:00 run is his largest demand run, that is the run from which he probably received the most surveys (at 44-45), but Interstate is not proposing that it have a high-speed vessel available from Point Judith at 10:00, and IHSF's customers who were being surveyed did not know that (at 45).

Mr. Nolan also conceded that even if Interstate was granted a CPCN, IHSF would keep the bulk of its 10:00 passengers (at 46-47) as well as the bulk of its 2:00 passengers and its 7:30 passengers. Moreover, Mr. Nolan conceded that the survey showed that there were a number of people who were on the IHSF ferry "specifically to travel to New Harbor" (at 47). More importantly, Mr. Nolan conceded that the IHSF survey showed that there were a number of people who "specifically said that they prefer to use Island Hi-Speed Ferry's service rather than Interstate's service, even if Interstate went into Old Harbor on a fast ferry." (at 47-48)

Mr. Nolan conceded that Interstate's survey establishes that "there is a public demand for high speed ferry travel from Point Judith to Old Harbor" (at 50) and that if Interstate is given the license, "Island Hi-Speed Ferry would need some sort of level playing field" (at 51). However, as of right now, even if the New Harbor restriction were lifted from IHSF's CPCN, IHSF does not have the physical ability to land in Old Harbor (at 52-53). IHSF has, however, discussed with the Filippi family the possibility of landing its ferry at Ballard's dock in Old Harbor (at 60).

Mr. Nolan conceded that he was familiar with Interstate's operation and the family that runs it (at 88) and that he believes that Interstate is fit, willing, and able to operate the proposed service:

"Q. Based on your personal experiences with them, do you believe that they are fit, willing, and able to operate the run that they're proposing here?

A. Yes." (at 88-89)

With regard to the impact of Block Island Express, Mr. Nolan expressed the opinion that in 2004 IHSF lost about 12,000 to 13,000 customers on its Galilee to Block Island service (at 91), which from the point of view of the Town of Narragansett's concern about overcrowding in Galilee, more than offsets Mr. Edge's projected 10,000 new customers from Interstate's fast ferry.

On cross-examination from Mr. Roberti, in terms of conditions Mr. Nolan would like to have imposed if Interstate was granted the requested CPCN, Mr. Nolan testified as follows:

"If I had a wish list of what I'd like to see happen here in the event that Interstate is licensed for high speed service, I'd like to see us operating at roughly the same regulated price point, No. 1, so we're on a competitive playing field relative to rate, and I think it would only be fair to afford Island Hi-Speed some protection...into the schedule that Interstate is allowed to operate that, for instance,...their runs operate 15 minutes behind ours as opposed to 15 minutes prior to our departures." (at 95)

These were the only conditions Mr. Nolan initially asked for on his "wish list" in the event Interstate was granted the CPCN it is seeking. However, under prodding from Mr. Hagopian, Mr. Nolan added one more item to his "wish list", and that is "access to Old Harbor" (at 110). Mr.

Nolan also expanded his testimony by stating that, if both companies were allowed to run to Old Harbor, then “I would feel very comfortable if some of the handcuffs were taken off the rates to allow two companies to compete...I think I would be comfortable with competing on a level playing field with Interstate with adjustable rates.” (at 111) In other words, “both companies would have to have the discretion to raise and lower their rates as necessary” (at 111).

Under further questioning from Mr. Hagopian, Mr. Nolan stated that “an alternative approach to level the field” if IHSF did not have access to Old Harbor and Interstate was granted the CPCN it was requesting, would be for there to be rates for Interstate which are higher than IHSF’s rates (at 112).

In other words, Mr. Nolan conceded the following:

1. The public convenience and necessity (public need) for the proposed service has been fully demonstrated by Interstate.
2. Interstate is fit, willing, and able to provide the proposed service.
3. IHSF would like to meet the demonstrated public need for high speed ferry service from Point Judith to Old Harbor.
4. If Interstate is granted the requested CPCN, then IHSF would like to have a competitive playing field “operating at roughly the same regulated price point” if both operated out of Old Harbor (at 95), and an unspecified “rate differential” if IHSF continues to operate out of New Harbor (at 112).
5. Mr. Nolan would like Interstate’s runs to operate 15 minutes after IHSF’s departures.
6. If both ferries were operating to Old Harbor, Mr. Nolan would feel comfortable if all regulatory handcuffs were taken off and both companies were allowed to compete and raise and lower prices as they deemed necessary (at 111).

Mr. Nolan therefore made it clear that IHSF is not asking this Division to continue IHSF's five-year monopoly on high-speed ferry service to Block Island from Point Judith, because IHSF would be comfortable competing with Interstate. In other words, IHSF has conceded that the public need for fast ferry transportation from Point Judith to Old Harbor has been established, that Interstate is fit, willing, and able to service that public need, and more importantly, that IHSF is prepared to compete head to head with Interstate.

18. **LAWRENCE KUNKEL.** Mr. Kunkel's direct testimony is IHSF Exhibit 11. Mr. Kunkel has a Masters Degree in Economics, but he does not have a Ph.D. (at 2). Dr. Tyrrell and Dr. Stutz each have a Ph.D. Mr. Kunkel believes that the fast ferry market to Block Island is characterized by excess capacity (at 5-6), and that Interstate's proposal to enter the high-speed ferry market is "economically irrational and contrary to the public interest." (at 6). Of course, Dr. Stutz and even Mr. Nolan disagreed on both points. Mr. Kunkel did, however, concede that it is "the DPUC's legal mandate...to concern itself primarily with the public need." (at 7) Mr. Kunkel feels that if the CPCN is granted to Interstate, IHSF would end up in bankruptcy (at 8). Mr. Kunkel suggested that the appropriate form of market entry would be "in the form of a merger with one of the existing firms in the market or an outright acquisition of one of the existing firms," (at 9) but this forum cannot force such a merger.

Mr. Kunkel also filed rebuttal testimony (IHSF Exhibit 15). In this testimony, he presented a survey of IHSF customers that was done in late May and early June 2005. He interpreted the survey as concluding that approximately 57% of IHSF's customers would utilize Interstate's fast ferry if its CPCN were granted (at 3). Dr. Stutz and Mr. Edge both challenged the validity of the survey results for the reasons stated above, especially because the IHSF customers were not told that Interstate would only make 3 runs per day from Point Judith.

## POSSIBLE CONDITIONS

Interstate understands that the Division may consider the imposition of conditions if it grants Interstate's requested CPCN. Interstate suggests that the following conditions may be appropriate:

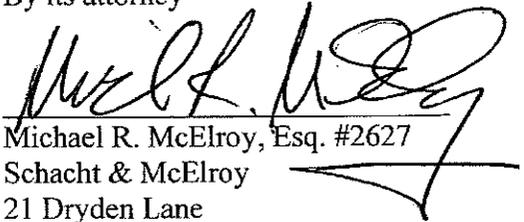
1. Interstate could be ordered to run its Point Judith fast ferry service at passenger and bicycle rates (the only items that IHSF carries) that are never less than IHSF's rates. Interstate has proposed that this condition be adopted. It is the same type of rate floor regulation that the PUC has already imposed on IHSF.
2. Interstate does not believe there needs to be any delay in either Interstate's 7:45 a.m. run or Interstate's 5:00 p.m. run from Point Judith. These are very lightly traveled runs. However, if IHSF is unable to secure docking space in Old Harbor, Interstate would be willing to leave at the same time (12:00 p.m.) that IHSF leaves. Interstate does not believe a 15-minute delay is needed or desirable because it would interfere with its Newport runs and layover, as testified to in detail by Joshua Linda.
3. IHSF's regulatory restrictions could be lifted, but not until Interstate actually gets its fast ferry in the water.
4. Interstate will run on the schedule set forth in JL2, unless the Division approves a change.

## CONCLUSION

The evidence has demonstrated that there is a strong public demand for a fast ferry from Point Judith to Old Harbor and from Newport to Old Harbor. The evidence has also demonstrated that Interstate is fit, willing, and able to meet that demand. Accordingly, Interstate respectfully requests that the Division issue a CPCN to Interstate for passenger and freight fast ferry

transportation between 1) Point Judith and Old Harbor, Block Island, and 2) Newport and Old Harbor, Block Island.

Respectfully submitted,  
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By its attorney



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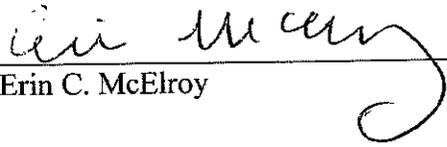
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