

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888**

IN RE:	Motion By Interstate Navigation	:	
	Company For A One-Year	:	Docket No. D-05-06
	Amendment To its CPCN	:	
	Petition By Island Hi-Speed Ferry, LLC	:	
	For Authority to Hold its CPCN In	:	Docket No. D-06-16
	Dormancy	:	
	Joint Application By Interstate Navigation	:	
	Company and Island Hi-Speed Ferry, LLC	:	
	For Approval of Time Charter of the Motor	:	Docket No. D-06-17
	Vessel "Athena"	:	

REPORT AND ORDER

1. INTRODUCTION AND HISTORY

On December 6, 2004, the Interstate Navigation Company, 14 Eugene O'Neill Drive, New London, Connecticut ("Interstate"), filed an application with the Rhode Island Division of Public Utilities and Carriers ("Division") seeking authority to operate as a seasonal "fast ferry" water carrier of passengers and freight between (1) Point Judith and Old Harbor, Block Island; and (2) Newport and Old Harbor, Block Island.

Following the docketing of Interstate's application, the Division received motions to intervene from the town of New Shoreham ("New Shoreham"); the town of Narragansett ("Narragansett"); and Island Hi-Speed Ferry, LLC

("IHSF").¹ The Division's Advocacy Section ("Advocacy Section"), an indispensable party, also entered an appearance in the docket.

After a lengthy discovery phase, the Division subsequently conducted five public hearings in the docket, on June 13, 14, 15 and 22, and July 11, 2005. After briefs were submitted, the Division issued a final report and order in the docket on January 23, 2006.² In its report and order, the Division found that Interstate had adequately demonstrated that it is fit, willing and able to provide high-speed ferry services between Point Judith, Block Island (Old Harbor) and Newport. The Division additionally found that the "public convenience and necessity" required Interstate's proposed fast ferry services between Point Judith, Block Island (Old Harbor) and Newport.

In the interest of promoting continued coexistence, the Division also identified several licensing restrictions and regulatory measures that the Division believed would facilitate IHSF's efforts to coexist with Interstate. The Division adopted these restrictions and protective measures "as an initially crafted safety net", and indicated that it would take additional steps to ensure the continued coexistence of these two water carrier companies as future circumstances warranted. Specifically, the Division's decision imposed the following three restrictions on Interstate's approved certificate of public convenience and necessity ("CPCN"):

- a. *Interstate shall adhere to its filed plan to operate three trips per day between Point Judith and Old*

¹ Interstate never objected to the intervention motions and all the movants ultimately became parties in the case.

² Order No. 18506.

Harbor and three trips per day between Newport and Old Harbor;

- b. Interstate's three departure times from Point Judith shall be 8:15 AM, 12:20 PM and 5:30 PM; and*
- c. Interstate is prohibited from marketing its fast ferry service to IHSF's customer base.*

2. PLEADINGS NOW BEFORE THE DIVISION

Interstate's Motion

On April 6, 2006 Interstate filed a motion with the Division wherein Interstate requests "a one-year amendment to its fast ferry certificate..." Interstate filed the motion as a post-decision pleading in Docket No. D-05-06.

In its motion, Interstate states as follows:

"IHSF will not be operating from Point Judith to Block Island in 2006. Instead, IHSF has agreed to lease its fast ferry vessel the M/V Athena to Interstate. Therefore, in 2006 Interstate wishes to operate a fast ferry between Point Judith and Old Harbor only. Interstate plans to fill the void created by IHSF's cessation of fast ferry service to Block Island from Point Judith by providing fast ferry service under Interstate's new CPCN. However, to fill that void, Interstate needs its CPCN amended for the summer of 2006 (1) to eliminate the restriction on the number, timing and marketing of fast ferry runs between Point Judith to Old Harbor, and (2) to hold in abeyance the Newport to Block Island leg of the new CPCN. (Conventional ferry service by Interstate between Newport and Block Island will continue). Therefore, Interstate requests that the restrictions set forth in Report & Order # 18506 be lifted and amended..."³

³ Interstate Exhibit A, Docket No. D-05-06

Interstate also proffered the pre-filed testimony of Walter E. Edge, Jr. in support of its request.⁴

In further support of its motion, Interstate proffered a “stipulation” that was signed by all the parties who originally participated in its original CPCN application proceeding in Docket No. D-05-06, supra. The signatories consisted of Interstate, IHSF, the Division’s Advocacy Section, the town of New Shoreham, and the town of Narragansett. Additionally, although not a party in the underlying case, the City of Newport also signed the agreement.⁵

IHSF’s Petition

On April 10, 2006, IHSF filed a petition with the Division wherein it seeks authority from the Division to hold its CPCN “in dormancy for a period of one year, from May 15, 2006 up to and including May 15, 2007.”⁶ The Division has docketed IHSF’s petition and assigned the designation Docket No. D-06-16. IHSF proffered the pre-filed testimony of Lawrence R. Kunkel in support of its petition.⁷ IHSF “also incorporates by reference the pre-filed testimony of Walter E. Edge in the companion docket filed by Interstate requesting Amendment of Interstate’s Fast Ferry CPCN.”

In further support of its motion, IHSF proffered a separate “stipulation” that was also signed by all the parties who originally participated in Interstate’s original CPCN application proceeding in Docket No. D-05-06. The signatories

⁴ Interstate Exhibit B, Docket No. D-05-06. Mr. Edge is the Consulting Department Director and President of Bacon & Edge, p.c., a CPA firm specializing in utility regulation. Mr. Edge testified as an expert witness for Interstate previously in Docket No. D-05-06.

⁵ Interstate Exhibit C, Docket No. D-05-06.

⁶ IHSF Exhibit 1, Docket No. D-06-16.

⁷ Joint Exhibit 2, Docket No. D-06-17. Mr. Kunkel is the President and Chief Economist at Kunkel Strategic Services, IBC, an economic and strategic management consulting firm, 83 North Pearson Drive, Warwick, RI 02888. . Mr. Kunkel testified as an expert witness for IHSF previously in Docket No. D-05-06.

consisted of Interstate, IHSF, the Division's Advocacy Section, the town of New Shoreham, and the town of Narragansett.⁸

Joint Petition

Also on April 10, 2006, Interstate and IHSF filed a joint petition with the Division wherein the parties "request that the Division approve a Time Charter of the Motor Vessel *Athena* from IHSF to Interstate, for the period May 24, 2006 through October 11, 2006."⁹ The petition was filed pursuant to the provisions of R.I.G.L. §39-3-24. The parties proffered the pre-filed testimony of Lawrence R. Kunkel in support of their joint petition.¹⁰ The Division has docketed IHSF's petition and assigned the designation Docket No. D-06-17.

In further support of their joint petition, Interstate and IHSF proffered a separate "stipulation" that was again signed by all the parties who originally participated in Interstate's original CPCN application proceeding in Docket No. D-05-06. The signatories consisted of Interstate, IHSF, the Division's Advocacy Section, the town of New Shoreham, and the town of Narragansett.¹¹

Consolidation and Public Hearing

Due to the obvious connections between the three filings and in the interest of administrative economy, the Division consolidated the three filings into one adjudicative proceeding. A consolidated "Notice of Public Hearing" was published in the *Providence Journal* on April 21, 2006 and the Division conducted a public hearing on May 1, 2006. The hearing was conducted in the

⁸ IHSF Exhibit 2, Docket No. D-06-16.

⁹ Joint Exhibit 1, Docket No. D-06-17.

¹⁰ Joint Exhibit 2, Docket No. D-06-17.

¹¹ Joint Exhibit 3, Docket No. D-06-17.

Division's hearing room located at 89 Jefferson Boulevard in Warwick. The following counsel entered appearances in this docket:

For Interstate:	Michael R. McElroy, Esq.
For IHSF:	Mark J. Hagopian, Esq. ¹²
For New Shoreham:	Merlyn P. O'Keefe, Esq. ¹³
For the Advocacy Section:	Leo J. Wold, Esq. Spec. Assistant Attorney General
For Narragansett:	Mark A. McSally, Esq. ¹⁴

No one appeared at the hearing in opposition to the motion and petitions filed by Interstate and IHSF.

3. FINDINGS

The Division has considered the instant motion and petition filings, and the supporting testimony and stipulations, and finds that the requests being made are in the public interest.

Accordingly, it is

(18597) ORDERED:

1. That the April 6, 2006 motion filing by the Interstate Navigation Company in Docket No. D-05-06, is hereby approved as filed.

¹² Attorney Hagopian did not attend the hearing. He contacted the hearing officer in advance of the hearing to indicate that Mr. McElroy, Interstate's attorney, would be representing IHSF's interests at the hearing.

¹³ Attorney O'Keefe similarly did not attend the hearing. He also contacted the hearing officer in advance of the hearing to indicate that he would not be attending. His participation in the consolidated proceedings was limited to the execution of the three settlement offers that were submitted by the parties.

¹⁴ Attorney McSally also did not attend the hearing. His participation in the consolidated proceedings was limited to the execution of the three settlement offers that were submitted by the parties.

2. That the April 10, 2006 petition filing by Island Hi-Speed Ferry, LLC, in Docket No. D-06-16, is hereby approved as filed.
3. That the April 10, 2006 joint petition filing by the Interstate Navigation Company and Island Hi-Speed Ferry, LLC, in Docket No. D-06-17, is hereby approved as filed.

Dated and Effective at Warwick, Rhode Island on May 5, 2006.

John Spirito, Jr., Esq.
Hearing Officer

APPROVED: _____
Thomas F. Ahern
Administrator