

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

IN RE:

Docket No. D-06-51

Petition By Interstate Navigation Company For Authority to Borrow \$5.6 Million.

Docket No. D-06-53

Petition By Interstate Navigation Company For Approval to:

- (1) Purchase the Rhode Island Assets Of Island Hi-Speed Ferry, LLC and Lease of the M/V Athena to Island Hi-Speed Ferry, LLC;
- (2) The Elimination of all Restrictions on Interstate Navigation Company's Fast Ferry CPCN;
- (3) The Elimination of all Restrictions on Island Hi-Speed Ferry, LLC's Fast Ferry CPCN;
- (4) Transfer Of Island Hi-Speed Ferry, LLC's Fast Ferry CPCN to Interstate and Approval to Continue to Hold the Island Hi-Speed Ferry, LLC CPCN in Abeyance (dormancy); and
- (5) To Continue to Hold the Newport Leg of Interstate Navigation Company's Fast Ferry CPCN in Abeyance (dormancy).

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. The matter was docketed as Division Docket No. D-05-06.

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

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

² Order No. 18506.

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 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.*

Subsequently, 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 stated 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

In 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 Advocacy Section, New Shoreham, and Narragansett. Additionally, although not a party in the underlying case, the City of Newport also signed the agreement.⁴

In a related filing, on April 10, 2006, IHSF filed a petition with the Division wherein it sought 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.”⁵ The Division docketed IHSF’s petition and assigned the designation Docket No. D-06-16. In 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 consisted of Interstate, IHSF, the Advocacy Section, New Shoreham, and Narragansett.⁶

Also on April 10, 2006, Interstate and IHSF filed a joint petition with the Division wherein the parties requested “...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.”⁷ The petition was filed pursuant to the provisions of R.I.G.L. §39-3-24. The Division docketed the joint petition and assigned the designation Docket No. D-06-17. In further support of their joint

⁴ Interstate Exhibit C, Docket No. D-05-06.

⁵ IHSF Exhibit 1, Docket No. D-06-16.

⁶ IHSF Exhibit 2, Docket No. D-06-16.

⁷ Joint Exhibit 1, Docket No. D-06-17.

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 again consisted of Interstate, IHSF, the Advocacy Section, New Shoreham, and Narragansett.⁸

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

The Division subsequently found the foregoing motion and petition filings in the public interest and approved each, as filed, through a report and order issued on May 5, 2006.⁹

2. THE INSTANT PETITION REQUESTS

A. Request for Authority to Borrow \$5.6 Million

On August 25, 2006, Interstate filed its instant petition for approval to borrow \$5.6 Million from the Washington Trust Company (“WTC”). The petition was filed in accordance with the requirements contained in R.I.G.L. §39-3-15, et seq. In support of its petition filing, Interstate proffered the pre-filed

⁸ Joint Exhibit 3, Docket No. D-06-17.

⁹ See Order No.18597.

testimony of Walter E. Edge, Jr., a regulatory consultant.¹⁰ The matter was docketed as Division Docket No. D-06-51.

Mr. Edge explained that the requested borrowing is necessary in order to facilitate Interstate's proposed purchase of IHSF's Rhode Island fast ferry business. Mr. Edge related that the terms of this new borrowing to acquire IHSF are similar to the \$3.1 million current debt that was approved by the Division to acquire the *M/V Anna C* in Docket No. D-04-21.¹¹

Mr. Edge testified that the proceeds from this loan will be used by Interstate to purchase the entire Rhode Island operation of IHSF, which includes the purchase of the *M/V Athena*, the IHSF CPCN to operate between Point Judith and Block Island (New Harbor), the IHSF customer list, the IHSF berthing permit in Point Judith, and a perpetual non-compete agreement, at a total cost of \$5,612,500.¹²

Mr. Edge next explained the rate options contained in the WTC commitment letter.¹³ He related that WTC is allowing Interstate to borrow the money in up to three "tranches (basically three parts)" each of which will be allowed the following rate options at the time of closing:

- A floating rate at 30 day LIBOR plus 175 basis points (7.075% as of 8/17/06) or at prime (as stated in the Wall Street Journal) minus 1% (7.25% as of 8/17/06) adjusted daily,

¹⁰ Interstate Exhibit 1 (Docket No. D-06-51).

¹¹ *Id.*, p. 2.

¹² *Id.*, p. 3.

¹³ A copy of the WTC commitment letter was attached to Mr. Edge's pre-filed direct testimony. See also Interstate Exhibit 2 (Docket No. D-06-51).

- A fixed rate at the Federal Home Loan Bank of Boston's (FHLB) Ten Year Cost Of Funds (COF) Rate at time of election plus 190 basis points (7.40% as of 8/17/06), or based upon 30-day LIBOR plus 175 basis points, with a swap to a fixed rate (7.20% as of 8/17/06).

Mr. Edge related that after closing, and from time to time, Interstate may elect to fix any floating rate tranche of the loan at a fixed rate based upon the FHLB COF Rate based upon the remaining number of years until maturity of the loan at time of election, plus 190 basis points.¹⁴

Mr. Edge next related that the loan is for a 10-year term with a 25-year mortgage style amortization. Mr. Edge noted that the ten-year term would result in a balloon payment due at the end of the ten years. He related that it "is expected that this balloon payment will probably be rolled over into a ten to fifteen year loan at that time."¹⁵ Mr. Edge also testified that although it is not specified in the commitment letter, the WTC has agreed to have interest only payments in the winter and larger payments in the summer. Mr. Edge also provided details on additional terms related to collateral, prepayment penalties and changes to financial covenants.¹⁶ He also testified that the closing on the loan is scheduled for November 1, 2006.¹⁷

Mr. Edge testified that the proposed borrowing would have "no immediate impact on the traditional service ratepayers (or the fast ferry rate payers if the

¹⁴ *Id.*, p. 3; also see attached Commitment Letter.

¹⁵ *Id.*, p. 3.

¹⁶ *Id.*, p. 4.

¹⁷ *Id.*, p. 8.

PUC continues the rates currently in place...).”¹⁸ Mr. Edge also testified that Interstate would not require an increase in rates on its traditional operation to pay the debt service on this new debt. Mr. Edge related that “Interstate has projected that the new fast ferry division will more than pay for all of its direct expenses to include all debt service payments.”¹⁹ In fact, Mr. Edge projected an anticipated surplus of \$254,754 after paying all of the fast ferry direct expenses.²⁰

In further support of the proposed borrowing, Mr. Edge proffered a schedule (WEE-1) that provides a calculation of the projected fast ferry revenues and expenses. He noted that the projections on the schedule “are significantly different than the original projections that Interstate used in its CPCN filing.” He explained that “major differences in the size, design and usage of the Athena compared to the size, design and usage of Interstate’s proposed new [larger] fast ferry has resulted in significantly different projections.”²¹ Mr. Edge related that additional differences in projections result from changes in debt service costs, lower ridership numbers in 2006 than originally estimated, and changes associated with salaries and wages costs.²²

B. Request For Approval to: (1) Purchase the Rhode Island Assets Of Island Hi-Speed Ferry, LLC and Lease of the M/V Athena to Island Hi-Speed Ferry, LLC; (2) The Elimination of all Restrictions on Interstate Navigation Company’s Fast Ferry CPCN; (3) The Elimination of all Restrictions on Island Hi-Speed Ferry, LLC’s Fast Ferry CPCN; (4) Transfer Of Island Hi-Speed Ferry,

¹⁸ Id., p. 6.

¹⁹ Id., p. 8.

²⁰ Id.

²¹ Id., p. 9.

²² Id., pp. 9-10.

LLC's Fast Ferry CPCN to Interstate and Approval to Continue to Hold the Island Hi-Speed Ferry, LLC CPCN in Abeyance (dormancy); and (5) To Continue to Hold the Newport Leg of Interstate Navigation Company's Fast Ferry CPCN in Abeyance (dormancy).

On August 31, 2006, Interstate filed a petition, in which it aggregately requests the following approvals:

1. Interstate requests approval under R.I.G.L. §§39-3-24 and 39-3-25 of Interstate's purchase of IHSF, including, but not limited to, the M/V Athena, the IHSF CPCN, and all other assets of IHSF for a sum of \$5,612,500. Interstate states that the Purchase and Sale Agreement ("Agreement"), scheduled for closing on November 1, 2006, also includes a lease back (charter) of the M/V Athena from Interstate to IHSF for the period November 15, 2006 until May 1, 2007, at a rate of \$1,285 per day. Interstate indicates that the revenues from the lease will provide cash flow to Interstate to help service the related \$5.6 million debt service;²³

2. Interstate observes that because IHSF will no longer be operating a high speed ferry from Point Judith to Block Island, and because the restrictions imposed on Interstate's fast ferry CPCN were intended to protect IHSF, Interstate respectfully requests the elimination of all restrictions on Interstate's fast ferry CPCN, including, but not limited to, restrictions relating to scheduling and marketing;²⁴

3. Interstate additionally observes that because the restrictions on IHSF's fast ferry CPCN were imposed to protect Interstate, the lifeline carrier,

²³ Interstate Exhibit 1 (Docket No. D-06-53), pp. 1-2.

²⁴ *Id.*, p. 2.

and because IHSF will no longer be operating, and Interstate will now own IHSF's fast ferry CPCN, the restrictions are no longer necessary and should be eliminated;²⁵

4. Interstate requests that IHSF's fast ferry CPCN be transferred to Interstate and that the IHSF CPCN being transferred (Point Judith to New Harbor) continue to be held in abeyance (dormancy);²⁶ and

5. Interstate requests that the Newport leg of its fast ferry CPCN continue to be held in abeyance (dormancy).²⁷

In support of its petition filing, Interstate proffered the pre-filed testimony of Walter E. Edge, Jr., a regulatory consultant.²⁸ The matter was docketed as Division Docket No. D-06-53. Mr. Edge's pre-filed testimony in this docket dovetails into the pre-filed testimony he proffered in Docket No. D-06-51, supra.

Beginning with Interstate's proposal to purchase the Rhode Island assets of IHSF and the lease of the M/V Athena to IHSF, Mr. Edge sponsored and authenticated two exhibits: (1) the Letter Agreement signed by the parties on November 16, 2005, and (2) the Asset Purchase Agreement signed by the parties on April 5, 2006.²⁹

Mr. Edge testified that the purchase of IHSF's Rhode Island assets has changed Interstate's plans to build its own fast ferry. He related that although

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Interstate Exhibit 2 (Docket No. D-06-53).

²⁹ Id., p. 4 and "Attachment A"

Interstate still hopes to go forward with its plans to build a larger car/freight/passenger fast ferry, Interstate believes that it is only prudent at this time to use this opportunity to run the *M/V Athena* on the Point Judith to Block Island run for a while to determine what the actual demand is for Interstate's fast ferry service to Old Harbor. Mr. Edge related that Interstate has been "a bit disappointed to date with the fast ferry ridership on the *M/V Athena*." He related "Interstate thinks it needs to make its customers more familiar with the service to build demand."³⁰ Mr. Edge testified, however, that Interstate "is still considering, as one of its options, building a new larger fast ferry vessel and running it from Point Judith to Block Island and then using the *M/V Athena* to run the three way run (Point Judith-Block Island-Newport and return).³¹

Mr. Edge testified that Interstate believes that the current schedule of fast ferry runs to and from the Island may not provide passengers with the flexibility they have come to expect from Interstate. He noted that some passengers are opting to ride one-way on the fast ferry and make the return trip on a traditional vessel. He related that Interstate hopes to investigate this point in more detail next year.³²

Mr. Edge also asserted that the facilities for furnishing service would not be diminished by this transaction. He related that Interstate expects to continue to provide substantially the same number of fast ferry runs to and

³⁰ *Id.*, p. 4.

³¹ *Id.*

³² *Id.*

from the Island, using the same vessel previously used by IHSF. However, according to Mr. Edge, “the runs will take less time because Interstate will be landing in Old Harbor (downtown) which is the more favorable island landing location for most of Interstate’s customers.”³³ Mr. Edge also opined that the purchase and sale agreement is consistent with the public interest, a necessary criterion contained in R.I.G.L. §39-3-25. He reasoned that Interstate will be able to purchase the assets of IHSF and “not raise the existing fast ferry rates at this time.” He added that the profits from the fast ferry will be used by Interstate for the public interest and not be distributed to the owners of Interstate in the form of dividends.³⁴

Mr. Edge next discussed the terms of the proposed Asset Purchase Agreement. He identified the “major terms” as follows:

1. This is an asset purchase.
2. There is no assumption of any debt.
3. Purchase Price: \$5,612,500
4. Earnest money deposit: \$250,000
5. Bank used for financing: Washington Trust Company
6. Approval of financing by the DPUC and rates by the PUC.
7. Assets purchased:
 - M/V Athena \$4,200,000 (appraised value)
 - Customer List 12,500 Allocation

³³ Id., p. 6.

³⁴ Id.

- Non Compete 500,000 Allocation
- Goodwill 200,000 Allocation
- CPCN 500,000 Allocation
- Berthing Permit 200,000 Allocation

Total \$5,612,500

8. Approvals for the transfer of assets by the DPUC
9. November 1, 2006 Closing.

Mr. Edge testified that, in his expert opinion, the purchase of the IHSF Rhode Island assets by Interstate is in the best interest of Interstate and its ratepayers. He observed that over the last four years, “Interstate has been fighting against an onslaught of fast ferry competitors to maintain ridership on its traditional ferries.” As examples, Mr. Edge related that Interstate purchased a bigger faster vessel (the *M/V Anna C*) to replace the *M/V Nelseco* on the Point Judith to Block Island run and completed major renovations on the *M/V Carol Jean* in an attempt to compete with the “faster and fancier fast ferries.” He related that “unfortunately all of Interstates efforts did not stop the lose [sic] of ridership to its fast ferry competitors from Point Judith (IHSF) and New London (Block Island Express).”³⁵

Mr. Edge testified that Interstate was concerned that the loss of ridership would result in an increase in Interstate’s lifeline rates and that profits gained from the fast ferry operations were not benefiting ratepayers. He testified that with the purchase of the IHSF assets, “Interstate will gain control over the

³⁵ Id., p. 7.

profits from the fast ferry operation from Point Judith and will be able to funnel those profits back into the company, as it has always done, for the good of the ratepayers.”³⁶

Mr. Edge next turned his attention to Interstate’s request for the elimination of all restrictions on its fast ferry CPCN. In short, he argued that they are no longer needed. He therefore asked that the Division remove all restrictions related to “departure times,” “marketing” and the “operating schedule.”³⁷ He also testified that Interstate “would like one modification as well.” Specifically, Mr. Edge stated that since IHSF will no longer be running its fast ferry from Point Judith to Block Island, Interstate would like to fill that fast ferry void and run up to six trips per day from Point Judith to Old Harbor in the summer instead of the three trips per day from Point Judith to Old Harbor required by Interstate’s fast ferry CPCN.³⁸ Mr. Edge added that Interstate would also like the flexibility, in periods of slow demand, to reduce the number of trips and/or run only on the weekends.³⁹

In support of this request, Mr. Edge testified that Interstate believes that the public convenience and necessity will be better served if Interstate continues to provide a similar service to Block Island as was previously provided by IHSF. He testified that Interstate would like to modify its CPCN “until it can build its new car/freight/passenger fast ferry and put it into service.” Mr. Edge also pointed out that in order to provide these additional

³⁶ Id., p. 8.

³⁷ Id., p. 10.

³⁸ Id., p. 9.

³⁹ Id.

runs between Point Judith and Block Island Interstate would not be able to “make the other more time consuming Newport leg of the three legged trip set forth in Interstate’s CPCN.”⁴⁰

Mr. Edge next addressed Interstate’s request for the elimination of all restrictions on IHSF’s fast ferry CPCN. He observed that the restrictions that were put on IHSF’s CPCN were designed to protect the lifeline service provided by Interstate. He related that since Interstate will own the CPCN, it would be able to provide its own protection. He also opined that clearing the CPCN of all restrictions would allow for more flexibility to Interstate to maximize the profit that would be available to protect the lifeline rates.⁴¹

Regarding Interstate’s request to transfer IHSF’s CPCN to Interstate and to continue to hold the IHSF CPCN in abeyance, Mr. Edge testified that Interstate intends to run the *M/V Athena* under its own CPCN from Point Judith to Block Island (Old Harbor) up to six times a day. He related that Interstate believes that this is the best use of the *M/V Athena* and it satisfies the greatest public need and convenience. Mr. Edge also offered the following reason for the request:

“Interstate is still hoping to build a new larger, car/freight/passenger fast ferry vessel. When that vessel is in operation, Interstate will have two fast ferries and may have a need for the IHSF CPCN. Interstate knows how difficult it is to get a new CPCN and would like to keep its options open relating to the CPCN purchased from IHSF.”

⁴⁰ *Id.*

⁴¹ *Id.*, p. 10.

Mr. Edge lastly addressed Interstate's request to continue to hold the Newport leg of its fast ferry CPCN in abeyance. Mr. Edge reiterated that Interstate cannot maximize its runs between Point Judith and Block Island (Old Harbor) if it must also provide three trips a day between Block Island and Newport, as required under Interstate's fast ferry CPCN. Mr. Edge opined that "three trips a day between Point Judith and Block Island will not satisfy the demand that was serviced by IHSF, let alone address the needs of Interstate's fast ferry customers..."⁴²

3. PUBLIC HEARING

Due to the obvious connections between the two filings and in the interest of administrative economy, the Division consolidated the two filings into one adjudicative proceeding. A consolidated "Notice of Public Hearing" was published in the *Providence Journal* on September 11, 2006 and the Division conducted a public hearing on October 2, 2006. The hearing was conducted in the 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 ⁴³ :	Mark J. Hagopian, Esq.
For the Advocacy Section:	William K. Lueker, Esq. Spec. Assistant Attorney General

No one appeared at the hearing in opposition to Interstate's petitions.

⁴² *Id.*, p. 11.

⁴³ IHSF filed a motion to intervene in Docket No. D-06-53 on September 12, 2006. Because it was filed in a timely fashion and because there were no objections filed in response thereto, IHSF's motion was automatically approved in accordance with the provisions of Rule 17(e) of the Division's Rules of Practice and Procedure.

At the outset of the hearing, a stipulated agreement that was recently executed on September 18, 2006 between Interstate and New Shoreham was entered into the record.⁴⁴ The stipulation was offered for Division consideration and approval, and provides in pertinent part as follows:

1. *Interstate and the Town agree that in the event that the Division approves the proposed purchase by Interstate of the Rhode Island Assets of Island Hi-Speed Ferry ("IHSF"), the transfer of IHSF's fast ferry CPCN (the 'New Harbor CPCN') to Interstate, and the holding of the New Harbor CPCN and the Newport leg of Interstate's fast ferry CPCN by Interstate in abeyance (dormancy), Interstate shall provide the Town with written notice at least 180 days in advance of any date(s) as of which Interstate proposes to reactivate (a) the New Harbor CPCN or (b) the Newport leg of Interstate's fast ferry CPCN. CPCN reactivation shall mean the commencement of scheduled or chartered fast ferry operations to/from Newport and/or to/from New Harbor.*

2. *Interstate and the Town agree that the provision of formal advance notice to the Town of any planned reactivation of the New Harbor CPCN will aid the Town in its upland preparations for the influx of additional ferry passengers at the New Harbor docking location and facilitate cooperation between the Town and Interstate.*

3. *Similarly, Interstate and the Town agree that the provision of formal advance notice to the Town of any planned reactivation of the Newport leg of Interstate's fast ferry CPCN will aid the Town in its upland preparations for the influx of additional ferry passengers at the Old Harbor docking location and facilitate cooperation between the Town and Interstate.*

4. *Subject to the Division's inclusion of the Interstate commitment contained in paragraph 1 above as a condition for the Division approvals (a) requested by Interstate from the Division as referenced in paragraph*

⁴⁴ Interstate Exhibit 3 (Docket No. D-06-53).

1 above and (b) required under the Asset Purchase Agreement filed with the Division on August 31, 2006, the Town does not oppose the Division's granting such approvals.

5. Nothing in the foregoing terms of this Stipulation shall limit the ability of any party to take any position in any future Division proceedings or pending or future Commission proceedings regarding the conventional ferry quality of service issues, financing applications filed by Interstate or ratemaking issues related to Interstate's conventional and fast ferry operations.

6. Nothing in the foregoing terms of this Stipulation shall preclude the Town from submitting comments to the Division regarding Interstate's financing approval application pending in Docket No. D-06-51.

Also, consistent with "paragraph 6" of the above stipulated agreement, New Shoreham did submit comments regarding Interstate's long-term financing application, Docket No. D-06-51.⁴⁵ In its comments, the Town stated that it did not oppose Interstate's application but was "*concerned that the cost and reliability of conventional 'lifeline' ferry service not be adversely affected by Interstate's simultaneous operation of fast ferry service, given that the proposed long term debt used to acquire IHSF's Rhode Island assets will be secured in part by Interstate...assets used to provide conventional 'lifeline' ferry service.*"⁴⁶

4. STIPULATION BETWEEN THE PARTIES

On the morning of the public hearing, the parties jointly proffered a stipulated agreement that addresses each of the issues presented in these consolidated dockets. The agreement was executed by Interstate, IHSF and the

⁴⁵ Public Comment Exhibit 1.

⁴⁶ *Id.*, pp. 1-2.

Advocacy Section.⁴⁷ The terms and conditions of the stipulated agreement are, in pertinent part, provided below:

Section 1. *Interstate may obtain financing in the amount of \$5,600,000 from the Washington Trust Company.*

Section 2. *Interstate may purchase the Rhode Island assets of IHSF, including: the M/V Athena, customer list, covenant not to compete, goodwill, CPCN, and berthing permit, for the total purchase price of \$5,612,500, utilizing a loan furnished by the Washington Trust Company. The terms of the loan are as described in the Washington Trust Commitment Letter and Term Sheet submitted in Docket D-06-51. Interstate may also charter the M/V Athena for November 15, 2006, to May 1, 2007, at \$1,285 per day.*

Section 3. *IHSF's CPCN will be transferred to Interstate and merged with the Interstate high speed ferry CPCN to authorize the provision of high speed ferry services by Interstate between Point Judith and Newport to any Block Island termini, including Old Harbor and New Harbor. Because Interstate would not be in a financial or operational position to commence a Newport high speed service until the summer of 2009 at the earliest, Interstate's combined high speed ferry CPCN will continue to be held in abeyance with respect to the Newport leg of its fast ferry service until October 31, 2008. However, Interstate shall be required to report to the Division by October 31 of each year as to the status of its plans to provide high speed service between Newport and Block Island. The continued authorization of that service on the CPCN will be decided after Interstate files its October 31, 2008, report, and annually thereafter. Interstate's combined high speed ferry CPCN shall be without restriction with respect to furnishing services between Point Judith and Block Island except that it shall be required, barring extraordinary circumstances, to provide services commencing no later than July 7 and concluding no earlier than Labor Day of each year. Interstate's proposed schedule and termini for all fast ferry*

⁴⁷ Joint Exhibit 1 (Docket Nos. D-06-51 and D-06-53).

services, and any modifications thereto, shall be provided to the Division for review at least 45 days prior to the effective date of the scheduled services.

Section 4. *The Parties believe that the maintenance of safe and reliable year round service to Block Island at reasonable rates for passengers, vehicles and freight is of critical importance. The provision of high speed ferry services provides economic benefits to Block Island as well as benefits to customers who use that service. However, the Parties also agree that the provision of high speed service by competitors has posed, and would continue to pose, risks to the profitability of Interstate and its ability to maintain safe and reliable year round traditional service to Block Island at reasonable rates for passengers, vehicles, and freight. The Parties are confident that the proposed transaction can mitigate such risks.*

Nevertheless, the Parties recognize that the proposed transaction is not without its own risks, including, but not limited to, generation of adequate revenues by the high speed service to cover the costs of that service (including the interest and principal repayments on approximately \$5.6 million of additional debt). Therefore, to protect the year round traditional service to Block Island at reasonable rates for passengers, vehicles, and freight, Interstate agrees that any losses incurred from the operation of high speed service will not affect the year round service, or rates, to Block Island for passengers, vehicles, or freight, unless the Public Utilities Commission should direct otherwise.

Section 5. *This Stipulation and Settlement should not be interpreted to restrict the rights of any party to recommend a particular treatment of the profits from the operation of high speed operations for ratemaking purposes or to restrict the authority of the Public Utilities Commission with regard to the treatment of the profits from the high speed operations for ratemaking purposes.⁴⁸*

⁴⁸ Joint Exhibit 1 (Docket Nos. D-06-51 and D-06-53).

5. FINDINGS

The Division has carefully examined the record evidence, including the settlement agreement between the parties, and finds that approving the instant petitions, as modified by the settlement agreement between the parties, would be reasonable and in the interest of ratepayers. The Division does, however, have a few concerns that warrant some modifications to the approvals in issue. The Division also finds that the stipulated agreement between Interstate and New Shoreham is not in the interest of ratepayers.

Regarding the issue of whether the Division should relax the restrictions currently attached to IHSF's and Interstate's CPCNs, the Division believes that it is important to preserve the nature of luxury high-speed ferry service, vis a vis the service provided by Interstate's conventional slower speed ferries, by maintaining the following restrictions: (1) that the vessel(s) be capable of operating comparatively smoothly and quietly with a service speed of approximately 28 knots; (2) that services continue to include advanced ticketing and guaranteed seating; and (3) that amenities like airline seating, wall-to-wall carpeting, climate control (including A/C) and galley services continue to be provided.⁴⁹

The Division is also willing to grant Interstate's request to hold its Newport authority in abeyance through the 2008 operating season, but will not agree to limit its scheduled review (after October 31, 2008) to only a determination of whether that aspect of the authority contained in Interstate's

⁴⁹ These requirements are consistent with the Division's previous order in 02-MC-56 (Order No. 17081, issued on 8/2/02).

CPCN ought to be continued or not. Instead, the Division will address the entirety of the authority conferred in Interstate's CPCN, as the Division originally granted Interstate's high-speed ferry CPCN based on the totality of the fast ferry services being proposed at the time, which prominently included high-speed ferry services between Newport to Block Island. At this time the Division will also investigate the status of Interstate's originally planned larger car/freight/passenger fast ferry, which was another influential factor in the granting of Interstate's fast ferry CPCN.

The Division notes that though Interstate had initially requested authority to hold IHSF's CPCN in abeyance after it was transferred, that request has been effectively withdrawn by the parties' settlement offer calling for the merging of IHSF's CPCN into Interstate's CPCN. The Division will approve the merging of authority. However, the Division finds that it would be unreasonable to permit Interstate to shelf its "New Harbor" authority in perpetuity or never utilize the second fast ferry authorized under IHSF's CPCN. Accordingly, the Division will examine the propriety of allowing Interstate to retain the authority realized through the transfer of IHSF's CPCN when it conducts its evaluation of Interstate's dormant Newport authority (and larger vessel status) sometime after the 2008 operating season.

Lastly, with respect to the stipulation between Interstate and New Shoreham, the Division finds the proposed notice obligation unreasonable, contrary to the interests of ratepayers, and an attempted usurpation of

Division authority. Therefore, the Division has decided to reject the proposed settlement.

Accordingly, it is

(18728) ORDERED:

1. That the Interstate Navigation Company's August 25, 2006 petition, which seeks Division approval under R.I.G.L. §39-3-15, to enter into long-term debt and borrow an amount not to exceed \$5.6 Million, from the Washington Trust Company, is hereby approved as filed, subject to the terms and conditions contained in the settlement agreement between the parties. That the Division additionally hereby limits approval of the instant borrowing to the terms and details identified in the record.
2. That the Interstate Navigation Company's August 31, 2006 petition, which seeks the following approvals from the Division: (1) to purchase the Rhode Island assets of Island Hi-Speed Ferry, LLC and Lease of the M/V Athena to Island Hi-Speed Ferry, LLC; (2) the elimination of all restrictions on Interstate Navigation Company's fast ferry CPCN; (3) the elimination of all Restrictions on Island Hi-Speed Ferry, LLC's Fast Ferry CPCN; (4) transfer of Island Hi-Speed Ferry, LLC's fast ferry CPCN to Interstate and approval to continue to hold the Island Hi-Speed Ferry, LLC CPCN in abeyance (dormancy); and (5) to continue to hold the Newport Leg of Interstate Navigation Company's fast ferry CPCN in abeyance (dormancy), are all hereby approved, subject to the terms and conditions contained in the

settlement agreement between the parties, and the Division's findings and imposed modifications discussed and contained herein.

3. The offer of settlement jointly submitted by the parties in these consolidated dockets is hereby approved and adopted, subject to the Division's findings and imposed modifications discussed and contained herein.

4. The offer of settlement submitted by New Shoreham and Interstate in these consolidated dockets is hereby rejected.

Dated and Effective at Warwick, Rhode Island on October 3, 2006.


John Spirito, Jr., Esq.
Hearing Officer

APPROVED: 
Thomas F. Ahern
Administrator

