

**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**

I. Travel

The Rhode Island Division of Public Utilities and Carriers ("Division") previously issued four Reports and Orders ("R&O's") in the instant consolidated dockets, specifically, R&O No. 18728, issued on October 3, 2006; R&O No. 19477, issued on October 31, 2008; R&O No. 19599, issued on March 17, 2009 and R&O No. 19919, issued on February 26, 2010. These four previously issued R&O's are inextricably linked with this R&O,

and accordingly shall be adopted as the introduction to this R&O and, by necessity, incorporated by reference. As the travel of these consolidated dockets is long and complicated, the Division will skip all discussion of this travel in the instant R&O, relying instead on the incorporation of the above-identified R&O's as a comprehensive prologue, thereby permitting the Division to limit its focus to the compliance issues that still remain outstanding.

## II. Interstate's Latest Compliance Filing and Position

On December 28, 2011, the Interstate Navigation Company, 14 Eugene O'Neill Drive, New London, Connecticut ("Interstate") filed a pre-scheduled compliance filing relating to the several remaining open issues in consolidated Docket Nos. D-06-51 and D-06-53.<sup>1</sup>

In its 2011 filing, Interstate moves for a 2-month extension of time to comply with R&O No. 19919. Interstate acknowledges that R&O No. 19919, *supra*, required Interstate to submit a proposal to the Division by December 31, 2011, that sets forth a plan to provide regular fast ferry services between Newport and Block Island (Old Harbor) and Point Judith and New Harbor on Block Island by the summer of 2012. Interstate further acknowledges that R&O No. 19919 provides that in the event Interstate is unable or unwilling to propose such a plan by December 31, 2011, the Division will revoke that portion of Interstate's fast ferry Certificate of Public Convenience and Necessity (CPCN) that provides the authority to operate a fast ferry service

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<sup>1</sup> Interstate Exhibit 2011-1.

between Newport and Block Island (Old Harbor) and Point Judith and New Harbor.<sup>2</sup>

Also contained in its 2011 filing, Interstate requests limited authority to provide fast ferry services from Point Judith and New Harbor during “Race Week.” Interstate makes this formal request based on a holding in R&O No. 19919, which provides that “if revocation...becomes necessary, Interstate may, if it wishes to continue to provide fast ferry services to and from New Harbor from Point Judith during ‘Race Week,’ file a petition with the Division on an annual basis for the requisite limited authority to provide such services.”<sup>3</sup>

In support of its requests, Interstate proffered a letter from its Vice President, Joshua Linda, wherein Mr. Linda relates that despite Interstate’s efforts over the last two years to locate a suitable fast ferry for the Newport to Block Island fast ferry service, it has been unable to locate such a vessel to date. However, Mr. Linda indicates that Interstate has recently learned of the existence of three fast ferry vessels which possibly could be used to provide such services. Based on this new development, Mr. Linda requests that Interstate be provided an additional two months, “through March 1, 2012,” “to investigate whether these fast ferries would be suited for

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<sup>2</sup> *Id.*, p. 1.

<sup>3</sup> *Id.*

Interstate's Newport to Block Island run, and if so, whether an acceptable purchase price could be negotiated."<sup>4</sup>

Mr. Linda's letter makes no mention of any efforts by Interstate to set forth a plan to provide regular fast ferry services between Point Judith and New Harbor by the summer of 2012.

### III. Comments and Interventions

The Division notes that Interstate mailed copies of its December 28, 2011 filing to all the Intervenors and interested persons who have previously participated and/or commented in these consolidated dockets. Notwithstanding, the Division received no comments or pleadings from any of these parties or individuals concerning Interstate's latest filing.

### IV. Findings

#### a. Request for extension

Predicated on the possibility of shortly locating a suitable vessel to provide fast ferry services between Newport and Block Island, the Division finds that Interstate's request for a 2-month extension of time is reasonable. This extension shall be limited to that portion of Interstate's fast ferry CPCN that provides the authority to operate a fast ferry service between Newport and Block Island.

#### b. Request for Limited Authority

With respect to Interstate request for limited authority to provide fast ferry services from Point Judith to New Harbor during "Race Week," the

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<sup>4</sup> Id., p. 2 and "Exhibit A."

Division finds that it must first address Interstate's failure to set forth a plan to provide regular fast ferry services between Point Judith and New Harbor by the summer of 2012, as was directed by the Division in R&O No. 19919.

Specifically, the Division has previously held that "in the event that Interstate is unable or unwilling to propose such a plan by December 31, 2011, the Division will carry out its previous decision in R&O No. 15999 and revoke that portion of Interstate's fast ferry CPCN that provides the authority to operate a fast ferry service between Newport and Block Island and Point Judith and New Harbor."<sup>5</sup> In its instant filing, Interstate has requested a 2-month extension of time for submitting a plan to operate a regular fast ferry service between Newport and Block Island, which the Division is granting; however, no such plan is mentioned by Interstate for that portion of its operating authority that requires regular fast ferry services between Point Judith and New Harbor. Therefore, in conformance with the Division's previous R&O's in these consolidated dockets, the Division finds that Interstate's CPCN authority for regular fast ferry services between Point Judith and New Harbor has been forfeited.

Contemplating the possibility of the revocation of this authority, in R&O No. 19919 the Division held:

If a revocation of above-described authority becomes necessary, Interstate may, if it wishes to continue providing fast ferry services to and from New Harbor during "Race Week," file a petition with the Division on an annual basis for the requisite limited authority to

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<sup>5</sup> See R&O No. 19919, pp. 10-11.

provide such services. Interstate will thereupon be required to satisfy the burden of proof prescribed under Rhode Island General Laws, Section 39-3-3 before such authority will be granted by the Division. If granted, the duration of such authority will be limited to only one "Race Week" at a time and will expire immediately thereafter.

In view of Interstate's instant request for the limited authority defined above, the Division finds abundant support for concluding that Interstate has accepted the forfeiture of its heretofore authority to operate a fast ferry between Point Judith and New Harbor.

The Division's findings in R&O No. 19919 also established the procedural methodology for addressing an Interstate request for limited authority to provide fast ferry services to and from New Harbor during "Race Week." As noted above, Interstate is "required to satisfy the burden of proof prescribed under Rhode Island General Laws, Section 39-3-3 before such authority will be granted by the Division." Accordingly, the Division will instruct its Clerk to schedule a public hearing to take up this matter as expeditiously as practicable. Additionally, though the Division has previously held (in R&O No. 19919) that requests for limited "Race Week" authority would require annual application filings and annual reviews and approvals by the Division, the Division has reconsidered that decision and will agree to consider application filings from Interstate that seek such limited authority over a three-year period.

Finally, albeit not mentioned in Interstate's December 28, 2011 filing, the Division continues to recognize that Interstate remains obligated, pursuant to previous Division decisions in these consolidated dockets, to place into service the "originally planned larger car/freight/passenger fast ferry" that Interstate described in Docket No. D-05-06. Regarding this requirement, the Division has decided again to reserve judgment on this matter, consistent with its findings in R&O No. 19599 and R&O No. 19919.

Accordingly, it is

(20625) ORDERED:

1. That R&O No 18728, issued on October 3, 2006; R&O No. 19477, issued on October 31, 2008; R&O No. 19599, issued on March 17, 2009; and R&O No. 19919, issued on February 26, 2010, are hereby adopted as the introduction to this R&O and, by necessity, incorporated by reference.
2. That Interstate's motion for an extension of time for submitting a proposal to the Division for regular fast ferry services between Newport and Block Island from December 31, 2011 to March 1, 2012, is hereby granted.
3. That Interstate's authority to provide regular fast ferry services between Point Judith and New Harbor on Block Island is hereby revoked. The Division's Carrier Section is instructed to issue an

amended CPCN to Interstate which reflects this reduction in operating authority.

4. That Interstate's request for limited authority to provide fast ferry services between Point Judith and New Harbor during "Race Week" (in June, 2012) shall be subject to regulatory review as prescribed under Rhode Island General Laws, Section 39-3-3. In furtherance of conducting this review, the Division directs its Clerk to schedule a duly noticed public hearing, under a separate docket number designation, to address this request as expeditiously as practicable. If granted, the duration of such authority will be limited to only the 2012 "Race Week" and will expire immediately thereafter, unless otherwise extended by the Division; provided, however, that any extension of such limited authority shall not exceed two additional "Race Week" seasons. Based on this decision, Interstate may amend its pending request for such limited "Race Week" authority to include the 2013 and 2014 seasons as well. If Interstate wishes to amend its request to add the 2013 and 2014 seasons, it shall file such amendment without delay so that the notice of hearing to be published in this matter may properly reflect the amended request.<sup>6</sup>

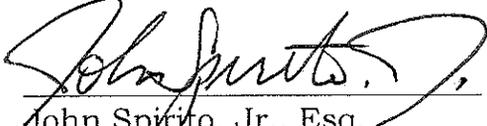
5. With respect to Interstate's obligation to operate with a vessel that is materially consistent with the "originally planned larger

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<sup>6</sup> Interstate is encouraged to contact the Clerk immediately, even before filing any such amended pleading(s), in order to quickly convey its intentions regarding this matter.

car/freight/passenger fast ferry” that Interstate described in Docket No. D-05-06, the Division will again reserve judgment on this matter consistent with its previous findings in R&O No. 19599 and R&O No. 19919.

Dated and Effective at Warwick, Rhode Island on January 12, 2012.

  
John Spirito, Jr., Esq.  
Hearing Officer

APPROVED:   
Thomas F. Ahern  
Administrator