

Following the filing of this application, the Division scheduled, and published notice of, the date, time and location of a formal hearing to review the application. On March 5, 2010, the Division received a timely motion to intervene from Oldport Marine Services, Inc., CPCN number W-1138, a water vessel passenger carrier authorized to provide services similar to those proposed by the Applicant. The motion to intervene was granted pursuant to Rule 17 of the Division's *Rules of Practice and Procedure*.

A duly noticed public hearing on this application was held on March 11, 2010.

Appearances:

Ralph M. Kinder, Esq., for the Applicant

Michael R. McElroy, Esq., for the Intervenor

Applicable Law

The General Assembly has declared that it is the policy of the state to regulate certain business enterprises in the best interests of the public:

(a) The general assembly finds and therefore declares that:

(1) The businesses of ... offering to the public transportation of persons and property ...are affected with a public interest;

(2) Supervision and reasonable regulation by the state of the manner in which such businesses construct their systems and carry on their operations within the state are necessary to protect and promote the convenience, health, comfort, safety, accommodation, and welfare of the people, and are a proper exercise of the police power of the state;

(3) Preservation of the state's resources, commerce, and industry requires the assurance of adequate public transportation ... facilities, ... all supplied to the people with reliability, at economical cost, and with due regard for the preservation and enhancement of the environment, the conservation of natural resources, including scenic, historic, and recreational assets, and the strengthening of long-range, land-use planning;

(b) It is hereby declared to be the policy of the state to provide fair regulation of public utilities and carriers in the interest of the public, to promote availability of adequate, efficient and economical ... transportation services ... to the inhabitants of the state, to provide just and reasonable rates and charges for such services and supplies, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices, and to co-operate with other states and agencies of the federal government in promoting and coordinating efforts to achieve realization of this policy.

(c) To this end, there is hereby vested in the public utilities commission and *the division of public utilities and carriers* the exclusive power and authority to supervise, regulate, and make orders governing the conduct of companies offering to the public in intrastate commerce ... transportation services ... for the purpose of increasing and maintaining the efficiency of the companies, according desirable safeguards and convenience to their employees and to the public, and protecting them and the public against improper and unreasonable rates, tolls and charges by providing full, fair, and adequate administrative procedures and remedies, and by securing a judicial review to any party aggrieved by such an administrative proceeding or ruling. ...

R.I.G.L. § 39-1-1 (*emphasis supplied*.) It is apparent from this declaration of policy that the General Assembly intended to establish a qualified administrative body to evaluate technical evidence, address the myriad of complex problems associated with regulatory proceedings, and render rational decisions. *South County Gas Co. v. Burke*, 551 A.2d ___ at 22 (R.I. 1988). In this case, the Division is the agency specifically charged with regulating transportation companies, such as the Applicant proposes to become, operating solely upon Narragansett Bay, and area entirely located within this state (although the Public Utilities Commission must still evaluate and approve the tariff of water transportation companies).

The General Assembly also took great care to define a number of terms relevant to the regulation of common carriers such as the Applicant proposed to become. For example:

“Common carrier”, except when used in chapters 12, 12, and 14 of this title, means and includes all carriers for hire or compensation including ... *steam boat, motor boat, power boat, hydrofoil, and ferry companies and all other companies operating any agency or facility for public use in this conveyance over fixed*

routes, or between fixed termini within this state or persons or property by or by a combination of land, air, or water;...

R.I.G.L. § 39-1-2(7) (*emphasis supplied*). Under this definition, anyone operating a “motor boat”, “power boat”, or “hydrofoil”, or “ferry” company, or any other company operating a conveyance for carrying persons or property for hire or compensation, by, or by a combination of, land, air, or water, along fixed routes or between fixed termini, within this state, is considered a “common carrier.”

However, this definition of “common carrier” specifically excludes persons operating sail-powered vessels, or those operating powered vessels that do not follow fixed routes or operate between fixed termini (plural), even though they may be transporting passengers for hire or compensation. This type of operation, which would include most tour boats and excursion boats (which generally operate from a single terminus, with each cruise beginning and ending at that terminus to embark and disembark all passengers with no other stops) are considered “charter carriers”:

“Charter carrier” means and includes all carriers for hire or compensation within this state not included in the definition of common carrier; ...

R.I.G.L. § 39-1-2(4).

The Applicant, which proposes to transport passengers for compensation between Perrotti Park in Newport, Rhode Island (a fixed terminus), and the two cruise ship anchorages designated by the Newport Harbor Master for that purpose (each of which is a specific site within Newport Harbor; i.e., fixed termini)², clearly comes within the definition of a common carrier. As a common carrier, the Applicant is subject to regulation as a public utility:

² See Hearing Officer Exhibit 5 for identification, a National Oceanic and Atmospheric Administration chart of Newport Harbor. The Hearing Officer took administrative notice of the contents of this chart. See tr. at 10-11. See also testimony of CAPT Gifford, tr. at 28-30.

“Public utility” means and includes ... every company operating or doing business in intrastate commerce and in this state as a ... common carrier

R.I.G.L. § 39-1-2(20). As a common carrier type of public utility, the Applicant is subject to the authority of the Administrator of the Division in all matters save approval of the Applicant’s tariff:

The administrator ... shall exercise the jurisdiction, supervision, powers, and duties not specifically assigned to the commission, including the execution of all laws relating to public utilities and carriers and all regulations and orders of the commission governing the conduct and charges of public utilities and who shall perform such other duties and have such powers as are hereinafter set forth.

R.I.G.L. § 39-1-3(b).

The application process itself is governed by chapter 3 of Title 39:

(a) No common carrier of persons and/or property operating upon water between termini within this state shall hereafter furnish or sell its services unless the common carrier shall first have made application to and obtained a certificate from the division certifying that public convenience and necessity required the services....

(c) Notwithstanding any provision of §§ 39-5-1 and/or 42-35-15 or any other provision of the general or public laws to the contrary, no agency nor reviewing court, may order an interlocutory stay of any order of the division with respect to an application entered under § 39-3-3.1, and/or certificate under § 39-3-3.1. Nothing herein shall be construed to limit the right of any petitioner, public utility, party in interest or other person or entity aggrieved by an order of the division entered under § 39-3-3.1, from seeking judicial review in accordance with §§ 39-5-1 and/or 42-35-15.

R.I.G.L. § 39-3-3. Collectively, these two subsections establish the need to apply to the Division for a CPCN prior to begin operating as common carrier by water and make it clear that the application process will proceed to its conclusion (i.e., issuance of a Report and Order by the Division determining whether or not the application is approved) before any party may challenge the application process in court (under R.I.G.L. §§ 39-5-1 and 42-35-15, appeals of Division orders may only be made in Superior Court). Once the application is filed, the Division is

required to schedule a hearing on the application after first ensuring that the interested municipal officials and the public are properly notified. R.I.G.L. § 39-3-3.1.

It is interesting to note that R.I.G.L. § 39-3-3 only requires the Applicant to show that public convenience and necessity supports issuance of an CPCN; there is no requirement under that statute for the Applicant to establish that it is fit, willing and able to perform the services proposed and to comply with the applicable regulations and statutes. However, “as part of its broad statutory authority to protect the public, the Division must ensure that an applicant for a certificate is fit, willing and able to properly perform the service performed. Moreover, the Division must be confident that the Applicant will not only provide safe and reliable service, but also will adhere to Orders of the Division, as well as applicable rules and regulations promulgated by the Division.” *In Re Island Hi-Speed Ferry, LLC, 8 Pier Marketplace, Narragansett, RI 01882*, Division Report and Order Number 15652 issued on August 25, 1998, in Division Docket No. 98 MC 16 (application for a CPCN to operate a high speed ferry between the Port of Galilee and the Town of New Shoreham; footnotes omitted); *see also* R.I.G.L. § 39-1-38 for the General Assembly’s grant of broad incidental powers to the Division. Accordingly, in order to have its application for operating authority approved, the Applicant must establish not only that public convenience and necessity requires issuing a CPCN, but that the Applicant is fit, willing and able.

Intervenor’s Motion to Dismiss

At the beginning of the hearing, counsel for the Intervenor moved to dismiss the application in this case on the grounds that the proposed service (running a ferry service between Perrotti Park in Newport and cruise ships anchored in Newport Harbor) was a charter carrier service within the meaning of R.I.G.L. § 39-1-2(4) rather than a common carrier service within

the meaning of R.I.G.L. § 39-1-2(7). The basis of his argument is that while the Perrotti Park landing was a fixed terminus, the cruise ships were not; therefore, since the proposed service would not be between “fixed” termini, this could not, by definition, be a regulated common carrier service. We disagree.

While cruise ships may come and go, just like buses and jitneys, their designated anchorages, just like designated bus or jitney stops and transfer points, remain fixed. There are two designated anchorages in Newport Harbor to which the Harbormaster may direct cruise ships. While these anchorages are a bit larger than your typical bus stop (they must be able to accommodate as many as two large ships pivoting about their anchors according to the wind and tides), they are functionally no different from any of the bus (or jitney) stops with which we are all familiar.³ No one would seriously suggest that a bus stop is not a “fixed” terminus simply because the presence of other vehicles, pedestrians, or other obstructions prevent a bus or jitney from pulling up to precisely the same spot along the curb every trip. We see nothing different about cruise ships dropping their anchor in a designated anchorage for the purpose of transferring passengers, their baggage, and light supplies from ship to shore via another vessel (in this case, a packet boat acting as a ship’s tender). The cruise ship anchorages (and not the ships themselves) are fixed termini within the meaning of R.I.G.L. §§ 39-1-2(7) and 39-3-3. Accordingly, we find that the Applicant in this case is seeking authority to function as a common carrier and is subject to the regulation of the Division.

Moreover, the Division has long exercised jurisdiction over a wide variety of common carriers of persons and property by water other than traditional ferry operations. *See generally In*

³ *See* Hearing Officer Exhibit 5 for identification, a National Oceanic and Atmospheric Administration chart of Newport Harbor. The Hearing Officer took administrative notice of the contents of this chart. *See* tr. at 10-11. *See also* testimony of CAPT Gifford, tr. at 28-30.

Re Bruce Shaw d/b/a Shaw's Water Taxi, Division Report and Order No. 18979 dated June 13, 2007, in Division Docket No. 07 MC 44 (on demand water transportation between public and private docks and piers); *In Re Water Cruises of RI, LLC*, Division Report and Order No. 15907 dated June 25, 1999, in Division Docket No. 99 MC 36 (water tours over between fixed termini in Pawtucket, Providence, Wickford, East Greenwich); *In Re Joseph B. Dempsey, Jr., d/b/a Providence River Boat Co.*, Division Report and Order No. 15495 dated December 19, 1997, I Division Docket No. 97 MC 76 (water taxi and tour boat services); *In Re John P. Hirschler*, Division Report and Order No. 15495 dated May 11, 1990, in Division Docket No. 90 MC 20 (tour service over irregular routes in East Bay); *In Re Application Of H.R.M., Inc.*, Division Report and Order No. 13172 dated January 19, 1990, in Division Docket No. 89 MC 126 (water taxi service); *In Re Waterfront Marine Services, Inc.*, Division Report and Order No. 12662 dated June 8, 1988, in Division Docket No. 88 MC 33 (tour boat and launch services; water taxi and water shuttle services denied); *North East Water Taxi Service, Inc.*, Division Report and Order No. 12306 dated April 14, 1987, in Division Docket No. 86 MC 209 (water taxi services); *Newport Navigation Co., Inc.*, Division Report and Order No. 12114 dated August 18, 1986, in Division Docket No. 85 MC 276 (boat-launch service, water tour service, special-events operator within Newport Harbor); *Oldport Marine Services, Inc.*, Division Report and Order No. 10740 dated July 20, 1982, in Division Docket No. MC-W-22 (water taxi services in New Shoreham's New Harbor); *Mark S. Kellner d/b/a Newport Launch Service*, Division Report and Order No. 10430 dated May 7, 1981, in Division Docket No. MC-W-18 (water taxi service); *Fiesta Cruise Lines, Inc.*, Division Report and Order No. 9309 dated April 25, 1977, in Division Docket No. 1277 (general transportation of passengers for compensation); and, *William T. Manning*,

Division Report and Order No. 8933 dated March 14, 1974, in Division Docket No. 1138 (tender/water taxi services).

For the foregoing reasons, the Intervenor's Motion to Dismiss the application is denied.

Authority To Approve Rates

Counsel for the Intervenor also requested clarification of whether the Public Utilities Commission ("Commission") or the Division would approve the tariff of a common carrier by water providing tender services to cruise ships. This issue is not as complex as the parties (and the Hearing Officer) apparently believed, but clearly merits some discussion for the benefit of both the Applicant and the Intervenor.⁴

The basic delineation of the functions of the Commission and Division is set out in R.I.G.L. § 39-1-3. According to this statute:

... The commission shall serve as a quasi-judicial tribunal with jurisdiction, powers, and duties to ... *hold investigations and hearings involving the rates, tariffs, tolls, and charges*, and the sufficiency and reasonableness of facilities and accommodations of railroad, gas, electric distribution, water, telephone, telegraph, and pipeline public utilities, the location of railroad depots and stations, and the control of grade crossings, the revocation, suspension, or alteration of certificates issued pursuant to R.I.G.L. § 39-10-4, appeals under R.I.G.L. § 39-1-30, petitions under R.I.G.L. § 39-1-31, and proceedings under R.I.G.L. § 39-1-32.

R.I.G.L. § 39-1-3(a) (*emphasis supplied*). While the Commission clearly has broad authority under this provision with regard to "rates, tariffs, tolls, and charges," the shopping list of public utilities to which that language applies does not include common carriers other than railroads.

With respect to the Division's authority, the same statute provides as follows:

⁴ At the hearing, counsel for the Applicant suggested that he might like to provide a brief on this issue should the Hearing Officer determine that his client would eventually have to file a tariff with the Commission, and the Hearing Officer replied that he would welcome such a brief if the parties wished to submit one. Tr. at 16. As of the date this Report and Order was prepared, however, more than a month following the hearing, there was no sign of a brief. In view of the fact that the Hearing Officer and Division have determined that the Rhode Island Supreme Court has already addressed this issue, we see no reason to wait further for briefs.

The administrator shall be a person who is not a commissioner and who shall exercise the jurisdiction, supervision, powers, and duties not specifically assigned to the commission, *including the execution of all laws relating to public utilities and carriers and all regulations and orders of the commission governing the conduct and charges of public utilities* and who shall perform such other duties and have such powers as are hereinafter set forth....

R.I.G.L. § 39-1-3(b) (*emphasis supplied*). On its face, this is a rather broad grant of authority to the Division that would arguably cover authority over any “rates, tariffs, tolls, and charges” for utilities not specifically covered in the Commission’s assignment – including such common carriers as ferries and ship’s tender services. Yet it also contains language suggesting that it is the Commission that issues “all regulations and orders ... governing the ... charges of public utilities.” Clearly, we will have to look further for clarification.

That clarification comes in R.I.G.L. § 39-3-11(b), which provides, in pertinent part:

Upon receipt from a common carrier of persons and/or property *upon water* of a notice of any change proposed to be made in any schedule filed pursuant to § 39-3-10, *the commission* shall give notice as it may prescribe of the pendency of the proposal and of the time and place of the hearing thereon to the mayor and also any city manager of each city, and to the president of the town council and also any town manager of each town in which the carrier picks up or discharges passengers. *The commission* shall also publish a notice of the hearing at least ten (10) days prior to the date thereof in a newspaper of general circulation in each city or town in which the carrier picks up or discharges passengers. In all other respects, hearings and investigations with respect to the proposals by the carriers shall be governed by the provisions of subsection (a) of this section.

(*Emphasis supplied.*) This section makes it crystal clear that it is the Commission, and not the Division, that has jurisdiction over the “rates, tolls and charges” of **all** common carriers of persons and/or property *upon water*, **not just those of ferry operations.**

This conclusion is reinforced when you consider that there is specific statutory authority granting the Division power over the “rates, tolls and charges” of several clearly delineated types of common carriers. R.I.G.L. §§ 39-12-12 and 39-12-13 grant the Division the power to

establish and alter the rates, charges, classifications, regulations and practices of common carriers of property. R.I.G.L. § 39-13-2 grants the Division the power to establish and alter the rates, charges, classifications, regulations and practices of jitney operators. R.I.G.L. §§ 39-14-2, 39-14-2.1, and 39-14-2.2 grant the Division the power to establish and alter the rates, charges, classifications, regulations and practices of taxicabs and limited public motor vehicles (common carriers of persons).

No comparable grant of authority over the “rates, tolls and charges” of common carriers of persons and/or property *upon water anywhere in Title 39*. Applying the maxim of statutory interpretation *expression unius est exclusion alterius*, we may conclude that because the General Assembly chose not to give the Division express authority over the “rates, tolls and charges” of common carriers of persons and/or property *upon water*, while it did give the Division such express authority over other types of common carriers, the General Assembly must have intended to have that authority remain with the Commission (to whom the General Assembly gave broad general authority with respect to most public utilities *including* common carriers of persons and/or property *upon water*).

In *O’Neil v. Interstate Navigation Company*, 565 A.2d 530 (R.I. 1989), the Rhode Island Supreme Court adopted the same analysis to conclude that the Commission has subject matter jurisdiction over rate change applications filed under R.I.G.L. § 39-3-11. In that case, Interstate Navigation Company, a ferry operator transporting passengers and cargo between Point Judith and New Shoreham, filed an application with the Commission to adjust its tariffs. The Commission, by a 2-1 vote, held that it did not have subject matter jurisdiction over the application because common carriers of passengers and property by water were not among the public utilities specifically enumerated in R.I.G.L. § 39-1-3(a) as being subject to the

Commission's jurisdiction with respect to investigating and holding hearings involving "rates, tariffs, tolls and charges." Upon appeal, the Supreme Court disagreed, stating:

The ambiguity in § 39-1-3 can be clarified when read together with other sections of the statute. Interstate, a ferry company, is engaged in the water transportation of persons, vehicles, and freight to New Shoreham, Rhode Island. Interstate is a common carrier as defined by § 39-1-2(8)⁵, which defines a common carrier as all carriers for hire or compensation, including ferry companies. According to § 39-1-2(7)⁶, Interstate would be classified as a public utility by virtue of being a common carrier.

In *Town of New Shoreham v. Rhode Island Public Utilities Commission*, 464 A.2d 730, 737 n.5 (R.I. 1983), we stated that "the commission has exclusive jurisdiction to determine the rates of public utilities." Further, pursuant to G.L. 1956 (1984 Reenactment) § 39-3-11, as amended by P.L. 1986, ch. 504, § 2, the commission has the jurisdiction to review rate-change applications of public utilities, to hold hearings and investigations, and to issue orders pertaining to these rate-change applications. Section 39-3-11 illustrates the Legislature's intention to reserve rate-making authority over public utilities to the quasi-judicial commission.

The commission relied on the certificate requirement imposed on water carriers by § 39-3-3 in determining that the division had jurisdiction to hear Interstate's rate-change application. Section 39-3-3 requires water carriers to obtain a certificate of public convenience and necessity from the division prior to commencing business within the state. **Section 39-3-3's certificate requirement is not applicable to the determination of rates of water carriers.** The issuance of certificates of public convenience and necessity to utilities is an administrative function reserved to the division. **The determination of rates of water carriers is a quasi-judicial function reserved to the commission.**

Further, the commission interpreted specific legislative grants of rate-making power to the division over certain common carriers to extend to *all* common carriers including ferries. The Legislature delegated some of the commission's rate-making authority to the division. These include rate-making power over air carriers (G.L. 1956 (1984 Reenactment) chapter 11 of title 39), motor carriers of property (chapter 12 of title 39), motor passenger carriers (chapter 13 of title 39), and taxi cabs and limited public motor vehicles (chapter

⁵ Since this decision was issued in 1989, the definitions set out in § 39-1-2 have been renumbered. "Common carrier" is now defined at R.I.G.L. 1956 (2006 Reenactment) § 39-1-2(7) rather than § 39-1-2(8) as cited in the *O'Neil* decision.

⁶ Since this decision was issued in 1989, the definitions set out in § 39-1-2 have been renumbered. "Public utility" is now defined at R.I.G.L. 1956 (2006 Reenactment) § 39-1-2(20) rather than § 39-1-2(7) as cited in the *O'Neil* decision.

14 of title 39). This delegation of rate-making authority is not absolute; it is limited to those specifically enumerated by the Legislature. Had the Legislature intended to delegate rate-making authority over ferries to the division, it would have done so in a similar manner.

O'Neil at 532-533 (footnotes in text omitted) (**emphasis supplied**). While *O'Neil* dealt only with filing new rates and charges (that is, with modifying existing rates and charged), the Supreme Court soon extended its rationale to cover the initial rate-filing of a start-up company such as the Applicant:

...[W]e conclude that although § 39-3-10 may be construed as a “file and run” statute wherein a start-up utility may simply file a rate with the Commission without requiring initial approval of that rate, the Commission has the authority to *sua sponte* investigate the rates of a public utility at any time. Further, we conclude that the Commission has broad authority under § 39-3-11 to review and approve the rates of a public utility, whether an initial rate or a proposed change of existing rates, and is mandated to periodically review and hold public hearings respecting those rates in the absence of any proposed rate change. Therefore, we are satisfied that **the Commission has subject matter jurisdiction to determine the propriety of the initial rate filing of a public utility, particularly where, as in this case, the Division’s Certificate of Public Convenience and Necessity is conditioned upon the initial rate filing approval of the Commission.**

In Re Island Hi-Speed Ferry, LLC., 746 A.2d 1240, 1244 (R.I. 2000) (**emphasis supplied**). In view of these decisions, and particularly in view of the fact that R.I.G.L. §§ 39-3-3 and 39-3-3.1, and the Supreme Court in *O'Neil*, speak of “water carriers” without distinguishing between ferries and other types of water carriers, we must conclude that the type of operation proposed by the application in this case requires initial tariff approval from the Commission.

Findings

Having finally disposed of the preliminary procedural issues that were raised, we may now turn to the merits of the application.

The first witness called was Capt. Robert Gifford who testified that he is employed as a ship’s agent in and around Narragansett Bay. As a ship’s agent, he acts as the local point of

contact, or agent, for foreign flagged ships visiting the local United States ports. He will arrange for them to obtain supplies, tender services, shipping documentation, medical assistance, whatever the ship's master needs for his ship while it is in a United States port.⁷

According to his testimony, for many years now he has been acting as the ship's agent for all cruise ships coming in to Newport Harbor. While all the cruise ships carry their own tenders, occasionally they need additional tender services from local companies and will seek to hire those services through him. For the past few years, there has only been one company in Newport offering tender services to the cruise ships. Some of his customers would like to have more of a choice, either in hopes of getting a better price or simply because they need more services than the one local company is able to provide. In his opinion, it would be very useful to have additional tender resources available in Newport.⁸

Next, Capt. Gifford identified Applicant's Exhibit 2, a preliminary version of the cruise ship schedule for Newport for the 2010 summer season.⁹ This schedule shows that, as of the date of the hearing, some 40 cruise ships were expected to pull in to Newport Harbor between April 20, 2010, and November 1, 2010.¹⁰

Finally, Capt. Gifford asked to be allowed to offer public comment. In that capacity he opined that tender services should be viewed as nothing more than private charters and should not be considered regulated common carriers. He is concerned that having tender services subjected to regulation might create an additional burden for his customers.¹¹

⁷ Tr. at 20.

⁸ Tr. at 20-26.

⁹ Tr. at 26.

¹⁰ Applicant's Exhibit 2.

¹¹ Tr. at 27-28.

In response to cross-examination by the Hearing Officer on this public comment, Capt. Gifford testified that there are only two anchorages in Newport Harbor that are routinely used by cruise ships, largely because there only two large enough to accommodate them and close enough to Newport to offer acceptably convenient access to the city. Just as a matter of logistic convenience, the cruise ships want to anchor as close to Goat Island as they can possibly get.¹²

The next witness called was Mr. Addison Closson, President and owner of the Applicant. Mr. Closson testified that his company hoped to provide tender service between Perrotti Park and the cruise ships visiting Newport. His plan was to use the *Viking Queen*, a 52-foot steel-hulled vessel rated for 149 passengers (the Coast Guard Certificate of Inspection authorizing the *Viking Queen* to carry passengers is pending, but expected to be awarded soon). The *Viking Queen* was in the process of being refurbished, but should be available for service in June 2010.¹³

According to Mr. Closson, a June availability would allow him to meet the majority of the scheduled cruise ship visits to Newport in 2010, but he was hopeful that he might be able to use a second boat, the *Aquidneck Ferry*, to provide some tender services prior to the *Viking Queen's* availability.¹⁴

The Division notes that this was a publicly noticed hearing, and that no one, including the Intervenor, denied that public convenience and necessity would be served by authorizing an additional tender service for Newport Harbor.

Conclusion

Based on the record, the Division finds that the Applicant has shown itself to be fit, willing and able to provide the proposed services, and to comply with all applicable rules,

¹² Tr. at 28-29.

¹³ Tr. at 32-33.

¹⁴ Tr. at 33-34.

regulations and statutes pertaining to the proposed services. Further, the Division finds that the Applicant has shown that there is a public convenience and necessity that warrants the award of a certificate granting authority for a water carrier service in Newport Harbor providing tender services between Perrotti Park in downtown Newport, Rhode Island, and cruise ships anchored within the confines of Newport Harbor.

Having said this, it is important to note that the Division is not the only governmental agency which has jurisdiction over all aspects of the proposed tender service. For example, the Applicant must first obtain a Certificate of Inspection from the Coast Guard before it can begin to carry passengers and/or light cargo on the *Viking Queen*, and it will have to secure landing rights for Perrotti Park from the City or the Harbor Master. The Applicant shall be expected to show compliance with all regulatory requirements, including those from other agencies, before it can begin operating its tender service.

Accordingly, it is

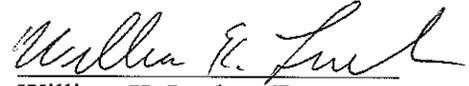
(19966) ORDERED:

1. That the application of Aquidneck Ferry & Charter, Inc., 459 Winstone Drive, Portsmouth, Rhode Island 02871, for a Certificate of Public Convenience and Necessity ("CPCN") seeking authority to engage in the transportation of passengers to and from cruise ships anchored in Newport Harbor and Perrotti Park in Newport, Rhode Island, i.e., to perform tender services for cruise ships, via water carrier pursuant to R.I.G.L. § 39-3-3 is approved.
2. The Division's approval is subject to fulfillment of the following terms and conditions prior to the commencement of the transportation services:

- a. That prior to offering service to the public, the Applicant must provide the Division with sufficient documentation proving that it has complied with all necessary government regulations (i.e., U.S. Coast Guard, State and local permits);
 - b. That the vessel utilized by the Applicant to provide the service contain all the amenities stated in the Applicant's testimony and business plan, and that the services provided conform with the evidence of record;
 - c. That the Applicant file with the Public Utilities Commission, and have approved, tariffs reflecting the rates and charges to be charged for its services;
 - d. That the Applicant submit proof of insurance and also hand deliver to the Motor Carrier Section of the Division a copy of the approved tariffs reflecting the rates and charges approved by the Public Utilities Commission;
 - e. That prior to offering service to the public, the Applicant shall notify the Motor Carrier Section of the Division and allow it to inspect the vessel to ensure compliance with this Report and Order.
3. Upon satisfactory completion of the aforementioned terms and conditions, a CPCN shall be issued. The Applicant shall not perform any of the transportation services authorized through this Report and Order until it has satisfied the aforementioned terms and conditions and has been physically issued a CPCN.
 4. If the terms and conditions outlined above in paragraphs 2(a), 2(b), 2(c), 2(d) and 2(e) are not met within ninety (90) days, the approval granted herein will be of no further force and effect.
 5. The Applicant's business address must remain at the same location as listed on the application unless otherwise approved by the Division.

6. The authority conferred herein is further limited to the water vessels that were described by the Applicant during the hearing. The Division must approve any change in water vessel.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND, ON APRIL 26, 2010.



William K. Lueker, Esq.
Senior Legal Counsel
Hearing Officer

APPROVED:



Thomas F. Ahern
Administrator