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December 27, 2013

Luly Massaro
Clerk
Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888

Re: A&R Marine Corp. d/b/a Prudence & Bay Islands Transport
Application For Certificate of Public Convenience And Necessity
Docket No. D-13-105

Dear Luly:

Enclosed for filing in this matter are an original and five copies of the Post-Hearing Brief of A&R Marine Corp. d/b/a Prudence & Bay Islands Transport.

If you have any questions, please feel free to call.

Very truly yours,



Michael R. McElroy

MRMc:tmg
cc: Service List

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

IN RE: A&R MARINE CORP. d/b/a PRUDENCE :
& BAY ISLANDS TRANSPORT – :
APPLICATION FOR CERTIFICATE OF : DOCKET No. D-13-105
PUBLIC CONVENIENCE AND NECESSITY :

**POST-HEARING BRIEF OF A&R MARINE CORP. d/b/a
PRUDENCE & BAY ISLANDS TRANSPORT**

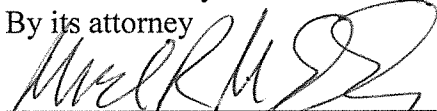
At the conclusion of the evidentiary hearings in this matter on December 5, 2013, it was agreed that any post-hearing briefs would need to be filed within 45 days from December 5, 2013, i.e., on or before January 20, 2014.

A&R Marine Corp. d/b/a Prudence & Bay Islands Transport (A&R Marine) elects to adopt the closing statement delivered by its undersigned counsel at the December 5, 2013 hearing as its post-hearing comments in this matter. For the convenience of the Hearing Officer, a copy of the transcript of the closing statement is attached hereto as Exhibit 1 and incorporated by reference herein.

A&R Marine therefore respectfully requests that the Division issue an Order finding that A&R Marine has established that it is fit, willing, and able to provide the ferry service to Prudence Island that it has applied for, and that the public convenience and necessity require the service because (1) the A&R Marine proposal is fitting and suited to the public need, (2) the proposal tends to promote the accommodation of the public, and (3) the proposal would be conducive to the public welfare. See *Abbott v. Public Utilities Commission*, 136 A. 490, 491-92 (RI 1927).

Respectfully submitted,
A&R Marine Corp. d/b/a
Prudence & Bay Islands Transport,
By its attorney

Dated: 12/22/13



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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served by first class mail, postage-paid, a true and accurate copy of the within Post-Hearing Brief of A&R Marine Corp. d/b/a Prudence & Bay Islands Transport on this 27th day of December, 2013 to the attached service list.



Theresa Gallo

A&R Marine Corp/Post-Hearing Brief

A&R Marine Corp. d/b/a Prudence & Bay Islands – Docket No. D-13-105
Updated Service List as of 10/30/13

Name/Address	E-mail Address	Phone
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David Bebyn	dbebyn@beconsulting.biz	
Stephen Antaya	stephena@antaya.com	
Daniel Antaya	danant22@my.uri.edu	
John Doherty	jkdoherly61@gmail.com	
Division Advocacy: Leo Wold, Esq. Dept. of Attorney General 150 South Main St. Providence, RI 02903	Lwold@riag.ri.gov Jmunoz@riag.ri.gov dmacrae@riag.ri.gov	401-222-2424
Town of Porstmouth: Terence J. Tierney, Esq. Law Office of Terence J. Tierney 35 Touro St. Newport, RI 02840	Tierneylaw@yahoo.com	401-316-4566
Kevin P. Gavin, Esq. Portsmouth Town Solicitor Law Office of Kevin P. Gavin 31 Harrington Ave. Portsmouth, RI 02871	KPgavin@aol.com	
Town of Bristol: Andrew M. Teitz, Esq. Assistant Town Solicitor Ursillo, Teitz & Ritch, Ltd. 2 Williams St. Providence, RI 02903	andyteitz@utrlaw.com	401-331-2222
Prudence Ferry: Timothy J. Dodd, Esq., 215 Broadway Providence, RI 02903	doddlawoffices@aol.com	401-272-3900
File original & four (4) copies w/: Luly E. Massaro, Clerk Division of Public Utilities & Carriers 89 Jefferson Boulevard Warwick, RI 02888	Luly.massaro@puc.ri.gov Jspirito@ripuc.state.ri.us Tmercercer@ripuc.state.ri.us Tkogut@ripuc.state.ri.us	401-780-2107
Christine O'Connor, Bristol Phoenix	coconnor@eastbaynewspapers.com	

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standards are slightly different when looking at a regulated lifeline service with its 25-minute travel destination.

So again, I don't take a formal position with regard to A&R's application today. I will address that formally in my brief to follow. Thank you very much.

MR. SPIRITO: Thank you. Okay. I will say for the record -- Mr. McElroy, do you have a few thoughts?

MR. McELROY: I have a closing statement.

MR. SPIRITO: I apologize.

MR. McELROY: No problem at all. Let me first say that I was absolutely astounded to hear Mr. Dodd say that there have been no complaints. Absolutely astounded. It's a matter of public record. We ask the Division to take administrative notice of its own reports and orders and of the Commission's reports and orders in which numerous complaints were registered against Prudence Ferry for many reasons and are reflected in these reports and orders, some

1 of which I quoted in my opening statement,
2 but many of which are fully reflected in
3 those reports and orders.

4 The restroom situation. I agree
5 with Ms. Hetherington. This federal
6 regulation is irrelevant to this case. It
7 simply provides for minimum standards on a
8 federal basis. There is absolutely no
9 reason, and it certainly doesn't take
10 jurisdiction away from this Division or from
11 the Commission to continue to regulate terms
12 of service for the public utilities within
13 its jurisdiction. Moreover, in the case
14 that I cited in my opening statement and
15 that Miss Hetherington has talked about with
16 the Public Utilities Commission where they
17 did get more than a 20 percent rate
18 increase, contrary my brother Dodd's
19 statement that they never received a rate
20 increase; they got more than a 20 percent
21 rate increase in that case.

22 They signed a stipulation with the
23 Division in which Prudence Ferry said that
24 it would -- that it would maintain clean

1 restrooms for the duration. They agreed to
2 it. So regardless of what this federal
3 regulation may or may not require, and
4 again, it's only a minimum, they assumed
5 that responsibility and the Commission
6 turned that into an order. So not only did
7 they adopt the stipulation in which they
8 said they were going to keep their restrooms
9 clean and open, but the Commission then made
10 that part of their order. They've been
11 under that order and under that signed
12 agreement for over 20 years and they've
13 ignored it for 20 years. So it's kind of
14 mind blowing to me that that's the position
15 they're taking today which is so contrary to
16 so much that's already been heard over two
17 decades by this Division and by the
18 Commission.

19 In terms of my formal closing
20 argument, let me just reiterate that A&R
21 Marine has filed an application under 39-3-3
22 for a certificate of public convenience and
23 necessity to operate a ferry between the
24 mainland and Prudence Island. Under 39-3-3

1 the Division is authorized to grant a water
2 carrier a CPCN when the public convenience
3 and necessity require the service. The
4 Supreme Court in Abbott versus the PUC
5 stated that the rules to be applied to make
6 this determination are basically 3. "1. Is
7 the proposal fitting or suited to the public
8 need?" That's a quote. "2. Does the
9 proposal tend to promote the accommodation
10 of the public?" Another quote. "And 3.
11 Will the proposal be "conducive" to the
12 public welfare?" Another quote.

13 I respectfully submit that A&R
14 Marine has submitted evidence that
15 demonstrates that these tests have been met.
16 You've heard the testimony of Stephen
17 Antaya, the President of A&R Marine and a
18 successful Rhode Island businessman who has
19 roots going back many years on Prudence
20 Island. You've also heard testimony from
21 Ethan Rossi, a licensed captain with
22 experience operating vessels as a captain in
23 the bay. You've heard from Daniel Antaya
24 who is graduating with a degree in marine

1 affairs and will be serving as Vice
2 President of Engineering and as a deckhand
3 on the boat. You've heard from Pat Rossi,
4 the owner of the Rossi Farms on Prudence
5 Island; full-time islander, lived there many
6 years and operates a successful business on
7 the island. She will be serving as the
8 Secretary of the business and assisting in
9 its startup. And you've heard the testimony
10 of Matthew Rossi. Matt Rossi was our last
11 witness. You may recall that he has many,
12 many years of relevant marine experience.
13 He will be assisting Ethan Rossi, Dan
14 Antaya, Pat Rossi and Stephen Antaya in
15 providing a high level of ferry service to
16 the island and getting this operation up off
17 the ground.

18 It was Mr. Rossi who testified
19 after listing his experience that A&R
20 Marine, A being Antaya, and R being Rossi,
21 so the Antaya and Rossi families would
22 provide a high level of ferry service to the
23 island or he would die trying.

24 You've heard testimony from Gary

1 Crosby, the Town Planner of Portsmouth, who
2 testified that Portsmouth was notified in
3 writing by Bruce Medley, the President of
4 Prudence Ferry, that Prudence Ferry would
5 cease all operations on December 1st. Mr.
6 Crosby testified that in response to this
7 the Town of Portsmouth issued a request for
8 -- formal request for information for
9 potential ferry operators to fill the void
10 that would be left by the discontinuance of
11 this lifeline service. This was not some
12 intemperate comment. This was something
13 that was intentionally stated in writing and
14 done.

15 And then Mr. Medley sat and watched
16 things go from there. He threatened to
17 discontinue service for whatever reason that
18 may have been intemperate, but nevertheless,
19 when things started spiraling in order to
20 fill this void and a formal request for
21 information was issued, formal proposals in
22 response to that request for information
23 were filed by A&R Marine and other actions
24 were taken, Mr. Medley stood by and let it

1 all run its course.

2 Now, eventually, he did say, "Oh,
3 well, I've changed my mind. I'm not really
4 going to stop on December 1st." But you
5 know, if one day he's going to do it and the
6 next day he's not going to do it, and, "Oh,
7 well, you know. I might run out of Fall
8 River." If you recall the testimony of Mr.
9 Crosby, that was also stated by Mr. Medley.

10 What you've got is a tremendous
11 sense of people who need this service as a
12 lifeline. There's no bridge to Prudence
13 Island. They need this in order to live
14 their lives. They've got to be able to get
15 on and off the island. You don't play with
16 people like this if you're a responsible
17 public utility. You just don't. And Mr.
18 Medley let all of this happen, he instigated
19 it all and he can't now get around it by
20 simply saying that, "I made an intemperate
21 comment." It was much, much more than that.
22 The islanders have no idea if the A&R
23 service is not allowed to get up and running
24 and Prudence Ferry is, again, the sole

1 provider if Mr. Medley is just going to
2 threaten discontinuance again the next time
3 he doesn't get his way on something.

4 Mr. Crosby worked with A&R to help
5 them put together an application to this
6 Division. You heard Mr. Crosby testify that
7 Mr. Medley's announcement regarding the
8 December 1 discontinuance caused a major
9 disruption to the Town of Portsmouth for
10 over six months and what they've done to do
11 that, and you heard Mr. Crosby specifically
12 testify that after his meetings with the
13 representatives of A&R that he had a high
14 level of confidence, and I think that's
15 pretty close to a quote from the transcript,
16 a high level of confidence in A&R Marine.

17 You've heard Mr. Crosby testify
18 that the town itself was concerned that even
19 though Mr. Medley withdrew his written
20 notification regarding the December 1
21 cessation of service that the town remains
22 justifiably concerned that Mr. Medley could
23 easily change his mind again. And that Mr.
24 Medley also mentioned the Fall River

1 operation which would be very inconvenient
2 to the town and the islanders and especially
3 the kids that are bussed from the island to
4 the school on the mainland.

5 Mr. Crosby testified to and
6 authenticated the letter submitted by the
7 Prudence Island Planning Commission which
8 has been marked as Exhibit 3 full. That
9 letter sets forth a number of expectations
10 that the Prudence Island Planning Commission
11 would expect from "a ferry that is
12 responsive to its customers". This ferry --
13 this letter was developed after a meeting on
14 the island that many people attended.

15 The letter stated that the minimum
16 service would include eight items. 1,
17 consistent and thorough snow removal; 2, a
18 morning and afternoon ferry on Thanksgiving;
19 3, a restroom on the ferry; 4, adequately
20 heated and lighted cabins; 5, telephone and
21 online vehicle reservations; 6, text
22 messaging for changing schedules and
23 cancellations; 7, the ability to use credit
24 cards; and 8, an annual meeting with the

1 islanders to discuss service and schedules.
2 This letter was signed by Dr. Sterling and
3 it was put together after hearing from --
4 the input of the islanders. You heard Mr.
5 Crosby testify that in his experience none
6 of these eight items are currently being
7 provided by the existing Prudence Ferry.
8 And you also heard Mr. Antaya testify that
9 all of these items would be addressed by
10 A&R.

11 Mr. Crosby also testified that the
12 town will assist A&R Marine with the
13 construction of a landing facility on land
14 that the town owns on Prudence Island which
15 is immediately adjacent to the existing
16 landing facility owned by Prudence Ferry,
17 and that, in fact, the town has already
18 spent approximately \$20,000 for survey and
19 other work on that property to date.

20 Disturbingly, you heard Mr. Crosby
21 authenticate a voice mail that was left on
22 his answering machine by Mr. Medley. This
23 voice mail was left on the same day that A&R
24 filed its application with this Division.

1 The voice mail stated in part, "I understand
2 you've had engineers or surveyors or
3 something snooping around the homestead
4 property. Be warned. Keep your people out
5 of my property over there. Otherwise, I
6 will take legal action against you and your
7 buddy Klimm." Mr. Klimm is the
8 Administrator. "You understand English?"

9 You heard Mr. Crosby state that he
10 was so disturbed by this voice mail that he
11 forwarded it to the police. Mr. Crosby also
12 forwarded Mr. Medley's e-mail notification
13 regarding the December 1 cessation of
14 services to Terry Mercer in the Motor
15 Carriers Section of the Division.

16 You heard Attorney Teitz testify
17 for the Town of Bristol that Prudence Ferry
18 sold its property to the town for \$800,000
19 except for the loading ramp on the property.
20 Bristol has leased the property back to
21 Prudence Ferry, but as he stated in his
22 argument, only through June 14th or until
23 such time as the current President of
24 Prudence Ferry, that is Mr. Medley, either,

1 A, no longer owns, or B, no longer operates
2 the current ferry service, whichever is
3 earlier.

4 Mr. Teitz also testified that under
5 Paragraph 17 of the lease an assignment or
6 sublease is prohibited without first
7 obtaining Bristol's written consent which
8 may be granted or withheld in the sole
9 discretion of Bristol.

10 You have before you as Exhibit 1
11 A&R Marine's CPCN application, which
12 includes a detailed business plan. That
13 business plan was modified on the first day
14 of these hearings to state that A&R Marine's
15 goal is to start operating to Prudence
16 Island on or about June 14th, 2014, which
17 would be after the expiration of the
18 existing lease to Mr. Medley in Bristol.
19 The Bristol -- the business plan makes it
20 clear that the operators of A&R Marine are
21 different from the current operation of
22 Prudence Ferry because they are islanders.
23 They're islanders who know what it is like
24 to have to travel every day on the ferry to

1 go to work or to school. They know what it
2 is like to have a business on the island and
3 to have supplies that need to be brought
4 over. They know what it is like to have to
5 deal with a lifeline ferry to live your
6 life.

7 A&R Marine wants to work with the
8 island residents and help preserve the
9 island communities. It is their community,
10 after all. A&R Marine is committed to
11 obtaining all of the necessary permits,
12 including the CPCN we are seeking today, and
13 the docking locations, but in the meantime,
14 in the section of the business plan entitled
15 "Initial Plan", A&R Marine made it
16 absolutely clear that it had an immediate
17 solution which would be to provide passenger
18 service between Prudence Island and the
19 mainland on a daily basis using a landing
20 craft that would not need to land at a dock.
21 A&R Marine would utilize the landing craft
22 until permanent facilities could be acquired
23 on Prudence Island and the mainland. At
24 that point A&R Marine would buy or lease a

1 regular ferry to provide the service that
2 would meet the requirements set forth in the
3 business plan. It's important to emphasize
4 that this is true even if there would be two
5 ferries for a while operating in a
6 competitive situation.

7 A&R Marine has been actively
8 looking for appropriate vessels, as Mr.
9 Antaya testified. They had a vessel under
10 contract. They paid a substantial down
11 payment to hold that off the market.
12 They're still in negotiations regarding that
13 vessel and extending that contract, but
14 they're also looking at other vessels.
15 Nevertheless, Mr. Antaya has stated in his
16 business plan that he will privately fund
17 this venture and he will do so even if there
18 are two ferries operating in a competitive
19 situation. After all, it's certainly not
20 impossible to anticipate that there could be
21 two ferries operating. There were two
22 ferries operating for a while. Mr. Medley
23 was in that exact situation when he was
24 operating in a competitive situation with

1 Mr. Blount. Eventually, Mr. Medley bought
2 out Mr. Blount and it was one operation, but
3 for a while there were two ferries operating
4 in competition with each other out there.
5 So this is not an unheard of or impossible
6 situation by any means.

7 Yes, it's true that the proforma
8 assumed that A&R would, in fact, be the sole
9 provider of the service, and when you make a
10 proforma you have to make assumptions about
11 what's going to eventually happen in the
12 rate year, and those assumptions were made
13 by Mr. Bebyn, but Mr. Antaya, who is a very
14 successful businessman, has committed that
15 he will fund this out of pocket. He
16 testified to his financial capability. He
17 presented a letter from his banker
18 supporting him in this endeavor. Mr. Antaya
19 is a Director and Vice President of Antaya
20 Technologies and has been with that company
21 for over 20 years. He founded that company
22 with his father and the company currently
23 has over \$30 million in annual sales, it has
24 three plants and employs over 200 people in

1 Rhode Island. Mr. Antaya began the company
2 as a startup, much like he would be starting
3 A&R as a startup, and is now extremely
4 successful. He's the definition of an
5 entrepreneur. He is working with the Rossi
6 family and they are both eager to provide a
7 much higher level of ferry service to
8 Prudence Island than is currently being
9 provided.

10 Interestingly, Mr. Antaya not only
11 has a degree in business management but he
12 spent ten years himself working in the
13 fishing industry. Ethan Rossi who will be a
14 the captain on the vessel is appropriately
15 licensed as a captain and has all the
16 qualifications necessary to operate the
17 vessel, including the fact that he is a
18 firefighter and an EMT. Matthew Rossi has
19 extensive marine experience over the course
20 of many years, and although he retired
21 approximately two years ago, he is prepared
22 to assist in his retirement in getting this
23 ferry up and running as quickly as possible.

24 The Exhibit 2 from the Bank of

1 America stated that Mr. Antaya's company
2 presently has available a low seven figure
3 line of credit and that the bank looks
4 forward to assisting Mr. Antaya in this new
5 project to provide ferry service.

6 You've heard testimony from island
7 residents about numerous problems they've
8 experienced with regard to the existing
9 Prudence Ferry service and its lack of
10 customer orientation, to put it mildly.
11 This is not the first time this Division has
12 heard these complaints. Hopefully, it will
13 be the last if A&R is granted a CPCN.

14 You've heard Pat Rossi testify and
15 submit in her Exhibit 7 her commitment that
16 the vessel will carry additional regular
17 sized vehicles over and above what is
18 currently possible on the existing Prudence
19 Ferry and that its first floor cabin will be
20 wheelchair accessible, that there will be
21 heated bathrooms, that the cabins will be
22 heated, there will be an area where items
23 can be delivered and placed such as small
24 lumber orders, appliances, et cetera, and

1 there will be a lock box for pharmacy items.
2 That's all in her letter that is in as a
3 full exhibit.

4 With regard to customer service,
5 they will have set daily office hours,
6 online reservations, a text alert system for
7 cancellations and extra runs, and they'll
8 hold a public meeting on Prudence Island
9 once a year to keep communication open with
10 the islanders and will seek to get the PUC
11 to approve commencement of the service
12 utilizing the same rates as currently in
13 effect for the existing Prudence Ferry.

14 You've heard testimony from
15 year-round islanders such as Robin Weber and
16 the letter she submitted as Exhibit 8. You
17 will recall that Robin works for the
18 Narragansett Bay National Estuarine Research
19 Reserve on Prudence Island. It's kind of a
20 mouthful. And the support that she
21 expressed for A&R Marine's proposed service.

22 You've heard support from other
23 islanders such a Traci Whitney. You heard
24 testimony from islander James Oswald, who is

1 an attorney, about the uncertainty created
2 in Mr. -- created by Mr. Medley's threat to
3 discontinue service and the actions taken by
4 the Prudence Island Planning Commission that
5 he worked on to address the uncertainty
6 which culminated in the meeting and the
7 Exhibit 3 from the Prudence Island Planning
8 Commission that you have before you.

9 You heard testimony from Dr.
10 Sterling, a long-time island resident and
11 the Chairman of the Prudence Island Planning
12 Commission. He's the author of Exhibit 3
13 and he outlined the expectations with regard
14 to adequate ferry service.

15 You heard from islander Frank
16 Jernack, a retired engineer, who is a
17 full-time resident of the island and
18 continues a consulting business. He
19 regularly rides the ferry and was very
20 critical of the existing operation and very
21 supportive of the A&R application.

22 You heard testimony from Bob
23 Marshall, the Fire Chief on Prudence Island,
24 who also works off island two days a week as

1 a medical technician driving an ambulance;
2 was critical of the existing service and
3 supportive of A&R. It was Mr. Marshall's
4 daughter who was forced to go to the bath
5 room in a trash can because the restroom was
6 locked.

7 At the close of the Division
8 hearing on May 8th which was looking into
9 Mr. Medley's failure to renew his CPCN for
10 2013 that Ms. Hetherington referred to, in
11 the footnote it states, and that is a quote,
12 "Mr. Medley informed the Hearing Officer
13 that it was his company's intention to cease
14 operations following the last scheduled trip
15 on December 1, 2013." Again, that's
16 Footnote 83 in Order 21050, May 24, 2013
17 that we understand the Hearing Officer will
18 take administrative notice of.

19 In that same footnote this Division
20 went on to encourage "any new service
21 provider to submit their application for
22 operating authority no later than October
23 15, 2013." A&R Marine has done exactly
24 that. A&R Marine submitted its application

1 on September 19th, 2013. Again, the same
2 day Mr. Medley left his threatening voice
3 mail with Mr. Crosby.

4 After A&R filed its application the
5 Towns of Portsmouth and Bristol both
6 intervened. The Advocacy Section is also a
7 party in this matter and Prudence Ferry was
8 allowed late intervention in this matter
9 without objection so that all interested
10 parties could be before the Division in this
11 important matter at this time.

12 We respectfully submit that the
13 evidence has clearly demonstrated that Mr.
14 Medley has little regard for regulation by
15 this Division or by the Commission. We have
16 demonstrated that in Docket 2090 which,
17 again, Ms. Hetherington referred to in
18 response to complaints at that time from
19 the -- from passengers on the ferry,
20 Prudence Ferry agreed "to operate and
21 maintain all restrooms in a clean deodorized
22 condition". Despite this stipulation,
23 Prudence Ferry has blatantly ignored that
24 requirement to the detriment of its

1 passengers. It has simply locked its
2 restroom and not made it available.

3 This is an egregious breach of the
4 responsibilities of a public utility to its
5 ratepayers, not to mention an egregious
6 breach of an order of the Commission and an
7 egregious breach of a stipulation signed by
8 Prudence Ferry and it has been breached for
9 20 years. It should not be tolerated.

10 In 1993 in Docket 92-MC-95, the
11 Division also found that Mr. Medley had
12 intentionally ignored the Division's
13 directive to post hearing notices on the
14 boat and the dock. Mr. Medley went so far
15 as to call the Hearing Officer and stated
16 that the notices had intentionally not been
17 posted and that Prudence Ferry would not
18 cooperate in the docket. This resulted in a
19 hearing to examine the fitness of Prudence
20 Ferry and Mr. Medley to provide the
21 transportation services authorized by the
22 CPCN. The Division ultimately found that
23 Prudence Ferry had committed an
24 administrative regulatory violation and it

1 had also arguably engaged in criminal
2 conduct. The Division issued a fine of
3 \$1,500 and stated, "The Division hereby
4 places PFI and Mr. Medley on notice that
5 future violations of this nature will result
6 in more serious consequences. Future
7 actions by PFI or Mr. Medley designed to
8 evade or ignore a Division mandate may place
9 PFI's operating authority, its certificate,
10 in jeopardy and lead to criminal prosecution
11 of PFI's officers. The findings in this
12 order," which again, we ask the Division to
13 take administrative notice of, went on to
14 state that, "Prudence Ferry had failed "to
15 conduct itself as a regulated public
16 utility" and that the Division's regulatory
17 -- and had manifested -- "had manifested a
18 belligerent posture toward the Division's
19 regulatory oversight and powers" and had
20 "engaged in inexcusable behavior."

21 The Division went on to state that,
22 "The Division must remind the company that
23 it's operating certificate was conferred by
24 the Division and similarly may be taken away

1 by the Division. A certificate of public
2 convenience and necessity is not an
3 irrevocable property right; instead, it
4 represents a license to serve the public as
5 a regulated common carrier." The Division
6 concluded by saying that this situation
7 "will no longer be tolerated".

8 What you have here before you today
9 is a family-run, Prudence Island-based
10 proposal that has substantial financial
11 backing. There are rarely CPCNs that are
12 granted with boats in place, dock, leases
13 signed, et cetera. It is the usual practice
14 of this Division to enter an order stating
15 that the applicant has shown that it is fit,
16 willing and able and that the public
17 convenience and necessity would be served by
18 the application being granted, but that the
19 CPCN itself will not be issued by the Motor
20 Carriers Section until certain conditions
21 have been met. Think about it for a minute.
22 What company would ever apply for a CPCN for
23 something, other than maybe a taxi service
24 or something, where it has to make

1 substantial six or seven figure investments
2 if it has no idea whether it is likely to
3 get the CPCN. Once it gets an order from
4 this Division that it has been shown to be
5 fit, willing and able and that the public
6 convenience and necessity will be served, it
7 can then take that to its lender, it can
8 then take that and enter into contracts to
9 buy vessels, to lease vessels, to build
10 docks, to lease docks, to do whatever needs
11 to be done. I have participated in a number
12 of hearings, and I'm sure this Hearing
13 Officer has as well, where the decision that
14 was rendered was a conditional one, and
15 conditions were imposed that had to be met
16 before the Motor Carriers Section would
17 actually issue the CPCN.

18 That's what we're asking for here.
19 We fully understand that there will be
20 conditions imposed, yet we are fully
21 prepared to go forward once we get a finding
22 that we are fit, willing and able and that
23 the public convenience and necessity would
24 be served by the application, prepared to go

1 forward and make all of the necessary
2 arrangements to institute this ferry service
3 even if it is in direct competition with Mr.
4 Medley's service. Frankly, we believe that
5 his service has been so poor that we will
6 have no problem whatsoever becoming the sole
7 ferry provider as Mr. Medley did 20 some odd
8 years ago when he was competing with Mr.
9 Blount. Thank you.

10 MR. SPIRITO: Thank you, Mr.
11 McElroy. If you could, I would appreciate
12 it if you could just comment on the
13 applicant's proposal to provide service to
14 Hog Island which is indicated in the
15 application but for some reason there wasn't
16 a whole lot of discussion about it during
17 the proceeding.

18 MR. McELROY: The reason there was
19 no discussion about it is because, as the
20 Hearing Officer knows, the dock on Hog
21 Island is currently unsuitable for the
22 landing of a vessel. Now, it may be that if
23 we go to the landing craft as opposed to a
24 traditional ferry vessel, that for a while

1 with a landing craft we could, in fact,
2 serve Hog Island. But that would only
3 provide an interim solution. For a
4 permanent solution to Hog Island, the Hog
5 Islanders would need to get together and
6 rebuild that dock.

7 Would A&R be willing to serve Hog
8 Island under those circumstances?
9 Absolutely. That's why it's on the
10 application. It is our hope that that dock
11 will be rebuilt, that it will be sufficient
12 to land a ferry at on a regular basis and
13 that Hog Island will be included in our
14 service.

15 MR. SPIRITO: Okay. Thank you very
16 much. Anyone else wishing to offer
17 additional comment? Anyone in the back of
18 the room here to offer public comment this
19 morning? Okay.

20 Then what we will do at this point,
21 as was discussed earlier, I will agree to a
22 45-day deadline for briefs, there will be
23 simultaneous briefs, no reply briefs, and if
24 there are any motions to be filed, I will

1 address them as they come in.

2 At this point I have all the
3 evidence that I need to make a decision and
4 we'll be waiting for the transcript and then
5 I will endeavor to get a written decision
6 before the Administrator. So thank you all
7 very much for your time. I appreciate the
8 public interest in this case, and I will do
9 my best to get a decision out as
10 expeditiously as possible because I know
11 this is a very important issue to so many
12 people. Thank you.

13 (ADJOURNED AT 11:25 A.M.)

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C E R T I F I C A T E

I hereby certify that the foregoing is a true and accurate transcript of the hearing taken before the Rhode Island Division of Public Utilities and Carriers, John Spirito, Esq., Hearing Officer, on December 5, 2013, at 10:00 a.m.

JO ANNE M. SUTCLIFFE, RPR/CSR
Notary Public, State of Rhode Island