
STATE OF RHODE ISLAND
BEFORE THE RHODE ISLAND DIVISION OF PUBLIC UTILITIES AND CARRIERS

DOCKET # D-13-05

IN RE: A & R MARINE CORPORATION'S
APPLICATION FOR A CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY

BRIEF OF INTERVENOR,
TOWN OF PORTSMOUTH, RHODE ISLAND

Town of Portsmouth, Rhode Island
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INTRODUCTION:

The Town of Portsmouth, Rhode Island, has a strong interest in a dependable ferry service to Prudence Island. Because the island is accessible only by boat, a ferry is a “lifeline” upon which thousands of residents and guests depend for meeting basic needs. The Town government also requires a dependable ferry service to Prudence Island in order to provide residents with a wide variety of municipal services, including police and fire protection, ambulance services, road maintenance, trash removal, governmental meetings, and school transportation. Because the Town of Portsmouth currently uses the existing ferry to the island for these purposes, and has done so for many years, it has significant experience with the existing ferry provider and the level of operations provided by it. Portsmouth formally intervened in this Docket in order to describe its experience with the current certificate holder, and to ensure that island residents receive a high quality ferry service that they deserve and are entitled to receive.

BACKGROUND AND TRAVEL OF CASE:

On April 26, 2013, the Town received a communication from Prudence Ferry, Inc., (hereafter “PFI”) indicating that “Prudence Ferry Inc. will cease all operations as of the last ferry on December 1, 2013.” In response, the Town began searching for another ferry service provider.

On May 8, 2013, Mr. Bruce Medley, President of PFI, informed the Division of Public Utilities and Carriers that it was the intention of PFI to cease operations following the last scheduled trip on December 1, 2013. See: **Report and Order in Docket 13 MC 22**, May 24, 2013. P.69, footnote 85.

On June 14, 2013 PFI entered a lease with the Town of Bristol for use of the Town Dock. The lease expires on June 14, 2014, or upon such time as the current President of PFI no longer owns or operates the current ferry service that uses the dock.

On September 19, 2013, A & R Marine Corporation d/b/a/ Prudence & Bay Islands Transport (hereafter “A & R”) filed an application with the Division of Public Utilities and Carriers (the “DPUC”) seeking a “Certificate of Public Convenience and Necessity” (hereafter a “CPCN”) for operation of a ferry service between Bristol, Rhode Island, and Prudence Island.

On October 29, 2013, the DPUC convened a public hearing on A & R’s application, pursuant to Rhode Island General Laws 39-1-1, and 39-3-3. At that time the Town of Portsmouth’s Motion to Intervene was granted, the Town of Bristol’s Motion to Intervene was granted, and the Motion of Prudence Ferry, Inc., to intervene out of time was also granted without objection. Testimony was received from numerous witnesses, several documents were admitted into evidence, and public comments and arguments of counsel were considered before the hearing was recessed. The hearing resumed, and was concluded, on December 5, 2013, and a briefing schedule was then established with a deadline for submission of briefs set for January 20, 2014. The deadline was subsequently extended to February 4, 2014, at the request of the Town of Portsmouth.

STATEMENT OF THE ISSUES:

- 1.) HAS A& R MARINE, INC., MET THE LEGAL STANDARD FOR ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY ?
- 2.) SHOULD THE DPUC GRANT A & R’S APPLICATION ?

STANDARD OF REVIEW:

The Division of Public Utilities and Carriers is authorized by Section 39-3-3 of the Rhode Island General Laws to issue a “Certificate of Public Convenience and Necessity.” In order to qualify for a CPCN an applicant must prove that it is fit, willing, and able to perform the services for which it has applied, and also demonstrate that the public convenience and necessity require the service it proposes to offer.

In Abbott v. Public Utilities Commission, 136 A. 490, (R.I. 1972), the Rhode Island Supreme Court held that the standard to be applied in deciding whether to grant or deny applications filed under RIGL 39-3-3 requires the applicant to demonstrate that its proposal: 1.) is fitting or suited to the public need; 2.) tends to promote the accommodation of the public; and 3.) is conducive to the public welfare. *Id.*, at 491-92.

THE TESTIMONY AND DOCUMENTARY EVIDENCE IN THE RECORD:

Portsmouth Town Planner Gary Crosby was the first witness to testify in this proceeding, and he described the Town’s experience with the existing ferry service provider, i.e., PFI, as well as efforts he had made to ensure that ferry service to Prudence Island remained available for residents. He explained that the Town of Portsmouth’s interest in this proceeding is simply to ensure that safe and responsible ferry service exists for town residents who live on Prudence Island, and that the Town seeks reasonable assurance that ferry service will continue on a long-term basis.

Mr. Crosby first described the receipt by town officials of an e-mail on April 23, 2013, from Bruce Medley, the president of PFI, indicating that PFI intended to cease all ferry service to Prudence Island on December 1, 2013. He next described the Town’s receipt of a letter from the

Prudence Island Planning Commission on May 9, 2013, which requested that the Town begin the process of looking for a replacement ferry service. The “Prudence Island Planning Commission Letter to Portsmouth Town Administrator John Klimm dated May 9, 2013” was then admitted into evidence as **Portsmouth’s Exhibit #1**. Mr. Crosby next described efforts he made in response to receiving PFI’s e-mail message, including investigating whether any entities existed in the marketplace that would be both capable of, and interested in, operating a ferry service to Prudence Island. He went on to describe his preparation of a “Request for Information” (hereafter “RFI”) that the Town issued in June, 2013, in order to solicit interest in running a ferry service. Mr. Crosby described spending a great deal of time dealing with the RFI process, and how it was a “complete disruption” of his usual work flow which had caused other work to have to be postponed.

Mr. Crosby testified that A & R Marine Corporation and three other entities responded to the RFI, and that he suggested to each that they contact the DPUC to begin the permitting process. Mr. Crosby described how he was notified that A & R had been in discussions with the Town of Bristol about use of the town-owned dock, and how he had also discussed the possible use of town-owned land on Prudence Island as a potential ferry landing site with A & R. He stated that the Town had agreed with A & R that the leasing of town land on Prudence Island for a ferry landing facility was a possibility, and stated that the town later spent \$18,000.00 to conduct land and water depth surveys in order to allow A & R (or anyone else) to use such data to design a dock on the town-owned land if it chose to do so.

Mr. Crosby then described how in July, 2013, Town officials became aware that PFI was considering use of a ferry terminal in Fall River, Massachusetts, as a substitute for the existing mainland landing site that is located in the neighboring Town of Bristol, Rhode Island. He

explained that such a potential change in where the Prudence Island ferry service would be located greatly concerned the Town because it currently uses the ferry facility in Bristol for providing the island with police and fire protection, for trash removal and public work functions, and for transportation of school students. In addition, he stated that PFI's potential change to an out-of-state location would be a considerable inconvenience to the Town, and that a change to a location much further away than Bristol would also increase the Town's costs associated with providing services to island residents.

As part of his work seeking to find a solution to the ferry service issue that had arisen in May, Mr. Crosby testified that he contacted the Town of Bristol, which advised him that it had acquired the dock in Bristol that is presently being used by PFI, and had leased the dock to PFI, but only until June 14, 2014. Bristol also expressed a strong interest in having ferry service to Prudence Island continue from the town dock after the lease expired.

Mr. Crosby next described his attendance at a meeting of the Prudence Island Planning Commission (PIPC) on October 19, 2013. He testified that the Town Council wanted to make sure it understood the desires of the citizens of Prudence Island with regard to A & R's application for a CPCN, and had requested that a meeting be convened on the island. He concluded his direct testimony by describing a letter, dated October 19, 2013, that the Town received from the PIPC, and this letter was then admitted into evidence and marked as **Portsmouth's Exhibit 3**. The PIPC letter states that the e-mail sent by the owner of PFI to the Town on April 23, 2013, indicating that ferry service would cease as of December 1, 2013, had caused great concern and anxiety among island residents that continue to exist. The letter indicated that the islanders needed "a reliable service," and described a "responsive" ferry service as one which provided at least:

- Consistent and thorough snow removal from parking areas, docks and ramps;
- A rest room on the ferry;
- Morning and afternoon ferry service on Thanksgiving;
- Adequately heated and lighted cabins;
- The ability to make telephone and on-line vehicle reservations;
- An annual meeting with islanders to discuss service and schedules;
- An ability to use credit cards for ticket purchases;
- Text messaging for changing reservations and notification of ferry cancellations.

The PIPC letter further indicated that many island residents have slipped going to and from the existing ferry, have tried to make reservations by phone without success, and “don’t need to shiver all winter” (due to an unheated passenger cabin).

Counsel for A & R Marine then cross-examined Mr. Crosby, who authenticated a copy of the April 23, 2013 e-mail from PFI to the Town, which was admitted into evidence as **Applicant’s Exhibit 4**. Mr. Crosby testified that representatives of A & R Marine had described plans to apply for a CPCN to him, and had also asked about Portsmouth’s needs with regard to an adequate ferry service. He stated that the Town was satisfied with A & R’s business plan, and that it was pleased the CPCN application process was moving forward. Mr. Crosby then authenticated a transcript of a voice mail message from the owner of PFI that had been left for him at his office on September 9, 2013, and this document was admitted into evidence as **Applicant’s Exhibit 5**. The voice mail stated “Good morning, this is Bruce Medley from the Prudence Ferry. I understand you’ve had engineers or surveyors or something snooping around the Homestead property. Be warned; keep your people out of my property over there. And I don’t want to hear anything more about poor condition of the dock or whatever over there;

otherwise I will take legal action against you... and your buddy Klimm.” Mr. Crosby stated that the message disturbed him, and that he had discussed it with the Town’s Acting Chief of Police, and had also sent a transcription of the voice mail to the DPUC.

Mr. Crosby went on to testify that a great deal of uncertainty for the Town had been created by PFI’s pattern of activities and statements about ceasing service, moving the mainland landing site out of state, etc. He stated that A & R’s filing of an application for a CPCN alleviated some of this uncertainty, and was a positive step in the right direction that had accomplished one of the goals of the RFI process, i.e., to locate interested parties that could provide a replacement ferry service. He also explained that he had recently inquired about any negotiations between Bristol and PFI to continue PFI’s lease of the Bristol docking facility beyond June, 2014, and had learned that no such negotiations had taken place. Mr. Crosby stated that the filing of A & R’s application aligned with the Town’s goals of trying to find a long-term ferry service, and that he had a “high level of confidence” in the applicant. When asked about a change in plans with regard to a continuation of ferry service after December 1, 2013, that PFI had commented about, Mr. Crosby stated that the comments had not “changed anything” because the Town still lacked confidence that PFI’s plan to cease services would not arise again in the future. He testified that “stability” was important for this type of “lifeline” ferry service, and providing such stability was one of the Town’s goals. He also stated that the Town does not presently have “a reasonable assurance” that PFI would “continue on a long-term basis.”

On a brief cross-examination by counsel for PFI, Mr. Crosby acknowledged that he considered the size and capacity of a ferry providing lifeline services to be important, and did not know about the particulars of the vessel that A & R proposed to use if it were granted a CPCN,

or whether modifications to the Bristol docking facilities would be required to be made to accommodate the A & R ferry.

Counsel for the DPUC's Advocacy Section also briefly cross-examined Mr. Crosby about PFI's change in plans involving continuing ferry services after December 1, 2013. Mr. Crosby stated that during a meeting held in July, 2013, the President of PFI had made a "conditional statement" to that effect, but did not state how long the ferry service would continue after December 1, 2013, and never followed-up in writing to reflect his oral comments (even though they directly contradicted the position taken in PFI's April, 2013 written communication to the Town).

A & R's counsel then inquired about any plans to "lease" PFI to one of the ferry captains, and Mr. Crosby testified that PFI's President had stated such a plan at the PIPC meeting held on October 19th, but that such announcement had not caused the Town to feel less uncertain about the ferry service to Prudence Island. This concluded Mr. Crosby's testimony.

Applicant's Exhibit 6, "Lease Agreement between Bristol, R.I. and Prudence Ferry, Inc.," was then admitted into evidence upon motion by the Town of Bristol. Attorney Andrew Teitz testified that the lease concerned the dock owned by Bristol that is currently used by PFI, and that the lease contained a provision under which the lease would terminate at such time as the current President of PFI no longer operates the ferry service. He stated that Bristol would be willing to lease the dock to A & R if it were granted a CPCN, and that Bristol is concerned about the continuation of ferry service from the Town dock, which it would like to see maintained. On cross-examination by the DPUC, Attorney Teitz testified that the Town dock had recently been

acquired from PFI President Bruce Medley, who at the time had expressed an interest to local officials of getting “out of the business” (Tr., p. 74).

Harry Sterling, PhD., was then called as a witness and testified about the October 19, 2013, letter to the Portsmouth Town Council that he signed as the Chair of the PIPC. He testified that island residents had felt “jerked around a lot over six months” and that the withdrawal of the plan to cease ferry service had left island residents with a sense of uncertainty that still continues. Dr. Sterling explained the basis for the concerns expressed in the PIPC letter, and stated that the existing ferry service “rarely” provides snow removal services from the docks, ramps and parking areas, has for a long time kept the rest room door on the ferry locked, and has only “intermittently” maintained adequately lighted and heated cabins for passengers. He stated that PFI does not allow for reservations to be made online, or credit cards to be used for reservations, and it does not hold annual meetings with island residents to discuss schedules and service.

A & R next presented Traci Whitney, who described how for many years restrooms were not available for her and her five children on PFI’s ferry because they were routinely locked, and how PFI was not interested in instituting online reservation services. She opined that the public convenience would be furthered by issuance of a CPCN to A & R.

Stephen Antaya, the President of A & R, then testified at length about his company’s plans and qualifications. He stated that he is employed as a Director and Vice President of a firm that he co-founded twenty years ago which has over 300 million dollars in annual sales, and which employs over 200 people in the State of Rhode Island. He explained that he owns a home on Prudence Island, and described the difficulties his family has experienced in arranging transportation to the island using PFI, such as arranging the transportation of building materials,

and making reservations. He stated that PFI is not providing adequate ferry service to Prudence Island, and that A & R's response to the Town of Portsmouth's RFI addressed the problems of snow removal at the dock and parking areas, the locked rest rooms, and the cabin lighting and heating problems that had been brought to his attention. Mr. Antaya expressed confidence in A & R's ability to meet the needs of the public, and felt the public convenience would be served by the issuance of the requested CPCN. He also described A & R's financial ability to provide ferry services, citing a letter of support from the Bank of America that was submitted as part of the A & R application. **Applicant's Exhibit 2** "Bank of America Letter dated October 14, 2013," was then admitted into evidence. The witness went on to describe why A & R's proposed ferry service would be reliable, stating that "when you are given a CPCN, you're legally obligated to continue that lifeline service..." and that A & R understood this commitment and would provide such service. He also stated his company's intention to abide by all DPUC orders if it were granted a CPCN.

Mr. Antaya then addressed the concerns raised by island residents that are reflected in the October 19th PIPC letter, and committed the company to providing an adequately lighted and heated cabin for passengers with unlocked rest rooms, consistent and thorough snow removal, morning and afternoon ferry service on Thanksgiving, and the ability to make telephone and on line reservations. Mr. Antaya also stated that A & R would allow passengers to use credit cards for reservations, and would hold annual meetings on the island to discuss schedules and service. He next described the qualifications of A & R's Vice President of Operations, who is licensed to operate the type of ferry A & R would use, and is also an experienced EMT, firefighter, and ship Captain. The experience and qualifications of other A & R Officers and Directors were also described, including extensive experience in maintenance and operations of vessels, as well as

with operating a business on Prudence Island. He said A & R's intent was to operate a vessel that could accommodate more vehicles and passengers than the existing provider (i.e., 150 passengers, along with a full complement of vehicles).

A & R then presented Mr. David Bebyn, an expert witness with extensive experience in utility rate filings who had prepared the financial projections included in A & R's application. Mr. Bebyn stated his opinion that A & R would be able to successfully operate the proposed ferry service if granted a CPCN. The witness acknowledged that there would likely be some negative impact to rate payers if there were two ferry services competing for the current level of ridership. On cross examination, counsel for PFI questioned the accuracy of A & R's financial projections because they were premised upon A & R being the sole provider of ferry services to the island. Mr. Bebyn acknowledged the possibility that PFI might compete against A & R for the existing ridership, but pointed out the "issue about the dock in Bristol" could mean "there may end up being one provider that lands at that dock." PFI did not confront the witness with any evidence that supported its suggestion that it "was intending to stay in operation" after its lease of the Bristol dock expired in the coming months, and Mr. Bebyn maintained that A & R's financial projections were based on current rates and reasonable assumptions.

On December 5, 2013, the hearing was reconvened. No witnesses were presented at this time, and the final closing arguments of counsel were presented for A & R, and PFI as the sole objector to the application.

ARGUMENT:

(A) A & R MARINE HAS MET THE STANDARD FOR ISSUANCE OF A CPCN

A & R Marine's application to the DPUC contained all required information concerning the fitness of the officers and directors of the company, their experience in the industry, and the type

of vessel proposed to be operated by the company. The applicant's Pro Forma Financial Statement indicated that adequate financial resources were available to it. A & R's Business Plan demonstrated that the applicant is committed to providing a high level of services to the public, and adequately described the vessel it is negotiating to acquire. The Business Plan states that the applicant has met with representative of the Towns of Portsmouth and Bristol to ascertain their needs, has engaged legal and accounting professionals, as well as a broker to procure a ferry. The application materials clearly show that A & R Marine is fit, willing, and able to operate as a water carrier in that it has substantial experience in the marine industry, a sound financial footing, a capable management team, and the ability to secure a vessel and landing areas on Prudence Island and the mainland in Bristol, Rhode Island.

Testimony and documentary evidence in the administrative record also support the conclusion that A & R Marine has met the applicable legal standard for issuance of a CPCN. The company President, and other representatives (including Ethan Rossi, who would operate the proposed ferry as Captain), presented a convincing case that A & R Marine has sufficient experience in business and marine affairs that would enable it to operate a successful ferry business, as well as the support of a major bank and a personal guarantee of financial backing. The Town of Portsmouth presented evidence indicating that it would be willing to lease dock space on Prudence Island to A & R Marine, and has already expended funds to conduct surveys of this property and adjacent waters to facilitate the construction of a dock for a ferry. The Town of Bristol likewise presented testimony that it would be willing to lease a dock on the Bristol waterfront to A & R Marine, and introduced an exhibit indicating that a lease of that dock space to PFI expires in June, 2014, (which coincides with the time when A & R proposes to commence ferry operations to Prudence Island originating from Bristol). The availability of docking

facilities on both the island and mainland, as well as sufficient funding and staff to acquire and operate a vessel, show that the applicant is fit and able to operate the proposed service. Testimony provided by a number of company officials, as well as comments provided by the public, convincingly demonstrate that the applicant is willing and eager to begin operating a ferry between Bristol and Prudence Island (and perhaps eventually even to Hog Island as well).

In addition to demonstrating that it is fit, willing, and able to provide the proposed service, A & R Marine proved through sworn testimony that its proposal is suited to the public need, is conducive to the public welfare, and will tend to promote the accommodation of the public that depends on a ferry to the island. For example, numerous witnesses at the hearing on the application described substantial difficulties experienced with PFI in, e.g., making reservations, accessing the docks and parking areas during inclement weather, having to use unheated cabins with inadequate lighting, and encountering locked restrooms. The Town of Portsmouth also presented evidence in the form of a letter from the Prudence Island Planning Commission showing that a ferry service operated in the manner proposed by A & R would accommodate the public's need for basic conveniences such as heated cabins with accessible rest rooms. The testimony and evidence in the record indicates that the existing provider notified the Town of Portsmouth in writing of an intention to cease ferry service, which clearly demonstrates an immediate and urgent public need for an alternative ferry service to the island. The evidence also showed that PFI floated plans to relocate the mainland ferry landing facility to an out-of-state location that would cause the Town to incur substantially greater costs in providing essential governmental services to island residents. Great uncertainty continues to exist on the part of the Town of Portsmouth regarding the long-term commitment of the existing provider, (notwithstanding a reversal of the position it announced about a planned cessation of services). A

& R Marine, on the other hand, has committed to ensuring that any ferry it operates would continue to operate from Bristol, and would have well-heated and lighted facilities, improved reservation procedures, accessible restrooms, and maintained parking areas. The evidence and public comments contained in the administrative record show that the grant of a CPCN to A & R would accommodate the public's need for basic and essential public services that are currently lacking, and would be conducive to the public welfare.

Based upon A & R Marine's application to the DPUC (and attached financial information and business plan), the sworn testimony from the expert and lay witnesses elicited at the hearing, the documents admitted into evidence, and the public comments submitted in this Docket, it is abundantly clear that the legal standard for the requested grant of authority to operate as a water carrier has been met by the applicant.

(B) THE DPUC SHOULD ISSUE A CPCN TO A & R MARINE

The evidence contained in the administrative record clearly demonstrates that granting A & R's application for a CPCN will be responsive to the public's needs, conducive to the public welfare, and will promote the accommodation of the public's needs for reliable ferry service to Prudence Island over the long term. Accordingly, the Town of Portsmouth urges the DPUC to approve the application (subject to the customary conditions that the applicant acquires an appropriate vessel which passes a safety inspection, obtains liability insurance, and secures landing rights on the island and mainland,). Additionally, the DPUC should consider imposing additional conditions on the requested CPCN requiring A & R to adhere to the commitments it made at the hearing (i.e., to provide accessible parking areas, unlocked rest rooms, adequately heated and lighted passenger cabins, on-line reservation capabilities, etc.).

A & R demonstrated that it is fit, willing and able to provide ferry service to Prudence Island if it receives a CPCN, and that a public need exists for a more responsive ferry service over the long – term than that which currently exists.

The Town of Portsmouth submits that PFI's arguments in opposition to the grant of the requested CPCN are based on mischaracterizations of the evidence, and they should be rejected as unpersuasive. It presented no witnesses at the hearing, and only one exhibit, which appeared to be completely irrelevant to the application before the Division. **PFI's Exhibit 1** consisted of a United States Coast Guard regulation (found at 46 C.F.R. 177.30) stating that "... vessels operating on short runs of approximately 30 minutes or less need not be equipped with toilets or wash basins." The public's convenience and needs surely include easy access to rest rooms on ferry trips lasting 25 minutes, and these needs must be accommodated by ferries that are operated under a Rhode Island CPCN, regardless of the minimum federal requirements cited by PFI. As reflected by the PIPC's letter of October 19th, an accessible bathroom for the ferry to Prudence Island is certainly expected of a provider responsive to the public's needs. The testimony and public comments in the record show that PFI's restrooms are routinely locked, thereby causing the convenience and needs of passengers to be ignored. PFI's argument that "a bathroom isn't even necessary" only demonstrates that it does not accept one of the most fundamental and inherent requirements applicable to CPCN holders transporting thousands of passengers each year in Rhode Island pursuant to a CPCN. If that is PFI's position, and it intends to continue service, the public should be afforded the opportunity to choose a competing ferry that will provide accessible bathrooms.

PFI's closing argument claiming that the public convenience and necessity would not be served by two competing services should be rejected. PFI had ample opportunity to present

evidence showing that PFI will continue to operate the ferry after its lease with Bristol expires, yet nothing in the administrative record substantiates such a position. Instead, the record shows that PFI's ferry landing facility rights on the mainland expire six months from now, that the company President has indicated a desire to "get out of the business," and that PFI has never provided written assurance to the Town of Portsmouth that it has reversed the plan to cease operations that was communicated in writing to the Town. PFI's claim that it "never filed any formal notification with the PUC that they were intending to stop operations" is also completely erroneous, as evidenced by the **DPUC's May, 2013, Order in Docket No. 13 M.C. 22**, which explicitly notes that "...on May 8, 2013 Mr. Medley informed the Hearing Officer that it was his company's intention to cease operations following the last scheduled trip on December 1, 2013." Administrative notice should be taken of this sworn statement made by the PFI President. PFI knew it had informed the DPUC last May of an intention to cease service, yet never presented a witness, or exhibit, indicating it had since retracted the official position it took before the DPUC.

PFI also objected to the grant of A & R's application because "there's no boat" and it is not known how long it will take to "retrofit whatever boat turns up." However, the record shows that A & R understands and agrees that any CPCN issued to it would be conditional on securing a vessel and making any necessary modifications to it. It is unrealistic to expect a prospective CPCN holder to expend funds to purchase and modify a vessel before knowing if a CPCN will be granted to it. New entrants to a regulated market typically lack the expensive hardware required to operate the business, and therefore require the issuance of a conditional permit in order to attract capital investment. The relevant question is not whether the applicant already owns a ferry, but rather whether the applicant has a reasonable chance of securing any needed financing after a CPCN is issued to it. A & R's sworn testimony showed it will be able to

provide a suitable ferry (with landing rights on the island and mainland) by the contemplated start of operations, either with bank financing or through investment by the owners. PFI's reliance on mere arguments of counsel to the contrary should be deemed insufficient to rebut the reliable evidence offered by A & R.

The argument raised by PFI that A & R's financial plans are "inaccurate" (because they account for only one ferry service, rather than two), is unpersuasive for the same reasons. First, there is absolutely no evidence in the record proving that PFI intends to continue providing service after its dock lease expires in the coming months, or even that it has the legal right to use docking facilities anywhere on the mainland after that point. At this point in time, PFI's suggestion that there will be "two competing services" is nothing more than conjecture, as there is simply no evidence before the Division to substantiate the position that PFI will continue ferry service if A&R is granted a CPCN. The undisputed evidence instead shows that PFI will have no mainland landing rights in a matter of months, and that the company President has expressed his desire to "get out of the business." The testimony showing that PFI has not attempted to negotiate an extension of the lease of the Bristol dock is further evidence of an intent to discontinue service next June. Moreover, no evidence was presented to show that two competing services could not co-exist. The DPUC rejected this same line of argument when it granted a CPCN to a high speed ferry boat to Block Island that allowed it to compete against an existing provider, and it should likewise reject such argument in this matter.

PFI also argued that A & R's plans to establish a website for booking online reservations would be problematic, but once again presented no evidence that would contradict A & R's sworn testimony that it intends to establish a website that would be similar to those used by other ferry operators to Block Island and Nantucket, which easily accommodate vehicles of varying

size. All that PFI's argument proved was that it continues to find no reason to establish the type of on-line reservation services that island residents say they need, and which A & R proposes to institute.

In its closing argument PFI claimed that it has "no intention of stopping" ferry service to Prudence Island. However, the Hearing Officer must rely on evidence, not arguments, and ample unrefuted evidence tends to demonstrate the exact opposite is true. If PFI truly had "no intention of stopping" service it should have presented some sort of reliable evidence to that effect, such as demonstrating that it is negotiating a lease renewal with the Bristol dock's owner. In the absence of such a showing, a fair and reasonable inference to be drawn from the evidence is that PFI may be stopping ferry service next June due to a lack of a landing area, or a desire of the company's President to get out of the ferry business, or both.

CONCLUSION:

For the reasons set forth herein, the Town of Portsmouth submits that the application of A&R Marine, Inc. for a CPCN meets the statutory requirements contained in R.I. Gen. Laws 39-3-3, and should be granted.

Respectfully submitted,
Town of Portsmouth,
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CERTIFICATION

I certify that a copy of the Brief of the Town of Portsmouth, Rhode Island, was sent via U.S. mail, or e-mail, to the Service List in this Docket on the 28 th day of January, 2014.

/s/ Terence J. Tierney