

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

IN RE: Interstate Navigation Company – New Fast Ferry Report and Interstate’s Application to Modify its Fast Ferry Water Carrier Certificate of Public Convenience and Necessity (CPCN Certificate No. W-1169 dated January 18, 2012) and to relinquish its Conventional Ferry Water Carrier Certificate No.’s 2 and 3 (dated June 25, 1954).

DOCKET NO. D-13-19

REPORT AND ORDER

1. Introduction

As an introduction to this Order, the Rhode Island Division of Public Utilities and Carriers (“Division”) hereby incorporates by reference the following eight Division Orders issued in the instant consolidated dockets: Order No. 18728, issued on October 3, 2006; Order No. 19477, issued on October 31, 2008; Order No. 19599, issued on March 17, 2009; Order No. 19919, issued on February 26, 2010, Order No. 20625, issued on January 12, 2012; Order No. 20659, issued on February 29, 2012; Order No. 20727, issued on May 7, 2012; and Order No. 20730, issued on May 8, 2012.

The Division will not summarize the foregoing decisions in this Report and Order, for to do so would take considerable time. Instead, in the interest of administrative economy, the Division has incorporated these previous decisions into the instant decision. For a comprehensive history of the travel of these consolidated docket matters, and the Divisions decisions thereon, please refer to the individual Report and Orders cited above.

2. Interstate Navigation Company's March 26, 2013 Filing

On March 26, 2013, the Interstate Navigation Company ("Interstate") filed a status report on its efforts to locate and purchase a "fast ferry" to provide ferry services between Newport and Block Island, in compliance with a Division mandate contained in an order(s) referenced above; and, also, an application to: (1) modify its fast ferry water carrier certificate of public convenience and necessity ("CPCN"), CPCN No. W-1169, issued on January 18, 2012; and (2) relinquish its conventional ferry CPCN Nos. W-2 and W-3, issued on June 25, 1954.

In response to the application filing, the Division conducted a duly noticed public hearing on April 19, 2013. The hearing was conducted in the Division's hearing room, located at 89 Jefferson Boulevard in Warwick. The following counsel entered appearances:

For Interstate:	Michael R. McElroy, Esq.
For the Division's Advocacy Section:	Karen Lyons, Esq. Special Assistant Attorney General

Interstate proffered one witness in support of its application. The witness was identified as Mr. Walter E. Edge, Jr., MBA, CPA, Consulting Department Director and Sr. Vice President of B & E Consulting, LLC., 21 Dryden Lane, Providence, Rhode Island. Mr. Edge submitted pre-filed direct testimony in this docket.

Mr. Edge began his testimony with a status report on Interstate's efforts to start up a new fast ferry service between Newport and Block Island, as required by the Division. Mr. Edge related that Interstate has purchased a fast ferry,

formerly called the *MV Royal Miss Belmar*, that Interstate has renamed the *MV Islander*. He testified that the vessel was damaged when purchased by Interstate and that Interstate paid approximately \$440,000 for the vessel. Mr. Edge related that repairs to the vessel are expected to exceed \$1,000,000. He noted that Interstate expects to begin service with the new vessel this summer.¹

Mr. Edge also testified that the *MV Islander* is expected to leave Point Judith daily, at 8:00 AM, and arrive at Perrotti Park in downtown Newport, at 8:40 AM. According to Mr. Edge, the vessel “will then make three 1 hour and 15 minute runs to Block Island and returning twice (also 1 hour and 15 minute runs).” Mr. Edge testified that the vessel “will end the day with a run from Block Island to Point Judith at 8:15 PM and arrive back at Point Judith at 8:50 in the evening.”²

Mr. Edge noted that Interstate’s authority to operate a fast ferry between Newport and Block Island is already contained in CPCN No. W-1169. Mr. Edge opined that CPCN No. 1169 also would permit Interstate to operate the *MV Islander* between Block Island and Point Judith for the vessel’s last trip of the day. However, Mr. Edge observes that CPCN No. W-1169 does not presently permit Interstate to begin its fast ferry services between Newport and Block Island with an initial fast ferry service between Point Judith and Newport Interstate. Due to this limitation, Interstate is requesting, through the instant filing, that

¹ Interstate Exhibit 1, Edge Testimony, pp. 2-3.

² *Id.*, p. 3.

CPCN No. W-1169 be amended to permit a fast ferry service between Point Judith and Newport.³

In support of this request, Mr. Edge acknowledged that Interstate must prove that "...it is fit, willing, and able to provide the requested service and that... public convenience and necessity require the requested service." Regarding the criteria of "fitness," "willingness," and "ability," Mr. Edge pointed to Interstate's considerable experience in operating both life line and seasonal ferry operations between Point Judith, Newport and Block Island, as well as Interstate's seasonal fast ferry service between Point Judith and Block Island in recent years.⁴

Mr. Edge also opined that the "public convenience and necessity" criterion is also satisfied in this matter, as evidenced from the fact that the proposed fast ferry service will be replacing Interstate's current conventional seasonal service between Point Judith and Newport. Mr. Edge also stressed that the new fast ferry service will provide a much smoother and faster ride for Interstate's customers.

Mr. Edge further opined that because the new fast ferry service will be landing in downtown Newport, rather than at Fort Adams, he expects that more passengers will take the ride to visit Newport's "tourist sites, restaurants, shopping, etc." Additionally, Mr. Edge opined that because Interstate will be berthing the *MV Islander* in Point Judith overnight, and will make its first run in the morning to Newport, receiving the requested authority will allow Interstate the ability to carry passengers for no additional operating cost; which Mr. Edge

³ Id., p. 4.

⁴ Id., p. 5.

emphasized, “maximizes revenues which is beneficial to the Company and the ratepayers.”⁵

Mr. Edge described the Point Judith to Newport run as an “integral part of the new fast ferry schedule that will provide service to/from Newport and Block Island.” Mr. Edge related that with its conventional ferry, Interstate was only able to provide one round trip between Newport and Block Island each day. In contrast, Mr. Edge related that the new fast ferry “will allow Interstate to run three trips from Newport to Block Island and two return trips...” Mr. Edge opined that “this opens the door for an entirely new customer base not being served at this time.” He testified that the “initial run each day (Point Judith to Newport) is essential to allow for all the subsequent needs to be filled for travelers between Newport and Block Island.”⁶ Mr. Edge added that “Interstate will have to make the run with or without passengers. It only makes sense to allow passengers to ride on this run.”⁷

Lastly, Mr. Edge testified that if Interstate’s request to modify CPCN No. W-1169 is approved by the Division, “Interstate’s Water Carrier Conventional CPCN No. 2... and CPCN No. 3... can be eliminated.”⁸

3. Public Comment

At the conclusion of Interstate’s direct case, the hearing officer queried those in attendance at the hearing if anyone was interested in offering “public

⁵ Id., p. 6.

⁶ Id., p. 7.

⁷ Id.

⁸ Id., p. 9.

comment” in response to Interstate’s application filing. Two individuals came forward.

Mr. Paul Filippi offered comments in opposition to Interstate’s application filing. He also sponsored written comments.⁹ However, it quickly became obvious that Mr. Filippi’s concerns related exclusively to rate-related issues, which are clearly outside the scope of the instant proceeding and more appropriately within the Public Utilities Commission’s (“Commission”) regulatory purview. Indeed, Mr. Filippi acknowledged that he also planned to bring his concerns to the Commission in the context of the rate proceeding that is also presently pending before the Commission.¹⁰

Mr. Christopher D’Ovidio attended the hearing “on behalf of the Solicitor for the Town of New Shoreham.” Mr. D’Ovidio stated that “we have no objection to the petition today.”¹¹

4. The Advocacy Section’s Position

After its cross-examination of Interstate’s witness, the Advocacy Section indicated for the record that it supported Interstate’s application filing and recommended that the Division approve it as filed.

5. Findings

Through earlier decisions issued by the Division, as referenced above, the Division has held that Interstate must provide high-speed or “fast ferry” service between Newport and Block Island, or, alternatively, surrender the related authority now conferred through CPCN No. W-1169. As evidenced in the instant

⁹ Public Comment Exhibit 1.

¹⁰ Tr. 30-41.

¹¹ Tr. 42.

filing, it is abundantly clear that Interstate has opted to provide the “fast ferry” service rather than surrender that component of its current CPCN authority. In view of the Division’s previous decisions on this issue, supra, there is no need for the Division to again formally approve the provision of this service.

However, Interstate’s request to expand the authority contained in CPCN No. W-1169 to include high-speed service between Point Judith and Newport does require a determination by the Division that Interstate is fit, willing and able to provide the service; and that the proposed service is needed in the public interest.

Before addressing the relevant findings, the Division notes that Rhode Island General Laws, Section 39-3-3 establishes the requisite burden of proof that Interstate must satisfy in order to receive the modification to the “water carrier” CPCN that it seeks. The pertinent provisions state as follows:

No common carrier of persons and/or property operating upon the 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.¹²

In addition to a determination of whether the “public convenience and necessity require[s] the services” the Division must also evaluate the applicant’s “fitness, willingness and ability” to provide the proposed transportation services.¹³

Regarding the “fitness, willingness and ability” criteria, the Division notes that it has previously held, in the orders referenced above, that Interstate is

¹² Under R.I.G.L. §39-1-2 (7), the definition of a “common carrier” includes “ferry companies”.

¹³ See generally R.I.G.L. §§39-1-1, 39-1-38 and 39-3-3.1; also *Interstate Navigation Co. v. Division of Public Utilities and Carriers*, 1999 WL 813603 (R.I. Super. 1999).

sufficiently “fit” to operate a “fast ferry” service.¹⁴ In fact, Interstate has been providing such a service between Point Judith and Block Island for several years now. Interstate’s “willingness” to provide the service is obvious from the application now before the Division. As for its “ability,” the Division finds that the record fully supports a conclusion that Interstate has the needed vessel, expertise, docks and financial resources to successfully launch and maintain the proposed fast ferry service between Point Judith and Newport.

With respect to the “public convenience and necessity” question, the Division accepts Interstate’s arguments that the proposed fast ferry service will be replacing Interstate’s current conventional seasonal service between Point Judith and Newport; and that the new fast ferry service will provide a much smoother and faster ride for Interstate’s customers. The Division also finds credence in Interstate’s claim that new customers may be attracted to the service as a result of Interstate’s ability to now dock in downtown Newport rather than at Fort Adams. The Division likewise agrees that because Interstate will be berthing the *MV Islander* in Point Judith overnight, it makes regulatory sense to permit Interstate the ability to carry passengers on the vessel’s short run from Point Judith to Newport.

The Division does, however, perceive a glaring inconsistency between Interstate’s willingness to provide only one-way service between Point Judith and Newport and the ostensibly much broader request by Interstate to modify CPCN No. W-1169 to include authority for round-trip high-speed service between Point Judith and Newport. While Interstate argues that one-way service between Point

¹⁴ See Order No. 18506 (pages 54 and 55) issued on January 23, 2006.

Judith and Newport is essential in order to facilitate the multiple daily trips between Newport and Block Island, a transportation service plan that the Division supports, the Division finds insufficient evidence in the record to approve Interstate's request for round-trip high speed authority between Point Judith and Block Island. The record simply does not demonstrate the requisite elements of Interstate's "willingness" to provide round-trip service or the public's need for such round-trip service. Therefore, the Division is compelled to reject Interstate's broader request to add such round-trip authority to its CPCN; only the initial early-morning one-way service from Point Judith to Newport shall be authorized.

The final issue for consideration is Interstate's decision to relinquish its conventional ferry CPCN Nos. W-2 and W-3, which were originally issued on June 25, 1954. On this matter, the Division has previously held that it cannot compel common carriers to provide perpetual transportation services against the carrier's will.¹⁵ While it is unfortunate that Interstate has decided to give up these long-standing seasonal ferry services, the Division must accept this decision by Interstate.

Accordingly, it is

(21032) ORDERED:

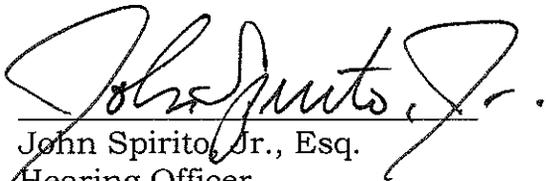
1. That Order No. 18728, issued on October 3, 2006; Order No. 19477, issued on October 31, 2008; Order No. 19599, issued on March 17, 2009; Order No. 19919, issued on February 26, 2010, Order No. 20625, issued on January 12, 2012; Order No. 20659, issued on February 29, 2012; Order No. 20727, issued on May 7, 2012, and Order No. 20730, issued on May 8,

¹⁵ See Order No. 16190, issued on February 29, 2000.

2012, are hereby adopted as the introduction to this Order and, by necessity, incorporated by reference.

2. That Interstate's March 26, 2013 application to modify its fast ferry water carrier certificate of public convenience and necessity, CPCN No. W-1169, issued on January 18, 2012, is hereby granted in part and denied in part. Specifically, CPCN No. W-1169 shall be modified to reflect that Interstate is granted additional authority to provide seasonal "one-way" "fast ferry" service from Point Judith to Newport, consistent with the actual service described in Interstate's filing.
3. That Interstate's March 26, 2013 application to relinquish its conventional ferry CPCN Nos. W-2 and W-3, issued on June 25, 1954, is hereby granted.

Dated and Effective at Warwick, Rhode Island on May 9, 2013.


John Spirito, Jr., Esq.
Hearing Officer

APPROVED: 
Thomas F. Ahern
Administrator