

September 15, 2015

Via E-mail/Hand-Delivery

Ms. Luly Massaro
Division Clerk
Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, Rhode Island 02888

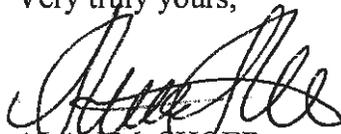
In re: Rhode Island Fast Ferry, Inc. -- Docket No. D-13-51

Dear Luly:

On behalf of Rhode Island Fast Ferry, Inc. ("RIFF"), please find an original and four (4) copies of the enclosed Objection to Intervenor's Motion to Modify Procedural Schedule for filing in the above docket.

Please let me know if you have any questions.

Very truly yours,



ALAN M. SHOER
ashoer@apslaw.com

Enclosures

STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: RHODE ISLAND FAST FERRY, INC.:

Docket No.: D-13-51

**RIFF'S OBJECTION TO INTERVENOR'S
MOTION TO MODIFY PROCEDURAL SCHEDULE**

Rhode Island Fast Ferry, Inc. "RIFF" objects to Intervenor's September 14, 2015 Motion to Modify the Procedural Schedule. The Division's August 19, 2015 Order (No. 22045) did not allow additional discovery; rather the Division reserved the right to extend the hearing date schedule if it determines that additional time for discovery would be appropriate." Order at pg. 4. (emphasis added). Similarly, the Division's Order did not contemplate a reply to RIFF's declaration. Had the Division intended to allow a reply it could and would have included that in its original or amended Orders regarding RIFF's Declaration. These efforts by Interstate and the Town to delay, obfuscate and turn this proceeding into a CRMC or Army Corps of Engineering harbor zoning process, overseen by the Division, are entirely inappropriate. For the reasons explained below additional discovery, additional replies to the RIFF Declaration on docks, and extending the schedule out to 2016, as requested by the Motions of Interstate (and the Town), is not appropriate.

The Division's latest Order (No. 22045), reserving to the Division the right to suspend the hearings and allow additional discovery, was intended to allow the Town an additional bite at the discovery apple only "if RIFF proposes to use a New Harbor facility, rather than an Old Harbor".¹ Since RIFF has filed a sworn Affidavit that it no longer has such an intention, as

¹ That Order also contemplated the potential need to rule on any intervention requests by new parties "directly linked to the change of docking locations on Block Island" from Old to New Harbor and the need of any such yet unidentified parties, the Town and the Advocacy Section to "address this new development". Order No. 22045.

relates to New Harbor, that portion of the Order is moot and the request to suspend and allow further discovery should be denied.

Moreover, the Division's Orders regarding RIFF's dock declaration simply required a prima facie showing that RIFF had identified a Block Island dock (in either New or Old Harbor) and to offer proof of its availability. RIFF has now done so. Given that the Division found in its Intervention Order it is "ill equipped" to decide matters relating to the appropriateness of the use of any docking facility, instead deferring such matters to the appropriate State and local agencies, the Division should not allow this process to be turned into a CRMC or Army Corps permitting or zoning hearing, which is the clear intent of the discovery efforts of Interstate and the Town, as seen in the massive scope of information sought in the Town's Subpoena of Mr. Filippi.

As an additional concern, RIFF also objects to Interstate's Motion as beyond the proper scope of Interstate's limited intervention status in this proceeding. Interstate has no standing to request additional discovery as to the "fit, willing and able" issue in this proceeding. The Order allowing Interstate's limited intervention status made it clear that Interstate's participation in this proceeding was limited to the issue of whether there is a public need for RIFF's service. As per that Intervention Order, Interstate has no standing to question the ability of RIFF to conduct a high speed ferry service to Block Island. Order on Intervention (No. 21170, dated Sept. 24, 2013).

The issue of whether RIFF has made a prima facie showing that it has a Block Island terminus is certainly not a public convenience issue, it is – or more appropriately was – an ability issue – whether there exists a bona fide plan to dock the RIFF ferry in Old Harbor. RIFF has met that burden, as filed in its Declaration and supporting documents. Of course there are permitting steps that must occur, after a conditional DPUC license is secured, to finally determine this

aspect of the ability issue; but it is clearly not the role of the Division to make that determination now. Yet, Interstate continues to ignore the Division's clear ruling limiting its intervention status and will continue to ignore its properly limited intervention role, unless the Division puts a stop to it.² RIFF respectfully requests that the Division deny Interstate's request to pursue any additional discovery on this ability issue, the right to reply to RIFF's Declaration, or to additional time. RIFF will now address the Town's efforts in support of Interstate's Motion.

Apparently undaunted by the Division's Order regarding the RIFF Declaration, the Town (joined by Interstate) have issued a Subpoena in this matter without an Order allowing additional discovery. A review of the Subpoena issued by the Town reveals that the scope of issues the Town (and Interstate) would like to take this case is massive in substantive scope. The breadth and depth of the documents requested from the proposed deponent, Mr. Filippi, makes it clear that Interstate and the Town wish to go on an inappropriate fishing expedition, and to expand the scope of these proceedings to include the appropriateness of the docks RIFF has secured and to use the procedural and discovery processes of the Division to bootstrap objections that they, in all likelihood, will submit to the Army Corps of Engineers, CRMC and DEM or other agencies to prevent permitting of the so-called Bluewater piers. This is clearly an inappropriate use of the Division's process and time, and should not be allowed by the Division.

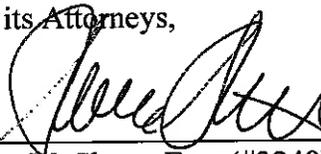
Accordingly, the Division should deny the Intervenor's joint Motion. In the event that the Division believes any further discovery is appropriate (which it should not), the Division should first conduct a scheduling conference as soon as possible in order to address the Town's request for additional discovery so as to properly limit the scope of any discovery the Division

² Over RIFF's objections, Interstate violated the Division's Intervention Order by making a long and tedious detour into the Old Harbor dock issues at the deposition of Charles Donadio, and questioned Mr. Donadio other matters having nothing to do with public convenience and necessity. Interstate will not cease these efforts unless the Division takes steps to remind Interstate of its limited role in these proceedings.

deems necessary and appropriate at this point (to the issue of RIFF's ability to provide the proposed service). However, for the record, RIFF strenuously objects to the request of the Town (or Interstate) for an additional 30 days for the taking of any further discovery, to the request by the Town and Interstate for another 30 days to file a further reply to RIFF's Declaration, and to the request of the Town and Interstate that the hearings be pushed back into 2016.

Respectfully submitted,

RHODE ISLAND FAST FERRY, INC.,
By its Attorneys,



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Dated: July 31, 2015

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2015, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.

