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September 16, 2013

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

RE: RHODE ISLAND FAST FERRY, INC.
Docket No. D-13-51

Dear Luly:

Enclosed for filing are an original and nine copies of the Interstate Navigation Company's Reply to the Objection of Rhode Island Fast Ferry, Inc. to Interstate's Motion to Intervene as a Full Party.

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

Very truly yours,

Michael R. McElroy

MRMc:tmg
cc: Service List (attached)

Interstate/Donadio/Massaro4

STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: RHODE ISLAND FAST FERRY, INC. : DOCKET No. D-13-51

INTERSTATE NAVIGATION COMPANY'S REPLY TO THE OBJECTION OF RHODE ISLAND FAST FERRY, INC. TO INTERSTATE'S MOTION TO INTERVENE AS A FULL PARTY

I. INTRODUCTION

On August 19, 2013, pursuant to Rule 17 of the Division's Rules, Interstate Navigation Company d/b/a The Block Island Ferry (Interstate) moved to intervene as a full party in this matter. Pursuant to Rule 17, those who may intervene include (1) "any person with . . . an interest of such nature that intervention is necessary or appropriate," (2) any person with "an interest which may be directly affected and which is not adequately represented by existing parties . . .", and (3) "any other interest of such a nature that movant's participation may be in the public interest."

The Division's Rules for intervention are virtually identical to the Commission's Rules. The Supreme Court has made it clear that this Division/Commission legal "standard for determining whether to grant intervenor status to a party . . . is liberally drawn in order to ensure that the interests of interested parties are met through the adversarial process." *In Re: Island Hi-Speed Ferry*, LLC., 746 A.2d 1240, 1245. (Emphasis added).

On September 9, 2013, Rhode Island Fast Ferry, Inc. (RIFF) filed an Objection to Interstate's Motion to Intervene.[1] RIFF's Objection is filled with vitriol, hyperbole, and inaccuracies, apparently because Mr. Donadio, the owner of RIFF, harbors lingering resentment regarding the matters handled by this Division when his former company, Island Hi-Speed Ferry,

[1] For some inexplicable reason, RIFF's Objection was captioned "In Re: Rhode Island Fast Ferry, Inc. Ceiling Prices for 2011."

LLC. (IHSF) obtained a CPCN to operate a fast ferry from Point Judith to New Harbor, Block Island.

Mr. Donadio was eventually bought out of IHSF by his partners. His partners then eventually sold the assets of IHSF to Interstate. Unlike IHSF, Interstate was able to turn the new fast ferry into a profit center. Those profits have, from the time Interstate began running the fast ferry, supported the lifeline ferry service Interstate runs to Block Island by keeping rates low and the service level high. In fact, in Interstate's most recent rate case, in which a settlement between Interstate, the Division, and the Town of New Shoreham was approved by the Commission for 2013, the Division specifically linked (as it had done previously) Interstate's fast ferry operation to its lifeline service. The Division insisted that the profits earned by Interstate's fast ferry operation (in the estimated amount of almost $500,000 per year) must be utilized to support the lifeline service to Block Island. Similarly, the new fast ferry operation begun by Interstate this summer between Newport and Block Island was designed, with Division and the Commission approval, so that all profits from that operation also fully support the lifeline service.

Accordingly, what RIFF apparently fails to understand is that, although fast ferry service and conventional ferry service may be different types of services, Interstate's fast ferry operation has always been inextricably financially linked with Interstate's conventional lifeline operation. In fact, were it not for the fact that Interstate's fast ferry operation was generating a profit during the term of the recently expired Rate Plan approved by the Division and the Commission, Interstate's conventional service would have suffered significant losses and would have been forced to seek extraordinary rate relief from the Commission. However, Interstate's success in building its fast ferry operation allowed it to not only hold down rates under the Rate Plan, but to extend the Rate Plan for an additional sixth year before general rate relief became necessary.

II. INTERSTATE, AS THE INCUMBENT LIFELINE FERRY PROVIDER, IS LEGALLY A NECESSARY PARTY IN THIS PROCEEDING

In determining whether a CPCN should be granted, the Division must, by Supreme Court mandate, receive evidence on various matters, including, but not limited to: (1) is Interstate, the incumbent provider, meeting the needs of the public for ferry travel to Block Island? (2) what are the investments of capital made by Interstate? (3) what is the nature of the ferry service being rendered by Interstate's owners? (4) if Interstate's service is adequate, what will be the probable effect of admitting competition into a field now adequately served? (5) what effect will competition have on Interstate's revenues? and (6) would competition have an adverse effect on the adequacy of the existing services provided by Interstate? This was all made clear by the seminal CPCN case *Abbott v. Public Utilities Commission*, 136 A. 490 (RI 1927).

In *Abbott*, the Supreme Court approved the denial by the Commission of a CPCN to operate jitneys.[2]

First, the Supreme Court provided details regarding the meaning of the statutory requirement that the "public convenience and necessity" must require the proposed new service. The Supreme Court held:

> The expression "public convenience and necessity" has not a well-defined and precise meaning. "Convenience" is not used colloquially in the statute as the appellant appears to consider. It is not synonymous with "handy" and "easy of access," although the question of ease of access may well enter into the determination of the public's convenience. "Convenience" shall be given an interpretation in accord with its regular meaning of "suitable," "fitting," and "public convenience" has reference to something fitting or suited to the public need.
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> * * *
>
> The word "necessity" in the expression under consideration does not have reference to an indispensable necessity, but rather that the route in question appears to the commission to be reasonably requisite. In passing upon public convenience and necessity, the commission must consider whether a proposed route is suited to and tends to promote the accommodation of the pubic and also

[2] In 1927 when this case was decided, CPCNs were issued by the Public Utilities Commission, rather than the Division of Public Utilities and Carriers.

whether it is reasonably required to meet a need for such accommodation. (at 491, emphasis added).

After defining the "public convenience and necessity" standard, the Supreme Court then made it clear exactly what type of evidence must be considered in a CPCN proceeding. The Supreme Court held as follows:

> In considering this question, the Public Utilities Commission have taken a broad view of the situation presented by such an application as that before us upon appeal. . . . they are justified in considering the existing means of transportation, as to its substantial character and its probable permanence, also the investments of capital made by the owners of such existing means, the nature of the service that is being rendered, and, if such service is adequate, what will be the probable effect of admitting competition into a field now adequately served, and what effect such competition will probably have upon the receipts of existing lines of transportation, and as to whether, in the face of further competition, the adequacy of the existing service will be continued. (at 491-92, emphasis added).

After examining the record, the Supreme Court held:

> After an examination of the evidence presented before the commission, we approve their finding that both the steam railroad and the electric trolley service of the two utilities now operating between Providence and Woonsocket are adequate and reasonable, and rendered upon proper and suitable schedules; that, if the appellant's busses are permitted to operate as requested in competition with the electric trolley service of the United Electric Railways Company, it would probably result in such a loss of traffic and revenue to the United Electric Railways Company as to cause the line to fail to earn its operating expenses, leading to a deterioration of its present service and perhaps the ultimate discontinuance of such service, to the public detriment. We approve the conclusion of the commission that no such public convenience and necessity has been proved by the applicant as to warrant the granting to him of the permission which he seeks. (at 492, emphasis added).

RIFF has also ignored the fact that in Order No. 15652, which granted IHSF's CPCN, this Division held that:

> The Division must weigh the impact on existing carriers, a concept that was embraced by the Supreme Court in *Abbott v. Public Utilities Commission.* (at 31).

Although the Supreme Court in *Breen v. Division of Public Utilities*, 194 A. 719, 720 (RI 1937), held that the protection of existing investments from "wasteful competition" is "secondary" to the "first and most fundamental obligation of securing adequate service for the

public," it is essential in properly reviewing a CPCN application that the matters outlined by the Supreme Court in the *Abbott* case be considered by the Division through competent evidence. This means that evidence must be presented regarding (1) whether the existing carrier (Interstate) is providing adequate service and can be expected to do so in the future; (2) the investments of capital made by Interstate; (3) the nature of ferry services being provided by Interstate; (4) what the probable effect would be of admitting competition; (5) what the effect such competition would probably have on the revenues of Interstate; and (6) whether, in the face of further competition, the adequacy of Interstate's existing lifeline service will be continued.

This evidence is essential to a proper examination of the CPCN application by RIFF. Interstate is the only party that can accurately present such evidence. In fact, Interstate recently completed a survey of its ridership over the summer of 2013. The survey was drawn up and supervised by Edward M. Mazze, Ph.D., and it shows that Interstate will suffer significant ridership loss if RIFF is awarded a CPCN. Therefore, it is beyond any rational argument that Interstate, by law as established by the Supreme Court, has "an interest which may be directly affected and which is not adequately represented by existing parties," and, at a minimum, that Interstate has an "interest of such a nature that [Interstate's] participation may be in the public interest."

RIFF argues that the Division's Advocacy Section and/or the Attorney General will work to protect the interests of Interstate's ratepayers in this matter. We certainly hope that they will do their best to do so, but history does not help RIFF's argument. For example, in Commission Docket No. 2802, in which the Commission set IHSF's initial rates, the Chairman of the Commission, in his dissent, stated that:

> The record in this proceeding is completely devoid of any evidence to substantiate the Division's position; apparently the record in the CPCN proceeding is similarly lacking.
>
> The Division was repeatedly asked to provide a witness and testimony in this case. The Division repeatedly refused. (Dissent, at 13, emphasis added).

In reading RIFF's Objection, one could be left with the impression that the Supreme Court ruled that Interstate was not a proper party intervenor in the IHSF rate case. But that is not what happened. Before the Supreme Court, IHSF argued that "it was unlawful and unreasonable for the Commission to grant intervenor status to both the Town and Interstate." (746 A.2d, at 1244). However, the Supreme Court rejected IHSF's argument, ruling as follows:

> Hi-Speed argued that neither the Town nor Interstate had a right to intervene in the rate proceedings before the Commission, asserting that Interstate was acting solely out of its own financial self-interest and that the Town's interests were adequately represented by the Division and the Attorney General. We disagree, and for the following reasons affirm the decision of the Commission to grant intervenor status to both the Town and Interstate. (746 A.2d, at 1244-45, emphasis added).

III. RIFF IS PROPOSING A PURE CREAM-SKIMMING OPERATION, TO THE DETRIMENT OF THE PUBLIC

RIFF often argues that it is necessary to compare "apples to apples." However, RIFF is proposing a service which is not at all a truly "competitive" service with Interstate. RIFF is proposing to simply skim the cream off of Interstate's round-trip day-tripper tourists. These tourists provide the bulk of Interstate's summer revenues. Interstate uses those revenues to operate during the approximate 8 months of the year where Interstate serves as the lifeline to Block Island at significant financial loss.

RIFF is proposing to carry only passengers and only in the summer. RIFF is not proposing to do any of the heavy lifting required during the other 8 months of the year when there is no profit to be made. RIFF will not be bringing any passengers, freight, cars, trucks, gasoline, diesel, propane, food, etc. to Block Island in the winter (or even in the spring and fall

"shoulder seasons"), but will instead be siphoning off Interstate's summer round-trip tourists and putting those profits directly into the pockets of RIFF's owner. On the contrary, Interstate's summer profits, including its fast ferry profits, are all used to support Interstate's lifeline service, to keep rates low, and to keep service level high year-round. Only if RIFF proposed a year-round, full service ferry operation, could there be a true "apples to apples" comparison.

IV. RIFF MISUNDERSTANDS THE REGULATORY PROCESS

RIFF apparently believes that Interstate's owners make more profit when Interstate sells more tickets, and that Interstate's owners lose money when Interstate sells less tickets. This shows a basic misunderstanding of rate base rate of return utility regulation. Interstate's profit level is not determined by its revenues minus expenses. It is determined by an authorized rate of return calculated using rate base and rate of return. This authorized rate of return operates independently of Interstate's ticket sales, revenues, or expenses. Moreover, Interstate has never once in its 80-year history declared any dividends to its owners. In fact, Interstate has always reinvested all of its authorized profit back into the company in order to improve the level of service that it provides to Block Island. Therefore, Interstate is being falsely accused of requesting the opportunity to intervene solely to protect profits for its stockholders. RIFF is wrong. Interstate is requesting intervention so that the Division will have all of the information it needs to protect Interstate's ratepayers, and especially to ensure the continued viability of its lifeline service to Block Island. It is RIFF that wants to maximize profits for its owner, and to do so on the backs of the ratepayers.

V. ALL OF THE PROFITS FROM FALL RIVER WILL SUBSIDIZE THE LIFELINE

RIFF tries to make much of the fact that in the summer of 2014, Interstate will be overnight berthing the ferry M/V *Islander* in Fall River. The *Islander* only runs in the summer, primarily between Newport and Block Island. The Fall River situation is nothing more than

moving the overnight berthing location of the M/V *Islander* from Point Judith (where it berthed in 2013) to Fall River. Those who want to travel from Fall River will need to leave Fall River early in the morning and will not be able to return by ferry until the evening. Interstate will simply be leaving from Fall River, traveling to Newport, and then running back and forth between Newport and Block Island all day. The *Islander* will then return to Fall River in the evening. This is far from the picture RIFF attempts to paint of this service being a major extension of Interstate's service. But nevertheless, if the Fall River service provides Interstate with additional income, every single dollar of those revenues will go to support the lifeline service. On the contrary, every dollar siphoned off by RIFF will go into the pocket of RIFF's owner, which would work to the detriment rather than the benefit of Interstate's ratepayers. It would especially harm Block Islanders who rely on Interstate's lifeline services in the winter months. Block Islanders certainly will not be able to rely on RIFF to provide any service at all to the Island in the off season.

VI. INTERSTATE IS A RHODE ISLAND OPERATION

Interstate takes offense at RIFF making the argument that it is not "acting in the public interest of Rhode Island" because "Interstate's real interests are protecting its Connecticut business activities, not in seeking to benefit Rhode Island's public interest." (Objection, at 14). All of Interstate's business activities are Rhode Island based. Its ferries run only to and from Block Island; it has no Connecticut ferries. It is true that Interstate's administrative offices have been located in New London, Connecticut, but as this Division knows, Interstate is nearly finished constructing a new headquarters building in Galilee. Interstate will soon be leaving New London and moving its corporate headquarters (and the jobs that go with it) to Galilee in the very near future. Interstate is completely committed to the public interest of Rhode Island and its ratepayers who travel to and from Block Island.

CONCLUSION

Interstate has provided constant lifeline ferry services to Block Island since 1933. The Division has regulated Interstate since the Division was created. The Division has been involved in many proceedings involving Interstate. The Division is well aware that Interstate, in its 80th year of operation, is a small, family owned business. This Division has gotten to know Susan (Wronowski) Linda, the President of Interstate, her husband, Raymond Linda, the General Manager of Interstate, and their son, Joshua Linda, the Vice President of Interstate. The Division has witnessed first hand on many occasions Interstate's operation. We will therefore leave it to the Division's hands-on experience with Interstate and the Linda family to judge whether Interstate is the demonic entity that RIFF falsely attempts to portray in its over the top Objection. The simple fact is that the evidence Interstate will put forth as an intervenor in this matter is legally crucial to a proper determination of whether a CPCN should be granted to RIFF. Accordingly, we respectfully submit that this Division should grant Interstate's Motion to Intervene as a full party.

Respectfully submitted,
Interstate Navigation Company
By its attorney,

Dated: September 16, 2013

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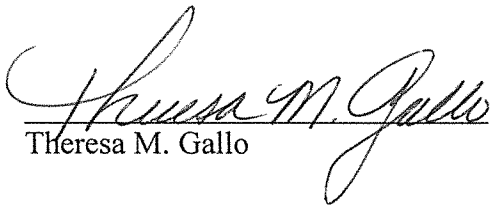
CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of September, 2013, I emailed a true copy of the foregoing to the attached service list:



Theresa M. Gallo

Interstate/Donadio/Reply to RIFF Objection to Intervention

Rhode Island Fast Ferry – CPCN Application Docket No. D-13-51
Updated 8/5/13

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