

STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: RHODE ISLAND FAST FERRY, INC.:

Docket No.: D-13-51

MEMORANDUM IN SUPPORT OF RIFF's
PERMITTING AND SERVICE START-UP TIMELINE DECLARATION

In its October 26, 2015 Order (22166) in this matter the Division required that RIFF submit a detailed chronology of the various anticipated regulatory steps and approvals concomitant with Bluewater's Old Harbor dock plans, as well as a projected RIFF service start date, along with a breakdown of how that date was determined. RIFF has complied with that Order by way of submission of an Affidavit of its President, Charles A. Donadio. The Donadio Affidavit contains a timeline based upon correspondence submitted by Bluewater's Counsel, Kelly Drye, as well as its dock contractor, Anaconda.

As the Kelly Drye correspondence indicates, the Army Corps Section 408 permitting process is typically 12 to 18 months and could be shorter due to the mandate that the Corps "significantly expedite the process". That process also runs concurrently with any State permitting, such as application for a CRMC Assent. According to Kelly Drye:

"As for timing, the Corps permitting process typically requires 12 to 18 months to complete. The EC sets forth a nine-step process for review of a section 408 permit application. EC 1165-2-216 at 8-18.2[.] Bluewater has already completed the first step in the process, pre-coordination with the Corps. The Corps will also evaluate Bluewater's proposed docking facilities in accordance with section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 404; section 404 of the Clean Water Act, 33 U.S.C. § 1344; and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. § 1413. The Corps is currently preparing as-built drawing of the Corps' breakwater and channels and will provide these drawings to Bluewater by the end of the month so that Bluewater can design its proposed docking facilities with the required setbacks and not impact the Corps' existing project. The Corps' schedule for review is concurrent with the various State permitting requirements and includes the time for required coordination with other state and federal agencies. Significantly, the Water Resources Reform and Development Act of 2014 requires the Corps to significantly expedite the section 408 permit process. *See* Water Resources Reform & Development Act of 2014, § 1007, Pub. L. 113-121, 128 Stat. 1193 (June 10, 2014). Thus, the permitting timeline could shorten.

... The relevant portions of the EC are attached. *See* Attachment A."

It is estimated that once the Army Corps process is complete, Bluewater's dock could be constructed and operational within an additional 80 to 100 days according to its dock construction contractor, Anaconda, after dredging is complete. It is RIFF's understanding that the Mount Hope Pier requires dredging and the dredging window is from October 15th to January 15th of the following year. The actual build time for that pier would be approximately 75 days

post-dredging. However, the Lot 158 pier requires no dredging and can be completed within 15 days according to Anaconda.

Thus, under non-accelerated circumstances, the permitting and construction process would take approximately 22 months. If the permitting process is shortened as mandated by federal law it could be less. But assuming it is not, for whatever reason, at the outer limits the Army Corps process should be complete in 18 months, or by April 1st of 2017 (this assumes that the 18 month process started with the September 8, 2015 Bluewater pre-coordination meeting with the Army Corps).

That is less time than it took Island Hi-Speed Ferry's ("IHSF") litigation against the Town regarding its right to use Payne's Dock took to wend its way through the Superior and Supreme Courts....**after** it was issued its CPCN. That litigation began with a February 2001 Cease and Desist Order issued by the Town's Building Official to Payne's Dock arising out of IHSF's use of the pier for its ferry operations and culminated with the decision of the R.I. Supreme Court in June 2003 striking the down the Town's fruitless attempt to stop the ferry operation by usurping the CRMC's exclusive jurisdiction to regulate such activities beyond the mean high water mark. See, Champlin's vs. Tillson, 823 A.2d 1162 (R.I. 2003). Once again, that civil litigation detour occurred **after** the Division issued IHSF's CPCN in August 1998 and after the Division issued that CPCN, despite arguments by the Town that IHSF was not "able" to operate from Payne's Dock.¹

Assuming that the Bluewater Pier is fully permitted by April 1, 2017, it would be reasonable and prudent at that point in time for Bluewater to start its pier construction process and for RIFF to start its vessel construction process (assuming that it does not use one of its existing vessels to provide the service). If RIFF uses an existing vessel and the Lot 158 pier, then giving Bluewater 15 days to construct that pier, RIFF could be in service on May 31, 2017. If RIFF constructs a purpose-built vessel or the Mount Hope Pier is constructed instead of the Lot 138 pier, service start-up would be May 31, 2018.

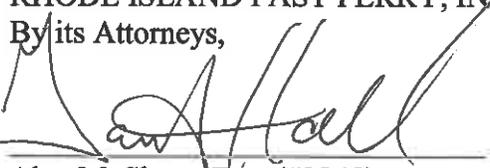
Again, using IHSF as the benchmark, IHSF applied for its CPCN in February 1998 and did not have its vessel in the water until July 2001. In that case, 43 months elapsed between the filing of the application for a CPCN and actual start-up of service, with a major issue, use of IHSF's pier facility unresolved for another 23 months. Viewed in the context of both the Town's and Interstate's well documented history – a history not lost upon the Rhode Island Supreme Court – of going to any length to stall, hinder and delay the permitting of any ferry service that poses any competition, direct or indirect, to Interstate, it would be patently unfair for the Town to succeed in doing so again here just because parallel permitting processes must take place.

Accordingly, given all of the filings in support of and in opposition to the Town's Motion for Summary Disposition, that Motion should be denied and hearings in this matter should be rescheduled.

¹ The Town's and Interstate's challenge of the ability of IHSF to land at Payne's Dock in New Harbor on the grounds that the Town's Zoning Ordinance did not permit such a use of the pier facility was covered in more detail in RIFF's Opposition to the Town's Motion for Summary Disposition at pp. 7-9.

Respectfully submitted,

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



Alan M. Shoer, Esq. (#3248)
James A. Hall, Esq. (#6167)
ADLER POLLOCK & SHEEHAN, P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903-1345
Tel: 401-274-7200
Fax: 401-751-0604
Dated: November 16, 2015

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2015, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.

