

September 13, 2017

Via E-mail/Federal Express Delivery

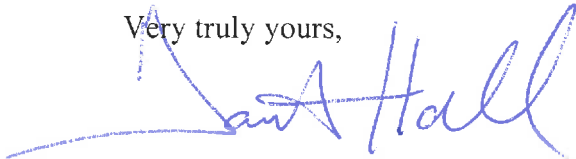
Ms. Luly Massaro
Division Clerk
Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, Rhode Island 02888

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 RIFF’s Motion to Stay the compliance date set forth in the Division of Public Utilities and Carriers’ September 22, 2016 Report and Order. This Motion is being submitted in accordance with the Order of the Rhode Island Superior Court, dated September 12, 2017 (Order attached to Motion).

Very truly yours,



JAMES A. HALL
ihall@apslaw.com

Enclosure

cc: Service List

STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: RHODE ISLAND FAST FERRY, INC.:

Docket No. D-13-51

RHODE ISLAND FAST FERRY, INC.'S MOTION TO STAY THE COMPLIANCE DATE SET FORTH IN THE DIVISION OF PUBLIC UTILITIES AND CARRIERS' FINAL REPORT AND ORDER PENDING FINAL JUDGMENT ON APPEAL

Pursuant to Judge Licht's September 12, 2017 Order, Rhode Island Fast Ferry, Inc. ("RIFF") requests that the Division of Public Utilities and Carriers ("Division") stay the compliance date set forth in the Division's September 22, 2016 Report and Order ("Division's Order" or "Final Order") granting RIFF a certificate of convenience and necessity ("CPCN") to operate a "fast ferry" service between Quonset Point, North Kingstown, Rhode Island and Old Harbor, Block Island pending final judgment on the appeal of these consolidated cases. *See* Judge Licht's Sept. 12, 2017 Order, attached hereto as **Exhibit A**. RIFF hereby requests that the one (1) year compliance period, as intended by the Division to follow the Final Order, be stayed and not begin to run until final adjudication of the now pending appeal.

ARGUMENT

On September 22, 2016, the Division granted RIFF a CPCN to operate a "fast ferry" water carrier of passengers between Quonset Point, North Kingstown, Rhode Island and Old Harbor, Block Island. *See* Division Order No. 22548, dated September 22, 2016. The Division determined that RIFF had satisfied all the requisite requirements of R.I. Gen. Laws §§ 39-3-3 and 39-3-3.1. The Division's Order, however, established that RIFF must meet certain conditions within one (1) year from the issue date of the Division's Order. *Id.* at 142 (stating "RIFF shall satisfy the conditions contained in 'Ordered' paragraph '2,' above within *one (1) year* from the issue date of this Report and Order. . . . Continuances may be granted by the

Division for just cause.”¹ As discussed below, just cause exists for the Division to grant RIFF’s request to stay the compliance date set forth in the Division’s Order.

Pursuant to R.I. Gen. Laws § 42-35-15, “[t]he filing of the complaint does not itself stay enforcement of the agency order. The *agency may grant*, or the reviewing court may order, *a stay upon the appropriate terms.*” R.I. Gen. Laws § 42-35-15(c) (emphasis added). According to Rule 31(b) of the Division’s Rules of Practice and Procedure (“Division’s Rules”), “[o]n motion or *sua sponte*, and upon terms as are just, the Administrator may relieve a party from a final order or proceeding for . . . [a]ny other reason justifying relief from the operation of the order.” Division Rule 31(b)(6).

On October 12, 2016, the Town of New Shoreham (“Town”) appealed the Division’s Order. On October 14, 2016, Interstate Navigation Company d/b/a the Block Island Ferry (“Interstate”) also appealed the Division’s Order. Immediately thereafter, due to the deadlines set in the Division’s Order, RIFF filed a motion requesting an accelerated briefing schedule. *See* RIFF’s Motion for Briefing and Case Management Schedule, dated October 25, 2016. The Town and Interstate (collectively “Petitioners”) objected to RIFF’s Motion for an accelerated briefing schedule, filed motions for additional appellate-level discovery (all of which were denied) and additionally filed two separate remand motions. Although Petitioners’ original

¹ Paragraph 2 of the Division’s Order states: “Before a CPCN is issued, RIFF must demonstrate to the Division that: (1) it has access to suitable docking/landing facilities in Quonset and on Block Island; (2) that it has leased, purchased or otherwise identified the vessel(s) it will use in providing its proposed ferry services consistent with the commitments and evidence presented during this case; (3) that it has satisfied all Coast Guard requirements associated with the provision of its proposed ferry service; (4) that it has satisfied any applicable municipal permitting requirements; (5) that it has adequate liability insurance in effect; and (6) that it has passed a Division inspection to ensure regulatory compliance.” Division’s Order, at 141-42.

appeals were filed in Superior Court in October of 2016, almost one year ago, Petitioners have yet to file their appellate briefs.

RIFF worked diligently to ensure that it would satisfy all the requisite conditions by the Division's deadline. However, due to delays in the appeal process, RIFF has been placed in an untenable position and will be unable to satisfy the conditions in Paragraph 2 of the Division's Order by the Division's one (1) year compliance deadline. In particular, the ability of RIFF to finalize its landing arrangements, secure its lease, purchase or otherwise secure a vessel, satisfy all Coast Guard requirements, fulfill any applicable municipal permitting requirements, secure liability insurance and secure a Division inspection of the vessel will all depend on RIFF securing a final non-appealable decision affirming the Division's Order granting a conditional license to RIFF. Petitioners' vigorously oppose the Division's Order in the appeal and substantial further delay is anticipated before this appeal process concludes.

For all these reasons, due to the delays that are inevitable given the appellate process, RIFF has been placed in an untenable position and will be unable to satisfy all the conditions in Paragraph 2 of the Division's Order. *See* Division's Order, at 141-42. Because one (1) year has passed since the Division entered its Final Order in this docket and the appeal has yet to be briefed and because the Superior Court remanded a separate issue back to the Division for an evidentiary hearing, RIFF requests that the Division stay the one (1) year compliance requirement until the conclusion of Petitioners' appeal. If the Division stays the compliance date for a lesser defined period of time, RIFF will inevitably need to petition the Court for yet another remand regarding this exact issue and again move the Division to further stay and/or extend the compliance date stated in the Division's Order. RIFF did not cause the delays in the appellate process and has done everything in its power to expedite the appeal. RIFF should not be

prejudiced by the Petitioners' repeated motions that have served only to delay a final decision on this matter.

Accordingly, just cause exists for the Division to stay the one (1) year compliance requirement until after a final judgment enters on the Petitioners' appeal.

CONCLUSION

RIFF respectfully requests that the Division stay the one (1) year compliance date in the Division's Order until after a final judgment enters on the appeal of these consolidated cases; a one (1) year post finality compliance period as set forth in the Division's Order. RIFF requests the Division order that RIFF shall have one (1) year from the conclusion of the Petitioners' appeal to comply with the conditions set forth in Paragraph 2 of the Division's Order.

Respectfully submitted,

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

/s/ Alan M. Shoer

Alan M. Shoer, Esq. (#3248)
James A. Hall, Esq. (#6167)
Nicole M. Verdi, Esq. (#9370)
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Tel: 401-274-7200
Fax: 401-351-4607
Dated: September 13, 2017

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2017, I delivered a true copy of the foregoing document via electronic mail to the Parties in this proceeding.

/s/ Alan M. Shoer

EXHIBIT A

CONSOLIDATED CASES

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

TOWN OF NEW SHOREHAM

v.

C.A. No. PC-2016-4758

RHODE ISLAND FAST FERRY, INC.
and RHODE ISLAND DIVISION OF
PUBLIC UTILITIES AND CARRIERS,
MACKY MCCLEARY, ADMINISTRATOR

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

INTERSTATE NAVIGATION COMPANY
d/b/a THE BLOCK ISLAND FERRY

v.

C.A. No. PC-2016-4804

RHODE ISLAND FAST FERRY, INC.
and RHODE ISLAND DIVISION OF
PUBLIC UTILITIES AND CARRIERS,
MACKY McCLEARY, ADMINISTRATOR

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

TOWN OF NEW SHOREHAM

v.

C.A. No. PC-2017-3405

RHODE ISLAND FAST FERRY, INC.
and RHODE ISLAND DIVISION OF
PUBLIC UTILITIES AND CARRIERS,
MACKY MCCLEARY, ADMINISTRATOR

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

INTERSTATE NAVIGATION COMPANY
d/b/a THE BLOCK ISLAND FERRY

v.

C.A. No. PC-2017-3409

RHODE ISLAND FAST FERRY, INC.
and RHODE ISLAND DIVISION OF
PUBLIC UTILITIES AND CARRIERS,
MACKY McCLEARY, ADMINISTRATOR

ORDER

This matter came on for hearing in the above-referenced consolidated cases on September 8, 2017 before Judge Licht on the Motion of the Rhode Island Fast Ferry, Inc. ("RIFF") for a stay. By agreement of the parties, it is hereby ORDERED:

This case is remanded to the Division of Public Utilities and Carriers for the purpose of deciding RIFF's request for a continuance of the time period for RIFF to complete the requisite conditions precedent to the issuance of a CPCN pursuant to the DPUC order of September 22, 2016.

The parties may submit to the Division position papers on this issue by noon on Friday, September 15, 2017. The parties agree that the Division may decide this issue on the papers filed and need not conduct a formal hearing. The Division shall issue its determination as to any such extension, or denial thereof, by no later than 4:30 PM on Thursday, September 21, 2017.

ENTER:



PER ORDER:



Dated:

9/12/2017

Dated:

9/12/2017

Presented By:

/s/ Katherine A. Merolla
Katherine A. Merolla, Esq., No. 2344
Kent Office Building
469 Centerville Road, Suite 206
Warwick, RI 02886
401-739-2900
401-739-2906 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of September, 2017, I filed and served this document through the electronic filing system on the following:

Michael R. McElroy
James A. Hall
Nicole M. Verdi
Alan M. Shoer
Casey J. Lee
Lea J. Donaldson

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The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Katherine A. Merolla