

ADLER POLLOCK & SHEEHAN P.C.

August 14, 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 Motion for Clarification to Correct Order and to Adjust 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](mailto:ashoer@apslaw.com)

Enclosures

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DIVISION OF PUBLIC UTILITIES AND CARRIERS**

**In Re: Rhode Island Fast Ferry, Inc.            )**

**Docket No. D-13-51**

**MOTION FOR CLARIFICATION TO CORRECT ORDER  
AND TO ADJUST PROCEDURAL SCHEDULE**

Rhode Island Fast Ferry, Inc. ("RIFF") hereby submits this Motion to request clarification and correction in the August 11, 2015 Order issued in response to the Town's Motion for Summary Disposition (Order No. 22030). Additionally, RIFF requests that the dates for the reservation of decision and compliance date for submittal of RIFF's Declaration be moved from August 28, 2015 to September 28, 2015.

The Order incorrectly identified the hearing dates for this matter as "September 7 and 8, 2015." Order at pg. 2. The Hearing Officer then set the date of August 28, 2015 (of approximately 10 days before the hearing date) for ruling on the Motion, and for the requirement for an opportunity to submit a "written declaration to the Division identifying the dock it is proposing to use on Block Island (in furtherance of its proposed ferry services) and offer proof of the dock's availability." Order at pg. 7-8.

However, by email dated July 21, 2015 the Division informed the parties that the hearing dates for this matter would take place on the dates of October 7 and 8, 2015 (not September 7 and 8, 2015). Accordingly RIFF requests that the dates reserved for decision by the Hearing Officer, and for the compliance date for the filing of RIFF's declaration be extended by a comparable 30 days, to September 28, 2015.

RIFF requires this additional time to secure the necessary supporting documents or evidence in support of the Order's requirement that RIFF submit the required "proof" of dock availability. This extra time is required especially due to the fact that this is the busiest time of the year on the Island, where businesses are engaged in substantial tourist related activities and managing staffing issues with vacations and travel.

Similarly, the extra time is needed in order for RIFF to respond to the Town's position regarding the use of the South Pier that it acquired from the Army Corps of Engineers. The Hearing Officer has indicated in the Order that he is considering rendering a decision before hearings and full briefing on the legal merits of RIFF's assertion that it has a public right to use the South Pier in Old Harbor.<sup>1</sup>

Given the Town's position on the right of public access to the South Pier, and because it sidestepped the statutory "public use" issue in its reply Memorandum, with a detour into the "public vessel" realm (which relates to "tolls" and charges; not the scope of the rights vested by the statutory reference to "public use"),<sup>2</sup> it may be necessary for RIFF to seek further clarification from federal authorities regarding the right of "public use" of the South Pier, beyond a simple interpretation of the plain language of the conveyance by statute to the Town.<sup>3</sup> If this is necessary this will of course take additional time.

In any event, if the Hearing Officer will be ruling in a summary disposition on the merits of RIFF's claim of availability of the South Pier, as set forth in a grant by federal statute to the

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<sup>1</sup> RIFF believes that this issue is one that should not be summarily decided, but should be examined along with the other issues during the hearings and with the benefit of post hearing briefing.

<sup>2</sup> The relevant section of the statute granting the Town the South Pier is as follows: "Improving harbor at Block Island, Rhode Island . . . and the wharf on the land side of the inner harbor is hereby conveyed to the town of New Shoreham for the public use of said town; but no tolls or charges shall ever be exacted for the use of said wharf by public vessels of the United States or freight carried in such vessels." Act of 1890, ch. 907, 26 Stat. 426, 428 (Sept. 19, 1890) (appropriations for public works on rivers, harbors and other purposes) (emphasis added).

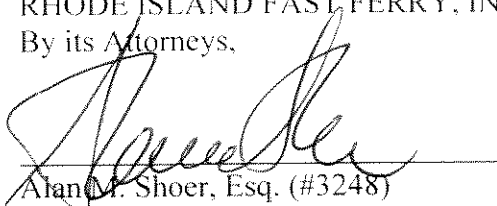
<sup>3</sup> It appears clear from the historic documents post-dating the conveyance that the Town may not use the Pier in such a way as to obstruct navigation by any vessel.

Town, then RIFF will need additional time in order to provide the Division with further proof of dock availability at the Town's South Pier as well.

For all these reasons RIFF requests that the Hearing Officer correct the Order to account for the hearing dates in October, and to move the date for reservation of decision and compliance to September 28, 2015.

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 August 14, 2015, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.

