

STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: RHODE ISLAND FAST FERRY, INC.

DOCKET No. D-13-51

**RESPONSE OF THE TOWN OF NEW SHOREHAM
TO RHODE ISLAND FAST FERRY INC.'S OBJECTION TO MOTION FOR
SUMMARY DISPOSITION**

The Town of New Shoreham ("Town") has moved pursuant to Section 19(e) of the Division's Procedural Rules, for Summary Disposition on the grounds that there is no genuine issue of fact material to the decision in the above-referenced matter. This memorandum is filed in response to Rhode Island Fast Ferry Inc.'s ("RIFF") objection to the Town's motion.

A. RIFF's Application for a Certificate of Public Convenience and Necessity seeks the certificate with respect to a route between Quonset Point, North Kingstown and Old Harbor, Block Island.

The affidavit of Charles A. Donadio, Jr., President of RIFF, which was filed in opposition to the Town's motion states that based upon his relationship with the owner of Payne's dock in New Harbor and plans for on-going discussions regarding the use of that dock for RIFF's ferry, Mr. Donadio believes that he will be able to secure permission for RIFF's ferry operations. There are several obvious problems with this assertion:

1. RIFF's July 2013 Application ("Application") for a Certificate of Public Convenience and Necessity ("CPCN") specifically and unequivocally states that the proposed fast ferry service

would depart from RIFF's ferry terminal located at 1347 Roger Williams Way in Quonset Point, North Kingstown and arrive in Old Harbor, Block Island, not New Harbor. In addition, the Application specifies the route that the ferry would travel as being down the West Passage of Narragansett Bay and along the Narragansett coastline into Old Harbor. Attached to the Application is a diagram which depicts the planned route from Quonset Point to Old Harbor.

Section 15(c) of the Division's Procedural Rules requires that public notice of the application be given as follows:

Upon the filing of an application for a certificate of public convenience and necessity the Division shall publish notice of the filing in The Providence Journal-Bulletin or in a newspaper of general circulation in the county where the principal office of the utility is located, in the form prescribed by Rule 12(c). The notice will appear at least once. The Administrator may, at his or her discretion, order that the utility publish the notice itself and/or that the utility bear the expense of the publication.

The Division's online listing of documentation filed in this case does not contain a notice of the filing of the Application; however, any such notice would have had to notify the public that the proposed application, as stated in the Application, was for a ferry service which would travel from Quonset Point to Old Harbor. Even assuming that the planned route was not published, anyone looking at the Application through the Division's website or otherwise would be notified that the planned route was to Old Harbor.

By alleging in the Donadio affidavit that the RIFF ferry may very well dock in New Harbor, RIFF is attempting to materially alter its application midstream. Indeed, there are many businesses, both in New Harbor itself and adjacent to New Harbor, which may have made the determination that they should intervene in these proceedings. All of such businesses and any other interested persons were effectively denied the opportunity to move for intervention because of the fact that a planned route to New Harbor was never mentioned in the Application.

2. The Town's discovery going back to the commencement of these proceedings has been targeted toward gathering information concerning the proposed route from Quonset to Old Harbor. Accordingly, if the Division permits a de facto amendment of the Application, the Town would be prejudiced by its inability to request data regarding a route from Quonset to New Harbor.

3. The Town's own investigation going back to the commencement of these proceedings has been targeted toward gathering information concerning the proposed route from Quonset to Old Harbor. In addition, the Town's prefiled testimony is directed to the route specified in the Application. Accordingly, if the Division permits a de facto amendment of the Application, the Town would be prejudiced by its inability to conduct an investigation and the fact that the Town has not filed testimony in this regard.

4. R.I.G.L. 39-12-7 entitled, "Issuance of certificate to common carrier," requires that the CPCN must specify the service to be rendered and the routes and/or fixed termini. As discussed above, in this case, the requested route and termini as set forth in the Application is between Quonset and Old Harbor.

B. RIFF's apparent assertion that it is allowed to use the Town dock for its ferry operations is not supported by fact or law.

The affidavit of Charles A. Donadio, Jr., President of RIFF, which was filed in opposition to the Town's motion, attached certain unverified documentation to the affidavit. Aside from the fact that Mr. Donadio is not authorized to certify the authenticity of these documents, Mr. Donadio's representation as to what these documents mean is completely inaccurate.

The legislation to which RIFF refers states that the Town may not implement tolls or charges for the use of the wharf by "public vessels of the United States." The term "public vessels of the United States" is not ambiguous. A public vessel of the United States is a vessel which is either owned by the United States government or bareboat chartered by the United States government as its owner *pro hac vice*. *City of Los Angeles v. United States of America*, 355 F.Supp. 461 (C.D.CA. 1972). In that case the court determined that the vessels in question were owned by the United States government and, therefore, were public vessels of the United States.

To contend that a private passenger ferry owned and operated by RIFF is somehow a public vessel owned by the United States government is absurd. No court has ever interpreted the language referenced above as mandating that the Town allow a private passenger ferry to use the Town dock for its operations. Moreover, any such attempt would be met by vigorous opposition from the Town.

C. RIFF's reference to an IHSF application is inapplicable and is irrelevant to this case.

The affidavit of Mr. Donadio references an IHSF application for a CPCN and states that in that case it had "only a simple Letter of Intent from Payne's Dock Incorporated ("Payne's) expressing Payne's intent to lease wharfage to IHSF, conditioned upon the granting of IHSF's CPCN." This reference is inapplicable because: a. No such Letter of Intent exists in this case; and b. Based upon the testimony of Donadio at his deposition, the degree of his contact with Payne's has been minimal at best and does not even approach leading to a potential Letter of Intent. The RIFF Application has been pending for over two years; any such deal should have been worked out long before now.

Moreover, the reference in the Donadio affidavit as to what he thinks or hopes may happen with respect to the Payne's dock is irrelevant because during a conference in this matter on May 15, 2015 which involved certain motions and discovery, the Hearing Officer unequivocally advised RIFF's counsel that RIFF must notify the Town and Interstate of the exact planned docking location prior to the commencement of a hearing before the Division on the Application. As set forth in the Town's initial memorandum in support of the Town's Motion for Summary Disposition, the testimony provided by Mr. Donadio on behalf of RIFF clearly demonstrates that RIFF does not have a specific docking location.

The Town respectfully submits that its Motion for Summary Disposition should be granted.

Please note that counsel to Interstate Navigation concurs with the positions set forth herein.

TOWN OF NEW SHORHAM
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CERTIFICATION

I hereby certify that, on August 6, 2015, I served this document via e-mail on the individuals listed on the attached Exhibit A.

EXHIBIT A

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