

STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: RHODE ISLAND FAST FERRY, INC.

DOCKET No. D-13-51

***MOTION OF THE TOWN OF NEW SHOREHAM TO
COMPEL RESPONSES TO DATA REQUESTS AND TO STRIKE OBJECTIONS OF
RHODE ISLAND FAST FERRY, INC. AND
IN RESPONSE TO RHODE ISLAND FAST FERRY INC.'S MOTION***

**RIFF HAS FAILED TO COMPLY WITH DIVISION
RULE OF PRACTICE AND PROCEDURE 21 (C) (3)**

Rule 21(C)(3) requires that an objection to a data request, whether in whole or part, be filed in no event later than ten calendar days after service of the request. The Town of New Shoreham ("Town") served data requests on Rhode Island Fast Ferry ("RIFF") on November 2, 2017. On November 14, 2017, RIFF filed objections to Data Requests, Nos. D-15, D-16, I-5, I-6, I-7, I-8, I-16, I-17, I-18, I-19, I-20 and I-21.¹

On November 22, 2017, RIFF objected to Data Requests, Nos. D-1, D-2, D-7, D-8, D-9, and D-10. The objections to these Data Requests were not filed in a timely manner and should be stricken. In addition, RIFF should be ordered to comply with these Data Requests.²

¹ As referenced in the Data Requests, D is a request that seeks documentation and I is a request that seeks specific information.

² In a footnote in RIFF's Motion of November 14, 2017, RIFF objected to the "scope" of D-1 and D-2 and stated that it would produce the formal permit application and official correspondence.

REQUEST FOR HEARING

The Town requests a hearing before the Division with respect to the motions and objections filed with regard to the Town's Data Requests.³

MOTIONS PERTAINING TO INDIVIDUAL DOCUMENT REQUESTS

REQUESTS D1 & D2:

D 1. All Documents which RIFF and/or Bluewater have submitted to the Army Corps in connection with an application to construct a docking facility in the Old Harbor of Block Island since January 1, 2016.

D 2. All Documents which the Army Corps has submitted to RIFF and/or Bluewater in connection with an application to construct a docking facility in the Old Harbor of Block Island since January 1, 2016.

MOTION REQUESTS D1 & D2:

RIFF has stated that the request is overly broad and that it would produce "the formal permit application" and "official correspondence." To the contrary, these requests are specific in subject matter and limited in time. Production of the documents is essential to the issues presented in this proceeding, and the Town cannot get a fair hearing without them. In addition, in order to proceed in this matter, the documentation requested must be reviewed by the Town's experts.

³ The Town and Interstate agreed to an extension of time for RIFF to submit its documentation to 11/22 and RIFF agreed to an extension of time until 11/29 for the Town to file this motion/objection.

REQUESTS D7 through D10

D 7. All Environmental Impact Studies prepared in connection with the proposed alteration to the federal project in the form of the Proposed East Breakwater Docking Facility.

D 8. All Environmental Impact Studies prepared in connection with the proposed alteration to the federal project in the form of the Proposed Northerly L Docking Facility.

D 9. All applicable environmental compliance documentation including but not limited to National Environmental Policy Act and the Endangered Species Act prepared in connection with the proposed alteration to the federal project in the form of the Proposed East Breakwater Docking Facility.

D 10. All applicable environmental compliance documentation including but not limited to National Environmental Policy Act and the Endangered Species Act prepared in connection with the proposed alteration to the federal project in the form of the Proposed Northerly L Docking Facility.

MOTION REQUESTS D7 through D10:

RIFF did not object to these requests within the time requirements of Rule 21(C)(3); moreover, this documentation is highly relevant to the issues presented and the Town requests an order compelling compliance. The Environmental Impact Studies and environmental compliance documentation are an essential part of RIFF/Bluewater's applications to the Army Corps of Engineers ("Army Corps") as well as to the Rhode Island Department of Environmental Management ("DEM") and the Rhode Island Coastal Resources Management Council ("CRMC").

REQUESTS D15 & D16:

D 15. All contracts that have been entered into pertaining to the design and/or construction of the Proposed East Breakwater Docking Facility including, without limitation, contracts for engineering, design, environmental or other professional services and contracts for the purchase of materials and/or equipment.

D 16. All contracts that have been entered into pertaining to the design and/or construction of the Proposed Northerly L Docking Facility including, without limitation, contracts for engineering, design, environmental or other professional services and contracts for the purchase of materials and/or equipment.

MOTION REQUESTS D15 & D16:

This documentation is relevant to the issues presented and the Town requests an order compelling compliance. These contracts will demonstrate the extent and nature of the steps taken by RIFF/Bluewater in order to have the documentation prepared that is required in connection with RIFF/Bluewater's applications to the Army Corps as well as to DEM and CRMC. In addition, this request is also related to the determination of whether the docks can be legally built in Old Harbor under existing laws, regulations and ordinances.

MOTIONS PERTAINING TO DOCUMENTS IDENTIFIED BUT NOT PRODUCED

Although RIFF identified certain documentation in response to the Data Requests, the following documents were not produced and the Town requests an order compelling compliance:

1. RIFF produced a letter dated May 15, 2017 addressed to the Army Corps with reference to Section 408 permission for a dock in Old Harbor. This letter references documentation which was included with the letter and which was not produced.

2. RIFF produced an Army Corps letter dated June 22, 2017 requiring that that an application be submitted to the Army Corps Regulatory Division. RIFF has not produced that application.

Production of these documents is essential to the issues presented in this proceeding, and the Town cannot get a fair hearing without them. In addition, in order to proceed in this matter, the documentation requested must be reviewed by the Town's experts.

MOTIONS PERTAINING TO INDIVIDUAL DATA REQUESTS

REQUESTS I 5-I 8

- I 5. Identify which portions of the Proposed East Breakwater Docking Facility will be fixed.
- I 6. Identify which portions of the Proposed East Breakwater Docking Facility will be floating.
- I 7. Identify which portions of the Proposed Northerly L Docking Facility will be fixed.
- I 8. Identify which portions of the Proposed Northerly L Docking Facility will be floating.

MOTION REQUESTS I 5-I 8

The identification of the portions of the proposed docking facilities which are fixed and floating are highly relevant to the applications that RIFF/Bluewater must file with the Army Corps, DEM and CRMC. These floating/fixed determinations affect numerous matters such as dredging, environmental issues, federal and state repair/replacement efforts following storms and other natural disasters, and Town dredging and repair activities.

REQUESTS I 16 & I 17

- I 16. State whether the construction of the Proposed Walkway requires the use of fill/base.
- I 17. If the answer to I 16 is in the affirmative, describe the type and amount of the fill/base to be used in the construction of the Proposed Walkway.

MOTION REQUESTS I 16-I 17

RIFF has admitted that docking facility lies within a VE Zone. VE Zones are areas that are subject to high-velocity wave action. The relevant Army Corps applications require that the applicant list the federal and state approvals obtained by the applicant. If the approvals have been

denied, the application will not move forward. The use of fill/base is prohibited and also presents issues relevant to the Americans with Disabilities Act. This request is related to the determination of whether the docks can be legally built in Old Harbor under existing laws, regulations and ordinances.

REQUESTS I 18 - I 21

I 18. Describe the manner by which electricity and water will be brought to the Proposed East Breakwater Docking Facility.

I 19. State the name and location of all property owners whose permission is required to bring electricity and water to the Proposed East Breakwater Docking Facility.

I 20. Describe the manner by which electricity and water will be brought to the Proposed Northerly L Docking Facility.

I 21. State the name and location of all property owners whose permission is required to bring electricity and water to the Proposed Northerly L Docking Facility.

MOTION REQUESTS I 18 - I 21

The Army Corps applications require that the permission of the property owners referenced above be obtained. It is anticipated that the permission of the Town and private land owners will be required. These requests ask for that information. It is relevant, it is certainly not privileged and the Town requests an order compelling responses.

TOWN OF NEW SHOREHAM
By its attorneys,
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CERTIFICATION

I hereby certify that on November 29, 2017, I emailed a true copy of the foregoing document to those persons listed on the attached service list:

/s/Katherine A. Merolla