

December 11, 2017

*Via E-mail/Federal Express Delivery*

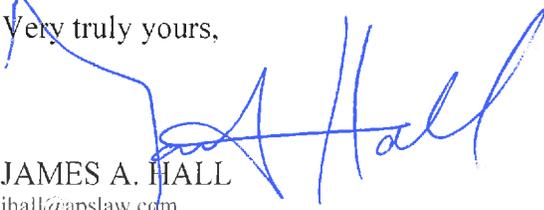
Ms. Luly Massaro  
Division Clerk  
Division of Public Utilities and Carriers  
89 Jefferson Boulevard  
Warwick, Rhode Island 02888

***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 enclosed an original and four (4) copies of RIFF’s Objection the Town of New Shoreham’s Motion to Compel.

Very truly yours,

  
JAMES A. HALL  
[jhall@apslaw.com](mailto:jhall@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

**OBJECTION OF RHODE ISLAND FAST FERRY, INC. TO THE  
TOWN OF NEW SHOREHAM'S MOTION TO COMPEL AND STRIKE OBJECTIONS**

Now comes Rhode Island Fast Ferry, Inc. (“RIFF”) and hereby objects to the Town of New Shoreham’s (“Town’s”) Motion to “Compel Responses to Data Requests and to Strike Objections” of RIFF, dated November 29, 2017 (“Town’s Motion” or “Town’s Motion to Compel”). The Town claims that RIFF’s objection motion was not filed in a “timely manner” and that RIFF “should be ordered to comply” with the Town’s data requests. *See* Town Nov. 29, 2017 Motion (“Town Mot.”), at 1. Because RIFF’s objection motion was filed within the timeframe stated in the Division of Public Utilities and Carriers (“Division”) Rules of Practice and Procedure and because RIFF properly and appropriately objected to the Town data requests that sought information beyond the scope of this proceeding, RIFF requests that Division deny the Town’s Motion.

**I. RIFF’S OBJECTION MOTION WAS TIMELY.**

RIFF filed its objection motion in accordance with the Division Rules. Rule 21(c) states that an “[o]bjection to a data request in whole or in part on the ground that the request is unreasonable and/or the material is not relevant or not permitted or required by law shall be made by motion filed as soon as practicable and in no event later than ten (10) calendar days after service of the request.” *See* Division Rule 21(c)(3). Rule 10(a) addresses calculating the ten (10) days and provides that “in computing any period of time prescribed or allowed by any rule, regulation, or order of the Division, or by any applicable statute, the date of the act, event, or default from or after which the designed period of time begins to run shall not be included, but

the last date of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday in Rhode Island, in which event the period shall run until the end of the next business day.” See Division Rule 10(a).

The Town’s data requests were filed on November 2, 2017. Ten (10) days from November 2, 2017 was November 12, 2017. However, November 12, 2017 was a Sunday and November 13, 2017 was a Rhode Island holiday (Veterans Day). Reading Division Rule 21(c)(3) in conjunction with Rule 10(a), RIFF’s objection was due on November 14, 2017, which was in fact the date on which RIFF filed its objection motion.

Accordingly, contrary to the Town’s claim, RIFF filed its objection motion in a timely manner.

**II. THE OBJECTED TO TOWN DATA REQUESTS SEEK INFORMATION BEYOND THE SCOPE OF THIS DIVISION PROCEEDING.**

As thoroughly explained in RIFF’s November 14, 2017 objection motion, which is incorporated herein by reference, the objected to Town data requests seek information that is beyond the scope of discovery set by the hearing officer and as agreed to by the parties. See RIFF Nov. 14, 2017 Motion to Object; Procedural Schedule, filed with the Division on October 20, 2017 (“Procedural Schedule”). During the October 20, 2017 pre-hearing conference, the Division limited the scope of discovery for purposes of this remand proceeding as agreed to in the following statement: “[t]he Town has the burden of proving that RIFF (through Bluewater) does not have a realistic expectation of constructing Bluewater’s planned docking facilities in Old Harbor, *irrespective of design*, through its permit applications with [only] the USACE or CRMC.” See Procedural Schedule (emphasis added). No party (including the Town) objected to the discovery scope set by the Division.

The Town’s 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 seek information regarding design aspects of the Bluewater dockage proposal and not RIFF's realistic expectation of constructing a planned docking facility, *irrespective of design*, through Bluewater's permit applications with the USACE or CRMC. These objected to data requests seek information beyond the scope of this proceeding.

Specifically, Data Requests, Nos. D-15 and D-16 seek "[a]ll contracts that have been entered into *pertaining to the design* and/or construction of the Proposed East Breakwater Docking Facility [and 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."<sup>1</sup> (Emphasis added.) Similarly, Data Requests, Nos. I-5 – I-8 ask RIFF to identify which portions of the "Proposed East Breakwater Docking Facility" and which portions of the "Proposed Northerly L Docking Facility" will be designed as "fixed" and/or "floating."<sup>2</sup> Additionally, Data Requests, Nos. I-16 and I-17 ask RIFF questions regarding such design characteristics of whether construction of "the Proposed Walkway requires the use of fill/base."<sup>3</sup> Further, Data Requests, Nos. I-18 – I-21 seek information regarding the design and specifically the manner in which the dock will be designed to bring

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<sup>1</sup> Data Request, No. D-15 states: "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." Data Request, No. D-16 states: "All contracts that have been entered into pertaining to the design and/or construction of the Proposed Northerly L Docking Facility including, without limitation, contract for engineering, design, environmental or other professional services and contracts for the purchase of materials and/or equipment."

<sup>2</sup> Data Request, No. I-5 states: "Identify which portions of the Proposed East Breakwater Docking Facility will be fixed." Data Request, No. I-6 states: "Identify which portions of the Proposed East Breakwater Docking Facility will be floating." Data Request, No. I-7 states: "Identify which portions of the Proposed Northerly L Docking Facility will be fixed." Data Request, No. I-8 states: "Identify which portions of the Proposed Northerly L Docking Facility will be floating."

<sup>3</sup> Data Request, No. I-16 states: "State whether the construction of the Proposed Walkway requires the use of fill/base." Data Request, No. I-17 states: "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."

electricity and water to the proposed docking facilities.<sup>4</sup>

RIFF also objected to the Town's data requests, Nos. D-1 and D-2 as they are overly broad and beyond the scope set by the Division. Data requests, Nos. D-1 and D-2 seek "[a]ll Documents[.]" The request for "all" is beyond the limited scope set by the Division on October 20, 2017. RIFF produced the formal permit application submitted to the United States Army Corps of Engineers ("USACE"). The May 15, 2017 Letter to the USACE, attached to RIFF's data responses in Exhibit D-1, is what Bluewater informs RIFF is the formal permit application that was submitted to the USACE and pending review (excluding attachments that are not within the scope of this proceeding). It is RIFF's understanding that the USACE will post the relevant documents subject to public comment and/or review process.

The Town claims that the information sought in the objected to data requests is "highly relevant to the issues presented[.]" See Town Mot., at 3. The Town further argues that the information regarding design is somehow relevant to determine "the extent and nature of the steps taken by RIFF/Bluewater" and is purportedly "related to the determination of whether the docks can be legally built" *Id.* at 4. The Town fails to provide a response to the fact that the information sought in the objected to data requests is beyond the scope of this remand proceeding and beyond the scope of the Division's express limitations as to issues of design. The Town may want this information, but it is not within the scope established by the Division on October 20, 2017.

The matter is before the Division for the limited purpose by the Superior Court as

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<sup>4</sup> Data Request, No. I-18 states: "Describe the manner by which electricity and water will be brought to the Proposed East Breakwater Docking Facility." Data Request, No. I-19 states: "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." Data Request, No. I-20 states: "Describe the manner by which electricity and water will be brought to the Proposed Northerly L Docking Facility." Data Request, No. I-21 states: "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."

follows: “This case is remanded to the Division for the limited purpose of determining whether the Division will exercise its right to revisit this matter pursuant to paragraph four of the Division’s Order of December 10, 2015. Paragraph 4 states: ‘That the Division reserves the right to revisit this matter upon a showing by the Town that it has been successful in its efforts to prevent the construction of Bluewater’s planned dock before the USACE or CRMC.’” See Judge Licht’s Sept. 12, 2017 Order. The Division is neither situated nor does it have jurisdiction to determine issues of feasibility of design or to make value judgments as to the likelihood of the USACE/CRMC grant based upon design. The Division correctly determined it was beyond the scope of this remand matter to inquire into the design aspects of the proposed docking facilities. The information sought in these objected to data requests relates solely to the specific design aspects of the proposed docking facilities.

**III. CONCLUSION**

Accordingly, for the reasons discussed thoroughly above and in RIFF’s November 14, 2017 objection motion, the Division should grant its objection motion and deny the Town’s Motion to Compel.

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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Providence, RI 02903-1345  
Tel: 401-274-7200  
Fax: 401-351-4607  
Dated: December 11, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that on December 11, 2017, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer