

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888**

IN RE: Application by Rhode Island Fast :
Ferry, Inc. for Water Carrier Authority : Docket No. D-13-51

ORDER

**(Issued in response to a January 2¹, 2018 Motion to Vacate
Division Order No. 22877 from the Town of New Shoreham and
the Interstate Navigation Company)**

Whereas: On July 2, 2013, Rhode Island Fast Ferry, Inc., 1347 Roger Williams Way, North Kingstown, Rhode Island (“RIFF”), filed an application with the Rhode Island Division of Public Utilities and Carriers (“Division”) seeking authority to operate as a seasonal “fast ferry” water carrier of passengers between Quonset Point, North Kingstown and Old Harbor, New Shoreham (Block Island). RIFF’s application was filed pursuant to Rhode Island General Laws, Sections 39-3-3 and 39-3-3.1, which require the issuance of a “certificate of public convenience and necessity” (CPCN) by the Division before “water carrier” services can be provided between points within the State.

Whereas: The Division previously issued fifteen (15) Orders (“Orders”) in the instant docket, specifically, Order No. 21170, issued on September 24, 2013; Order No. 21189, issued on October 3, 2013; Order No. 21541, issued

¹ Date stamp reflects that the motion was received by the Division on January 8, 2018.

on August 1, 2014; Order No. 22030, issued on August 11, 2015; Order No. 22045, issued on August 19, 2015; Order No. 22103, issued on September 21, 2015; Order No. 22141, issued on October 8, 2015; Order No. 22166, issued on October 20, 2015; Order No. 22183, issued on October 26, 2015; Order No. 22254, issued on December 10, 2015; Order No. 22548, issued on September 22, 2016; Order No. 22823, issued on June 23, 2017; Order No. 22877, issued on September 18, 2017; Order No. 22980, issued on December 13, 2017; and Order No. 23001, issued on January 8, 2018. These fifteen previously issued Orders are inextricably linked with this Order, and accordingly shall be adopted as the introduction to this Order and, by necessity, incorporated by reference. As the travel of this docket is long and complicated, the Division will skip all discussion of this travel in the instant Order, relying instead on the incorporation of the above-identified Orders as a comprehensive prologue, thereby permitting the Division to limit its focus to the latest outstanding dispute matter, *infra*.

Whereas: In response to the remand order of the Superior Court (See Order Nos. 22823 and 22877, *supra*), the Division conducted a pre-hearing conference on October 20, 2017 for the purpose of defining the scope of the remanded issue before the Division and to adopt a procedural schedule for affording the parties an opportunity to proffer their respective positions and arguments. During that pre-hearing conference, the Division held that the scope of the instant proceeding would be limited to providing the Town with

an opportunity to prove 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 the United States Army Corps of Engineers ("USACE") and the Rhode Island Coastal Resources Management Council ("CRMC").² The Division subsequently clarified the scope of the remand proceeding by informing the parties as follows:

[T]he Town shall be required to prove to the Division that RIFF will not be able to operate its proposed ferry service from a Bluewater docking facility in Old Harbor. Evidence of this prospect must be obvious and compelling, not ambiguous and speculative. The Division will not consider matters of design, environmental impacts or the terms in construction contracts.³

Whereas: After a brief discovery period, the aforementioned remand proceeding now awaits a hearing, whose scheduling is currently being addressed by the parties and the Division's Clerk.

Whereas: Contemporaneous with the instant remand proceeding, the Town of New Shoreham (the "Town") and the Interstate Navigation Company ("Interstate"), parties to the docket, on January 2, 2018, filed a motion to vacate Division Order No. 22877, which previously granted RIFF a one-year continuance, to September 22, 2018, to satisfy the conditions precedent that

² See Order No. 22980

³ Id., pp., 5-6.

were attached to the Division's approval of RIFF's July 2, 2013 CPCN application filing, *supra*.⁴

In their motion, the Town and Interstate argue that "despite repeated promises to do so, RIFF and Bluewater have admittedly failed to submit required permit applications for a docking facility in Old Harbor." The Town and Interstate maintain that "[i]t is disingenuous for RIFF to delay the permitting process before USACE, CRMC, RIDEM and the Town Building Inspector for an unknown period of time, while simultaneously representing to the Division and the Superior Court that the Town and Interstate have not yet proven RIFF's inability to secure a docking facility in Old Harbor."⁵

The Town and Interstate further argue that the "Division should place little or no weight on Bluewater's claims regarding the timing of the permitting and related applications." In support of this argument, the Town and Interstate cite to earlier claims by the consultant/attorney working on Bluewater's application filings, Joseph Corrigan of Kelley Drye & Warren LLP, whereby Mr. Corrigan had advised the Division in November of 2015, "that the permitting process would be complete in 12 to 18 months..."⁶

Whereas: RIFF filed an objection to the Town's and Interstate's motion on January 12, 2018. In its objection, RIFF argues that "[t]his motion is nothing more than a desperate attempt to undue the process and circumvent the remand proceeding that was requested by both Interstate

⁴ See Order No. 22877.

⁵ Motion, pp., 6-7.

⁶ Motion, pp., 7-8

and the Town and ordered by the Superior Court, as it has now been shown that not only does Bluewater have a realistic expectation of constructing a docking facility, but that Bluewater has also been moving forward with that process.”⁷

In further support of its objection, RIFF contends that it has not misled the Division or any other parties. RIFF argues that its “recent discovery responses clearly establish that Bluewater has (and is) working diligently to secure permits for a docking facility for RIFF in Old Harbor.” RIFF also argues that the Town’s and Interstate’s motion to vacate “completely ignores that RIFF’s request for a stay of the compliance period was not based solely on the fact that RIFF had yet to secure a suitable docking facility; rather, RIFF requested the stay because it was unable to satisfy *all* of the conditions listed in the CPCN Order within the original one-year compliance period.”⁸

FINDINGS

The Division has considered the arguments proffered the Town and Interstate in support of their motion to vacate Division Order No. 22877, and RIFF’s objection thereto, and finds insufficient justification to grant such an extreme prayer at this time. Order No. 22877 approved a one-year continuance, or until September 22, 2018 for RIFF to satisfy the conditions attached to the approval of the CPCN that was granted to RIFF in this

⁷ Objection, pp., 1-2.

⁸ Objection, pp., 3-8.

docket. The Division finds that the Town and Interstate have proffered inadequate support to take up this matter again at this time. The evidence and arguments presented by the Town and Interstate can be revisited in the event that RIFF seeks an additional continuance after September 22, 2018.

Accordingly, therefore, it is

(23018) ORDERED:

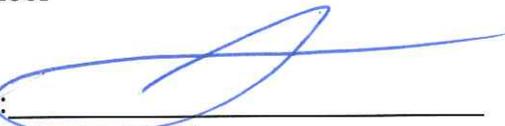
That the Town's and Interstate's January 2, 2018 motion to vacate Order No. 22877, is hereby denied.

Dated and Effective at Warwick, Rhode Island on January 25, 2018.



John Spirito, Jr., Esq.
Hearing Officer

APPROVED: _____



Macky McCleary
Administrator