

Order **22183** - RI Fast Ferry: Request for Consideration

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

(In response to the Town's Request for Reconsideration)

Whereas: The Rhode Island Division of Public Utilities and Carriers ("Division") previously issued eight 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 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; and Order No. 22166, issued on October 20, 2015. These eight 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 outstanding motions.

Whereas: On October 21, 2015, the Town filed a motion requesting that the Division reconsider its decision in Order No. 22166, *supra*, by allowing the Town an opportunity to respond to certain assertions made by Bluewater. The assertions in issue were described in Order No. 22166. Specifically, the Town

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requests an opportunity to offer legal support for its claim that the Army Corps of Engineers will not accept a Section 408 permitting application from Bluewater unless and until the Town supports the application filing. If its motion is approved by the Division, the Town requests a ten-day period to respond.

In support of its motion, the Town states that it did not believe that it needed to address the merits of Bluewater's opposition to the Town's discovery due to the fact that Bluewater's out-of-state attorney had not been authorized to practice law in Rhode Island by the time the deadline had passed for expressing objections under Rule 45 of the Superior Court's Rules of Civil Procedure. The Town contends that Bluewater's local attorney's late entry into the case did not cure the nullification of the earlier objection coming from Bluewater's out-of-state attorney. However, in view of the Division's decision in Order No. 22166, the Town seeks an opportunity to respond on the merits. ^[1]

Whereas: On October 23, 2015, Bluewater filed an objection to the Town's motion. Bluewater objects on two grounds. First, Bluewater argues that the Town already had an opportunity to address the merits of Bluewater's opposition to the Town's efforts to conduct additional discovery and failed to take advantage of that opportunity in a timely fashion.

Secondly, Bluewater attacks the Town's "claim that they, the town, not the Army Corps of Engineers, are required to initiate the Army Corps of Engineers 408 permitting process." Bluewater argues that its expert on the subject is in the process of preparing the Section 408 permitting application and that he has advised Bluewater that "Bluewater qualifies for a permit under Section 408..." ^[2]

FINDINGS

Based on the explanation and argument offered in support of its motion, the Division finds the Town's motion for reconsideration reasonable. Although the Division is perplexed as to why the Town simply did not address the merits of

Bluewater's assertions, as an alternative argument, in its earlier pleading, due to the potentially dispositive nature of the claim that the Town is making, the Division finds that the public interest would be better served by affording the Town this additional opportunity. Additionally, the Division understands the Town's claim to be that it must support Bluewater's application, in writing, before the Army Corps of Engineers would accept the application from Bluewater. The Division finds this claim to be distinguishable from Bluewater's perception that the Town is arguing that it must "initiate" the permitting process. Based on these findings, the Division shall approve the Town's motion pursuant to the provisions contained in Rules 31 (b) and (d) of the Division's Rules of Practice and Procedure.

Now, therefore, it is

(22183) ORDERED:

1. That Order No. 21170, issued on September 24, 2013; Order No. 21189, issued on October 3, 2013; Order No. 21541, issued 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; and Order No. 22166, issued on October 20, 2015, are hereby adopted as the introduction to this Order and, by necessity, incorporated by reference.
2. That the Town's motion for reconsideration is granted. The Town is directed to substantiate its assertion that Bluewater's Section 408 permitting application process requires Town approval as a pre-condition for filing acceptance by the Army Corps of Engineers.
3. The Town shall submit its legal memorandum by November 5, 2015.
4. Bluewater may offer a written response to the Town's memorandum by November 16, 2015.

5. That unless modified by this decision, the findings and directives contained in the Orders enumerated in paragraph "1," above, shall remain in full force and effect.

Dated and Effective at Warwick, Rhode Island on October 26, 2015.

Division of Public Utilities and Carriers

John Spirito, Jr., Esq.
Hearing Officer

APPROVED: _____
Thomas F. Ahern
Administrator

[\[1\]](#) See the Town's October 21, 2015 Motion for Reconsideration.

[\[2\]](#) See Bluewater's October 23, 2015 Objection.

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