

< Previous Hit      Next Hit >  
 < Previous Document      Next Document >

Document: Order 22141 - RI Fast  
 Ferry: Motion to Modify the  
 Procedural Schedule

## Order **22141** – RI Fast Ferry: Motion to Modify the Procedural Schedule

**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 RIFF’s Motion to Modify the Procedural Schedule to Allow Limited  
 Additional Discovery from the Town)

Whereas: The Rhode Island Division of Public Utilities and Carriers (“Division”) previously issued six Orders (“Orders”) in the instant docket, specifically, Order 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 1, 2015; Order No. 22045, issued on August 19, 2015 and Order No. 22103, issued on September 21, 2015. These six previously issued Orders are inextricably linked with the instant Order, and accordingly shall be adopted as the introduction to this Order and, for the 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 motion:

Whereas: On October 1, 2015, RIFF filed a “Motion to Modify the Procedural Schedule to Allow Limited Additional Discovery from the Town of New Shoreham.” In its motion, RIFF requests “the equal opportunity to conduct limited additional discovery:

from the Town, on the limited issues within the scope of the new scheduling Order issued by the Division on September 21, 2015 (Order No. 22103) and in relation to the information identified in the Town's filings with the Division, and in recent public statements concerning control and authority over certain areas of the Old Harbor in New Shoreham."<sup>[1]</sup>

Specifically, RIFF seeks authority from the Division to explore, through discovery, the Town's public assertion that it alone possesses the legal right to "wharf out" at the Northerly End of the stone jetty at the Inner Basin. RIFF also seeks to question the Town about its "claim that there is in fact no right of public access to the area of the East sea wall formerly known as the Mount Hope pier."

Whereas: In an Objection filed by the Town on October 5, 2015, the Town states that it never received an inquiry from RIFF or any of its representatives regarding the ownership of the stone jetty at the Inner Basin. The Town points out that the five year lease agreement for the stone jetty at the Inner Basin that it signed with the Coastal Resources Management Council ("CRMC") on April 1, 2013 "was easily obtainable from CRMC or the Town through an Access to Public Records request."<sup>[2]</sup>

With respect to the Mount Hope Pier access issue, the Town buttresses its assertion by pointing out that the diagram that RIFF submitted with its September 2015 filing "depicts a proposed ferry dock which is attached to another dock which is shown on the diagram as rectangular and white." The Town describes this other dock as the Town's "bait dock," which, the Town contends must be traversed across in order for RIFF to utilize the Mount Hope Pier as a dock for its ferry passengers. Moreover, the Town asserts that any discovery pertaining to the Town's bait dock "would be irrelevant and not reasonably calculated to lead to the discovery of admissible evidence because the availability of ... [the Mount Hope pier] was taken off the table by Paul Filippi in his last filing with the Division." The Town observes that the latest pleadings reflect

Mr. Filippi was unable to demonstrate that Bluewater LLC has actually acquired necessary riparian rights to develop this location into a dock.<sup>[3]</sup>

### **FINDINGS**

After considering the arguments from the parties, the Division finds insufficient justification at this time to permit RIFF to inquire into the Town's assertions regarding the property rights attendant to the Northerly Ell of the stone jetty at the Inner Basin. However, the Division shall order the Town to provide RIFF with a copy of the April 2013 lease agreement between the Town and CRMC on which the Town predicates its argument. After it has had an opportunity to examine the lease, if RIFF believes the lease does not provide the exclusive rights claimed by the Town, it may request that the Division revisit its motion to conduct limited discovery on this issue.

With respect to RIFF's request to conduct discovery regarding the Town's claim that it controls access to the Mount Hope Pier, the Division finds for the Town. Until such time as RIFF can demonstrate that Bluewater has unquestionably acquired riparian rights at the Mount Hope Pier location, the Division is not inclined to expand discovery into the Town's assertion that it controls access between the Mount Hope Pier and the adjoining land.

Now, therefore, it is

**(22141) 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; and Order No. 22103, issued on September 21, 2015, are hereby adopted as the introduction to this Order and, by necessity, incorporated by reference.
2. That RIFF's motion to modify the procedural schedule to allow limited additional discovery in this docket is hereby denied, as qualified herein.

Dated and Effective at Warwick, Rhode Island on October 8, 2015.

Division of Public Utilities and Carriers

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John Spirito, Jr., Esq.  
Hearing Officer

APPROVED: \_\_\_\_\_  
Thomas F. Ahern  
Administrator

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[\[1\]](#) See RIFF's October 5, 2015 Motion, p. 1.

[\[2\]](#) See Town's October 5, 2015 Objection, pp. 1-2.

[\[3\]](#) Id., p. 3.

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