

**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 November 29, 2017 Motion of the Town of New Shoreham to Compel Responses to Data Requests and to Strike Objections of Rhode Island Fast Ferry, Inc.)**

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 thirteen (13) 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; 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 and Order No. 22877, issued on September 18, 2017. These thirteen 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 discovery 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”).

Whereas: On November 2, 2017, the Town of New Shoreham (“Town”) propounded a number of Data Requests to RIFF in conformance with Rule 21(C) of the Division’s Rules of Practice and Procedure. Subsequently, on November 14, 2017, RIFF filed an objection to certain of the Town’s discovery requests. The basis of RIFF’s objection hinges on an argument that the Town’s discovery exceeds the scope of the matter now before the Division.

Whereas: On November 29, 2017, the Town filed a motion to compel responses to all of its data requests and to strike the objections of RIFF. The Town maintains that its discovery does not exceed the scope of the matter before the Division and that the Division must disregard RIFF’s objections as the objections were filed out of time. In support of its argument that RIFF’s objections were untimely, the Town relies on Rule 21(c)(3), which requires objecting parties to file their discovery objections within ten (10) calendar days after service of the request. The Town also requests that the Division conduct a hearing on the Town’s motion.

Whereas: On December 11, 2017, RIFF filed an objection to the Town’s motion to compel and motion to strike RIFF’s earlier objections. RIFF argues that the objections that it filed on November 14, 2017 were not untimely. Relying on Rule 10(a) of the Division’s Rules of Practice and

Procedure, RIFF contends that because November 12 and 13, 2017, were a Sunday and a Rhode Island holiday, respectively, RIFF's filing on November 14, 2017 was not untimely under the Division's Rules.

RIFF next argues that the Town's motion to compel must be denied as the questions that RIFF has objected to are beyond the scope of this remand proceeding. RIFF asserts that just because the Town "may want this information" does not mean the Town is entitled to documents "not within the scope established by the Division."

### **FINDINGS**

Inasmuch as the Division has defined the scope of the instant remand proceeding, the fact that RIFF may have been late in filing its objection to the Town's discovery does not bar the Division from enforcing its previous decision on scope, *sua sponte*. Nor does the Division find that a hearing is required to properly address the Town's motion.

After examining the discovery questions in issue, and considering the Town's arguments in support of its motion, the Division finds that Town Data Requests D-7, D-8, D-9, D-10, D-15, D-16, I-16, I-17, I-18, I-19, I-20 and I-21 all exceed the scope of the limited remand matter now before the Division.

In his remand order to the Division, Judge Licht ordered the matter back 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.” During a pre-hearing conference on October 20, 2017, the Division ordered that the scope of this remand proceeding would be for the limited purpose of providing the Town with an opportunity to prove “that RIFF (through Bluewater) does not have a realistic expectation of constructing Bluewater’s planned docking facility in Old Harbor, irrespective of design, through its permit applications with the USACE and CRMC.”

The Division finds that Town Data Requests D-7, D-8, D-9, D-10, D-15, D-16, I-16, I-17, I-18, I-19, I-20 and I-21 all relate to design-related details and, as such, are outside the scope of the instant remand proceeding. Regarding Data Requests D-1, D-2, I-5, I-6, I-7 and I-8, the Division finds that RIFF has adequately responded to these questions in conformance with the narrow scope of review established by the Division.

The Division must make it abundantly clear – in this docket, the Division will not be presiding over a proceeding designed to duplicate the anticipated contested and esoteric proceedings to be adjudicated before the USACE and CRMC. Those proceedings will involve Bluewater, not RIFF. Instead, in this docket, the 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. These topics are for other regulatory bodies to consider and antithetical to the regulatory interests of the Division in this narrowly focused CPCN paradigm.

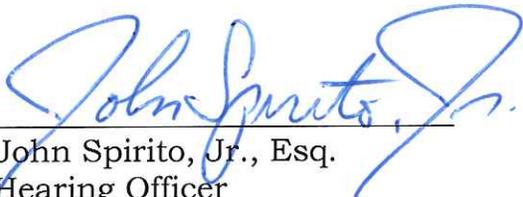
Accordingly, therefore, it is

(22980) ORDERED:

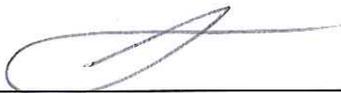
1. That the Town of New Shoreham's November 29, 2017 motion to compel responses to its Data Requests is hereby denied.

2. That the Town of New Shoreham's request for a hearing on its motion is denied.

Dated and Effective at Warwick, Rhode Island on December 13, 2017.

  
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John Spirito, Jr., Esq.  
Hearing Officer

APPROVED: \_\_\_\_\_

  
Macky McCleary  
Administrator