

**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 December 22, 2017 Motion for Reconsideration from the Town of New Shoreham

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 fourteen (14) 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; Order No. 22877, issued on September 18, 2017; and Order No. 22980, issued on December 13, 2017. These fourteen 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 proffered arguments in support of its 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 proffered arguments in support of its objection.

Whereas: After considering the arguments proffered from RIFF and the Town, the Division issued an order denying the Town’s motion to compel responses to all of its data requests (See Order No. 22980, issued on December 13, 2017).

Whereas: The Town filed a motion for reconsideration on December 22, 2017. In its motion, the Town urges the Division to reconsider its previous decision to deny the Town a copy of “the full ACOE [Army Corps of Engineers] application.” The Town contends that “[p]roduction of the full application is essential to a determination of the issues presented in this proceeding...”

Whereas: On December 29, 2017, RIFF filed an objection to the Town’s motion for reconsideration. In its objection, RIFF reiterates its previous

argument that the data responses sought by the Town exceed the scope of the discovery authorized by the Division in this limited remand matter.

FINDINGS

The Division has considered the arguments proffered by RIFF and the Town in the instant discovery dispute and finds that the Town has provided an insufficient evidentiary basis for the Division to modify/amend its previous findings and holding in Order No. 22980.

Accordingly, therefore, it is

(23001) ORDERED:

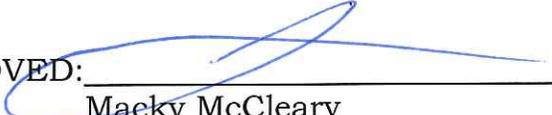
1. That the Town of New Shoreham's December 22, 2017 motion for reconsideration, related to the Division's December 13, 2017 denial of the Town's earlier November 29, 2017 motion to compel responses to its Data Requests, is hereby denied.

2. The Division's decision in Order No. 22980 is reaffirmed.

Dated and Effective at Warwick, Rhode Island on January 8, 2018.



John Spirito, Jr., Esq.
Hearing Officer

APPROVED: 

Maeky McCleary
Administrator