

**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 September 12, 2017 remand order of the Superior Court regarding Rhode Island Fast Ferry, Inc.'s Motion for a Stay in consolidated C.A. Nos. PC-2016-4758, PC-2016-4804 and PC-2017-3405)

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 twelve (12) 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 and Order No. 22823, issued on June 23, 2017. These twelve 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 remand matter, *infra*.

Whereas: In response to the final Report and Order issued in this docket (Order No. 22548, *supra*), the Report and Order which approved RIFF's application filing, Interstate Navigation Company, d/b/a The Block Island Ferry ("Interstate") and the Town of New Shoreham (the "Town"), both authorized Intervenors and Parties in this docket, filed timely appeals in the Superior Court. The appeals were filed pursuant to R.I.G.L. §42-35-15.

Whereas: An issue developed during the Superior Court appeal related to the following two "Ordered" paragraphs contained in Order No.

22548, which constitutes the Order that granted RIFF's July 2, 2013 application:

2. That the approval granted herein is subject to the following conditions: Before a CPCN is issued, RIFF must demonstrate to the Division that: (1) it has access to suitable docking/landing facilities in Quonset and on Block Island; (2) that it has leased, purchased or otherwise identified the vessel(s) it will use in providing its proposed ferry services consistent with the commitments and evidence presented during this case; (3) that it has satisfied all Coast Guard requirements associated with the provision of its proposed ferry services; (4) that it has satisfied any applicable municipal permitting requirements; (5) that it has adequate liability insurance in effect; and (6) that it has passed a Division inspection to ensure regulatory compliance.
3. That RIFF shall satisfy the conditions contained in "Ordered" paragraph "2," above within one (1) year from the issue date of this Report and Order. Failure to satisfy these conditions within the time specified shall result in the nullification and voiding of the authority granted herein. Continuances may be granted by the Division for just cause.¹

Specifically, RIFF claims that due to time delays associated with litigating the appeals filed by the Town and Interstate in this docket, it has been unable to satisfy the conditions precedent enumerated in Ordered Paragraph "2" above (hereafter, "Paragraph 2"), within the "one (1) year" time limit contained in Ordered Paragraph "3," above (hereafter, "Paragraph 3").

¹ See Order No. 22548, pp. 141-142.

As a consequence of RIFF's inability to satisfy the aforementioned conditions within the prescribed one-year time limit, RIFF has sought to "stay the compliance date" in accordance with the terms of Paragraph 3, which provides that "[c]ontinuances may be granted by the Division for just cause." However, as the Division's jurisdiction to hear RIFF's motion needed to first be approved by the Superior Court, which now possesses exclusive jurisdiction over this case (based on the appeals), the issue was presented to the Superior Court on September 8, 2017. Subsequently, on September 12, 2017, the Superior Court issued the following remand order:

This case is remanded to the Division of Public Utilities and Carriers for the purpose of deciding RIFF's request for a continuance of the time period for RIFF to complete the requisite conditions precedent to the issuance of a CPCN pursuant to the DPUC order of September 22, 2016.

The parties may submit to the Division position papers on this issue by noon on Friday, September 15, 2017. The parties agree that the Division may decide this issue on the papers filed and need not conduct a formal hearing. The Division shall issue its determination as to any such extension, or denial thereof, by no later than 4:30 PM on Thursday, September 21, 2017.

Whereas: On September 13, 2017, RIFF filed a "Motion to Stay the Compliance Date Set Forth in the Division of Public Utilities and Carriers' Final Report and Order Pending Final Judgment on Appeal." In its supporting memorandum, RIFF relies on Paragraph 3, to argue that it has

“just cause” for a stay. RIFF also relies on R.I.G.L. §42-35-15(c), as well as Rule 31(b) of the Division’s Rules of Practice and Procedure.²

RIFF next addresses the reasons why it was unable to satisfy the Division’s one-year time limitation. Essentially, RIFF maintains that the appeals and related appellate motions filed by Interstate and the Town have caused a protracted delay which has prevented RIFF from fully satisfying all of the conditions contained in Paragraph 2.³

Whereas: On September 14, 2017, Interstate and the Town filed a joint objection to RIFF’s “Motion to Stay the Compliance Date Set Forth in the Division of Public Utilities and Carriers’... Final Report and Order Pending Final Judgment on Appeal.” In support of their objection, Interstate and the Town argue that although the Division is free to grant a continuance for just cause, it is not free to grant a “stay,” which Interstate and the Town identify as the form of relief being requested by RIFF.⁴

Interstate and the Town assert that under R.I.G.L. §39-3-3(c), a reviewing court is prohibited from ordering “an interlocutory stay of any order of the division with respect to an application entered under §39-3-3.1, and/or certificate under §39-3-3.1.”⁵ Further, Interstate and the Town note that the Division’s Final Order authorizes RIFF to seek a continuance, not a stay.⁶

² See RIFF Motion, pp. 1-2.

³ Id., pp. 2-4.

⁴ See Interstate and Town Objection, p. 1.

⁵ R.I.G.L. §39-3-3.1 confers authority to the Division to issue CPCNs to water carriers.

⁶ See Interstate and Town Objection, p. 2.

Additionally, Interstate and the Town argue that it is disingenuous for RIFF to blame the delays in the appeal process on “repeated motions” filed by Interstate and the Town. Instead, Interstate and the Town contend that the delays were caused by RIFF’s failure “to identify its docking facility as previously ordered by the DPUC.”⁷

In their concluding arguments, Interstate and the Town assert that the Division should deny RIFF’s motion for a stay; but agree that the Division has the authority to grant a continuance “for a reasonable, specific period of time.” Accordingly, Interstate and the Town proffered the following continuance-related recommendation:

Interstate and the Town respectfully suggest that a continuance of one year would be appropriate given the posture and complexity of this case. If, after one year, RIFF is unable to satisfy the requirements set forth in the DPUC’s Order, RIFF could request an additional continuance from the DPUC.

FINDINGS

The Division has carefully considered the arguments and positions of the parties and finds that RIFF has provided sufficient “just cause” to justify a continuance of the one-year deadline contained in Paragraph 3. The Division also accepts Interstate’s and the Town’s suggestion that the continuance should be limited to one (1) year, or until September 22, 2018 and that RIFF may seek additional continuances, for just cause, beyond the new September 22, 2018 deadline.

⁷ Id., pp. 2-3.

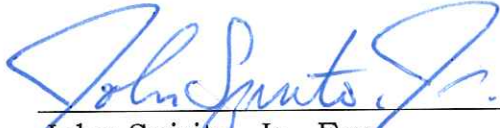
Accordingly, therefore, it is

(22877) ORDERED:

1. That in response to the September 12, 2017 remand order of the Superior Court, and predicated on the findings contained herein, the Division finds sufficient cause to grant RIFF a one-year continuance, or until September 22, 2018, to satisfy the conditions precedent contained in Paragraph 2, *supra*.


2. That RIFF may request additional continuances, for just cause, in the event that it is still unable to satisfy the conditions precedent contained in Paragraph 2, *supra*, by September 22, 2018.

Dated and Effective at Warwick, Rhode Island on September 18, 2017.



John Spirito, Jr., Esq.
Hearing Officer

APPROVED:



Macky McCleary
Administrator