

STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: RHODE ISLAND FAST FERRY, INC.:

Docket No. D-13-51

Bluewater, LLC
42 Water St. Old Harbor
Block Island, Rhode Island
02807

Dear Division of Public Utilities and Carriers,

The joint Rule 31(b) Motion as related to remand of Rhode Island Fast Ferry D-13-5 made by the Town and the for-profit Interstate Navigation Company should be denied. It provides no new material facts and merely describes adherence to the Division's Order recognizing adequate docking facilities.

Several months ago, in the Superior Court, the Town made a similar request, based on the similar allegations and, the Division, via counsel, found the joint intervenor's request for remand without legal merit stating that, "...the assertions made by the Town and Interstate were not evidence that could support remand," as, "the allegations raised in the Motion simply show that the process of securing suitable dock facilities is still ongoing, which is permissible under the terms of the Report and Order." *Division Of Public Utility and Carriers' [Superior Court] Memorandum In Support of Objection to Motion to Remand P.5-6 3/20/17*

The, "...Motion should also be denied because the purported additional evidence on which it is based relates to circumstances occurring after the Report and Order was entered. Evidence of circumstances occurring after agency proceedings have concluded is not a basis for remanding an administrative appeal."^[1] *Division Of Public Utility and Carriers' [Superior Court] Memorandum In Support of Objection to Motion to Remand P. 6 3/20/17*^[1]

This latest request is no different, asserting the illogical argument that dutifully advancing all Federal and State processes required to secure suitable dock facilities pursuant to a Public Utilities Division Order of September 22, 2016, is somehow new evidence.

Pursuant to this Order, Bluewater has diligently worked in accordance with engineers, and all required USACE personnel to formulate USACE site plans for both of the original sites within the Federal Navigation Project (FNP): Ballard's Wharf and the Mt. Hope Dock, which were the subject of extensive discovery and litigation prior to the Division Order of [September 22](#), 2016. Moreover, the assertion that the Town would

somehow require notice from RIFF or Bluewater regarding the Town's legal status in a Federal application process is illogical.

Likewise, the assertion that somehow notice is required for matters previously extensively litigated between the parties is flatly disingenuous. Specifically, the issue of ingress and alternative access was extensively litigated; justifying an entire section of Bluewater's filings entitled "Ingress and Egress."

Specifically, in a filing of November 16, 2015 Bluewater addressed identical baseless claims by joint intervenors, noting "they are incorrect in their assertion regarding the design and location of a *yet un-built access ramp*, and do not control the space through which it will run." *In Re: Rhode Island Fast Ferry, Inc.: Docket No.: D-13-51 Bluewater, LLC Opposition to Town Of New Shoreham Motion To Reconsider* 11/16/15 P.12

Therefore, the current claim in the joint intervenors most recent filing - that "a different method of moving passengers which would substantially interfere with the Town's and public's use of that area," P.8, - once again neglects all previous litigation of the issue and fails to acknowledge the Town has no legal right over "that area."

Most tellingly this statement fails to acknowledge that the construction of the ferry dock for a new ferry service has been found by this Division to be in the public good of the State of Rhode Island.

In closing, this is merely another attempt by Town and Interstate the delay the proceedings by any means necessary.

The joint applicants have not met their legal burden as the facts presented are not material and all have occurred subsequent to the Division Order, of September 22, 2016.

Sincerely

Paul Filippi,

CEO Bluewater LLC

[1] Evidence must, among other things, be material and relate to circumstances occurring before or during the underlying administrative proceedings." See *Id.*; see also *Davis v. Wood*, 444 A.2d. 190, 191 – 192 (R.I. 1982). R.I.G.L. § 42-35-15(e).