

June 7, 2016

Via E-mail/Hand-Delivery

Ms. Luly Massaro
Division Clerk
Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, Rhode Island 02888

In re: Rhode Island Fast Ferry, Inc. – Docket No. D-13-51

Dear Luly:

On behalf of Rhode Island Fast Ferry, Inc. (“RIFF”), please find an original and four (4) copies of the enclosed Post-Hearing Memorandum for filing in connection with the above docket.

Very truly yours,



ALAN M. SHOER
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Enclosure

STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: RHODE ISLAND FAST FERRY, INC.:

Docket No.: D-13-51

RHODE ISLAND FAST FERRY, INC.'S POST-HEARING MEMORANDUM

Now comes Rhode Island Fast Ferry, Inc. (“RIFF”) and hereby submits its Post-Hearing Memorandum in support of its application for a Certificate of Public Convenience and Necessity (“CPCN”) to operate a fast ferry between Quonset Point, North Kingstown and Old Harbor, Block Island.

I. INTRODUCTION

In 1998, Mr. Charles A. Donadio (“Mr. Donadio”), as the founder of Island Hi-Speed Ferry, introduced Rhode Island to the convenience, necessity and other benefits of high-speed ferry service by establishing such a service for those who wanted to travel to one of Rhode Island’s most desirable places, the Town of New Shoreham (the “Town” or “Block Island”). Back then, the incumbent monopoly service, Interstate Navigation (“Interstate”) of Connecticut, together with the Town, not only opposed Mr. Donadio but engaged in years of costly and time consuming litigation, seeking to block the introduction of choice made possible by (at the time) a new business market—high-speed ferry service. Interstate (and the Town) claimed that there was simply no demand or public need for high-speed ferry service and that introducing high-speed ferry service would serve only to destroy Interstate—through a “death spiral” caused by an alleged cataclysmic loss of passengers.

What we know now is that Interstate, and the Town, were dead wrong on both counts. In 1998, there was a huge, untapped demand for high-speed ferry service, and even with the introduction of high-speed ferry competition, Interstate was not destroyed nor did it go out of

business. On the contrary, Interstate's traditional ridership has grown immensely since 1998, even during the time when Interstate competed directly with the new high-speed service. Recognizing the sustainable demand for high-speed service, Interstate ultimately purchased Island Hi-Speed Ferry—the high-speed service it once claimed unviable. Since that time, Interstate has continually increased the volume of high-speed ferry service to Block Island via increased ridership and new vessels running from Newport, Rhode Island and Fall River, Massachusetts.

Now, almost twenty years later, Mr. Donadio is seeking another high-speed ferry license, this time to provide choice and convenience to passengers who would like to go to Block Island from a well established and obviously convenient location in North Kingstown at the port within the State's recently redeveloped Quonset Business Park ("Quonset"). The proposal is to offer service during the summer tourist season and especially to provide a convenient and attractive service to customers, particularly those who come from areas north, west and east of Quonset. This new port option would offer choice and convenience to passengers who prefer to embark from North Kingstown. The compelling question is this: Why would the State of Rhode Island, by and thru its Division of Public Utilities and Carriers (the "Division"), not offer passengers the opportunity to use RIFF's high-speed ferry service from Quonset to visit Block Island?

Interstate offers one answer; it claims (yet again) that the introduction of competition will cause it a cataclysmic loss of passengers and thus hurt its ability to continue to offer a "lifeline" through its traditional slower ferry and freight service. This is the same repudiated scare-tactic argument Interstate made in 1998. Just as they were wrong in 1998, Interstate is wrong once again. However, neither the law nor the facts here warrant such a result.

As illustrated below and demonstrated during the hearing(s), the evidence proves that, once again, Interstate’s chicken-little argument is vastly overstated and unsupportable by the facts. The impact of RIFF’s new service will, if any, be minimal at worst. And, if the State’s regulatory history is any guide, further competition will be better, not just for the public convenience and necessity, but for Interstate as well.¹

Interstate’s argument is, as expected, a purely reflexive reaction from a company that has enjoyed years of monopoly protection. Now that Interstate has “joined the party” and secured its own high-speed ferry service, it rationally wants it all to itself, and to force customers to have as few carrier choices as possible in order to visit Block Island. Of course they do not want any competition.

However, Rhode Island law long ago established that the Division (not Interstate) will determine what is in the best interests of Rhode Islanders. The Division now has the benefit of almost twenty years of market development to evaluate whether the public necessity and convenience will be served by RIFF’s proposal. The record developed in this proceeding compels a finding that RIFF should be granted a license to operate a high-speed ferry service from Quonset to Block Island.

II. LEGAL STANDARD

The Rhode Island General Assembly has stated that the purpose of the Division is to:

provide fair regulation of public utilities and carriers in the interest of the public, to promote availability of adequate, efficient and economical energy, communication, and transportation services and water supplies to the inhabitants *of the state*, to provide just and reasonable rates and charges for such services and supplies,

¹ The Town weighs in, again, by joining Interstate to assert that the Town does not want passengers to have choice, notwithstanding that its own tourist council supports RIFF’s proposal. The Town’s position in this case is at best very curious. They claim that RIFF will bring further passengers – without vehicles – who will overwhelm the infrastructure and serenity of the Island; yet the Town fully supported Interstate’s efforts to bring, presumably, the same number of new passengers through Interstate’s new services proposed for Newport and Fall River.

without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices, and to co-operate with other states and agencies of the federal government in promoting and coordinating efforts to achieve realization of this policy.

R.I. Gen. Laws § 39-1-1 (b) (emphasis added).

Pursuant to R.I. Gen. Laws § 39-3-3, “[n]o common carrier of persons and/or property operating upon water between termini within this state shall hereafter furnish or sell its services unless the common carrier shall first have made application to and obtained a certificate from the division certifying that public convenience and necessity required the services.” R.I. Gen. Laws § 39-3-3 (a). Additionally, a CPCN applicant must also show that it is “fit, willing and able to perform the service” proposed. *In Re: Aquidneck Ferry & Charter, Inc.*, Docket No. D-10-01, Order No. 20292 at 66 (Feb. 25, 2011).

Accordingly, in order for the Division to grant a CPCN to RIFF, RIFF must establish the following: (1) that it is fit, willing and able to perform the service and (2) that there is a public need and convenience for the service in the State of Rhode Island (“State” or “State of Rhode Island” or “Rhode Island”).

III. ANALYSIS

A. RIFF is Fit, Willing and Able to Provide a Fast Ferry Service from Quonset to Block Island.

“[T]here is little available in controlling interpretation of the phrase ‘fit, willing, and able[.]’” *University of Rhode Island v. Rhode Island Div. of Public Utilities and Carriers*, Nos. PC 11-0626, PC 11-0839, 2012 WL 113297, *7 (R.I. Super. Ct. Jan. 9, 2012). However, when Mr. Donadio first applied for a CPCN in 1998, the Division and a Rhode Island Superior Court were “satisfied that an individual[, Mr. Donadio,] with ‘proven diligence as a businessman’ was fit, willing, and able to operate a high-speed water ferry, even despite his issues with financing

the venture.” *Id.* (citing *Interstate Navigation Co. v. Div. of Pub. Utilities & Carriers of R.I.*, No. C.A. 98-4766, 1999 WL 813603, at *7-8 (R.I. Super. Ct. Aug. 31, 1999)).

In this case, RIFF’s fitness, willingness and ability to provide a high-speed ferry service is undisputed. The record reflects that Mr. Donadio, the owner of RIFF—who was deemed fit, willing and able in 1998—has close to twenty years of additional experience in the high-speed ferry industry, in general and in southern New England and Rhode Island. *See* Charles A. Donadio Pre-Filed Direct Testimony at 3; Hearing Transcript (“Tr.”) 03/15/16 at 91. Mr. Donadio has successfully operated a number of high-speed ferry businesses, including a high-speed ferry service from Quonset to Martha’s Vineyard since 2003, as well as a successful high-speed sightseeing tour service. *See* Tr. 03/15/16 at 185. Recently, he built the first high-speed transport ferry for technicians maintaining an ocean-based wind farm off the coast of Block Island.² *Id.* Accordingly, Mr. Donadio has demonstrated that he is fit, willing and able to operate a high-speed ferry service from Quonset to Block Island. At the Hearing(s), this went largely un rebutted by any meaningful testimony or evidence.

Nonetheless, multiple times throughout the hearing, Interstate³ attempted to diminish Mr. Donadio’s fitness by highlighting little more than the fact that Mr. Donadio did not create a “formal” business plan before applying for a CPCN with the Division. *See* Tr. 03/15/16 at 120,

² Mr. Donadio also operates a fast ferry business in Bermuda. *See* Pre-Filed Testimony of Charles Donadio at 2.

³ The Division’s Order granting Interstate intervener status limited “the scope of [Interstate’s] participation as relating to the [a]pplicant’s burden of proof to demonstrate ‘that public convenience and necessity require[s] the services.’” Docket No. D-13-51, Order No. 21170 at 19 (Sept. 24, 2013). The Division specifically stated that it “will not permit Interstate to participate beyond this limited issue.” *Id.* Accordingly, any testimony or evidence elicited or provided by Interstate as to willingness, fitness or ability should be stricken and not considered. Nevertheless, and in violation of the Division’s Order, Interstate still tried to argue that Mr. Donadio was unfit by questioning him regarding a formal business plan. *See* Tr. 03/15/16 at 120, 132, 133. Also, Interstate attempted to go beyond the scope of its intervener status again by attacking Mr. Donadio’s willingness when it introduced an e-mail from Joshua Linda, the president of Interstate, presumably to contend that Mr. Donadio did not actually want to run a ferry service, rather that he was pursuing the application only to then sell the certificate to Interstate. *See* Interstate Exhibit 14. In any event, evidence established that the purpose for meeting with Mr. Linda was initially to discuss Mr. Donadio’s interest in purchasing Interstate. Then the conversation spun off into other matters. However, Interstate’s attempt to negotiate a shot-in-the-dark non-compete with Mr. Donadio fell flat, as the record clearly reflects that Mr. Donadio “was not interested in” Interstate’s non-compete offer. *See* Tr. 03/02/16 at 203-05.

132, 133; Tr. 03/22/16 at 80. However, nowhere in the Division rules or regulations does it state that an applicant needs to provide the Division with a business plan of any particular format in order to be deemed fit by the Division.⁴ Moreover, Interstate's own witness, Dr. Edward M. Mazze ("Dr. Mazze"), explained that business plans are typically used to secure financing. *See* Tr. 03/22/16 at 116. As an experienced and well financed businessman, Mr. Donadio explained that although he has the ability to self-finance this venture, based on existing relations and profitability, a bank has already verbally agreed that RIFF will be able to obtain financing. *See* Tr. 03/15/16 at 203-04. Therefore, as the law does not require an applicant to create a formal business plan to be deemed fit, and as Mr. Donadio does not need to obtain financing in order to fund this venture, the fact that Mr. Donadio did not create a formal business plan is of no consequence and certainly does not establish that he is unfit to operate a high-speed ferry service.

Regarding willingness, the fact that RIFF submitted an application and endured over three years of hearings, briefings, data requests and motions, before both the Division and the interlocutory appeal to the Rhode Island Superior Court, exemplifies that RIFF and Mr. Donadio are willing to operate a high-speed ferry service from Quonset to Block Island. Again, acting beyond the scope of its intervention, Interstate appeared to address willingness by doing nothing more than highlighting Mr. Donadio's ultimate rejection of *Interstate's* non-compete offer. Not a single witness, expert or otherwise, testified or provided a scintilla of evidence that RIFF is not willing to provide the service for which it has applied.

With respect to ability, Mr. Donadio currently utilizes expanded and recently renovated dock space in Quonset that is large enough to "dock multiple vessels going in and out at the same time." *Id.* at 179. This went un rebutted and undisputed at the Hearing(s). The dock space is

⁴ *See e.g.*, Josh Linda testified that Interstate did not provide a formal business plan when applying for a certificate for its Newport or Fall River high-speed service. *See* Tr. 03/22/16 at 231-32.

owned by the State of Rhode Island, and Mr. Donadio has an exclusive lease with the State with a term of more than twenty years, with the ability to extend this lease. *Id.* at 187-88.

As for dockage at Old Harbor, the Division has already determined, in an order denying the Town's Motion for Summary Disposition, that RIFF has satisfactorily demonstrated the ability to dock at Old Harbor by and through its agreements with Bluewater, LLC ("Blue Water"). In its Order, the Division held that it "is satisfied that Bluewater's claims of interest and *ability* to construct a docking facility in Old Harbor are credible and that RIFF's access to Bluewater's planned docking facility is satisfactorily demonstrated on the record." Docket No. D-13-51, Order, In Response to the Town's Motion for Summary Disposition at 21 (Dec. 10, 2015) (emphasis added). The record reflects that nothing as related to dockage has changed since the Division concluded that "RIFF (through Bluewater) has a realistic expectation of having access to a future docking facility in Old Harbor from which it may operate a high-speed ferry service." *Id.* at 22; *see also* Tr. 3/15/16 at 173. No new testimony has been entered in the record that contradicts anything established in the Division's previous findings and Order. Accordingly, the record reflects that RIFF has the ability to establish a high-speed ferry service from Quonset to Old Harbor, Block Island.⁵

Thus, as discussed above, RIFF has satisfied its burden and proved that it is fit, willing and able to provide a high-speed ferry service from Quonset Point, North Kingstown to Old Harbor, Block Island.

B. Public Convenience and Necessity Require RIFF's Service.

Next, the record reflects that RIFF established that its service will satisfy the public necessity and convenience requirement articulated in R.I. Gen. Laws § 39-3-3. The Rhode

⁵ The documents filed by Bluewater, supplied in support of RIFF, also establish an ongoing business willingness to establish a new high-speed ferry terminal in Old Harbor. *See* Bluewater, LLC Response and Objections to Request for Production, Oct. 9, 2015.

Island Supreme Court interprets public convenience broadly as referencing “something fitting or suited to the public need.” *Abbott v. Public Utilities Comm’n*, 48 R.I. 196, 136 A. 490, 491 (1927). The Supreme Court further explained that “[t]he word ‘necessity’ in the expression under consideration does not have reference to an *indispensable necessity*, but rather that the route in question appears to the commission to be *reasonably requisite*.” *Id.* (emphasis added). The Supreme Court accordingly instructed that there is no formula through which the Division must view public convenience and necessity but that “[i]n passing upon public convenience and necessity, the commission must consider whether a proposed route is suited to and *tends* to promote the accommodation of the public and also whether it is reasonably required to meet a need for such accommodation.” *Id.* (emphasis added).

In this case, RIFF presented the testimony of five lay witnesses to support that its service satisfies the public convenience and necessity requirement. All five witnesses were knowledgeable and experienced in the tourism industry and were able to present the views of a larger population. Nevertheless, the Town and Interstate attempted to “strike” the testimony of each of these witnesses, asserting that because these witnesses were not disclosed experts, their testimony lacked foundation and should be stricken. *See* Tr. 03/02/16 at 67, 86, 108, 143, 164. However, the Town and Interstate are mistaken. A witness does not need to be an expert in order to offer an opinion to assist the Hearing Officer. Under the Rhode Island Rules of Evidence, lay witness opinion testimony is admissible, if the witness’ opinions are “(A) rationally based on the perception of the witness and (B) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue.” *See* R.I. R. Evid. 701. There is no legal requirement that lay witnesses rely on studies, surveys or any other similar tool.⁶

⁶ There is simply no requirement that a lay witness be an expert in order to give an opinion. The Town relied on *Kilday v. Morgan* for the proposition that no lay witness may testify regarding traffic conditions. However, in

The threshold question is merely whether the proposed service “*tend[s]* to promote the accommodation of the public.” *Abbott*, 136 A. at 491. Here, all five of these witnesses had extensive experience in the tourism industry. Four out of the five lay witness presented by RIFF testified not only in their individual capacity, but in a representative capacity as well. These five witnesses are not mere observers, they are experienced individuals that used their extensive experience and knowledge to testify that there is a public need and convenience offered by RIFF’s proposed service from Quonset to Old Harbor. While the opinions of these five witnesses might not be given the same weight of a disclosed expert, the testimony and opinions they provide are admissible and should be given more weight than public comment. Moreover, the Division has relied upon this same type of testimony in the past in support of its finding that there was a public need for the Point Judith to Block Island fast ferry. *In Re: Island Hi-Speed Ferry, LLC*, 98-MC-16, Report and Order, Order No. (15652) (Aug. 25, 1998), 17-19.

As discussed more thoroughly below, RIFF satisfied the public convenience and necessity requirements of R.I. Gen. Laws § 39-3-3. RIFF established that the market has been, and continues to, move more and more towards efficient high-speed service and that its proposed service meets the growing need for intermodal travel and will, as a result, attract additional tourism that does not add to traffic on already overly congested roadways, especially during the busy summer tourist season. Its proposed service contributes to the goals of reducing auto emissions and supports the investment made by the public in the State’s infrastructure, by encouraging increased use of the Quonset facilities. In short, RIFF has established that there is a clear demand for its service, that its service will benefit the Rhode Island economy, that its

Restivo v. Lynch, the Rhode Island Supreme Court determined that lay witness testimony regarding observed effects of prior residential construction on traffic was admissible and persuasive. 707 A.2d 663, 671 (R.I. 1998). Further, when questioned by the Hearing Officer, the Town admitted that it “does not dispute the fact that there is traffic [in the South County area during the summer].” Tr. 03/02/16 at 69. In fact, the hearing officer pointed to this obvious “disconnect” in the Town’s motion to strike argument and correctly denied the Town’s motion. *Id.*

service is not contrary to the Block Island Comprehensive Plan, that Interstate's service is no longer adequate to serve the growing need, that RIFF's service encourages competition through consumer choice and that the existence of choice utilizing the State's infrastructure investment will not result in the collapse of Interstate.

1: RIFF Established Public Convenience and Necessity because its Service will Increase Tourism and Reduce Traffic on Already Overly Congested Roadways.

First, Myrna George ("Ms. George"), with over a decade of experience in the tourism industry, testified in her capacity as President of the South County Tourism Council, representing eleven towns in the State of Rhode Island. Tr. 03/02/16 at 40, 55, 65; *see also* Pre-Filed Testimony of Myrna George at 2. Ms. George explained that "for travel to be meaningful to anyone coming into the area as a visitor, it must not be a burden." Tr. 03/02/16 at 40. Ms. George went on to testify about tourism in general and that whether it is attracted by ferry services, beaches or otherwise "...if, in fact, they're waiting in traffic for extended periods of time, that is a detriment to tourism." *Id.* In short, Ms. George testified that the proposed service of RIFF, although a longer ferry trip, provides a choice in service to prospective tourists who currently forgo travel to Block Island due to traffic and/or parking burdens. *See* Pre-Filed Testimony of Myrna George at 3-4. As Mr. Donadio testified, many of those prospective Block Island visitors are already entering Rhode Island to utilize ferry service to Martha's Vineyard, Massachusetts. Tr. 03/15/16 at 210; *see also* Pre-Filed Direct Testimony of Charles Donadio at 10 (stating "RIFF also carries passengers bound for Nantucket who layover in the Vineyard for the day and Vineyard vacationers who come to Rhode Island to visit our vacation sites. So, I

believe there is also a reverse market from the Vineyard to Block Island. But I seriously doubt that such travelers would use Interstate's fast ferry because it would not be a seamless route").⁷

Next, Elizabeth Dolan ("Ms. Dolan"), testifying in her capacity as immediate past-president of the North Kingstown Town Council ("Council"), also addressed the issue of public need and convenience.⁸ She indicated that the "Council believes that RIFF's proposal offers both local and visiting [out-of-state] tourists a more convenient Block Island fast ferry option due to the ease of access to Quonset from Route 95 via Routes 4 and 403." Pre-Filed Testimony of Elizabeth Dolan at 3. Ms. Dolan also stated that the "Council supports and encourages intermodal transportation as a means of making travel more convenient and alleviating traffic congestion." *Id.* Ms. Dolan concluded by stating that "the Council believes that the connections between RIFF's ferry terminal, RIPTA bus service, the Wickford Junction commuter rail service and T.F. Green Airport will not only make RIFF's service a success, it will promote State and federal transportation policy." *Id.*

2. *RIFF Established Public Convenience and Necessity by Showing that there is a Demand for its Service.*

Next, RIFF demonstrated that its proposed services will promote public convenience and necessity by establishing that there is an "untapped demand" for its services. Lawrence Kunkel ("Mr. Kunkel"), an economics, finance and "game theory" expert explained that "the high speed

⁷ Also, Jerry Zarrella ("Mr. Zarrella"), a Rhode Island resident and Block Island business owner testified in public comment in support of a high-speed ferry service operating from Quonset. Tr. 03/02/16 at 30. Specifically, he stated that the "two lane highway that brings you all the way down to Point Judith . . . is not adequate enough to handle the load of traffic that's going down that particular route." *Id.* at 31-32. He testified that if there was a ferry in North Kingstown he "would go to [Block Island] more[.]" noting that he "would much rather pay and it's roughly \$150 worth of fuel one direction [to take his personal boat] than to go and wait in line in beach traffic on a hot summer day[.]" *Id.* at 30, 34.

⁸ The present President of the North Kingstown Town Council, Kerry McKay, testified during public comment and "reaffirm[ed] the position of the council in North Kingstown that [it] support[s] th[e RIFF] project." Tr. 03/02/16 at 25. Mr. McKay also noted that his family has been in the furniture business in Rhode Island for 116 years and that "the competition level in [his] industry has gone through the roof and [they've] had to readjust [their] business model to accomplish to stay [sic] in business[.]" *Id.* at 25-26. Mr. McKay concluded that he believes that "competition in this matter is very healthy" and "gives another venue for the tourism which to me is probably the most important thing in the State of Rhode Island." *Id.* at 26.

ferry market continues to evolve, that the market itself is not saturated[.]” Tr. 03/15/16 at 231. Mr. Kunkel went on to explain that a “dormant, unserved, niche market will be activated, because this is not a zero sum game There are riders out there who want to go to Block Island who don’t want to go to Galilee.” *Id.* at 232. Mr. Kunkel noted that “there is a frequency marketplace out there where if people have additional choice, and not the choice purely on the basis of a monopoly lifeline and discretionary high-speed carrier, there’s a frequency market out there where people will go more frequently to Block Island.” *Id.* Mr. Zarrella, who would travel more frequently to Block Island if given a Quonset choice, is an example of this frequency market user. Tr. 03/02/16 at 30. Accordingly, Mr. Kunkel provided expert testimony, with a reasonable degree of economic certainty, “that there is a public need for such a service and that RIFF’s proposed service will satisfy that need.” *See* Pre-Filed Direct Testimony of Lawrence Kunkel at 4.

According to the Rhode Island Rules of Evidence, Rule 702, “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of fact or opinion.” R.I. R. Evid. 702. The Rhode Island Supreme Court has outlined “four nonexclusive factors” to consider in deciding whether or not to admit “novel or highly technical expert testimony.”⁹ *Ferris Ave. Realty, LLC v. Huhtamaki, Inc.*, 110 A.3d 267, 281 (R.I. 2015). However, the Supreme Court expressly indicated that “when the proffered knowledge is neither novel nor highly technical, satisfaction

⁹ The four factors are: “(1) whether the proffered knowledge can be or has been tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential rate of error; and (4) whether the theory or technique has gained general acceptance in the relevant scientific field.” *Ferris Ave. Realty, LLC v. Huhtamaki, Inc.*, 110 A.3d 267, 281 (R.I. 2015).

of one or more of these factors is *not* a necessary condition precedent to allowing the expert to testify.” *Id.* (emphasis added)(quoting *Morabit v. Hoag*, 80 A.3d 1, 12 (R.I. 2013) (determining that a professor of geology was an expert in geology and qualified to present testimony based on “stone wall science” without any evidence that the professor’s opinion met any of the “four factors” required for novel or highly technical testimony). In *Ferris Ave. Realty, LLC*, the Supreme Court found that expert testimony in the environmental engineering field “was not so technical that it required peer-reviewed publication support, but his opinion was helpful . . . because of his skills, experience, training, and education in environmental engineering—skills beyond the understanding of lay persons of ordinary intelligence.” *Id.* at 281-82. These same principles apply in this case.

Here, Mr. Kunkel is not only an experienced economist but an economist with a unique body of first-hand experience as an expert witness in numerous Rhode Island ferry matters. *See* D 98-MC-16, D 05-06, D 06-51/53. Mr. Kunkel was deemed the most credible expert witness in the Island Hi-Speed Ferry 1998 proceeding. *See Interstate Navigation Co.*, 1999 WL 813603, at *6 (stating that “[t]he Division specifically agreed with Kunkel’s observations and conclusions, and after hearing all the evidence and weighing the credibility of witnesses found that ‘the testimony of those witnesses who have experienced a need for the services that cannot be fulfilled by Interstate Navigation, is far more convincing’”). His opinions and observations now come with the addition of over twenty-years of experience analyzing ferry markets and analyzing the southern New England and Rhode Island ferry market. *See Pre-Filed Direct Testimony of Lawrence Kunkel* at 3-4. As for his other qualifications, he received his B.A. in economics from Providence College and received an A.M. in Social Science-Economics from the University of Chicago. *Id.* at 2. During his career, Mr. Kunkel was the sole research assistant to the 1982

Nobel Prize in Economics winner in the theory of industrial organization, “the study of how firms behave in an industry and how industries behave in an economy.” *Id.* He also served as the Chief Economist and Director of Corporate Strategy for Federal Home Loan Bank of Chicago. *Id.* at 3. Mr. Kunkel has authored thirteen academic and professional publications in the areas of economics, law and economics and strategy and economics. *Id.* Further, all his expert opinions were also based on his experience in past Public Utilities Commission and Division proceedings, where he correctly predicted the existence of an unserved niche market in the 1998 Island Hi-Speed Ferry case and its marginal impacts upon Interstate. *See id.* at 3-4. His expertise in analyzing the ferry industry and predicting ferry market behavior is, therefore, undeniable.

Mr. Donadio also addressed the issue of whether there is a demand for RIFF’s proposed services. Although Mr. Donadio was presented as a fact witness/applicant, he has unique and extensive knowledge and professional experience in the ferry industry, which cannot be overlooked. *See* Tr. 03/15/16 at 192. In fact, no one in Rhode Island has operated a high-speed ferry service longer than Mr. Donadio. Mr. Donadio, in his capacity as president of RIFF, long ago determined there to be a need for the proposed service. In fact, in light of the fully private investment RIFF plans to make in establishing the proposed service, if he is incorrect and there is no public need for this service, Mr. Donadio bears the burden of his decision (and Interstate will suffer zero harm).¹⁰ Simply put, good businessmen rarely make bad bets with their own money on non-existent demand. Accordingly, more credibility should be given to his opinion, lay or not.

Mr. Donadio addressed the public need for this service and the inadequacy of existing service, stating that sometimes Interstate’s service is filled to capacity “and as a result [members

¹⁰ RIFF is unlike Interstate in that RIFF is not free to make bad decisions and survive while insulating its shareholders from adverse consequences by factoring losses into a guaranteed return rate structure.

of the public] sometimes just show up on busy weekends and can be turned away.” Pre-Filed Direct Testimony of Charles Donadio at 7. Mr. Donadio supported this contention, stating that there have “been boats [at Interstate] that have been sold out [and] people have to wait for the next boat.” Tr. 03/02/16 at 231. Joshua Linda, president of Interstate, acknowledged that in the summer months there have been fast ferry trips that have sold out. Tr. 03/22/16 at 224.

Further, Mr. Donadio testified that Quonset is “an easy access point for people to get to the island and . . . much more convenient.” Tr. 03/15/16 at 178. Mr. Donadio explained that his location is convenient for the public because it is “centrally located, closer to the northern part of Rhode Island.” Tr. 03/02/16 at 189. The fact that Quonset would be a more convenient departure and arrival point for many northern Rhode Islanders and many other people from southern Massachusetts is obvious to anyone who has lived here for any length of time. Mr. Donadio further explained that Quonset is convenient because of the large parking capacity at his facility. Mr. Donadio stated that he leases over five-and-a-half-acres of property and has “never maxed out” his parking facility. Tr. 03/15/16 at 208. Conversely, Interstate’s witness, Michael Voccola, a hotel and parking lot owner in Point Judith, acknowledged that assuming a three-month summer season, his parking lot is filled to capacity more than a third of the season. Mr. Voccola testified that his parking lot is full “. . . thirty to forty five days per summer.” See Tr. 03/22/16 at 44.

Ms. George, President of the South County Tourism Council opined that new individuals who have not previously traveled by ferry to Block Island would utilize RIFF’s services. Tr. 03/02/16 at 61. Similarly, the previous Executive Director of the North Kingstown Chamber of Commerce, Martha Pughe (“Ms. Pughe”), further addressed demand for RIFF’s service.¹¹ *Id.* at

¹¹ The present Executive Director of the North Kingstown Chamber of Commerce, Kristen Urbach, testified during public comment that she and the present North Kingstown Chamber of Commerce Board of Directors support the

72. She explained that the North Kingstown Chamber of Commerce believes that “offering tourists another, more convenient, Block Island fast ferry option will encourage more commerce by tapping into the market of people who might not have otherwise travelled [sic] to the island.” Pre-Filed Testimony of Martha Pughe at 3-4.

Also, Robert Billington (“Mr. Billington”), President of the Blackstone Valley Tourism Council, addressed the issue of public need and convenience. Tr. 03/02/16 at 112-13. He stated that he “support[s] the idea of water transportation. . . . The more [Rhode Islanders that] can travel in Narragansett Bay I think the better.” *Id.* at 121. Mr. Billington went on to state that he supports RIFF because it is “closer to the population base or the heavier part of the market[,]” referring to his constituency in the Blackstone Valley. *Id.* at 121. When questioned about why someone from Blackstone Valley would be in support of RIFF, Mr. Billington reasoned that the more people that spend time in Rhode Island, the greater possibility that they would return and spend time in Blackstone Valley. *Id.* at 139 (stating “the idea would be if we can get someone to Rhode Island now . . . that hopefully they’d spend a little bit of time in Blackstone Valley”). Mr. Billington also addressed the issue of an untapped demand; when discussing his TourRI program, he noted that “*most* Rhode Islanders . . . still have not taken that trip to Block Island.” *Id.* at 128 (emphasis added); *see also* Pre-Filed Direct Testimony of Robert Billington at 4 & Rebuttal Testimony Robert Billington at 4 (“I was somewhat stunned to learn how large the number of Rhode Islanders who had never been to Block Island really was. . . . [M]any Rhode Islanders do not travel to Block Island because it is viewed as distant and difficult to reach. But when they are presented with a more convenient mode of traveling to the Island they will take advantage of it, even if the cost of such convenience is higher than driving to Galilee, parking

RIFF application. Tr. 03/02/16 at 27. Further, Ms. Urbach stated that she presented the issue to the current board and the current board “unanimously voted, as well, to support the Rhode Island Fast Ferry.” *Id.*

and purchasing a ferry ticket.”). Mr. Billington also brings a well-reasoned analysis to the evidence due to the fact that he operates a water passenger service himself, via a Division CPCN. *See id.* at 138.

It is also important to note the public comment given regarding this issue. A Bryant University and Brown University professor Andrew Naughton, speaking “as a citizen[,]” spoke in favor of RIFF. Tr. 03/02/16 at 28. He stated that “[a]s a Rhode Islander and somebody who’s concerned about the economy here, I would love to be able to say you can go down to Quonset and take a ferry to Block Island.” *Id.* He went on to speak of the un-tapped market, stating that, “[w]ith students, it’s like pulling teeth for them to come to class on time. The thought of their going down to Galilee is pretty much not going to happen. And I think it would be really great to have the opportunity for students to travel to places beyond the Blackstone Valley.” *Id.* Next, a resident of Cranston spoke to the issue of convenience, stating that he “wanted to voice [his] personal opinion about the I’d guess you’d call it inconvenience to try to get down to the Galilee ferry in the summertime. . . . [H]aving [a ferry] at Quonset would be extremely convenient [.]” *Id.* at 29. Lastly, as a Block Island business owner, Mr. Zarrella noted in public comment that the more people he has talked with say that they have never been to Block Island and in his opinion RIFF would be “tapping into a new resource[,] . . . add[ing] more business.” *Id.* at 35-36.

3. *RIFF Established Public Convenience and Necessity because its Service will Benefit the Rhode Island Economy.*

Rhode Island has one of the highest unemployment rates in the country. *See* Bureau of Labor Statistics, Unemployment Rate for States, (Feb. 2016), <http://www.bls.gov/web/laus/laumstrk.htm>; Kate Bramson, *RI Unemployment Now Ranks 12th Highest in U.S.*, Providence J. (Jul. 21, 2015), <http://www.providencejournal.com/article/20150721/NEWS/150729849>. As the Rhode Island

economy continues to be one of the lowest performers in the nation, Interstate’s own expert (Dr. Mazze) stressed the importance of creating jobs in this State. *See* Tr. 03/22/16 at 50-51, 53-56, 59-61. He confirmed that entrepreneurship provides new businesses and services to the State of Rhode Island and admitted that Mr. Donadio is an entrepreneur. *See id.* at 50-51, 53-54, 61. He went on to state that entrepreneurship is important because it drives economic activity. *See id.* at 61-62. In fact, he specifically stated that one reason for the low rate of job growth in the State is the fact that Rhode Island is dependent on companies headquartered outside of Rhode Island. *See id.* at 60.

Granting RIFF a CPCN will help bring jobs to the State. Also, unlike Interstate, which is a Connecticut corporation, RIFF is incorporated in Rhode Island. *See* State of Rhode Island and Providence Plantations, Office of Secretary of State, Division of Business Services, <http://ucc.state.ri.us/CorpSearch/CorpSearchSummary.asp?ReadFromDB=True&UpdateAllowed=&F&EIN=000136645> (last visited April 4, 2016), *compared to* Connecticut, Office of Secretary of State, Business Inquiry, <http://www.concordots.ct.gov/CONCORD/online?sn=PublicInquiry&eid=9740> (last visited April 4, 2016). Mr. Donadio, as a Rhode Island business owner and entrepreneur, invests his own money to grow his Rhode Island based businesses to benefit all citizens in the State. Granting a CPCN to RIFF will further serve the public need because it will not only allow for the utilization of the State investment at Quonset, but will create in-state jobs, producing in-state tax revenues—both individual and corporate.

Ms. Pughe, previous Executive Director of the North Kingstown Chamber of Commerce, also testified regarding RIFF’s impact on the economy, stating that the “Chamber believes that simply providing more choice will make the Block Island fast ferry market and the larger Rhode Island economy stronger.” Pre-Filed Testimony of Martha Pughe at 4. Importantly, Steven King (“Mr. King”), Director of the Quonset Development Corporation, emphasized the fact that public

investment and public monies have gone into the Quonset terminal.¹² Mr. King testified that he believed the public would be served by utilizing the ferry terminal in Quonset. Tr. 03/02/16 at 148. His stated that because the ferry terminal has already been built, he “would like to utilize the dock for [more ferry operations so as to ensure], then the more benefit that the public is going to receive for the investment the public has made.” *Id.* at 162.

Taking Mr. King’s testimony one step further; every dollar that goes into the Quonset terminal belongs to the State of Rhode Island because the State, the public, owns the Quonset terminal property. *See* Tr. 03/15/16 at 180-85, 187-88. This includes the investment in infrastructure, as has been and will be provided by RIFF.¹³ *Id.* Additionally, the proposed docks that RIFF intends to use in Block Island will continue to be controlled by the Army Corps of Engineering, for the benefit of the public. *Id.* at 169-70. At the end of the day, the public will control both ends of the proposed service. Accordingly, approving this CPCN will prevent the ridership and public from being held hostage to private dockage, as is the case with Interstate’s service. *See, also, In re Application of A&R Marine Corp. d/b/a/ Prudence & Bay Islands Transport – Application for Certificate of Public Convenience and Necessity (CPCN) License to Operate a Ferry to Prudence Island, Docket D-13-105.*¹⁴

4. *RIFF Established Public Convenience and Necessity because its Service is Envisioned by Block Island’s Comprehensive Plan.*

Both Interstate and the Town attempted to refute that there is a need and public convenience served by RIFF’s service, asserting that if RIFF’s service was not supported by the

¹² RIFF received public funds through a CMAQ – Air Quality Grant to build part of the Quonset facility. *See* Tr. 03/15/16 at 181.

¹³ Mr. Donadio stated that when he renovates the facility he will be paying for it “purely 100 percent out of [his] own pocket. [Yet, t]he building will be owned by the State of Rhode Island and it will be maintained by [him].” Tr. 03/15/16 at 187.

¹⁴ The Prudence Island ferry service scenario will be prohibited from ever occurring with the Block Island ferry service which, in turn, serves a public need and convenience. *See In re Application of A&R Marine Corp. d/b/a/ Prudence & Bay Islands Transport – Application for Certificate of Public Convenience and Necessity (CPCN) License to Operate a Ferry to Prudence Island, Docket D-13-105.*

Town of New Shoreham's Comprehensive Plan ("Town's Comprehensive Plan"), then the service could not satisfy a public need or convenience. However, this contention missed the mark in more than one way. On cross-examination of Ms. Pughe, she explained that she did not believe that a town's Comprehensive Plan is the begin-all and end-all of what is in the public interest, stating that "[t]hings change and move. And I think that as much as you can stay somewhat true to a comprehensive plan, there are pieces of the puzzle that move and grow."¹⁵ Tr. 03/02/16 at 79. Moreover, and possibly most instructive on this point, the Town's Comprehensive Plan, titled Land Use and Growth Management, discussing Old Harbor, specifically states: "There is some potential for expansion that could accommodate other ferry operations and small cruise vessels." RIFF, Exhibit 41 at 16. Further, aside from the fact that RIFF's service is consistent with the Town's Comprehensive Plan, that Plan does not dictate public need. One town's comprehensive plan, out of the thirty-nine cities and towns in the State of Rhode Island, cannot be dispositive as to whether the service satisfies a generalized public need and convenience in the State. If it were, and subjective, parochial, barriers to entry could be erected by each municipality there would be no need for a Division with statewide jurisdiction. If, for example, the City of Providence were to proclaim in its Comprehensive Plan, or in an ordinance implementing it, that new taxi companies should and will be prohibited from operating within city limits, that would be the end of the argument. That is an absurd result and ignores the statutory scheme enacted by the General Assembly with regard to permitting of public carriers.

5. RIFF Established Public Convenience and Necessity because Interstate's Service is No Longer Adequate.

¹⁵ Ms. Dolan also indicated that, in her experience, "comprehensive plans are living documents and as things change, comprehensive plans change. So I'm not clear that if this proposal were inconsistent with the comprehensive plan of New Shoreham, that there couldn't be a potential for their comprehensive plan to change." Tr. 03/02/16 at 103.

In this case, there has been much discussion concerning the “adequacy” of Interstate’s existing service. Although witnesses testified that Interstate’s service is “adequate,” the testimony begs the question: adequate compared to what? Adequate compared to swimming from Point Judith to Block Island? Adequate compared to paddle boarding to Block Island? Adequate compared to kayaking to Block Island? The fact remains that Interstate’s ferry service is (currently) the *only* intra-State Block Island ferry service option available to the citizens of Rhode Island.

Interstate’s witness, Dr. Mazze defined adequate service for passengers as one that is nothing more than timely and safe. Dr. Mazze stated that adequacy is merely “providing safe and convenience boarding of passengers, an adequate number of reliable departure and return times, on-time and safe arrivals and a comfortable trip for passengers.” *See* Interstate’s Response to RIFF’s First Set of Date Requests, 1-15 (f) at 7. RIFF submits that Interstate’s definition of adequacy is that which is minimally required to legally transport passengers from the mainland in Rhode Island to Block Island. Further, RIFF submits that this standard would not be adequate for the residents of Massachusetts or others traveling to Martha’s Vineyard during the summer. At Martha’s Vineyard, Oak Bluffs, there are five high-speed ferry services and numerous traditional ferry services providing state of the industry ferry transportation to Martha’s Vineyard during the summer. *See* Tr. 03/15/16 at 216. Being the “only show in town” is a poor foundation to claim that Interstate’s service needs special protection merely because its “adequacy” is due to being the only option available.¹⁶

¹⁶ If providing the minimum level of service were all that was required to proliferate the protection of a utility monopoly, we would all still be using black rotary telephones. A black rotary telephone was certainly deemed “adequate” for a hundred years, and in fact still may be “adequate” to some people today. However, for the overwhelming population today, the options and choices made available through competition are obvious. The Internet, wireless phones, smart phones, GPS mapping etc. were all made possible by competition, not in protecting

It is a given that Interstate is the only ferry service operating from within Rhode Island to Block Island. When Ms. George, President of the South County Tourism Council, was asked about what need Interstate was not currently satisfying, she replied, “Convenience. I think there are a lot of folks not going out to Block Island because it’s too much of a hassle to get there.” Tr. 03/02/16 at 49. She further stated that Interstate is “a ferry service that is the only service presently running out to the island[.]”¹⁷ *Id.* at 46.

Accordingly, RIFF submits that the fact that Interstate provides Rhode Islanders with the only ferry access to Block Island from the Rhode Island mainland does not justify denying RIFF a CPCN, nor does it mean that the existing service is truly adequate for everybody—unless adequacy for Rhode Islanders should be that which is considered inadequate for residents of other neighbor states. Interstate and the Town appear to argue that R.I. Gen. Laws § 39-1-1 and its progeny are a barrier to entry if an existing utility’s service is minimally “adequate,” even if a new service would be more “efficient” in the delivery of a service that the public wants or needs. That argument ignores the convenience prong in the test of public convenience and necessity.

6. *RIFF Established Public Convenience and Necessity because its Service Encourages Competition and Ratepayer Choice.*

When determining whether an applicant’s service satisfied the public need and convenience requirement, a Rhode Island Superior Court instructed the Division to consider the following:

the existing means of transportation, as to its substantial character and its probable permanence, also the investments of capital made by the owners of such existing means, the nature of the service that

the “adequacy” of AT&T monopoly rotary phones. And at last check AT&T is doing just fine, having responded to competition by offering its own brand of wireless telecommunications services. The parallels are compelling. Surely there are many that will determine that Interstate’s traditional service is still “adequate”; but for many more passengers there is a demand for the benefits that come from high-speed service, and Interstate will surely have to adapt to competition to improve and expand its own service offerings, all for the benefit of the public ultimately.

¹⁷ For the other witnesses asked about Interstate’s service, Interstate asked if the service was adequate, without defining the term adequacy. See Tr. 03/02/16 at 29, 100, 155.

is being rendered, and, if such service is adequate, what will be the probable effect of admitting competition into a field now adequately served, and what effect such competition will probably have upon the receipts of existing lines of transportation, and as to whether, in the face of further competition, the adequacy of the existing service will be continued.

Interstate Navigation Co., 1999 WL 813603, at *5.

The Division has stated that “[t]he primary purpose of the regulation of common carriers is to provide the public with safe and adequate transportation.” *In Re Application by A & R Marine Corporation for Water Carrier Authority*, Docket No. D-13-05, Order No. 21363 (Feb. 28, 2014) at 67 (internal quotations omitted). “A secondary purpose is to preserve the investment of those conducting such business from the deleterious effects of wasteful competition.” *Id.* The Division explained that “[t]he basic question respecting the issuance of CPCNs is whether the service available to the public is reasonably adequate to supply the public need therefore.” *Id.* (quoting *Yellow Cab Co. v. Public Utilities Hearing Board*, 73 R.I. 217, 54 A.2d 28 (1947) (internal quotation marks omitted)).

However, the Supreme Court has also warned that “increased competition is not a valid ground for denying a common carrier certificate.” *Interstate Navigation Co.*, 1999 WL 813603, at *5 (citing *Yellow Cab Co.*, 73 R.I. 217 at 226, 54 A.2d 28 at 32-33). Specifically, the Court reasoned that “existing carriers do not have a legal right to maintain a monopoly upon the services rendered.” *Id.* The Court noted that “protecting existing investments . . . from even wasteful competition must be treated as *secondary* to the first and most fundamental obligation of securing adequate service for the public.” *Id.* (quoting *Breen v. Division of Public Utilities*, 59 R.I. 134, 194 A. 719, 720 (1937)). Prior Division decisions have “shed light” upon the Division’s interpretation of the expression, “public convenience and necessity.”

For example, in *New England Steamboat Lines, Inc.*, Division Docket MC-W-24, the applicant for a water carrier certificate sought authority to provide “purely recreational, sight seeing cruises” out of Newport Harbor. The Division approved the application, concluding that “the present public convenience and necessity justifies the operation.” Similarly, in *In re: New England Steamboat Lines, Inc.*, Docket MC-W-28 (1984), the Division considered the application for a water carrier certificate where the proposed service was “targeted primarily at the public’s recreational and entertainment needs rather than its transportation needs.” The Division concluded that the proposed ferry service between Newport and Block Island served the public convenience and necessity.

Id. In fact, the Supreme Court has stated that, in granting a CPCN, it is proper to consider “such factors as competitive stimulation and anti-monopoly prophylaxis.” *Domestic Safe Deposit Co. v. Hawksley*, 111 R.I. 224, 228, 301 A.2d 342, 344 (1973).

Throughout this proceeding, there has been a great deal of discussion regarding the impact RIFF’s service may have on Interstate’s traditional or conventional (also referred to as “lifeline”) service. In fact, both Interstate and the Town contend that RIFF’s application must be denied because granting RIFF’s application may result in wasteful competition that could allegedly end Interstate’s lifeline service. This is exactly the same argument proffered by Interstate in 1998, which is now known to have been grossly overstated. In fact, Interstate has grown its business enormously, despite new competition. “What is past is prologue” goes the old expression, and the Division should be very cautious given Interstate’s propensity to overstate its case. Interstate’s wildly overstated fears represent, yet again, how out of touch this argument is with the facts.

It is important to stress that the current regulatory trend is to implement a regime that promotes competition. See *Town of Norwood v. FERC*, 202 F.3d 392, 396 (1st Cir. 2000) (“[a]s with other, once fully regulated industries, legislators and regulators have over the last 25 years

sought to introduce a greater measure of competition . . .). In fact, the General Assembly has acknowledged this modern trend and mandated that “it is in the public interest to promote competition in the electric industry”—an industry similar to the industry of ferry transportation service, which is critical to the health, safety and welfare of the public. *See* R.I. Gen. Laws § 39-1-1(d)(4). In a case before the Hearing Officer, the Division has stated that the law under which another service is granted a CPCN “does not confer monopoly control or an exclusive franchise over the market it serves.” *In Re Application by A & R Marine Corporation for Water Carrier Authority*, Docket No. D-13-105, Order No. 21363 (Feb. 28, 2014) at 66 (citing *Albert Capaldo v. Public Utility Hearing Board*, 71 R.I. 245 (1945)).

While nurturing a competitive environment is paramount to the current regulatory trend, the Division has observed that “wasteful competition” must be treated as “secondary consideration” for denying a CPCN. *Id.* (quoting *Breen*, 194 A. at 720). In this case, no evidence exists to support a finding that, were the Division to grant RIFF a CPCN, Interstate’s lifeline service to Block Island would cease to exist. In fact, the Division in *A & R Marine* concluded that objections by incumbents that new service providers will cause wasteful competition resulting in the failure of one or both companies “has never proven accurate.” *Id.* at 70-74 (citing *Island Hi-Speed Ferry* and other ferry carrier CPCN decisions). There was simply no evidence here to support Interstate’s argument that RIFF’s service will result in wasteful competition.

7. *Interstate Admittedly Overstates the Impact of RIFF’s Proposed Service on its Existing Ferry Service.*

Interstate submitted the testimony of Dr. Mazze and Walter Edge (“Mr. Edge”) to support its argument that granting a CPCN to RIFF would have a severe negative impact on Interstate’s lifeline service. However, as Dr. Mazze testified during the Hearing, those numbers were

overstated. RIFF submits, and the evidence shows, that the numbers relied upon by Dr. Mazze and Mr. Edge are incorrect and, at a minimum, unreliable. In fact, the impact of RIFF's proposal on Interstate's lifeline service, as Dr. Mazze testified, will be far less than originally asserted.

On cross examination, Dr. Mazze admitted that the ridership impact numbers, which were based on the responses to Interstate's survey, substantially decrease when survey takers were also asked to consider both "cost" and when the same passengers were later asked to consider "time over water." *See* Tr. 03/22/16 at 68-74. Dr. Mazze testified that the originally asserted impact numbers dropped substantially when cost *or* time were also considered. *Id.* Dr. Mazze further admitted that Interstate's survey failed to ask the obvious question: what if the Quonset ferry were *both* more expensive *and* required more time over water. *Id.* at 74. Dr. Mazze admitted that this would be highly relevant information and that if the adverse factors of cost *and* time were combined in a single question, the survey outcome as to the impact to Interstate would be even lower. *See id.* at 64-74. Nonetheless, either by design, as such low impacts do not further Interstate's worst case scenario/"death spiral" argument, or by mistake, Interstate's survey did not include such a question. The failure of Interstate to ask such a question renders the survey numbers incorrect and, at a minimum, unreliable.

Nonetheless, from the survey information that was provided and set forth in Dr. Mazze's pre-filed testimony, it is possible to calculate a reliable range of impact if indeed passengers were presented with the actual facts—Quonset ferry being more expensive *and* requiring more time over water. That calculated range, which was neither challenged nor rebutted, was provided in the pre-filed testimony of Stephanie Costa, PhD ("Dr. Costa"). Based on the evaluation and survey numbers included in Dr. Mazze's pre-filed testimony, Dr. Costa calculated and testified that "... somewhere between 4% and 10% of its conventional ferry passengers might use a

Quonset fast ferry that cost[s] \$50 and took longer and between .04% and 3% of [Interstate's] fast ferry customers would use the Quonset fast ferry at that price and [requiring] a longer ride over the water, with a level of certainty of 95%.” Pre-Filed Testimony of Dr. Stephanie Costa at 11.¹⁸ Using Dr. Costa's figures, the average cost to the ratepayer could increase by \$0.40—less than one dollar—for the traditional or conventional service. See Interstate Exhibit 15. In summary, Dr. Costa noted that Dr. Mazze's analysis fails to account for the number of people who would change their responses based upon the factors of cost differential *and* time over water differential. Pre-Filed Testimony of Dr. Stephanie Costa at 9-10. Dr. Mazze conceded on cross-examination that his analysis did not account for the people that would have changed their responses based upon the factors of cost differential *and* time over water. Tr. 03/22/16 at 68-74.¹⁹

This fundamental flaw in Interstate's survey methodology and analysis not only makes Mazze's conclusions at best unreliable, it impacts Mr. Edge's testimony as well. Mr. Edge testified, also relying on Dr. Mazze's "Marketing Research Study," that RIFF entering the ferry market "would result in an across-the-board increase in Interstate's traditional services rates of 14.2%." See Pre-Filed Testimony Walter Edge, page 4. After reviewing Mr. Edge's testimony

¹⁸ Dr. Costa, is an Associate Professor of Mathematics at Rhode Island College, with a PhD in Mathematics from the University of Rhode and experience educating and using statistics to analyze surveys opined, with a reasonably degree of mathematical certainty, that Dr. Mazze's analysis was fundamentally flawed. Pre-Filed Testimony of Dr. Stephanie Costa at 1, 9-10.

¹⁹ Mazze testified as follows:

Q. So the decision to take the fast ferry from Quonset is dependent on both the cost and price differential from the traditional or high speed ferry and that the on-water time is a half hour longer from Quonset than Point Judith, correct?

A. Yea, under these scenarios.

Q. Correct. Do you calculate the number of people who would change their mind if either the cost was more or because the on-water time is longer?

A. No.

Tr. 03/22/16 at 74.

and his most recent data responses, it is apparent that the basis of his predictions—the number of passengers that Interstate will lose if RIFF is given a CPCN—are overblown.

Since RIFF’s original application was filed in 2013, Interstate has requested and received rate increases, continuing to gain more revenue from its passengers. Taking into account the approval of the most recent rate increase, the rates that Mr. Edge originally alleges are purportedly needed to “subsidize” the lifeline service if the Division were to grant a license to RIFF is just *half* of what Mr. Edge and Interstate had originally projected in 2013, when the RIFF application was filed. *See Schedule WEE-2*, attached to Pre-Filed Testimony of Walter Edge. In fact, using Mr. Edge’s adjusted worst-case scenario figures, giving RIFF a license would allegedly result in a rate increase of only \$1.85 for an adult, round-trip, traditional ferry ticket. *See* Interstate Exhibit 15, page 3 (\$24.75-\$22.90). Accordingly, using Mr. Edge’s own worst-case-scenario calculations, relying on Dr. Mazze’s survey, Interstate would need to raise traditional or conventional ticket prices by less than the amount requested and approved in Interstate’s most recent rate request. *See id.* at 5 (Interstate recently requested a rate increase of \$2.00 for an adult round trip fast-ferry ticket price). To suggest that this relatively small rate increase corresponds to a “death spiral” for Interstate’s business is preposterous.

Moreover, Interstate may not actually need to increase rates for the traditional and conventional service, because as Mr. Edge testified, now that Interstate’s Newport and Fall River services are allegedly making a profit, Interstate will be able to use this new revenue to further subsidize the lifeline service.²⁰ *See* Tr. 03/22/16 at 155. Add to this the testimony of Mr.

²⁰ RIFF does not concede that Interstate’s Fall River or Newport services are profitable; however, based on the testimony of Mr. Edge, made under oath, Interstate is expected to secure this added source of revenue that can be used to subsidize the lifeline service and offset any loss of business from RIFF proposed service. On the other hand, if Interstate’s Fall River and Newport service do not prove profitable, as was the testimony at the Hearing, Interstate could remove this substantial expense from its operations. It may well be that those services are a drag on Interstate that should be jettisoned if they do not perform well, as a way for Interstate to cut costs, rather than increase revenues.

Donadio, who with over twenty years of experience in the ferry industry believes that a majority of his passengers will be new customers that have never traveled to or rarely travel to Block Island, and the rate increase boogie-man becomes a tired old mantra. Tr. 03/02/16 at 190 (stating that “there are going to be many more people that travel on this ferry that have never been to Block Island before, may have gone ten years ago and decide, hey, I’m going again because there’s one in my backyard . . .”).

Similarly, Mr. Kunkel, who has testified in numerous proceedings before the Division and the PUC regarding ferry permitting and regulation, who testified as an expert in the 1998 Island Hi-Speed Ferry CPCN proceeding and whose predictions that a death spiral would not result following the granting of a CPCN in 1998 proved correct, testified in this proceeding that this is not a zero sum game, “[i]t could well be that again with the entry of [RIFF] there’s no reason to suspect that both . . . Interstate’s fast ferry and the fast ferry from Quonset could not both enjoy ridership increases.” See Tr. 03/15/16 at 268-271. In fact, it was this rationale that the Hearing Office determined to be correct when analyzing the 1998 case in a recent decision. See *In Re Application by A & R Marine Corporation for Water Carrier Authority*, Docket No. D-13-05, Order No.21363 (Feb. 28, 2014) at 72-73 (stating that “the Division ultimately found Interstate’s concerns to be overstated . . . Not only did Interstate not go out of business, . . . [i]n retrospect, the public need clearly was properly served by the approval of high-speed ferry services in a market already being served by an incumbent ‘lifeline’ carrier”).²¹

Thus, pursuant to the authorities referenced above, granting RIFF a CPCN satisfies the “public convenience and necessity” criterion under R.I. Gen. Laws § 39-3-3 and granting this

²¹ Ms. Pughe, previous Executive Director of the North Kingstown Chamber of Commerce, further stated that “[t]o the extent that this creates competition between existing fast ferry providers and RIFF, this will be healthy, as it should cause the service providers to innovate and improve their business operations.” Pre-Filed Testimony of Martha Pughe, at 4.

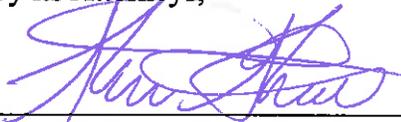
license will not put Interstate out of business, nor will the impact to Interstate even be material to their operations. If anything, new competition will force Interstate to improve its service in order to provide the highest level of service that its passengers will demand and that the Division should expect.

IV. CONCLUSION

For the reasons articulated above, the Division should grant RIFF's application for a CPCN.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2016, I delivered a true copy of the foregoing document via electronic mail to the parties in this proceeding.

