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June 7, 2016

Luly E. Massaro, Clerk  
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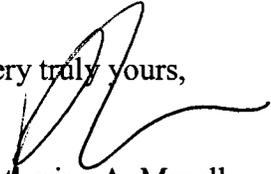
RE: RHODE ISLAND FAST FERRY, INC.  
Docket No. D-13-51

Dear Luly:

Enclosed for filing are an original and five copies of Interstate Navigation Company's Post-Hearing Memorandum.

If you have any questions, please feel free to call.

Very truly yours,



Katherine A. Merolla

KAM:zmp

*Enclosures (6)*

cc: Service List (attached)

**Rhode Island Fast Ferry (RIFF) – CPCN Application Docket No. D-13-51**  
**Updated 10-21-15**

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STATE OF RHODE ISLAND  
DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: RHODE ISLAND FAST FERRY, INC.

DOCKET No. D-13-51

**POST-HEARING MEMORANDUM OF THE TOWN OF NEW SHOREHAM  
IN OPPOSITION TO RHODE ISLAND FAST FERRY INC.'S APPLICATION  
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

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**I. LEGAL ARGUMENT IN SUPPORT OF MOTION TO STRIKE TESTIMONY  
OF LAWRENCE KUNKEL**

All parties acknowledge that under Rhode Island law the burden is on the applicant for a Certificate of Public Convenience and Necessity ("CPCN") to show public need. Interstate Navigation Company ("Interstate") has set forth this position at length in its Post-Hearing Memorandum and the position of the Division of Public Utilities and Carriers ("Division") in this regard was articulated by the Division's attorney following oral argument on the motion of the Town of New Shoreham ("Town") and Interstate for entry of judgment as follows: "I think that the town and Interstate's arguments were well articulated and I'm involved in many application hearings. I'm keenly aware that the burden is on the applicant to show need and I think the arguments that were made are precisely what you, Mr. Hearing officer, will take into account in your final order. So while I don't join the motion, per se, I don't dispute with what's been argued, but certainly that's their burden to meet." (TR. 3-22-16 pp. 34-35)

In support of its contention that there is a public need for the proposed ferry service from Quonset Point to the Old Harbor of Block Island, the Rhode Island Fast Ferry ("RIFF") presented the prefiled testimony of Larence Kunkel. In addition, Mr. Kunkel testified during the hearing which was conducted on March 15, 2016.

Mr. Kunkel stated that it was his opinion that there is a public need for a new high-speed ferry service from Quonset to Old Harbor based on three factors, each of which is discussed below.

(1) The first basis for Mr. Kunkel's opinion on public need was that both federal and State governments had invested a combined \$660 million in infrastructure improvements in the Quonset Davisville Business Park. (RIFF Ex. 22 p. 4) Based upon that investment, Mr. Kunkel deduced that "Inherent in that decision making was the assumption that there was a public need for the goods and services that the business tenants of the park would provide." (RIFF Ex. 22 p. 5)

While this leap in reasoning is certainly suspect on its face, when challenged on cross-examination, it became apparent that the alleged foundation for this deduction had no basis in fact. Indeed, Mr. Kunkel acknowledged that the funding which he referenced in his pre-filed testimony occurred in the mid-nineties through a bond referendum which was approved by the Rhode Island Legislature; moreover, Mr. Kunkel could not point to a single committee report, legislative report, or hearing report which discussed the public need for a ferry service from Quonset Point to Block Island. (TR. 3-15-16 pp. 227-228). The witness further admitted that the 1990's was before the time that high-speed ferry service was widely adopted in the Northeast. (TR. 3-15-16 p. 228).

Clearly then, this first "basis" must fail as being neither rational nor logical in support of Mr. Kunkel's opinion on need.

(2) The second basis for Mr. Kunkel's opinion on public need was that "the QDC (Quonset Development Corporation) Board of Directors made a policy decision when it granted RIFF's concession/land lease and approved its bulkhead improvements, that those actions would promote the manifest federal and State policies mentioned above, as well as serve the public marine transportation needs." (RIFF Ex. 22 p. 5)

The "manifest federal and State policies mentioned above" to which this statement refers involve the Legislature's decision to issue the bond referendum. It has been clearly demonstrated, however, that the Legislature's decision had nothing to do with the need for a high-speed ferry service to Block Island or anywhere else. Incredibly, this second "basis" piggy-backs on the first basis and infers that because the QDC Board of Directors granted the lease to RIFF, that this meant that the Board was acknowledging the Legislature's "opinion" that there was a need for the high-speed ferry service to Block Island.

The following testimony is illustrative of the fallacy of this argument.

Q. Now, the second prong, or the second basis for your opinion is that the Quonset QDC Board of Directors made a policy decision when it granted Rhode Island Fast Ferry's concession/land lease that this would promote the manifest of federal and state policies "mentioned above," that being the policies referenced in the first basis for the opinion. But we've already established that nowhere in the legislative record is the adoption or the approval of those bonds at all related to a high-speed ferry service from Quonset to Block Island, correct?

A. Correct.

Q. Can you point to a single Board of Directors minutes which establishes that when the Board of Directors entered into the lease with the Rhode Island Fast Ferry that the Board had made a decision that there was public need for service, fast ferry service from Quonset to Block Island?

A. There was no--the approval on the lease was based on running the high-speed ferry from Quonset to Martha's Vineyard.

Q. So, specifically, you cannot point to a single Board of Directors meeting minutes which establishes that the Board came to the conclusion when it granted the lease to Rhode Island Fast Ferry that there was a public need for fast ferry service from Quonset to Block Island, isn't that right?

A. Correct. (TR. 3-15-16 pp. 228-229)

Clearly, the QDC's entering into the lease with the RIFF had nothing to do with a fast ferry service to Block Island. Mr. Kunkel's own testimony establishes that this second "basis" must fail as being neither rationally nor logically related to Mr. Kunkel's opinion on need.

(3) The third basis for Mr. Kunkel's opinion on public need was his "studied opinion" that there is a dormant, unserved market for additional high-speed ferry service to Block Island. (TR. 3-15-16 pp. 229-230).

Testimony at the hearing clearly demonstrated that this "basis" is based on nothing, no data, no studies, no interviews, no surveys. Rather, Mr. Kunkel asserts that he is entitled to arrive at this opinion because he is an "expert." Interestingly, RIFF's own expert witness, Dr. Costa, contradicted Mr. Kunkel's assertion. Specifically, Dr. Costa testified that the size of the sample affects the margin of error in determining how a population would act. Mr. Kunkel had no survey and no samples whatsoever. In this regard, Dr. Costa testified:

Q. So having no one in the sample would not be a valid way to make an opinion as to how the population would act, correct?

A. I imagine it would be a personal opinion. Statistically speaking, you could not perform any sort of analysis if there is no data. (TR. 3-15-16 p. 43).

When confronted with Dr. Costa's testimony, Mr. Kunkel replied that he did not agree with her analysis. (TR. 3-15-16 p. 236).

In his prefiled testimony, Mr. Kunkel stated that there has not been a saturation of demand for travel to Block Island. (RIFF Ex. 22 p. 5). Moreover, upon questioning by the Division's attorney, he stated that there is no saturation point met yet in the high-speed ferry

market. (TR. 3-15-16 p. 272). As discussed above, this opinion is not supported by any studies or data. Moreover, these statements directly contradict Mr. Kunkel's prior sworn testimony to the Division in Docket No. D-05-06. The Town requests that the Hearing Officer take judicial notice of the Division's Report and Order in that docket and, specifically, of the Division's statement which appears on page 32 of the Report and Order as follows:

Mr. Kunkel testified that at present there are approximately 966,700 seats of high-speed ferry capacity serving Block Island. He related that based on IHSF's and BI Express' 2004 ridership numbers, "only 16 percent of the total market capacity was utilized." Mr. Kunkel related that this means that at existing market capacity over 800,000 passenger seats remain unutilized and available to the Block Island market. Mr. Kunkel emphasized that this excess capacity problem is worsened when you add the approximately 320,000 passenger seats offered by VFF. Mr. Kunkel related that in economic terms, Interstate's proposed fast ferry would represent another fast ferry carrier in an already "saturated" market. Mr. Kunkel stated that based on these facts, Interstate's entry into this market would be "absurd, economically irrational and contrary to the public interest."

The testimony elicited on cross-examination from Mr. Kunkel further establishes that:

(i) Despite the fact that he referred to game theory in his pre-filed testimony and in his live testimony, he did not ever actually prepare any game theory payoff matrix to determine that there was a dormant, unserved market for an additional high-speed ferry service to Block Island from Quonset. (TR. 3-15-16 p. 252).

(ii) He does not consider himself to be a marketing expert. (TR. 3-15-16 p. 259).

(iii) He was not given any information to review prior to preparing his testimony. (TR. 3-15-16 p. 260).

(iv) The last time he testified in a CPCN matter he was given a business plan for the proposed service. (TR. 3-15-16 p. 260)

(v) In preparing his testimony, he did not rely on any specific tourism travel or population studies or reports. (TR. 3-15-16 p. 261).

(vi) He did not perform any studies regarding whether the proposed RIFF service is in the public interest or needed. (TR. 3-15-16 p. 261).

(vii) He did not review Block Island's Comprehensive Plan to determine whether the RIFF proposal is in compliance with the plan. (TR. 3-15-16 p. 262).

(viii) He has never conducted any market surveys for businesses. (TR. 3-15-16 p. 262).

(ix) He has not seen any studies that demonstrate that RIFF's service would not negatively impact Interstate's revenues. (TR. 3-15-16 p. 264).

(x) He has never done a study to determine what percentage of RIFF's passengers will be passengers who have never been to Block Island at all. (TR. 3-15-16 p. 264)

At the conclusion of Mr. Kunkel's testimony, the Town moved to strike that testimony and Mr. Kunkel's opinion pursuant to Division Procedural Rule 24(c). Citing numerous reasons for the motion as articulated herein and in the transcript of the proceedings of March 22, 2016, the Town contends that there is no basis in fact for that opinion and that it is merely speculative. Interstate joined in the motion and, in so doing, counsel to Interstate stated: "I apologize for the strong words, but in my opinion it was an embarrassment that Mr. Kunkel would show up at this Division to express the opinions that he expressed without a single data point upon which to base them. I join in the motion." (TR. 3-22-16 pp. 13-14).

RIFF's attorney argued in opposition to the motion. During his argument, RIFF's attorney essentially made the same argument as Mr. Kunkel, that is, Mr. Kunkel is entitled to give an opinion because he is an expert. RIFF's attorney went on to state that Mr. Kunkel is an expert in

marketing and economics (TR. 3-22-16 p. 16), despite Mr. Kunkel's testimony that he does not consider himself to be a marketing expert. (TR. 3-15-16 p. 259). At no time did RIFF's attorney reference during his argument an actual, articulated factual basis for Mr. Kunkel's opinion.

Mr. Kunkel and RIFF's attorney aver that Mr. Kunkel can testify concerning his opinion because he is an expert. This argument, taken to its logical conclusion, means that because Mr. Kunkel is an economist he can opine on anything that affects the economy without any data, surveys, or studies whatsoever. This argument is in direct violation of Rhode Island law pertaining to the admissibility of expert opinion. In *Franco v. Latina*, 916 A.2d 1251, 1258 (R.I. 2007), the Rhode Island Supreme Court articulated the well-established rule regarding the requisite foundation for the admissibility of an expert opinion. In *Franco*, the court stated:

When presenting opinion testimony, “an expert witness shall be first examined concerning the facts or data upon which the opinion is based.” R.I. Evid. R. 705. An expert opinion must be derived from sufficiently articulated facts to allow the trial justice to determine whether the opinion elicited has probative force or is merely speculative. *Gorham v. Public Building Authority of Providence*, 612 A.2d 708, 717 (R.I. 1992). “An expert may not give an opinion without describing the foundation on which the opinion rests.” *Id.* (quoting *Nasco, Inc. v. Director of Public Works*, 116 R.I. 712, 721, 360 A.2d 871, 876 (1976)).

This rule is further set forth in the cases of *Nasco, Inc. v. Director of Public Words*, 360 A.2d 871 (R.I. 1976), and *Sweet v. Murphy*, 473 A.2d 758 (R.I. 1984), where in both cases the Supreme Court held that an expert's opinion based solely on the witness' experience without detailing any specific reasons or factors, was entitled to no weight, and that an expert may not give an opinion without describing the foundation on which his opinion rests.

Similarly, in *Gorham v. Public Building Authority of the City of Providence*, 612 A.2d 708, 717 (R.I. 1992), the Rhode Island Supreme Court explained that an expert may not give an opinion without describing the foundation on which his opinion rests and that the facts upon which the opinion of the expert is based must be stated because otherwise, 'it becomes impossible to ascertain whether the conclusion drawn from them possesses sufficient probative force; or is not mere conjecture or speculation.'

The Town has established that the alleged bases for the opinion of Mr. Kunkel as to the public need for a new high-speed ferry service from Quonset to Old Harbor, Block Island are fallacious and not factually supported. The Kunkel opinion has no probative force.

Based on the foregoing, the Town respectfully submits that its motion to strike should be granted.

## II. RIFF HAS FAILED TO MEET ITS BURDEN OF ESTABLISHING NEED.

R.I.G.L. § 39-3-3 entitled, "Certificate requirement for water carriers," provides that "no 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." The Rhode Island Supreme Court, in *Abbott v. Public Utilities Commission*, 136 A. 490 (RI 1927), discussed the meaning of the statutory reference to public convenience and necessity. In so doing, the Supreme Court noted that this phrase does not have a precise meaning and that the word convenience is not to be interpreted as meaning handy or easy of access; rather, the Supreme Court stated that the word convenience was to be given the interpretation "in accord with its regular meaning of "suitable," "fitting," and "public convenience" has reference to something fitting or suited to the public need." The court further stated:

The 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. In 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.* at 491.

The Town submits that RIFF has failed to establish that there is a public need for a new fast ferry service from Quonset to Old Harbor, Block Island. As discussed above in Section I of this Post-Hearing Memorandum, the opinion of RIFF's expert as to public need should be

stricken because the opinion has no competent basis and the alleged bases for this opinion were shown to be without foundation. Moreover, RIFF's remaining expert, Dr. Costa, testified that she is a mathematician and that it was not her purpose to testify regarding whether there is a public need for a new high-speed ferry service from Quonset Point to Block Island. (TR. 3-15-16 p. 41)

The remaining witnesses who testified on behalf of RIFF also did not establish public need. In this regard, the testimony of each witness, none of whom were submitted as an expert, is discussed below.

### **Myrna George**

Myrna George of the South County Tourism Council testified that the council was in favor of RIFF's proposal because it would ease the summer traffic burden and that it was her opinion that the ferry service from Quonset would reduce traffic. She further acknowledged that the only way that could happen is if those people who otherwise would have been traveling down the highway to Galilee instead divert over to Quonset. (TR. 3-2-16 p. 48) Ms. George was not provided with any information by Mr. Donadio or RIFF prior to preparing her testimony. (TR. 3-2-16 p. 41)

When asked about the opinion expressed in her prefiled testimony concerning need, the witness explained that the need to which she was referring, "spoke to the need of an overburdened highway and that need was not satisfied at the present time. We have two hours of congestion at the height of the season." (TR. 3-2-16 pp. 53-54)

In response to the motion of Interstate and the Town to strike this testimony, the Hearing Office stated that he was interpreting the witness' testimony to be, generally speaking, "that there is a huge traffic problem in the summertime, especially on the weekends and peak periods down

in the South County area, and it's her belief and the tourism council's belief that if some of that traffic is diverted to Quonset, that could have the potential to alleviate some of the traffic." (TR. 3-2-16 p. 70) Based upon that interpretation, the motion to strike was denied.

In summary, there was nothing in the testimony of Ms. George to establish a public need for a new fast ferry service from Quonset to Block Island.

### **Martha Pughe**

Martha Pughe, a former member of the North Kingstown Chamber of Commerce, testified that her primary concern is with improving business in the Town of North Kingstown. (TR. 3-2-16 p. 80) She is not an expert but believes that the RIFF option will encourage more commerce by tapping into the market of people who might not otherwise have traveled to the island; however, when asked about the basis for this opinion, Ms. Pughe testified that she did not rely on any studies and that there was nothing that we could look at or see which would provide a foundation for her testimony. (TR. 3-2-16 p. 75) In summary, this witness provided no competent testimony about a public need for a new fast ferry service from Quonset to Block Island.

### **Elizabeth Dolan**

Elizabeth Dolan is the past president of the North Kingstown Town Council. In her prefiled testimony, Ms. Dolan stated that the council supported the RIFF proposal because it would bring additional tourism revenues to that town and to Block Island.

Ms. Dolan did not testify as an expert and nothing in her testimony was related to the public need for a new ferry service from Quonset to Block Island. On cross-examination, Ms.

Dolan acknowledged that it was "just an assumption" that the proposed ferry service would bring additional revenues to Block Island. (TR. 3-2-16 p. 92) Ms. Dolan further testified that she did not review the Town's comprehensive plan because she is more concerned about her own town's goals which involve coordinating with the Quonset Development Corporation and that her concern as a representative of North Kingstown is to benefit North Kingstown. (TR. 3-2-16 p. 98)

Ms. Dolan did admit that if traffic was diverted to Quonset instead of Galilee, Interstate will have summertime revenue loss. (TR. 3-2-16 pp. 99-100). This witness also remarked that her testimony regarding the "public interest," was referring only to the "public interest" of North Kingstown. (TR. 3-2-16 p. 100)

In summary, Ms. Dolan did not provide any competent evidence in support of RIFF's position that there is a public need for its proposed service.

### **Robert Billington**

Robert Billington of the Blackstone Valley Tourism Council stated in his prefiled testimony that it is his opinion and the opinion of the Blackstone Valley Tourism Council that many Rhode Islanders do not travel to Block Island because it is viewed as difficult to reach and that there is a public need for the proposed RIFF service. (RIFF Ex. 8 p. 4) During his testimony at the hearing, however, the witness stated that he was not speaking for the Blackstone Valley Tourism Council, that the council has not taken a position on the RIFF proposal (TR. 3-2-16 p. 112), and that he was not testifying as an expert.

Mr. Billington's opinion as to an alleged "pent-up demand" for more convenient travel to Block Island is not based on any facts, just his assumptions and what he said was the experience

gained from running a tour to Block Island; however, when questioned about this tour, the witness admitted that the tour ran only once a year in May and that the tours were full. Significantly, no person to his knowledge ever failed to take the tour because participants took the ferry from Narragansett, and no one ever stated to him that he did not want to go on the tour because the ferry was leaving from Narragansett. (TR. 3-2-16 pp. 119-120)

Mr. Billington was never shown a business plan by RIFF and the only information that Mr. Donadio gave him about RIFF's proposal was that he was thinking about starting up a service from Quonset to Block Island. (TR. 3-2-16 p. 121) Moreover, the witness had no idea that the New Shoreham Town Council was not in favor of the proposal. Upon learning that fact, Mr. Billington stated, "I think communities are the stakeholders, they're the final judge. We need to work with what they want...That has to be reconciled with the people of Block Island..." (TR. 3-2-16 pp. 123-124)

At the conclusion of Mr. Billington's testimony, the Town and Interstate moved to strike the testimony. In response to the motion, the Hearing Officer stated that he was taking this testimony "as his personal opinion as if he were a member of the public offering public comment." (TR. 3-2-16 p. 145)

The Town respectfully submits that Mr. Billington did not provide any competent evidence in support of RIFF's position that there is a public need for the proposed service.

**Steven King**

Steven King is the managing director at the QDC. As was the case with the other RIFF witnesses, he was given no information at all about the proposed RIFF fast ferry service other than Mr. Donadio telling him that he was interested in starting up the route and asking if they would be supportive of RIFF using the Quonset facility. (TR. 3-2-16 p. 151)

This witness responded, "yes" in his prefiled testimony about whether there is a public need for RIFF's proposed ferry service (RIFF Ex. 10 p. 3); however, when asked about this opinion on cross-examination, Mr. King stated that he did not make the statement that there is a public need for the new proposed service. (TR. 3-2-16 pp. 147-148) When confronted with the statement, the witness testified that he did recall but that the statement was made in connection with the use of the public investment in the ferry terminal, the access highways and the Quonset infrastructure, and that: "So our view of the public being served is by utilizing those investments that have been made." (TR. 3-2-16 p. 148) The public need opinion was limited to the public need at Quonset to use the ferry terminal and infrastructure. (TR. 3-2-16 p. 148) In addition, he testified that the QDC Board of Directors has not taken a position on the RIFF proposal. (TR. 3-2-16 p. 151)

Clearly, Mr. King did not provide any competent evidence about the public need for RIFF's proposed high-speed ferry service.

**Charles Donadio, Jr.**

Mr. Donadio, owner and president of RIFF, made his first presentation to the Town Council on August 5, 2013 concerning a proposed passenger ferry service from Quonset Point to Old Harbor. The Town Council meeting minutes which are a matter of public record, establish that Mr. Donadio stated that he planned a summer-only service which would dock in Old Harbor;

however, he did not have a landing plan. It was stated that his ferry will carry luggage and bicycles but that the transporting of vehicles and freight are not included. Mr. Donadio further estimated two to three round trips per day from Memorial Day to Columbus Day.

On September 18, 2013, Mr. Donadio made another verbal presentation to the Town Council regarding the operation of a ferry from Quonset Point to Old Harbor. He stated that he was seeking the Town's support and that he “wants a positive relationship” with the Town and is “not planning on fighting the Town,” that he does “not want to get involved in a big battle with the Town.” He further stated: “I want a good relationship with the Town so it’s important for me to know how you stand and what you want to do because I want to go through this process with you as a partner.” He clearly stated that he “is not going to force a ferry service on this island.”

The Town council members expressed numerous concerns about this proposal including:

- a. Old Harbor is a relatively small harbor with much traffic in the summer months including the local fishing fleet, the charter fishing fleet, other charter boats, transient wharfage in Old Harbor, pleasure vessels and already existing ferries. The addition of yet another ferry to that harbor will cause further disruption, crowding and problems with vessel maneuvering. Safety is a serious concern.
- b. The addition of a new passenger service at a time when the island is already saturated with people is a serious concern.
- c. Ferry service rate increases as determined by the Public Utilities Commission ("PUC") cause a hardship to residents of the island. One of the factors which is a component of the PUC decision to allow a rate increase is the revenue of Interstate. Interstate provides the only ferry service to and from Block

Island during the off-season months and serves as a lifeline from the Town to the mainland for island residents. The revenues which Interstate Navigation obtains from the in-season period of Memorial Day to Columbus Day support the off-season ferry service.

d. RIFF plans to operate only from Memorial Day to Columbus Day, depending on demand and, if allowed to operate, would divert significant revenues from Interstate, thus resulting in either another rate increase for Town residents or a substantial reduction in service during the off-season months.

The New Shoreham Town Council took a vote on RIFF's proposal. Specifically, First Warden Gaffett moved to oppose the application because among other things, it does not meet island's needs for year round service, it does not meet island needs for carrying freight, and there are concerns about the effect on the lifeline service. This motion carried and the New Shoreham Town Council voted to oppose the application on behalf of the citizens of the Town.

The Town requested that RIFF honor Mr. Donadio's commitment to the Town Council that he would not pursue an application for the ferry service if the Town opposed the plan. Specifically, the Town, through its solicitor, both orally and in writing requested that the RIFF withdraw its application before the Division relating to a certificate for ferry service from Quonset Point to the island. Mr. Donadio refused to honor his commitment.

Charles Donadio, Jr., through these proceedings, opined that he believes that there is a public need for the proposed high-speed ferry service to Block Island and that there is a market of passengers who choose at this time not to travel to Block Island but who would travel to Block

Island if RIFF's service from Quonset is available. When pressed about the basis for this belief, Mr. Donadio stated that it was his experience; however, he had conducted no studies, no interviews, no surveys and had no data upon which to base this belief. In addition, RIFF has no formal business plan, no formal marketing plan, no formal marketing feasibility study, no formal advertising budget or plan, no formal revenue projections, and no formal profit or loss statements. (TR. 3-15-16 pp. 132-34).

The Hearing Officer ruled that Mr. Donadio's testimony would not be treated as expert testimony. (TR. 3-15-16 p. 95). There was no competent evidence provided by Mr. Donadio which would substantiate his claim that public convenience or necessity require RIFF's proposed high-speed ferry service.

Interstate's expert Dr. Mazze explained that the witnesses for RIFF had "...presented no studies that concluded that there was a pent-up demand for more convenient travel to Block Island and that a fast ferry from Quonset Point will increase the number of travelers to Block Island via fast ferry rather than redistribute the number of travelers among ferry carriers." (Interstate Ex 5 p. 14) Dr. Mazze further testified in his prefiled testimony that RIFF had "... presented no studies that showed that the passengers of Interstate Navigation were receiving inadequate service or there was not enough capacity on the current Interstate Navigation hi-speed and traditional ferries to meet the needs of passengers going to and from Block Island to Rhode Island." (Interstate Ex 5 p. 14)

It should also be noted that in analyzing Mr. Kunkel's claim that Interstate's survey is somehow evidence of public need, Dr. Mazze testified:

Since Mr. Kunkel did no independent research, and provided no study or data of his own, he would like to use the marketing study I designed as a basis for his

conclusion. But for the reasons I have previously explained, my study simply cannot be used to conclude that there is an unsatisfied public need for a Quonset fast ferry. What my study shows, in conjunction with the analysis of Mr. Edge, is that if the Division authorizes RIFF's proposed service, there will be a significant negative impact on Interstate's year-round lifeline ferry service to Block Island. (Interstate Ex. 6 p. 11)

Mr. Donadio's testimony did not provide any probative evidence of public need. The opinion that he did express was a personal opinion only, and was not supported by any interviews, studies, business or marketing plans, or other data upon which to form a foundation for his personal opinion.

In summary, the Town respectfully submits that RIFF has not met its burden of establishing public need for the proposed fast ferry service.

**III. THE HARDSHIP AND INCONVENIENCE TO THE TOWN OF NEW SHOREHAM AND ITS RESIDENTS REQUIRE THAT THE APPLICATION FOR A CPCN BE DENIED.**

The hardship and inconvenience to the Town and its residents which would result from the issuance of a CPCN in this matter require that the application be denied. In support of this position, the Town submits that the Rhode Island Legislature, through the enactment of Title 39, Chapter 3 of the Rhode Island General Laws, has expressed the legislative policy that the effect of the issuance of a CPCN on the Town must be carefully considered and weighed by the Hearing Officer in arriving at a decision on a CPCN application.

Specifically, R.I.G.L. § 39-3-3 states that: "(a) No 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..." and that "(b) A copy of any application filed with either the commission or the division by a water common carrier which includes a New Shoreham terminus shall be provided by the water common carrier to the New Shoreham town clerk by certified mail."

In addition, R.I.G.L. § 39-3-3.1 requires that the Division notify an affected city or town of a petition for issuance of a certificate under § 39-3-3, and states: "Upon receipt of the petition, the division shall fix a time and place of hearing thereon and shall give notice as it may prescribe of the pendency of the petition and of the time and place of a hearing thereon to the petitioner, to the mayor and also any city manager of each city, and to the president of the town council and also any town manager for each town, in which the petitioner desires to pick up or discharge

passengers. The division shall also publish a notice of the hearing at least ten (10) days prior to the date thereof in a newspaper of general circulation in each city or town in which the petitioner desires to pick up or discharge passengers. After the hearing the division shall enter an order granting or refusing to grant the petition."

The above-quoted statutory provisions manifest the Legislature's intent that the Town's position with respect to the issuance of a CPCN and as well as the potential hardships and inconvenience to the Town must be an important part of the determination of whether a CPCN application should be granted. A well-established, basic tenant of statutory construction is that the Legislature is presumed to have intended each word or provision of a statute to express a significant meaning, and the court will give effect to every word, clause, or sentence. *State v. Diamante*, 83 A.3d 546 (R.I. 2014).

The requirement that the Town be given notice of and included in these proceedings demonstrates the Legislature's intent that the position of the Town with respect to the issuance of a CPCN as well as the effects on the Town if the certificate were to issue must be considered by the Hearing Officer.

It is undisputed that Interstate provides the only lifeline service to the Town and that, pursuant to the orders of the PUC, the revenues generated by Interstate's fast ferry service to Block Island support the lifeline service. It is also undisputed that an RIFF high-season, passenger-only service to Block Island would result in a decrease in the revenue which supports Interstate's lifeline service. The only dispute concerned the amount of the loss. Moreover, RIFF does not plan to use any revenues to subsidize the lifeline service, nor does it plan to carry vehicles, food, medicine, equipment, fuel, or any of the other freight which is vital to the residents of the island.

At this juncture, it should be noted that while the word "competition" was often used during the hearings in this case, there is no true competition when viewed from the prospective of the island's residents. The establishment of a new fast ferry service from Quonset to Block Island will not give residents a choice regarding passenger service during the long off-season period, nor will it provide residents with any choice whatsoever concerning the transportation of vehicles or freight. RIFF is not proposing to do any of the heavy lifting; rather, it will take away vital revenues which support the island's lifeline service.

As discussed above, all parties agree that should the CPCN be granted, this would result in a reduction of revenues to support the lifeline service; the only dispute was as to the amount of the reduction. Dr. Edward Mazze, a professor of business administration at the University of Rhode Island, testified regarding this anticipated reduction. Dr. Mazze's credentials were not challenged by RIFF. Indeed, his extensive resume which details the numerous positions that he has held and his experience in the fields of marketing and marketing research demonstrates that he is uniquely qualified to provide an opinion in this case. Based upon his survey, study, and review of the relevant materials and pre-filed testimony, Dr. Mazze concluded that the granting of a CPCN for RIFF's proposed service: "would negatively impact Interstate's lifeline passenger, vehicle and freight services to Block Island by taking away customers and revenue from Interstate during the summer months. Interstate is highly dependent on its summer passenger revenue to support its year round passenger, vehicle and freight lifeline service to Block Island." (Interstate Ex. 5 p. 4)

Specifically, Dr. Mazze's 2013 market research study of Interstate passengers demonstrates that Interstate would lose upwards of seventeen percent (17%) of its traditional ferry passengers and twenty-seven percent (27%) of its hi-speed ferry passengers from Point

Judith during the summer months in the event that RIFF provides its proposed summer-only, passenger high-speed ferry service from Quonset Point to Old Harbor, Block Island. (Interstate Ex. 5 p. 4)

The deleterious effect on service and rates was further described by Dr. Mazze who concluded that the effect of authorizing RIFF's service would be a loss of revenues that would require Interstate to raise rates and/or reduce the number of lifeline service ferries to Block Island.

RIFF attempted to challenge Dr. Mazze's conclusions and opinions through the testimony of Dr. Costa who is a mathematician and who is not a marketing or economic expert. Dr. Costa, however, agreed with Dr. Mazze's conclusion that Interstate would lose passengers and revenue if RIFF operated a fast ferry service from Quonset to Block Island. Dr. Mazze explained Dr. Costa's conclusions as follows:

Dr. Costa did an analysis and concluded based on 95% certainty that between 13% and 21% of the entire population of all Point Judith conventional ferry riders would take the \$50 fast ferry from Quonset. She further concluded that she was 95% sure that the percentage of all Point Judith fast ferry users that would take the fast ferry from Quonset to Old Harbor is between 22% and 32%. Since this number was high, [she] then cross-tabulated questions, made assumptions and developed scenarios to arrive at lower numbers, namely, 4 to 10% of conventional ferry passengers and .04 to 3% of fast ferry customers, using confidence levels from probability sampling." (Interstate Ex. 6 at p. 7)

During cross-examination, Dr. Costa concluded that she was comfortable using a seven percent (7%) customer loss and that the resulting revenue loss would be \$410,888.91. (TR. 3-15-16 pp. 21-23).

Walter E. Edge, Jr. is a certified public account who holds a master's degree in business administration. He also testified about the deleterious effects on Interstate's lifeline service which would result from RIFF operating a passenger-only, fast ferry from Quonset to Old Harbor, Block Island. Specifically, Mr. Edge's calculations demonstrate that Interstate's projected losses would be great than 1.2 million dollars and that the lost revenue would necessitate a fourteen and two-tenths percent (14.2%) raise in rates and/or a reduction in lifeline services. (Interstate Ex. 2 at p. 2) Schedules WEE-1 and WEE-2 set forth the manner by which Mr. Edge calculated the expected lost revenue of \$1,214,509.

During the March 24, 2016 hearing, Mr. Edge further explained, through new schedule WEE-3 (Interstate Ex. 15), that the projected decrease in passengers as determine by Dr. Mazze would require an 8.17% increase in traditional rates and a 37% increase in rates for high-speed service. (TR. 3-22-16 p. 187)

Based on the testimony, calculations and opinions from the hearing, it is clear that one of the main factors which would determine the number of passengers who would be pulled away from Interstate's ferry service in Narragansett to RIFF's fast ferry service in Quonset is the cost of the trip. RIFF has advised the Division that the initial, anticipated round-trip ticket price would be fifty dollars (\$50.00); however, there are no guaranties that the price would not be lower. In fact, Mr. Donadio has stated that the RIFF ticket price could be between forty dollars (\$40.00) and fifty dollars (\$50.00). What is guaranteed, however, is that the price of Interstate's tickets will rise and, as they do, Interstate's prices will move closer to RIFF's prices. The closer the pricing, the more passengers will be lost from Interstate each year.

Interstate's lifeline service to Block Island is essential for the residents of the island. The key factor which determines the PUC setting of Interstate's ferry rates is the revenue generated

by Interstate's fast ferry operations. One hundred percent (100%) of the revenues from Interstate's in-season operations support the lifeline, off-season, rates. If RIFF is allowed to take passengers from Interstate's operations, rate increases will occur and/or the frequency of service will be reduced. Many times during the off-season, there is one boat to the island on certain days. The Town Council voted to oppose this application because, among other things, RIFF's proposal does not meet Block Island's need for year-round service or for carrying vehicles and freight.

It is clear from the testimony presented that Interstate's customers will divert to Quonset. A person intending to go to Block Island will be traveling down Route 4. There will be sign, "Block Island Ferry, Next Exit," but the next exit will be Quonset. That alone will divert persons intending to travel to Block Island by ferry.

An increase in rates does not just refer to passenger rates, it also refers to freight rates. Virtually every product/commodity which the residents of Block Island use including food, oil, gasoline, propane, medicine, building materials and supplies, clothing, etc. arrives on Interstate's ferries. Increases in freight rates necessarily result in an increase in the cost of all such items, costs which are already substantially higher than on the mainland. The year-round residents of the island engage in such occupations as school teachers, fishermen, construction workers, farmers, day laborers, restaurant workers, etc. Increases in passenger and freight rates and decreases in ferry service will result in substantial hardship to the residents of Block Island.

Island residents take the lifeline ferry to the mainland for medical treatments such as dialysis and chemotherapy, for doctor's appointments, family visits, school athletic meets, school field trips, etc. On occasion there may be as few as ten passengers on a ferry but Interstate still operates.

The Town Manager discussed these issues when she testified as follows:

I find it hard to believe that the word 'competition' as (sic) used in Supreme Court decisions or in these hearings doesn't include the concept of fair competition, and that's really what we've always been talking about here. In sixteen years, I've never seen another ferry company or developer come in and say, 'We'd like to run a ferry twelve months a year to Block Island.' It simply doesn't happen. From probably October 'til early May, the service that is provided to the Island, which makes up the lifeline service for Interstate, is the most critical element for the Island and for all of the residents on the Island. On any given day, particularly a Tuesday or a Wednesday, you might find ten or fifteen people on the ferry in the wintertime. It is not a money-making operation...And for all of the times that we have been faced with these issues of competition, to us on the Island, it is inconceivable that a service in June, July, August and September bringing people to the island is any form of fair competition." (TR. 3-24-16 pp. 16-17)

RIFF is not proposing to fulfill any of the island's lifeline needs. RIFF will not carry freight, automobiles, food, medicine, trucks, construction equipment, gasoline, diesel or propane; rather, the RIFF's sole purpose will be to take away the high season passenger revenues which support the island's lifeline ferry service.

In addition to the hardship discussed above, the Town Manager, the First Warden, the Second Warden and the Town Harbormaster, all testified to the inconvenience, traffic, congestion and indeed danger that would result in a fast ferry coming into the corner of the Old Harbor at the two possible docking locations depicted on the diagram RIFF submitted (RIFF Ex. 17). Block Island's police force and Block Island's Harbors' Department are not equipped to handle this situation.

In summarizing this situation the Town Manager testified:

...anyone who has seen the Old Harbor in the summertime, as the solicitor mentions, can well understand that it's almost impossible to design a safe flow of additional people in that Old Harbor Basin, or an additional ferry in that Old Harbor Basin. We have our charter fishing boats on the west dock. We have Ballard's Inn which brings in tons of people every day. During the day, the same time that a ferry would be coming or going, that causes a great deal of activity there. We have a bicycle rental. We have a moped rental with a training track there. It's a very limited dead-end space in terms of traffic also. And the idea of taxis trying to somehow maneuver down their just seems to be a greater burden for the town than any kind of convenience. (TR. 3-24-16 pp. 16-17)

Steven Land, the Town Harbormaster who is also a New Shoreham police officer, further described the problems that having RIFF coming into that corner of the Old Harbor and transporting passengers from those docks would cause.

Officer Land testified:

In the summer, obviously, boats come and boats leave, it's transient. On the weekends from Thursday through Sunday evening, you can have up to seven boats rafted out almost the entire length of the east dock. We put the larger boats in the corner and we've got the smaller ones. And we have to move them around. People say, 'I have to leave. I have an emergency.' We have to move seven boats to get one out. They raft stern to along the south dock. The charter fleet is in the corner here, the west is all commercial. The bait dock...we actually lease that out too. I've seen up to three 70-foot, you know, sport fishers on this. Holiday weekends, it's busy. It's very, very busy. It's hard to manage. It's not easy. So you can imagine this whole area filled in with boats, and people actually cross boat to boat. That's why the dock becomes so congested of bicycles and stuff because they don't want to carry it seven boats out. (TR. 3-24-16 pp. 36-37)

In summary, both the hardship and the inconvenience to the Town of the proposed RIFF service mitigate against issuing the CPCN certificate.

**IV. A REVIEW OF THE FACTORS TO BE CONSIDERED IN DETERMINING WHETHER A CPCN SHOULD ISSUE WEIGHS AGAINST ISSUING THE RIFF CPCN.**

In determining whether a CPCN should be granted, the Division must, through the combination of statutory requirements and the Rhode Island Supreme Court mandates as discussed in *Abbott v. Public Utilities, supra*, receive evidence and consider information on certain issues, including, but not limited to the following as expressed in the context of this case:

- (i) Has RIFF proven that “public convenience and necessity” require the proposed service from Quonset to Old Harbor, Block Island.
- (ii) Does Interstate meet the needs of the public for ferry travel to Block Island.
- (iii) What investments of capital has Interstate made in its ferry operations.
- (iv) What is the nature of the ferry service being rendered by Interstate.
- (v) If Interstate’s service is adequate, what would be the probable effect of admitting RIFF into the fast ferry field which is already adequately served.
- (vi) What is the anticipated effect of RIFF's proposed ferry service operations upon Interstate’s revenues.
- (vii) Would RIFF's proposed ferry service operations have an adverse impact on the adequacy of the existing services provided by Interstate.
- (viii) Is RIFF fit, willing, and able to properly perform the service proposed.

In *Abbott*, the Supreme Court ruled that the Commission is: ". . . justified in considering 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 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 (*Id.* at pp. 491-92).

A consideration of all of these factors, each of which is discussed below, weighs heavily against issuance of CPCN to RIFF.

(i) **Has RIFF proven that “public convenience and necessity” require the proposed service from Quonset to Old Harbor, Block Island.**

Section II of this Post-Hearing Memorandum sets forth in detail the bases for the Town's assertion that the RIFF has not established that there is a public need for a new fast service from Quonset to Block Island. In addition, Section III contains the arguments in support of the Town's position that the hardship and inconvenience to the residents of Block Island must be considered in reviewing the "public convenience" issue. The arguments of Section II and Section III are incorporated herein.

(ii) **Does Interstate meet the needs of the public for ferry travel to Block Island.**

The evidence presented at the hearing clearly demonstrated that the needs of the public for ferry travel to Block Island are being met by Interstate. Passengers are able to obtain seating

on either Interstate's traditional ferry or fast ferry and there is a surplus of available seating. The fast ferry market to Block Island is certainly not saturated.

Dr. Mazze, in reviewing the pre-filed testimony, stated the following as to RIFF's witnesses: "They presented no studies that showed that...there was not enough capacity on the current Interstate Navigation hi-speed and traditional ferries to meet the needs of passengers going to and from Block Island to Rhode Island." (Interstate Ex. 5 p. 14).

**(iii) What investments of capital has Interstate made in its ferry operations.**

Mr. Edge, the certified public accountant for Interstate, explained that Interstate's investments into fixed assets have been over thirty million dollars. (TR. 3-22-16 pp. 159-160) The amount of this substantial investment of capital by Interstate, a family owned and operated business, was not challenged by RIFF.

**(iv) What is the nature of the ferry service being rendered by Interstate.**

The evidence presented at the hearing established that Interstate runs a year-round, lifeline service to Block Island through its traditional ferry service. That lifeline service carries not only passengers to and from the mainland but is also responsible for the transportation of food, fuel, medicine and other freight essential to the residents of the island. In the high season, Interstate also runs fast ferry services from Narragansett and Newport. One hundred percent (100%) of the revenues from these services are used to subsidize the year-round, lifeline service.

**(v) If Interstate's service is adequate, what would be the probable effect of admitting RIFF into the fast ferry field which is already adequately served.**

It is interesting to note that not a single witness testified that Interstate's service was not adequate. Indeed, most of the testimony was that the service was very adequate and that the witness was satisfied with the service. Specific examples of this testimony follow:

- During public comment, Kerry McKay who is the president of the North Kingstown Town Council, a Quonset Point Development Corporation Board member, and an owner of McKay's Furniture stated that she uses Interstate's service on a fairly regular basis, and, with respect to the adequacy of Interstate's service, Ms. McKay concluded: "It's very adequate. They've been exceptional to work with, we've experienced no damage, no loss of product, and we use it in the summertime to a fare thee well." (TR. 3-2-16 p. 26)
- Similarly during public comment, Ross Notaroberto, a Cranston resident, stated that Interstate provides: "very adequate service." (TR. 3-2-16 p. 29)
- Elizabeth Dolan, the past president of the North Kingstown Town Council, testified that she has frequently traveled to Block Island and that when she traveled to the island she felt that Interstate provided adequate service to both her and her family. (TR. 3-2-16 p. 100)

- Steven King, the managing director Quonset Point Development Corporation, testified that his experience traveling to Block Island on Interstate's ferries has been fine and that the service is adequate in his opinion. (TR. 3-2-16 p. 155)
- Dr. Costa, RIFF's expert, stated under oath that she has been to Block Island about four or five times, that she used Interstate's ferry service, and that she found it to be adequate. (TR. 3-15-16 p. 24)
- Charles Donadio testified that Interstate's service is adequate. (TR. 3-15-16 p. 123)
- Mr. Kunkel, RIFF's expert, conceded that Interstate is adequately serving the lifeline needs of Block Island. (TR. 3-15-16 pp. 261-262)
- Last, Dr. Mazze, in reviewing the pre-filed testimony, stated the following as to RIFF's witnesses: "They presented no studies that showed that the passengers of Interstate Navigation were receiving inadequate service..." (Interstate Ex. 5 p. 14).

Given that it is uncontroverted that Interstate's ferry service to Block Island is adequate, the second prong of this issue involves an examination of the probable effect of admitting RIFF into the fast ferry field which is already adequately served. A discussion of this issue also involves issues:

- vi) **What is the anticipated effect of RIFF's proposed ferry service operations upon Interstate's revenues; and**
- (vii) **Would RIFF's proposed ferry service operations have an adverse impact on the adequacy of the existing services provided by Interstate.**

These issues are discussed in detail in the prior sections of this Post-Hearing Memorandum. To summarize:

- o Dr. Mazze's 2013 market research study of Interstate passengers demonstrates that Interstate would lose upwards of seventeen percent (17%) of its traditional ferry passengers and twenty-seven percent (27%) of its hi-speed ferry passengers from Point Judith during the summer months in the event that RIFF provides its proposed summer-only, passenger high-speed ferry service from Quonset Point to Old Harbor, Block Island. (Interstate Ex. 5 p. 4)
- o Walter E. Edge also testified about the deleterious effects on Interstate's lifeline service and his calculations demonstrate that Interstate's projected losses would be greater than 1.2 million dollars and that the lost revenue would necessitate a fourteen and two-tenths percent (14.2%) raise in rates and/or a reduction in lifeline services. (Interstate Ex. 2 at p. 2)

- Dr. Mazze concluded that the effect of authorizing RIFF's service would be a loss of revenues that would require Interstate to raise rates and/or reduce the number of lifeline service ferries to Block Island.

(viii) **Is RIFF fit, willing, and able to properly perform the service proposed.**

The Town submits that this question should be answered in the negative. As discussed in Section III of this Post-Hearing Memorandum, the Town's witnesses all described the serious issues involved with Interstate attempting to unload and deliver passengers to that congested corner of Old Harbor. There are multiple safety concerns and the Town does not have the personnel to handle the problems which would arise from any such RIFF operations. Accordingly, the service could not be properly performed.

In addition, the Town incorporates herein by reference the previous memoranda which the Town filed in support of its motion for summary disposition. The materials submitted in connection with those memoranda demonstrate that RIFF will be unable to operate from either of its proposed docking facilities.

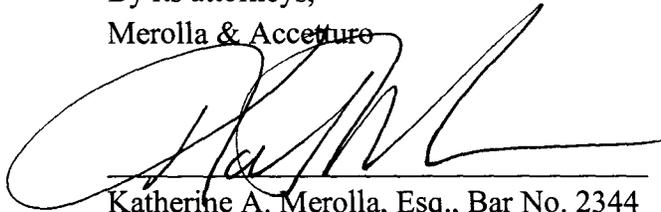
V. CONCLUSION

For the foregoing reasons, the Town respectfully submits that RIFF's application for a CPCN should be denied and the Town urges the Hearing Officer to consider the hardship and inconvenience to the residents of the Town of New Shoreham in rendering his decision.

TOWN OF NEW SHORHAM

By its attorneys,

Merolla & Accettura

A large, stylized handwritten signature in black ink, appearing to read 'K. Merolla', is written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of June, 2016, I emailed a true copy of the foregoing to the attached service list.

A handwritten signature in black ink, appearing to read 'K. Merolla', is written over a horizontal line. The signature is fluid and cursive.

Katherine A. Merolla

**Rhode Island Fast Ferry (RIFF) – CPCN Application Docket No. D-13-51**  
**Updated 10-21-15**

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