

STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: RHODE ISLAND FAST FERRY, INC.:

Docket No. D-13-51

**MOTION OF RHODE ISLAND FAST FERRY, INC.
TO EXTEND THE COMPLIANCE DATE IN THE
DIVISION'S SEPTEMBER 22, 2016 DECISION AND ORDER**

Rhode Island Fast Ferry, Inc. ("RIFF") hereby moves for the Rhode Island Division of Public Utilities and Carriers ("Division") to extend the compliance date for the conditions set forth in its September 22, 2016 Decision and Order granting RIFF a certificate of convenience and necessity ("CPCN") to operate a "fast ferry" service between Quonset Point, North Kingstown, Rhode Island and Old Harbor, Block Island.

ARGUMENT

On September 22, 2016, the Division issued a Report and Order granting RIFF's Application seeking a CPCN to operate a "fast ferry" water carrier of passengers between Quonset Point, North Kingstown, Rhode Island and Old Harbor, Block Island. *See* Division Order No. 22548, dated September 22, 2016, attached hereto as **Exhibit A**. The Division determined that RIFF had satisfied all the requisite requirements of R.I. Gen. Laws §§ 39-3-3 and 39-3-3.1. The Division's Order, however, established that RIFF must meet certain conditions within one (1) year from the issue date of the Division's Order. *Id.* at 141. Those conditions were as follows:

- (1) it has access to suitable docking/landing facilities in Quonset and on Block Island;
- (2) that it has leased, purchased or otherwise identified the vessel(s) it will use in providing its proposed ferry services consistent with the commitments and evidence presented during this case;
- (3) that it has satisfied all Coast Guard requirements associated with the provision of its proposed ferry services;
- (4) that it has satisfied any applicable municipal

permitting requirements; (5) that it has adequate liability insurance in effect; and (6) that it has passed a Division inspection to ensure regulatory compliance.

Id. at 141-42.

Subsequently, on October 12, 2016, the Town of New Shoreham (“Town”) appealed the Division’s Order. On October 14, 2016, Interstate Navigation Company d/b/a the Block Island Ferry (“Interstate”) also appealed the Division’s Order. Although RIFF worked diligently to ensure that it would satisfy all the requisite conditions by the Division’s deadline, due to delays in the appeal process, RIFF was unable to satisfy certain conditions in the Division’s Order by the Division’s deadline. Accordingly, last September, RIFF asked the Division to extend the one-year time limitation contained in the Division’s September 22, 2016 Order. Both the Town and Interstate (collectively “Petitioners”) predictably objected.

After analyzing written argument submitted by all parties¹, the Division granted RIFF’s request, stating that RIFF had “provided sufficient ‘just cause’ to justify a continuance of the one-year deadline contained in Paragraph 3” of its Order. *See* Division Order No. 22877, dated September 18, 2017, attached hereto as **Exhibit C**. The September 18, 2017 Order also stated: “RIFF may request additional continuances, for just cause, in the event that it is still unable to satisfy the conditions precedent contained in Paragraph 2, *supra*, by September 22, 2018.” *Id.* at 6. Just cause exists to support an additional continuance.

Since the Division granted its previous extension request, further delays have developed that require RIFF to request an additional extension from the Division. It is important to note, again, that RIFF has not caused the delays in this appeal process. It is self-evident that since

¹ The Petitioners stipulated that such an extension request, and objections thereto, did not require a hearing and that it is procedurally proper for the Division to issue an order of extension after review of the papers. *See* Superior Court Order, entered by Judge Licht, dated September 12, 2017, attached as **Exhibit B**.

September of 2017, the Petitioners have worked tirelessly to delay this appeal. Petitioners filed not one, but two, remand motions with the Superior Court, requesting that the Division again address the same dockage issue that the Division previously addressed during the underlying administrative hearing process. Petitioners insisted that the Division conduct evidentiary hearings and present witness testimony regarding the dockage issue that the Division previously addressed in full.² The Division's Order denying the Petitioners remand request, after expending the time and resources required for a full review and evidentiary hearing related to dockage, recently issued on July 16, 2018. *See* Division Order No. 23217, dated July 16, 2018, attached hereto as **Exhibit E**.³

Although RIFF has done everything in its power to expedite the appeal, Petitioners have successfully delayed the process and have yet to file their appellate briefs; the original appeals were filed in the Superior Court in October of 2016. As this matter needs to go back before the Superior Court for the filing of appellate briefs, RIFF respectfully requests that the Division extend the deadline set in its September 18, 2017 Order by one year – to September 22, 2019.

CONCLUSION

For the foregoing reasons, RIFF respectfully requests that Division grant its Motion to extend the deadline in its September 18, 2017 Order.

² While the dockage issue was on remand, the Petitioners also filed a Motion to Vacate the Division's Final Order granting RIFF a CPCN. On January 25, 2018, the Division denied Petitioners' Motion to Vacate. *See* Division Order No. 23018, dated January 25, 2018, attached hereto as **Exhibit D**.

³ As a basis for the showing of "good cause," RIFF hereby incorporates the evidentiary hearing record(s) and testimony regarding the status of dock permitting by Bluewater, LLC as presented to the Division on March 30, 2018 and April 4, 2018.

Respectfully submitted,

RHODE ISLAND FAST FERRY, INC.,
By its Attorneys,

/s/ Alan M. Shoer

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Dated: August 7, 2018

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2018, I delivered a true copy of the foregoing document via electronic mail to the Parties in this proceeding.

/s/ Alan M. Shoer