

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. OBJECTING TO
CERTAIN TOWN OF NEW SHOREHAM DATA REQUESTS**

Now comes Rhode Island Fast Ferry, Inc. (“RIFF”) and hereby objects to the Town of New Shoreham’s (“Town’s”) Data Requests, Nos. D-15, D-16, I-5, I-6, I-7, I-8, I-16, I-17, I-18, I-19, I-20 and I-21. The objected to Town data requests seek information that is beyond the scope of discovery. *See* Procedural Schedule, filed with the Rhode Island Division of Public Utilities and Carriers (“Division”) on October 20, 2017 (stating that the scope of discovery for purposes of the January 12, 2018 hearing was that “[t]he Town has the burden of proving that RIFF (through Bluewater) does not have a realistic expectation of constructing Bluewater’s planned docking facilities in Old Harbor, *irrespective of design*, through its permit applications with the USACE or CRMC”)(emphasis added), attached hereto as **Exhibit A**. The information requested by the Town in these data requests seeks information regarding design, not RIFF’s realistic expectation of construction through its permit applications with USACE or CRMC. Accordingly, because Data Requests, Nos. D-15, D-16, I-5, I-6, I-7, I-8, I-16, I-17, I-18, I-19, I-20 and I-21 seek information that is beyond the scope of this proceeding, RIFF requests the Division grant its Motion objecting to these data requests.¹

¹ RIFF will file responsive answers that are within the limited scope of review in this remand matter, as set by the Division in the pre-hearing conference, and as confirmed via e-mail with the parties, on October 20, 2017. However, RIFF does object to the scope of the Town’s Data Requests, Nos. D-1 and D-2 as they are overly broad and beyond the scope set by the Division. Data Requests, Nos. D-1 and D-2 seek “[a]ll Documents” between RIFF and/or Bluewater, Inc. and the United States Army Corps of Engineers (“USACE”) which the request defines as, essentially, any and all communications of whatever kind on whatever topic. The request for “all” such documents, as defined, is beyond the limited scope of review for this remand proceeding, as determined by the Division on October 20, 2017. RIFF will produce the formal permit application and official correspondence that is responsive to these questions as submitted to, or received from, the USACE.

Pursuant to Rule 21 of the Division Rules of Practice and Procedure, “[o]bjection to a data request in whole or in part on the ground that the request is unreasonable and/or the material is not relevant or not permitted or required by law shall be made by motion filed as soon as practicable and in no event later than ten (10) calendar days after service of the request.” *See* Division Rule 21(c)(3). “[R]elevancy of a request shall be determined under the standards established for such determinations under Rule 26 of the Superior Court Rules of Procedure.” *Id.*

On October 20, 2017, the parties appeared before the Division for a pre-hearing conference. During the pre-hearing conference, the Division determined the scope of this remand proceeding, which the Division requested RIFF confirm in an e-mail to the service list. *See Exhibit A.* The Division limited the scope of discovery for purposes of this remand proceeding to the following: “[t]he Town has the burden of proving that RIFF (through Bluewater) does not have a realistic expectation of constructing Bluewater’s planned docking facilities in Old Harbor, *irrespective of design*, through its permit applications with the USACE or CRMC.” **Exhibit A** (emphasis added). No party (including the Town) objected to the discovery scope set by the Division. Because the Town’s Data Requests, Nos. D-15, D-16, I-5, I-6, I-7, I-8, I-16, I-17, I-18, I-19, I-20 and I-21 seek information regarding design and not RIFF’s realistic expectation of constructing a planned docking facility, *irrespective of design*, through its permit applications with the USACE or CRMC, these data requests seek information beyond the scope of this proceeding.

Specifically, Data Requests, Nos. D-15 and D-16 seek “[a]ll contracts that have been entered into pertaining to the design and/or construction of the Proposed East Breakwater Docking Facility [and the Proposed Northerly L Docking Facility] including, without limitation, contracts for engineering, design, environmental or other professional services and contracts for

the purchase of materials and/or equipment.”² Similarly, Data Requests, Nos. I-5 – I-8 ask RIFF to identify which portions of the “Proposed East Breakwater Docking Facility” and which portions of the “Proposed Northerly L Docking Facility” will be “fixed” and/or “floating.”³ Additionally, Data Requests, Nos. I-16 and I-17 ask RIFF questions regarding whether construction of “the Proposed Walkway requires the use of fill/base.”⁴ Further, Data Requests, Nos. I-18 – I-21 seek information regarding the manner in which electricity and water is brought to the proposed docking facilities.⁵

The matter is before the Division for the limited purpose by the Superior Court as follows: “This case is remanded to the Division for the limited purpose of determining whether the Division will exercise its right to revisit this matter pursuant to paragraph four of the Division’s Order of December 10, 2015. Paragraph 4 states: ‘That the Division reserves the right to revisit this matter upon a showing by the Town that it has been successful in its efforts to

² Data Request, No. D-15 states: “All contracts that have been entered into pertaining to the design and/or construction of the Proposed East Breakwater Docking Facility including, without limitation, contracts for engineering, design, environmental or other professional services and contracts for the purchase of materials and/or equipment.” Data Request, No. D-16 states: “All contracts that have been entered into pertaining to the design and/or construction of the Proposed Northerly L Docking Facility including, without limitation, contract for engineering, design, environmental or other professional services and contracts for the purchase of materials and/or equipment.”

³ Data Request, No. I-5 states: “Identify which portions of the Proposed East Breakwater Docking Facility will be fixed.” Data Request, No. I-6 states: “Identify which portions of the Proposed East Breakwater Docking Facility will be floating.” Data Request, No. I-7 states: “Identify which portions of the Proposed Northerly L Docking Facility will be fixed.” Data Request, No. I-8 states: “Identify which portions of the Proposed Northerly L Docking Facility will be floating.”

⁴ Data Request, No. I-16 states: “State whether the construction of the Proposed Walkway requires the use of fill/base.” Data Request, No. I-17 states: “If the answer to I 16 is in the affirmative, describe the type and amount of the fill/base to be used in the construction of the Proposed Walkway.”

⁵ Data Request, No. I-18 states: “Describe the manner by which electricity and water will be brought to the Proposed East Breakwater Docking Facility.” Data Request, No. I-19 states: “State the name and location of all property owners whose permission is required to bring electricity and water to the Proposed East Breakwater Docking Facility.” Data Request, No. I-20 states: “Describe the manner by which electricity and water will be brought to the Proposed Northerly L Docking Facility.” Data Request, No. I-21 states: “State the name and location of all property owners whose permission is required to bring electricity and water to the Proposed Northerly L Docking Facility.”

prevent the construction of Bluewater's planned dock before the USACE or CRMC.'" See Judge Licht's Sept. 12, 2017. The Division determined it was beyond the scope of this remand matter to inquire into the design aspects of the proposed docking facilities. The information sought in these data requests relates solely to the specific design aspects of the proposed docking facilities. Accordingly, RIFF requests the Division grant its Motion objecting to the following specific Data Requests, Nos. D-15, D-16, I-5, I-6, I-7, I-8, I-16, I-17, I-18, I-19, I-20 and I-21.

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

/s/ Alan M. Shoer

Alan M. Shoer, Esq. (#3248)
James A. Hall, Esq. (#6167)
Nicole M. Verdi, Esq. (#9370)
ADLER POLLOCK & SHEEHAN, P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903-1345
Tel: 401-274-7200
Fax: 401-351-4607
Dated: November 14, 2017

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2017, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer

EXHIBIT A

Verdi, Nicole

From: Verdi, Nicole
Sent: Friday, October 20, 2017 3:07 PM
To: 'Massaro, Luly (PUC)'; Katherine Merolla; Shoer, Alan; Hall, James; Charlie@vineyardfastferry.com; Chetherington@riag.ri.gov; Jmunoz@riag.ri.gov; Dmacrae@riag.ri.gov; Michael@McElroyLawOffice.com; nspd2000@yahoo.com; emazze@verizon.net; jlg@BlockIslandFerry.com; MVManitou@aol.com; wedge@beconsulting.biz; Megan@BlockIslandFerry.com; suel@BlockIslandFerry.com; townmanager@new-Shoreham.com; rlacapra@lacapra.com; Spirito, John (DPUC); Kogut, Thomas (DPUC); Mercer, Terry (DPUC); jalyward@northkingstown.org
Cc: casey@cjlfirm.com
Subject: RI Fast Ferry - Docket No. D-13-51
Attachments: D-13-51 Procedural Schedule (Remand).DOCX

Good Afternoon:

Following-up from today's pre-hearing conference, here is the upcoming schedule:

1. Town's discovery (data requests only) due on November 3rd;
2. RIFF's responses due on November 17th;
3. Pre-filed testimony of the Town and RIFF due on December 8th;
4. Rebuttal testimony due on January 5th; and
5. Hearing date: January 12th (subject to publication of the Invenenergy EFSB hearing schedule).

This matter is before the Division in accordance with Judge Licht's September 12, 2017 Remand Order stating: "This case is remanded to the Division for the limited purpose of determining whether the Division will exercise its right to revisit this matter pursuant to paragraph four of the Division's Order of December 10, 2015. Paragraph 4 states: 'That the Division reserves the right to revisit this matter upon a showing by the Town that it has been successful in its efforts to prevent the construction of Bluewater's planned dock before the USACE or CRMC.'"

As was determined by the Division this morning, the scope of the discovery for purposes of the hearing scheduled for January 12, 2018 is as follows: The Town has the burden of proving that RIFF (through Bluewater) does not have a realistic expectation of constructing Bluewater's planned docking facilities in Old Harbor, irrespective of design, through its permit applications with the USACE or CRMC.

For everyone's convenience, I have also included this information in the form of a procedural schedule document, which is attached.

Very best,
Nicole

NICOLE M. VERDI, ESQ. | ATTORNEY
[V-CARD](#) | [BIO](#) | [WEBSITE](#) | NVERDI@APSLAW.COM
One Citizens Plaza, 8th Floor, Providence RI 02903
401.274.7200 | fax 401.351.4607

ADLER POLLOCK & SHEEHAN P.C.

PROVIDENCE - BOSTON - NEWPORT - NEW HAMPSHIRE



This e-mail message is confidential and is intended only for the named recipient(s). It may contain information that is subject to the attorney client privilege or the attorney work-product doctrine or that is otherwise exempt from disclosure under applicable law. If you have received this e-mail message in error, or are not the named recipient(s), please immediately notify NVerdi@apslaw.com and delete this message from your computer and destroy all copies. Thank you.

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
RHODE ISLAND DIVISION OF PUBLIC UTILITIES AND CARRIERS**

D-13-51

Procedural Schedule

November 3, 2017	Town's Discovery (Data Requests Only)
November 17, 2017	RIFF's Discovery Responses
December 8, 2017	Pre-Filed Direct Testimony
January 5, 2018	Rebuttal Testimony
January 12, 2018	Hearing

Scope of discovery for purposes of the January 12, 2018 hearing: The Town has the burden of proving that RIFF (through Bluewater) does not have a realistic expectation of constructing Bluewater's planned docking facilities in Old Harbor, irrespective of design, through its permit applications with the USACE or CRMC.