

April 15, 2015

Via E-mail/Hand-Delivery

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

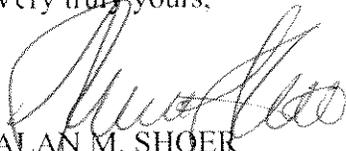
In re: Rhode Island Fast Ferry, Inc. – Motion to Compel  
Docket No. D-13-51

Dear Luly:

On behalf of Rhode Island Fast Ferry, Inc., enclosed please find a Motion to Compel More Responsive Responses to Data Requests and for Extension of the Procedural Schedule in the above docket.

Please let me know if you have any questions.

Very truly yours,



ALAN M. SHOER  
[ashoer@apslaw.com](mailto:ashoer@apslaw.com)

Enclosure

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

In Re: Rhode Island Fast Ferry, Inc.            )

Docket No. D-13-51

**RHODE ISLAND FAST FERRY, INC.'s MOTION TO COMPEL MORE  
RESPONSIVE RESPONSES TO DATA REQUESTS AND FOR EXTENSION  
OF THE PROCEDURAL SCHEDULE**

Pursuant to Rule 21, Rhode Island Fast Ferry, Inc. ("RIFF"), for the reasons explained below, moves the Hearing Officer to compel Interstate Navigation Company, Inc. ("Interstate") to provide RIFF more responsive and/or complete responses to the following data requests: RIFF 1-6, 1-7, 1-8, 1-9, 1-10, 1-11, 1-16 (d), 1-17 (g), 1-32 (a), 1-32 (c), 1-33, 1-34, 1-41 (f) and (g), 1-46 (g), 1-48 (f), 1-48 (i) and 1-49.

Further, RIFF requests that the procedural schedule be adjusted, to allow additional time for RIFF to utilize the information from these more responsive answers (if authorized by the Hearing Officer) to the data requests in RIFF's planned rebuttal testimony. RIFF suggests that, in the event that the Hearing Officer grants any of the relief requested herein that the RIFF rebuttal testimony date be extended to two (2) weeks from the deadline date for Interstate to provide more responsive answers, and for a corresponding shift in the remainder of the procedural schedule.

RIFF presents the following data requests, Interstate responses, and argument for the Hearing Officer's consideration of this Motion:

**RIFF DATA REQUESTS TO MR. MAZZE**

**RIFF DATA REQUEST 1- 6:**

State who selected the actual survey takers, including how and why such selection was made.

## **INTERSTATE RESPONSE TO RIFF 1-6:**

The survey takers were selected by the individuals administering the survey. The survey takers selected every 10<sup>th</sup> purchaser of tickets for pre-selected ferries in the morning and early afternoon of July 31, 2013, August 12, 2013 and September 7, 2013. The interviewers were instructed to ask each respondent the same questions and record verbatim the responses on an individual survey form. If the purchaser of tickets did not want to take the survey, the interviewer was told to ask the next person in line. The objective was to obtain about 200 questionnaires for each day of the survey. Dr. Mazze determined that about 200 passengers a day would be representative of all passengers on traditional and hi-speed ferries traveling to Block Island from Point Judith during the summer months. Two hundred passengers a day represented about 10% of the passengers taking a ferry each day during the summer months.

### **RIFF ARGUMENT:**

The responses require more responsive answers. The question is intended to find “who,” “how” and “why” the individual(s) *on behalf of Interstate* selected the people who actually asked the questions (i.e. *the survey takers*). Interstate’s answers refer to the survey respondents, not to the people that picked who, how and why the interviewers were selected to ask the questions of the passengers. The purpose of this data request was to obtain data regarding these “actual survey takers” (as opposed to the persons administering the survey (Mazze and Interstate management personnel), meaning those Interstate employees who actually asked the questions and recorded the answers. Interstate explains that the interviewers, selected by somebody (they do not say who), “were instructed” and the question asks “who” instructed them, and “why” that individual was selected. Interstate should answer these questions in order to assist RIFF’s ability to prepare rebuttal testimony.

## **RIFF DATA REQUEST 1- 7:**

State each and every step taken by Mr. Mazze and Interstate to control for bias among the survey takers.

## **INTERSTATE RESPONSE TO RIFF 1-7:**

First, the questions asked on the survey were pretested to make sure that they were clear, not leading and precise. Second, the survey included open-ended questions about the passenger being surveyed and closed-ended questions where the passenger had a set of responses to choose from, namely, Yes or No. Third, the surveys took place on different days, different weeks and in different months. Fourth, the names of respondents were not requested.

### **RIFF ARGUMENT:**

The responses require clarification. Interstate's answers refer to the survey respondents. The purpose of the requests was to obtain data regarding what steps were taken to control for bias among the Interstate survey takers (i.e. interviewers) as opposed to the persons administering the survey, Mazze and Interstate management personnel, meaning those Interstate employees who actually asked the questions and recorded the answers. RIFF's question seeks to understand more about the bias if any that may have existed in the interviewers chosen by Interstate to ask the questions of passengers. The fact that Interstate itself believed the questions to be "clear" is besides the point, or that the survey contained both "open" and "closed" questions, or that the survey took place on different days. Mr. Mazze's responses are not responsive to the question that relates to steps to control bias.

### **RIFF DATA REQUEST 1- 8:**

State what Mr. Mazze knew about the bias of the survey takers, including any public comments they may have made prior to or at the time of the taking of the survey, regarding RIFF's proposed Quonset service.

### **INTERSTATE RESPONSE TO RIFF 1-8:**

Dr. Mazze was not aware of any public comments made by any of the survey takers prior to or at the time of the survey regarding RIFF's Quonset service.

### **RIFF ARGUMENT:**

The responses require more responsive answers or clarification. Interstate's answers again appear to refer to the survey respondents. Again the purpose of this request was to obtain data regarding the people conducting the interviews, the "actual survey takers" meaning those Interstate employees who actually asked the questions and recorded the answers (as opposed to the persons administering the survey which we assume were Mr. Mazze and Interstate management personnel).

### **RIFF DATA REQUEST 1- 9:**

Identify by name who gave the instructions to the survey takers referred to at page 8, lines 13-15 Mr. Mazze's Pre-filed Direct Testimony and specifically what instructions were given.

### **INTERSTATE RESPONSE TO RIFF 1-9:**

The interviewers gave the instructions to each respondent. The respondents were told that the purpose of the survey was for marketing and promotion and that they would be asked a number of questions by the interviewer. The interviewer would record the answers

verbatim on the individual survey form. At the end of the interview, the respondent was thanked.

**RIFF ARGUMENT:**

The question asks “who” instructed the people asking the questions that are referred to in Mr. Mazze’s testimony and what “instructions” were given to the people that were asking the questions (“the survey takers”). Again, Interstate’s answers refer to the survey respondents. The purpose of the requests was to obtain data regarding the “actual survey takers” (as opposed to the persons administering the survey, Mazze and Interstate management personnel), meaning those Interstate employees who actually asked the questions and recorded the answers.

**RIFF DATA REQUEST 1- 10:**

Provide all details of the calculations used to arrive at the conclusion that RIFF will take as much as 20% of Interstate’s total passengers.

**INTERSTATE RESPONSE TO RIFF 1-10:**

Dr. Mazze tabulated the answers to the questions on the three surveys and as a result of the tabulations, it was found that as much as 20% of the total passengers of Interstate's ferries during July, August and September would take a fast ferry from Quonset Point to Block Island.

**RIFF ARGUMENT:**

Mr. Mazze’s response merely repeats his conclusion and does not provide any of the calculations or any other details in terms of the numbers or responses on the surveys. It is impossible to determine the reliability of the survey conclusions without understanding the actual number of people and number of responses used to make this broad conclusion. RIFF’s witnesses require this information in order to properly prepare and file rebuttal testimony.

**RIFF DATA REQUEST 1- 11:**

What does Mr. Mazze predict as the minimum value of that statistic, if the stated maximum value is 20%.

**INTERSTATE RESPONSE TO RIFF 1-11:**

The percentage was determined by tabulating the responses to the three surveys. A minimum value to that statistic could be a different number if the survey was conducted at a different time of the year.

### **RIFF ARGUMENT:**

This response completely avoids the question and is not responsive. Mr. Mazze has opined on the “maximum” value of the information supplied in the survey (which the details are not provided yet). The question asks for the “minimum” value prediction based on the same information in the survey. The minimum value for the time of year during which the survey was actually taken was not provided, as requested. RIFF’s witnesses require this information in order to properly prepare and file rebuttal testimony.

### **RIFF DATA REQUEST 1- 16 (d):**

Did Mr. Mazze make any attempt to identify areas where Interstate might cut costs without significantly impacting service before giving this direct testimony;

### **INTERSTATE RESPONSE TO RIFF 1-16 (d):**

Dr. Mazze does not have sufficient information to answer this question.

### **RIFF ARGUMENT:**

In Mr. Mazze’s responses to RIFF 1-16(a) and (b) Mr. Mazze states that cutting “costs” is one method available to Interstate in response to competition and loss of customers.<sup>1</sup> The question here asks if Mr. Mazze made any attempt to identify the “areas” where Interstate could cut “costs” without impacting service. The answer is not responsive to the question.

### **RIFF DATA REQUEST 1- 17 (g):**

In Mr. Mazze’s opinion, if approximately 20% of Interstate’s traditional and fast ferry ridership would in essence “jump ship” and use a high speed service from Quonset based upon just upon location, price and travel time over water, what does that say about the adequacy of Interstate’s existing service.

### **INTERSTATE RESPONSE TO RIFF 1-17 (g):**

The study was not designed to measure service. The study presented a number of scenarios about a potential port of departure for Interstate Navigation at Quonset Point as an addition to Interstate Navigation’s three current ports of departure Point Judith, Newport and Fall River

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<sup>1</sup> In response to the questions in RIFF 1-16(a) and (b) about options available to Interstate to make up for lost revenues Mr. Mazze stated: “When Interstate loses revenue, it has to find new sources of revenue, namely raising rates for passengers and freight and/ or cutting costs and services which will have a negative impact on the lifeline services provided to passengers and those transporting goods to Block Island.” (emphasis added).

### **RIFF ARGUMENT:**

The answer given is nonresponsive and evades the question. The question does not ask what Interstate believed was the purpose of the survey. The question does not ask what "scenarios" were the subject of the survey. The question asks Mr. Mazze to opine, as an expert witness, on what the results mean as relates to Interstate service and the public need and convenience for RIFF's high speed ferry services.

### **RIFF DATA REQUESTS TO MR. EDGE**

#### **RIFF DATA REQUEST 1- 32 (a):**

Referring to Mr. Edge's Pre-filed Direct Testimony at page 5, lines 16-24, provide a detailed explanation of the following:

- (a) If in fact Interstate loses fast ferry ridership to RIFF why should not Interstate shareholders either absorb the losses, lease their fast ferry or sell it to protect Interstate's lifeline customers

#### **INTERSTATE RESPONSE TO RIFF 1-32 (a):**

Interstate's stockholders receive no gains from fast ferry services so a loss of revenue is absorbed by the traditional ratepayers who get all of the benefit of the fast ferry operations. Interstate does lease its fast ferry as often as it can and those revenues have been given to the traditional ratepayers. If Interstate sells the fast ferry service the new owner would reap the benefits of the fast ferry service as profit and Interstate's traditional ratepayers would lose the subsidy.

### **RIFF ARGUMENT:**

Not responsive. The question asks whether any of three options is available in the event Interstate loses revenues from RIFF's service. The answer evades answering the question by postulating various scenarios that don't relate to the question. Mr. Edge does not answer the question "why" the various courses of action presented should not be taken, or why taking them will not benefit the traditional lifeline users.

#### **RIFF DATA REQUEST 1- 32 (c):**

- (c) Is Interstate a "for-profit business" in the generally accepted meaning of that phrase, or is Interstate exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

#### **INTERSTATE RESPONSE TO RIFF 1-32 (c):**

Yes.

**RIFF ARGUMENT:**

The question asks Mr. Mazze to answer from two choices. His answer of "yes" leaves RIFF guessing which of the options he is agreeing to. Mr. Mazze should clarify what he means by "yes" so that RIFF can prepare its rebuttal testimony without having to guess.

**RIFF DATA REQUEST 1- 33:**

Please provide Interstate's total annual hi-speed and traditional ridership statistics for the years 2006 to the present, broken down by persons carried on board its vessels and by ticket fare classification.

**INTERSTATE RESPONSE TO RIFF 1-33**

Objection. This is confidential and proprietary information. Moreover, this information is not needed to evaluate RIFF's request for a CPCN if RIFF is not going to pirate Interstate's customers.

**RIFF ARGUMENT:**

Not responsive. The data is necessary for RIFF and RIFF's witnesses to probe the basis, accuracy and veracity of Mr. Edge's testimony and calculations used to form the basis of his opinions in his testimony, specifically his projected ridership and revenue loss numbers. This data can be provided pursuant to a protective order, as has been done in other dockets.

**RIFF DATA REQUEST 1- 34:**

Please provide Interstate's vessel annual passenger utilization rates for its hi-speed and traditional operations for the years 2006 to the present, broken down by vessel, stating in your answer each vessel's total passenger capacity according to its Certificate of Inspection.

**INTERSTATE RESPONSE TO RIFF 1-34:**

Objection. Passenger utilization rates are confidential and proprietary information. Moreover this information is not needed to evaluate RIFF's request for a CPCN if RIFF is not going to pirate Interstate's customers.

**RIFF ARGUMENT:**

Not responsive. Mr. Edge and Mr. Mazze base some of their testimony on Interstate's capacity usage. Again, this data is necessary in order to allow RIFF and its witnesses to probe the basis, accuracy and veracity of Mr. Edge's testimony and calculations, specifically his ridership and revenue loss numbers. This data can be provided pursuant to a protective order, as has been done in other dockets.

**RIFF DATA REQUEST 1- 41 (f) and (g):**

Referring to Mr. Edge's Pre-filed Direct Testimony at pages 3, lines 28-32, 4, lines 1-2 and page 20, lines 13-15, provide a detailed explanation of the following:

- (f) What was Interstate's total fuel usage in gallons for the years 2012-2014;
- (g) What was Interstate's per gallon cost of fuel for the years 2012-2014;

**INTERSTATE RESPONSE TO RIFF 1-41 (f) and (g):**

- (f) Objection. This data request exceeds the scope of Interstate's direct testimony. However, this is public information available at the DPUC.
- (g) Objection. This data request exceeds the scope of Interstate's direct testimony. However, this is public information available at the DPUC.

**RIFF ARGUMENT:**

Not responsive and evasive. The request is relatively narrow in scope. The information is readily available to Interstate and is readily accessible by Mr. Edge as Interstate's expert witness. The data is necessary to allow RIFF an ability to probe the basis, accuracy and veracity of Edge's testimony and calculations, specifically his testimony that cutting costs is not a viable option available to Interstate in response to RIFF's high speed ferry service.

**RIFF DATA REQUEST 1- 46 (g):**

Referring to Mr. Edge's Pre-filed Direct Testimony at pages 19, lines 7-32 and 20, lines 1-3, provide a detailed explanation of the following:

- (g) Is the fact that a potential RIFF customer may live outside Rhode Island make them insignificant for public convenience purposes

**INTERSTATE RESPONSE TO RIFF 1-46 (g):**

No but serving them by RIFF instead of BIPCo will adversely impact Rhode Islanders who live on Block Island.

**RIFF ARGUMENT:**

The answer is not responsive and Mr. Edge should clarify what he means by "BIPCo" and what relevance that entity has to this question.

**RIFF DATA REQUEST 1- 48 (f):**

Referring to Mr. Edge's Pre-filed Direct Testimony at pages 20, lines 31-31 and 21, lines 1-2, provide a detailed explanation of the following:

(f) State the actual dollar amount of hi-speed profits used by Interstate to subsidize its traditional ferry rates, after all expenses and deductions were made, including sharing of any joint or common costs with its traditional operations, for the years 2006 to present

**INTERSTATE RESPONSE TO RIFF 1-48 (f):**

This is public information that can be found at the PUC.

**RIFF ARGUMENT:**

Not responsive. The information is readily available to Interstate and it is necessary in order for RIFF to probe the basis, accuracy and veracity of Edge's testimony and calculations, specifically his testimony that cutting costs is not a viable option. It is not appropriate to respond to an interrogatory type discovery request by pointing to a file room and saying you go find the answer. The request is relatively narrow in scope and the information is readily available to Interstate. If necessary a protective order can be put in place to protect any data that is deemed confidential and proprietary.

**RIFF DATA REQUEST 1-48 (i):**

Is it not true that the Commission considers non-Block Island Residents users of Interstate's services, including non-Resident users of Interstate's traditional ferries, as discretionary users who may "avoid . . . rate increases by not utilizing the services."

**INTERSTATE RESPONSE TO RIFF 1-48 (i):**

I will not comment on how the Commission considers non-BI Residents

**RIFF ARGUMENT:**

This response "I will not comment" is not responsive to the question and is evasive. Mr. Edge outright refuses to answer the question without offering any legitimate reason why. Mr. Edge has been an expert witness for Interstate for many years, perhaps decades. The question seeks to understand if he is aware of important precedent on previous Interstate matters that would provide relevant information to allow RIFF's witnesses to respond to Mr. Edge's positions in this matter. If he is aware of a Commission or Division decision or statement that is responsive to the question asked he should respond accordingly.

**RIFF DATA REQUEST 1-49:**

Referring to Mr. Edge's Pre-filed Direct Testimony at page 23, lines 14-16, provide a detailed explanation of the following:

- (a) State specifically which of the conditions in Docket D-13-105 Interstate believes are applicable to this Docket and why.

**INTERSTATE RESPONSE TO RIFF 1-49:**

Any Order of the Division regarding the issuance of CPCN when there are competitors for the service (like there are in this filing) can provide an expert witness (like me) with valuable knowledge as to how the Division is thinking about certain issues in a filing. Only someone who does not have significant experience testifying before the Division would ignore such an opportunity.

**RIFF ARGUMENT:**

Not responsive and evasive. The question relates directly to Mr. Edge's testimony where he asserts that "conditions" outlined in a previous Division decision concerning Interstate be "required of RIFF". He does not say which conditions, and so this question fairly asks for clarification. The answer given by Mr. Edge totally avoids the question. Mr. Edge avoids answering a simple question concerning "which" conditions of a specific Division decision (that he identified in written testimony) it contends are applicable in this docket, or why. RIFF requests that Mr. Edge answer the question that was asked.

**CONCLUSION**

The Division's Rules seek to promote "prompt and complete disclosure and exchange of information and encourages informal arrangements amongst the parties for this exchange."

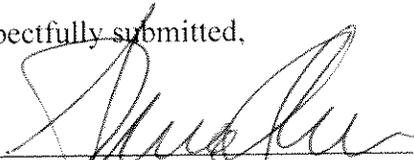
Division Rule 21. Further, "it is the Division's policy to encourage the timely use of discovery as a means toward effective presentations at hearing and avoidance of the use of cross-examination at hearing for discovery purposes." Division Rule 21.

RIFF asked very specific and relevant questions in response to testimony provided by Interstate witnesses in their pre filed written testimony. In those instances identified above Interstate did not answer the questions, provided incomplete answers or in some cases simply avoided answering. RIFF requires complete responses so that RIFF witnesses can adequately

prepare rebuttal testimony in response to certain facts, statements and opinions of Interstate's witnesses in their Pre Filed Testimony. This will avoid unnecessary cross examination at hearings. Moreover, RIFF is willing to accommodate Interstate regarding requests that seek necessary confidential information, through a protective order, if necessary.

RIFF requests that the Hearing Officer compel complete responses for the reasons articulated above and that the procedural schedule be modified accordingly.

Respectfully submitted,



Alan M. Shoer, Esq. (#3248)  
James A. Hall, Esq. (#6167)  
ADLER POLLOCK & SHEEHAN, P.C.  
One Citizens Plaza, 8<sup>th</sup> Floor  
Providence, RI 02903-1345  
Tel: 401-274-7200  
Fax: 401-751-0604

Dated: April 15, 2015

### CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2015, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.

