

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888**

IN RE: Interstate Navigation Company :
Application to Incur Debt with : Docket No. D-18-39
The Washington Trust Company :

REPORT AND ORDER

On December 10, 2018, the Interstate Navigation Company (“Interstate”) filed an application with the Rhode Island Division of Public Utilities and Carriers (“Division”) seeking authority to incur \$8.5 million in debt for the purpose of constructing a new 500-passenger fast ferry. The application identifies The Washington Trust Company (“Washington Trust”) as the lender for this borrowing.¹ The application was filed in accordance with the requirements contained in Section 39-3-15 of the Rhode Island General Laws and Rule 14 of the Division’s Rules of Practice and Procedure.

In response to the application filing, the Division conducted a duly noticed public hearing on December 27, 2018. The hearing was conducted in the Division’s hearing room, located at 89 Jefferson Boulevard in Warwick. The following counsel entered appearances:

For Interstate: Michael R. McElroy, Esq.

For the Division’s
Advocacy Section: Christy Hetherington, Esq.
Spec. Assistant Attorney General

¹ Interstate Exhibit 1.

Interstate proffered one witness in support of its application. The witness was identified as Mr. David G. Bebyn, President of B & E Consulting, LLC., 21 Dryden Lane, Providence, Rhode Island. Mr. Bebyn submitted pre-filed direct testimony with Interstate's application on December 10, 2018. During the hearing, however, it became necessary for Interstate to proffer its Vice President, Joshua P. Linda, as an additional witness to respond to certain questions that Mr. Bebyn was unable to answer.

Mr. Bebyn's Pre-filed Direct Testimony

Mr. Bebyn testified that the instant \$8.5 million borrowing is being requested to support the construction of a new 500-passenger fast ferry that will cost about \$10.5 million and be used on the Point Judith to Block Island fast run.² Mr. Bebyn explained that the first \$2 million of construction costs will come from Interstate's available cash and \$1.5 million held in Interstate's Commission-approved capital fund reserve account.³

Mr. Bebyn testified that the proposed 500-passenger vessel has twice the passenger carrying capacity of the *Athena*, the vessel that Interstate currently uses for this run. He added that the new vessel will permit Interstate to carry an additional 21,885 passengers during the summer season. Mr. Bebyn opined that this increased capacity will "be a benefit to the traditional ferry service because the fast ferry service provides a financial subsidy to the

² Id., Bebyn Testimony, p. 1.

³ Id., pp. 1-2.

traditional service which helps to hold down rates on the traditional year-round lifeline service.”⁴

Mr. Bebyn further explained that after the new vessel comes on line, the *Athena* will be repurposed for the current Newport to Block Island fast ferry run. He related that the currently used Newport to Block Island fast ferry, the *MV Islander*, will then be used for charters and as a “stand by vessel.”⁵

Regarding the terms of the borrowing, Mr. Bebyn testified that before committing to borrow from Washington Trust, Interstate did solicit bids from “all major lending institutions doing business in RI.” He related that negotiations then took place with Washington Trust, TD Bank and Citizens Bank, all of which offered substantially similar terms. At the end of negotiations, even though TD Bank was 6 basis points lower than Washington Trust, Mr. Bebyn testified that Interstate decided to go with Washington Trust, with which Interstate has had a long-standing banking relationship. He related that Interstate did not consider the 6-basis point spread sufficient justification for “moving to an unfamiliar lender.”⁶ Mr. Bebyn added that Interstate also considered the fact that Washington Trust has a location in Narragansett (TD Bank’s closest location is in Warwick), which will better facilitate Interstate’s cash deposits.⁷

Mr. Bebyn next offered a description of the Washington Trust loan. He related that the first two years of the loan (the Construction period) will use a

⁴ Id., p. 2.

⁵ Id.

⁶ Id., pp. 3-4.

⁷ Id., p. 4.

floating rate of 30-day Libor + 0.80% (2.71% as of May 24, 2018) and the final eight years will be fixed via Washington Trust's swap equivalent rate based on Libor + 0.80% (3.73% as of May 24, 2018). Mr. Bebyn also related that the forward lock in rate option as of May 24, 2018 was 3.82% and Interstate may elect to lock due to rising interest rates.⁸

Mr. Bebyn testified that the Washington Trust loan is a 10-year loan with a 25-year amortization. He related that the first two years are interest only. The remainder of the 10-year term will result in a balloon payment due at the end of the ten years. Mr. Bebyn testified that it is expected that this balloon payment will be rolled over into another 10-year loan at that time. He also related that Washington Trust has agreed to have interest only payments in the winter with larger payments in the summer, which Mr. Bebyn noted synchronizes with Interstate's cash flow.⁹

Mr. Bebyn next identified some additional loan terms. He proffered the following breakdown:

1. Funds will be advanced, after Interstate's initial equity of \$2 million, against work completed on the new vessel. The total estimated project cost is \$10.5 million. Interstate will be required to contribute additional equity if the project cost increases above the \$10.5 million estimate.
2. The collateral for the loan is a first preferred ship's position on the new vessel. Also, Interstate will give the bank a security interest in its business assets, a collateral assignment of its licenses, contracts and permits, and a conditional assignment of leases with

⁸ Id.

⁹ Id., p. 5.

respect to the Point Judith and Block Island docking facilities. For the most part, this is the same collateral that the bank already has on Interstate's current debt.

3. There is a prepayment penalty only to compensate the lender for any swap breakage fees.
4. Financial covenants are as follows:
 - Borrower to maintain Debt Service Coverage (DSC) of 1.25. The DSC will be calculated as net income plus depreciation/amortization and interest expense, divided by current maturities of long-term debt plus interest expense.
 - The DSC after routine capital expenditures must be 1.15.
 - Interstate must maintain a loan-to-value (LTV) ratio of 80% of the completed vessel.¹⁰

Mr. Bebyn next moved to a discussion about the planned financing's impact on Interstate's ratepayers. He explained that this financing will not decrease the weighted cost of debt and equity since the debt is not included in the traditional service ferry rates; he noted that "Interstate's fast ferry service operates as a separate division and accounts for all direct revenues and direct costs separately."¹¹ Mr. Bebyn also predicted "that inclusion of the new fast ferry will generate a small amount of additional net income for Interstate while providing stand by [sic] additional ferry capacity and other opportunities."¹² Mr. Bebyn related that he did not believe that this financing would result in a rate increase for either of Interstate's traditional (lifeline) or fast ferry service

¹⁰ Id.

¹¹ Id., p. 6.

¹² Id., and Schedule DGB-3.

operations.¹³ He also opined that the terms of the borrowing are in the best interest of Interstate's ratepayers.¹⁴

In response to a question from the hearing officer, Mr. Bebyn related that Interstate did not include any discussion about purchasing a new and larger high-speed vessel during its last rate proceeding before the Commission in 2013.¹⁵ Mr. Bebyn also questioned the economic value of transporting cars on a high-speed boat; he reasoned that the space required to hold cars would generate far more revenue holding passengers instead.¹⁶

Mr. Linda was proffered by Interstate to respond to several questions regarding the design of Interstate's planned 500-passenger vessel. Mr. Linda related that Interstate has decided to replace the *Athena* because "it is not possible to squeeze another trip" into "the peak demand times."¹⁷ He also confirmed that neither the *Athena* nor the *Islander* is capable of carrying cars or freight.¹⁸ Mr. Linda testified that there is not a need for carrying freight on Interstate's high-speed boats; he stated: "[w]e have ample freight capacity on the traditional ferries."¹⁹

When questioned by the Advocacy Section about a provision in Interstate's fast-ferry certificate that requires the Company to carry cars and freight, Mr. Linda responded:

¹³ Id.

¹⁴ Id.

¹⁵ Tr. 57.

¹⁶ Tr. 74-75.

¹⁷ Tr. 31.

¹⁸ Tr. 36.

¹⁹ Tr. 37.

Well, at the time, that was before we had purchased the CTCN [sic] of the former ferry company that owned the Athena, we didn't pursue the original boat. And we found by operating the Athena that the high speed is better standalone with passengers and luggage, limited bikes. Trying to mix it in with freight wouldn't be a wise decision on our behalf. People want to get to the island quick. So we find it works well the way it does.²⁰

When asked about what Interstate plans to do in the future about this provision in its CPCN, Mr. Linda related: “[w]e don't have any immediate plans right now with it.”²¹

In response to questions posed by the hearing officer, Mr. Linda testified that Interstate started thinking about replacing the *Athena* with a larger high-speed vessel in 2017. He related that the decision resulted from an increase in fast ferry ridership during the summers of 2015 and 2016.²² Mr. Linda also related that discussions with shipbuilder Gladding-Hearn started “last winter” and with the banks in the spring of 2018.²³ Mr. Linda further testified that he was not aware that Interstate was under any regulatory obligation to utilize a high-speed vessel capable of carrying cars and freight.²⁴ He also maintained that Interstate's decision to place a new larger high-speed vessel into service had nothing to do with the 2016 approval of new high-speed ferry services between Quonset Point and Old Harbor by the Rhode Island Fast Ferry, Inc. (“RIFF”).²⁵

²⁰ Tr. 48-49.

²¹ Tr. 49.

²² Tr. 57-58.

²³ Tr. 59.

²⁴ Tr. 80.

²⁵ Tr. 84.

PUBLIC COMMENTS

The Town of New Shoreham (“Town”) offered comments on the record in apparent support of Interstate’s filing. Attorney Katherine Merolla, the Town’s Solicitor, indicated that the Town had been assured by Interstate that any profits generated by the larger fast ferry “will be passed through to the traditional ferry service to hold down traditional ferry rates, including rates for both passengers and freight.” She also related that Interstate has promised that there would be no rate increases in 2019 or any reductions in scheduled ferry runs (traditional and high-speed) in 2019. Attorney Merolla stated that although the Town Council has not had a chance to vote on the Interstate’s proposal, she requested that the Division memorialize Interstate’s assurances in the Division’s decision on the matter.²⁶

Mr. Charles A. Donadio, Jr. also offered comments in this docket. Mr. Donadio, RIFF’s owner, spoke in vehement opposition to Interstate’s filing. Mr. Donadio related that since RIFF filed its application with the Division in July of 2013 seeking authority to provide high-speed ferry services between Quonset Point and Old Harbor, Interstate has been arguing that there is no need for any additional fast ferry services to Block Island. He emphasized that Interstate has been “fighting over my application for the last five and a half years when Interstate basically said there’s no need.”²⁷ Mr. Donadio offered the following criticism: “[t]he fact that Interstate now wants to build a huge 500-passenger fast ferry is a complete reversal to what they have been arguing since my

²⁶ Tr. 88-89.

²⁷ Tr. 90-91.

company... applied to operate a new fast ferry...” He added: “Interstate said there was no demand for additional fast ferry service, that their current fleet of slow ferries and the 250-passenger fast ferry service” could not handle; and that “the market [is] just fine” without RIFF, and that Interstate has “large amounts of unused capacity” and that they “rarely turn people away.”²⁸

Mr. Donadio related that both Interstate and the Town have opposed his application on grounds that “too many visitors and too much vessel traffic in the harbor” would be a problem for the Town. He declared that without this opposition, “I’d probably be in my third season right now running a new fast ferry to Block Island along with a new dock built servicing this new location.”²⁹

Mr. Donadio next stated that Interstate used this same tactic after another of his companies, Island-Hi-Speed Ferry (“IHSF”), was granted a license by the Division to operate a fast-boat ferry service between Point Judith and New Harbor back in 1998. He related that after “we received our Rhode Island DPUC license to operate, they filed numerous appeals to the Superior Court while in the background they were planning to operate their own new fast ferry. This is exactly what they are doing right now, exactly.”³⁰

Mr. Donadio next commented on the reasonableness of the proposed borrowing. Mr. Donadio questioned the validity of the interest cost identified in Interstate’s filing. He contended that interest rates have gone up and that he believes that Interstate is underestimating the financial risk with a higher

²⁸ Tr. 91-92.

²⁹ Tr. 92.

³⁰ Tr. 92-93.

interest rate expense. He also criticized Interstate for proposing to “spend in excess of \$10.5 million for a potentially \$13,000 annual profit.”³¹ Mr. Donadio also questioned the push by Interstate to rush the approval for this borrowing. He explained that he has done business with Gladding-Hearn, and is doing business with that company right now, and that he has never heard of a penalty being imposed for not signing a contract by a certain date. He asked the Division to request a copy of the contract in question in order to verify the terms.³² He also suggested that the Division “step back and take the appropriate time to look deeply into this flawed proposal and not be forced by desperate timelines because it’s their decision that they could have come out with this when they were thinking about it instead of throwing it on everybody’s lap at the last minute.”³³

Mr. Donadio also questioned Interstate’s ability to berth a new 125’ fast ferry at the Point Judith dock. He asserted that the dock at that location will only accommodate a vessel up to 98.5’. Mr. Donadio opined that a public hearing should be required to address this limitation.³⁴

The Division’s Advocacy Section did not proffer any witnesses in this docket. After an examination of the application filing and related pre-filed testimony, and after cross-examination of Interstate’s witnesses, the Advocacy Section stated for the record that would not be offering the Division a recommendation in this matter. The Advocacy Section indicated that in view of

³¹ Tr. 93-94.

³² Tr. 95.

³³ Tr. 97-98.

³⁴ Tr. 104-105.

the “complexities” and “competing certificates” involved in this case, and because it believes that this “is not just a 39-3-15 hearing,” it would defer to the hearing officer on how best to decide the many issues involved in this case.³⁵

LEGAL STANDARD

Under R.I.G.L. §39-3-15, a “public utility... may not without application to and authority from the division, issue... notes, or other evidences of indebtedness, payable more than twelve (12) months from the date of issue, when necessary for the acquisition of property, the construction, completion, extension, or improvement of its facilities or the improvement or maintenance of its service....”

Under R.I.G.L. §39-3-17, “[f]or the purpose of enabling the division to determine whether it should issue the order, it shall hold such hearings, make such inquires or investigations, examine such witnesses, books, papers, documents, and contracts as it may deem proper.

Under R.I.G.L. §39-3-18, “[t]he order of the division shall fix the amount, character, and terms of any issue, and the purposes to which the issue or any proceeds thereof shall be applied...”

FINDINGS

Before getting into the merits of Interstate’s application for borrowing authority, it is essential to identify and discuss the contextual significance associated with the substance and timing of the instant request. Regarding the

³⁵ Tr. 121-122.

timing, as recently as 2016, Interstate was arguing in opposition to an application filing by RIFF, wherein Interstate contended that if RIFF was authorized to carry passengers on its proposed fast ferry between Quonset Point and Old Harbor, Interstate would lose “as much as... 27% of its hi-speed ferry passengers....”³⁶ This prediction was based on Interstate’s then-assertion that the fast ferry capacity serving Block Island is presently “saturated,” and that additional capacity is absolutely unnecessary. Interstate emphasized that “only 16% of that capacity was being used;” and that since the start of Interstate’s then-recent Fall River service, “there are over 130,000 additional fast ferry seats... now available.”³⁷ Following Interstate’s logic, now that RIFF has been granted a CPCN, after it begins operations there will be significant additional excess capacity servicing Block Island. Notably, Interstate’s current proposal to double its fast ferry carrying capacity between Point Judith and Old Harbor stands in stark contrast to Interstate’s contemporaneous claims of a saturated fast-ferry market. Such inconsistencies raise the specter that Interstate’s decision to double its passenger carrying capacity may more likely be designed to thwart RIFF’s successful entry into the fast ferry market, *infra*.

The design of Interstate’s proposed new fast ferry is also astonishing in view of the regulatory record attached to Interstate’s fast ferry Certificate of Public Convenience and Necessity (“CPCN”), which was granted back on October 3, 2006. Some travel history is in order.

³⁶ See Order No. 22548, issued on September 22, 2016 (in Docket No. D-13-51).

³⁷ *Id.*, p. 42 and 95.

On December 6, 2004, Interstate Navigation filed an application with the Division seeking authority to operate as a seasonal “fast ferry” water carrier of passengers and freight between (1) Point Judith and Old Harbor, Block Island; and (2) Newport and Old Harbor, Block Island.³⁸ In the record of that proceeding, Interstate asserted that there was an unmet public need for the specific type of vessel and high-speed carrier services that Interstate was proposing. Interstate’s witnesses testified in that proceeding that the public demanded a high-speed vessel capable of carrying approximately 350 passengers, along with freight and up to six cars. Interstate argued at the time that such freight and car carrying capacity would be able to accommodate ambulances, homeland security activities and the quick delivery of essential parts and supplies to the Island. Interstate maintained that the public need for this type of vessel necessitated the approval of its application and the issuance of a CPCN. After a lengthy evaluation of Interstate’s claims and arguments for such a vessel (to operate between the proposed termini), the Division was persuaded that such a public need existed and approved Interstate’s application for a CPCN.³⁹

Subsequently, in 2006, Interstate purchased the Rhode Island assets of IHSF, including IHSF’s CPCN, which authorized fast-ferry services between Point Judith and New Harbor, Block Island. This purchase was approved by the Division, which led to a merger of Interstate’s and IHSF’s operating

³⁸ See Division Docket No. D-05-06.

³⁹ See Order No. 18506, issued on January 23, 2006.

certificates.⁴⁰ In approving the merger, the Division held, *inter alia*, that although it would permit Interstate to utilize IHSF's fast ferry in the short-term to provide ferry services between Point Judith and Old Harbor, Block Island, the Division still expected Interstate to eventually place its "originally planned larger car/freight/passenger fast ferry" into service. The Division stressed that Interstate's original commitment to use such a vessel had been an "influential factor in the granting of Interstate's fast ferry CPCN."⁴¹ The Division made it clear at the time, that Interstate would be expected to place this vessel in service as a condition of retaining the entirety of the operating authority conferred in its CPCN.

The Division re-examined its expectation for Interstate's use of its "originally planned larger car/freight/passenger fast ferry" in 2008, during a compliance review of Interstate's then-recently-merged fast-ferry operations. In that review, the Division detailed that it had suspended the requirement for Interstate to use its originally planned larger car/freight/passenger fast-ferry in 2006 **only temporarily** "due to Interstate's inability, in the short term, to provide all the fast-ferry services authorized and required under the two CPCNs..."⁴² The Division also disappointingly observed that "Interstate's focus has turned exclusively to maximizing its profits and away from providing these 'needed,' but not profitable services."⁴³ In rejecting Interstate's reasons for "not adding a second larger vessel that is capable of carrying freight and vehicles, as

⁴⁰ See Order No. 18728, issued on October 3, 2006.

⁴¹ *Id.*, p. 22.

⁴² See Order No. 19599, pp. 21-22.

⁴³ *Id.*, p. 22.

well as passengers,” the Division declared that Interstate’s “business strategy” was inconsistent with the public interest and violative of the regulatory obligations demanded under Interstate’s CPCN. Accepting, however, Interstate’s claims of contemporaneous financial difficulties, the Division made the following finding:

With respect to Interstate’s obligation to operate with a vessel that is materially consistent with the ‘originally planned larger car/freight/passenger fast ferry’ that Interstate described in Docket No. D-05-06, the Division will reserve judgment on this matter for the time being. The Division may wish to revisit this requirement in a future proceeding related to the issues addressed in this decision, and/or in a future rate proceeding before the PUC when the subject matter relates to the replacement of one or more of Interstate’s existing traditional ferry vessels.⁴⁴

On May 5, 2009, in keeping with the above-mentioned Division finding, the Division issued a CPCN (W-1169) to Interstate setting forth the totality of its operating rights and obligations. Contained therein is the following language, which requires the holder to:

Operate a seasonal ‘fast ferry’ water carrier of passengers and freight... with a vessel that is materially consistent with the ‘originally planned larger car/freight/passenger fast ferry’ described in Docket No. D-05-06. THIS REQUIREMENT IS CURRENTLY SUSPENDED (See Order No. 19599).

In a subsequent compliance review decision in 2012, related to other aspects of Interstate’s operating authority, the Division again reiterated its focus on Interstate’s “obligation” to provide its Point Judith to Old Harbor

⁴⁴ Id., pp. 30-31.

ratepayers with the promised larger boat. The order again contained the following reminder:

With respect to Interstate's obligation to operate with a vessel that is materially consistent with the "originally planned larger car/freight/passenger fast ferry" that Interstate described in Docket No. D-05-06, the Division will again reserve judgment on this matter consistent with its previous findings in R&O No. 19599 and R&O No. 19919.⁴⁵

On January 18, 2012, again, in keeping with the above-mentioned Division finding, the Division issued an amended CPCN (W-1169) to Interstate setting forth the totality of its operating rights and obligations. Contained therein is the following familiar reminder, requiring Interstate to:

Operate a seasonal 'fast ferry' water carrier of passengers and freight... with a vessel that is materially consistent with the 'originally planned larger car/freight/passenger fast ferry' described in Docket No. D-05-06. THIS REQUIREMENT IS CURRENTLY SUSPENDED (See Order No. 19599).

No further actions have been taken on this larger vessel obligation issue since 2012. Until now. Interstate now appears before the Division seeking authority to borrow \$8.5 million to finance the construction of a new larger fast-ferry, capable of carrying 500 passengers. But no cars and no freight. When questioned why the filing proposes that the funds be used for a high-speed ferry incapable of carrying cars and freight, Interstate, despite the long administrative history regarding this matter, surprisingly proclaimed that no such regulatory obligation exists. Indeed, Interstate contends that the decision

⁴⁵ See Order No. 20625, issued on January 12, 2012.

to use a fast ferry capable of carrying cars and freight rests solely with Interstate.⁴⁶

Most troubling of all, Interstate proudly declares that it makes poor economic sense to use a high-speed boat for carrying cars and freight; that there is no need for Interstate to carry freight on its high-speed boats when its traditional boats will suffice; and that high-speed vessels are best used for standalone passenger services.⁴⁷ Well, this was not Interstate's position when it was before the Division in 2006 seeking a high-speed CPCN of its own. Looking back, it appears that Interstate may have only promised use of such a vessel to maximize the Company's chances of acquiring a CPCN - for the exclusive purpose of driving IHSF from the market.

The Division finds Interstate's lack of commitment toward fulfilling its promises and regulatory obligations most disquieting. Interstate was granted a CPCN in 2006 to operate a fast ferry service between Point Judith and Old Harbor based, in large measure, on the design of the vessel that the Company was promising to use if its application was approved. When Interstate purchased the assets of IHSF later in 2006, the Division agreed to merge Interstate's and IHSF's two CPCNs, but with conditions attached. One of those conditions called for the eventual introduction of the vessel that Interstate had promised to provide to its prospective fast ferry passengers riding between Point Judith and Old Harbor, *supra*. In a 2008 decision, the Division was unambiguous in the seriousness of its determination to revisit Interstate's

⁴⁶ Tr. 80-82.

⁴⁷ Tr. 37, 48-49 and 74-75.

obligation to utilize a high-speed ferry capable of carrying cars and freight “in a future proceeding related to the issues addressed in this decision and/or in a future rate proceeding before the PUC when the subject matter relates to the replacement of one or more of Interstate’s existing traditional ferry vessels,” *supra*. Since, Interstate has decided to not present the PUC (Commission), and by extension, the Division, with an opportunity to examine the matter of adding this new vessel in the context of a rate case, the Division finds that the instant docket represents an obligatory line-in-the-sand regulatory moment.

Accordingly, if Interstate is to add a new high-speed vessel to its fleet, it shall be required to adopt a design “materially consistent with the ‘originally planned larger car/freight/passenger fast ferry’ described in Docket No. D-05-06.” This requirement should not be foreign to Interstate as it is clearly memorialized in several Division Orders and in Interstate’s CPCN (W-1169).

Next, with respect to the timing of Interstate’s plans to add a 500-passenger fast-ferry to its operations in 2020, the Division has concerns, *vis à vis*, Interstate’s actions regarding RIFF. As noted above, in opposing RIFF’s application to provide fast-ferry services to Old Harbor, Interstate has insisted that there is no need for additional high-speed capacity to Block Island. Nevertheless, Interstate now insists that it must double its capacity to carry passengers aboard a new Point Judith to Block Island fast ferry to satisfy some tremendous public need. At the same time, Interstate is appealing the Division’s decision granting RIFF a CPCN, based in part, on the excess capacity assertions Interstate espoused in RIFF’s application docket (D-13-51). This

appeal has been vigorously prosecuted by Interstate over the last two years and may not be resolved for some significant time to come. This raises the question of the timing of Interstate's decision to place a new \$10.5 million 500-passenger high-speed vessel into service - especially when Interstate expects very little "additional net income" from adding this new vessel.⁴⁸ The Division has seen this business strategy employed by Interstate before.

After IHSF was granted a CPCN authorizing high-speed ferry service in 1998,⁴⁹ Interstate similarly appealed that decision. As alluded to by Mr. Donadio, while the appeal was pending, and before IHSF could place its fast ferry into service, Interstate attempted to beat IHSF into the high-speed ferry market by placing its own high-speed ferry into service. The Division opened an investigation into this development to examine whether Interstate's actions were consistent with the Division's licensing authority and to determine whether Interstate was pursuing a course of action designed to restrain competition. In the end, the Division concluded that Interstate's actions were inimical to the public interest and imposed a three-year moratorium on Interstate from engaging in high-speed ferry services.⁵⁰ The Division found that Interstate's actions would, if allowed to go forward, impact the regulatory objectives from the Division's decision to grant IHSF a CPCN. The Division held that its goal was "to see this new market develop without detrimental consequences posed by another carrier...;" the Division also expressed concern

⁴⁸ Interstate Exh. 1, Bebyn Testimony, p. 6 and Schedule DGB-3.

⁴⁹ See Order No. 15652, issued on August 25, 1999.

⁵⁰ See Order Nos. 15892 and 15993, issued on June 11, 1999 and September 17, 1999, respectively.

that Interstate was attempting to “wield its monopoly strength to dominate the entire ferry market and thus thwart all the [Division’s] regulatory objectives....”⁵¹ The Division’s imposition of a three-year moratorium on Interstate was later affirmed by the Rhode Island Supreme Court.⁵²

The record in this docket suggests that Interstate is again attempting to dominate the high-speed ferry market and thwart the Division’s regulatory objectives. Predicated on this assessment, the Division will instruct the Clerk to open an investigatory docket to further examine the reasonableness of the timing and potential impact that Interstate’s 500-passenger ferry proposal will have on RIFF’s approved Quonset Point to Block Island high-speed ferry service operations. The Division shall open this new docket under the authority contained in R.I.G.L. §§39-4-10 and 39-4-13. During this investigation, the Division will determine whether another moratorium on Interstate’s high-speed fleet activities is warranted.

CONCLUSION

The Division is unable to approve the requested borrowing based on the vessel design deficiencies discussed above; the purpose of this borrowing is inconsistent with prior Division directives. Interstate shall be required to satisfy the regulatory obligations contained in these prior Division decisions and in its CPCN.

⁵¹ Order No. 15993.

⁵² See Interstate Navigation Co. v. Division of Public Utilities and Carriers, 824 A. 2d 1282 (R.I. 2003).

Further, as the timing and impact of Interstate's decision to replace the *Athena* with a vessel capable of carrying 500 passengers could be potentially harmful to the success of RIFF's plans to start a new high-speed ferry service between Quonset Point and Block Island, the Division must examine the potential for such harm to safeguard the public interest.

With respect to the proposed borrowing, predicated on a careful examination of the record in this matter, the Division finds that Interstate's application seeking approval to incur debt, totaling \$8.5 million, is unreasonable and not in the best interest of ratepayers.

Now, therefore, it is

(23364) ORDERED:

1. That the Interstate Navigation Company's December 10, 2018 application, which seeks Division approval under R.I.G.L. §39-3-15, to incur \$8.5 million in debt for the purpose of constructing a new 500-passenger fast ferry, is hereby denied.

2. That Interstate shall not add to or replace any of its existing high-speed vessels unless approved by order of the Division.

3. That the Division's Clerk is instructed to open a new docket designed to provide the Division with an opportunity to investigate the need and appropriateness of Interstate's plans to replace the *Athena* with a larger high-speed ferry. During this investigation the Division will evaluate whether Interstate's plans are designed to thwart Rhode Island Fast Ferry, Inc.'s entry into the Rhode Island intrastate high-speed ferry market; and if so, whether the

Division should impose a moratorium on such plans to protect the public interest. The Division's Clerk is further instructed to notify Rhode Island Fast Ferry, Inc. of the establishment and purpose for this new docket.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND ON JANUARY 4, 2019.



John Spirito, Jr., Esq.
Hearing Officer

APPROVED: 

Macky McCleary
Administrator



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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NOTICE OF AVAILABILITY OF JUDICIAL REVIEW

(PROVIDED PURSUANT TO R.I.G.L. §42-35-12)

Please be advised that if you are aggrieved by this final decision (report and order) of the Rhode Island Division of Public Utilities and Carriers (“Division”) you may seek judicial review of the Division’s final decision by filing an appeal with the Rhode Island Superior Court. You have thirty (30) days from the mailing date (or hand delivery date) of the Division’s final decision to file your appeal. The procedures for filing the appeal are set forth in Rhode Island General Laws, Section 42-35-15.

Proceedings for review may be instituted by filing a complaint in the Superior Court of Providence or Kent Counties. Copies of the complaint must be served upon the Division and all other parties of record in your case. You must serve copies of the complaint within ten (10) days after your complaint is filed with the Superior Court.

Please be advised that the filing of a complaint (appeal) with the Superior Court does not itself stay enforcement of the Division’s final decision. You may however, seek a stay from the Division and/or from the Court.

The judicial review shall be conducted by the Superior Court without a jury and shall be confined to the record. The Court, upon request, shall hear oral argument and receive written briefs.