

**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 – Plan to utilize the M/V *Islander*, which normally provides seasonal fast ferry services between Newport and Block Island, to provide additional passenger-carrying capacity between Point Judith and Block Island.

DOCKET NO. D-20-08

ORDER

Whereas: On June 19, 2020, the Interstate Navigation Company (“Interstate”) notified the Rhode Island Division of Public Utilities and Carriers (“Division”) that “due to the COVID-19 emergency” and related “obstacles to providing adequate service” to Block Island, including a voluntary reduction in “passenger capacities to about 50% to conform with the state’s social distancing guidelines for ferries... [and] because of shipyard delays caused by the effects of COVID-19 [on] the repowering and rehabilitation of the M/V *Anna C*,” it [Interstate] needed to “add another vessel to fill these schedule gaps to meet the demand for passengers.”

Whereas: In order to meet this need, Interstate notified the Division that it was “planning to run the fast ferry M/V *Athena* and to also temporarily add the fast ferry M/V *Islander*, which usually operates on the non-lifeline discretionary run from Newport to Block Island, to the vessels that run out of Point Judith.” Interstate indicated that it planned to run the M/V *Islander* “opposite the M/V *Athena*... [so that] we will have more departures at peak travel times.”¹

¹ See Interstate’s June 19, 2020 Notification.

Interstate provided the following additional information and explanation in its notification:

Normally the M/V *Block Island* holds 1,000 passengers, the M/V *Carol Jean* holds 1,110 passengers, the M/V *Anna C* holds 1,150 passengers, and the M/V *Athena* holds 250 passengers. With the COVID-19 restrictions, the M/V *Block Island* will only be able to carry about 500 passengers, the M/V *Carol Jean* only about 555 passengers, and the M/V *Athena* only about 125 passengers. The M/V *Anna C* is out of the mix for the time being, probably until late July. The M/V *Islander* will be able to carry about 185 additional passengers.

We do not want to cancel the discretionary Newport fast ferry run for the 2020 season. However, we need to delay the start of the Newport run for now in order to provide sufficient capacity from Point Judith. We will reassess the Newport run when the M/V *Anna C* returns to service. At that time, we will evaluate the status of the COVID-19 crisis and capacity restrictions which may exist and then determine whether the M/V *Islander* should return to Newport or whether she will need to stay at Point Judith for the remainder of the summer of 2020.

We want to emphasize that this is a temporary, emergency solution to the COVID-19 emergency capacity restrictions imposed by the state's ferry guidelines. Those guidelines state that ferries may operate additional vessels on the routes to deal with the capacity restrictions (copy enclosed).²

Whereas: Due to the fact Interstate's plan contained a suspension of fast ferry services between Newport and Block Island, the Division established the instant docket for the purpose of deciding whether the suspension of such service was appropriate and, if so, how long the suspension should last.³

² Id.

³ After receiving Interstate's notification, the Division requested that Interstate provide the Division with evidence that neither the Town of New Shoreham (Block Island) nor the City of Newport had any objections to Interstate's plan in the aggregate. The Division has since received written communications from both municipalities that they were aware of Interstate's plan and that neither municipality had any objection to Interstate's proposal. Because New Shoreham and Newport expressed no objections to Interstate's plan and due to the exigent circumstances

Whereas: In its decision on Interstate's June 19, 2020 proposal, the Division reached two findings. First, the Division expressed dissatisfaction with Interstate's decision to simply notify the Division of its decision to unilaterally suspend the seasonal start of its fast ferry services between Newport and Block Island rather than presenting its plan to the Division in the form of a petition or motion. The Division stressed that "any significant reduction in authorized ferry services must be approved by the Division – in advance – and Interstate knows that."⁴

Second, with respect to Interstate's plan to transfer the *M/V Islander* to Point Judith and reassess after the *M/V Anna C* was back in service, the Division approved this request through the end of July. The Division also held that it did not accept Interstate's proposal to self-reassess the use of the *M/V Islander* after the *M/V Anna C* returns to service. Interstate was thereupon directed to seek and receive Division approval to keep the *M/V Islander* at Point Judith after July 30, 2020, "if Interstate believed that keeping the *M/V Islander* at Point Judith is in the public interest."⁵

Whereas: On July 24, 2020, Interstate sent an email to the Division's Administrator requesting the Division's approval to "keep the *M/V Islander* in Point Judith for the remainder of the summer of 2020." Interstate also proffered

surrounding Interstate's need for additional passenger capacity to Block Island, the Division concluded that it would not be necessary to conduct a public hearing on the matter at that time.

⁴ See Order No. 23860, issued on July 2, 2020.

⁵ *Id.*

communications from Newport's Harbormaster and New Shoreham's Interim Town Manager that offered support for Interstate's proposal.⁶

In further support of its request to keep the M/V *Islander* in Point Judith for the remainder of the 2020 season, and, by logical extension, suspend fast-ferry services between Newport and Block Island for the remainder of the year, Interstate proffered the Joint Affidavit of Joshua Linda and William McCombe (the "Affiants"). Mr. Linda was identified as Interstate's Vice President and Mr. McCombe was identified as Interstate's Security Officer.

In their joint affidavit, Messrs. Linda and McCombe agreed that "running the *Islander* from Point Judith has allowed Interstate to reduce the groups or 'pods' of passengers that arrive at the dock," which they assert "allows us to have better social distancing by reducing the waiting passenger count..."⁷ The Affiants also contend that "running the *Islander* also allows overflow passengers on the traditional ferries to have a choice when the traditional ferries reach their reduced capacity maximums... [and] "to assist in running a late unscheduled trip to accommodate capacity reductions on the traditional ferries."⁸

The Affiants further justify the use of the M/V *Islander* in Point Judith based on language in the Governor's COVID-19 social distancing guidelines that allows "**ferry operators to operate additional vessels to run the routes, based on ridership demand.**"⁹ (Emphasis in Original).

⁶ See Interstate's July 24, 2020, *supra*, and subsequent July 27, 2020 email messages to the Administrator.

⁷ See Joint Affidavit submitted on July 24, 2020, p. 1.

⁸ *Id.*, p. 1.

⁹ *Id.*, pp. 1-2.

The Affiants next relate that Interstate is experiencing increased demand for fast ferry services between Point Judith and Block Island. The Affiants contend that due to the need to operate the M/V *Athena* at half capacity, using the M/V *Islander* in Point Judith permits Interstate to “carry the usual number of passengers....”¹⁰ The Affiants add that keeping the M/V *Islander* in Point Judith also satisfies the travel needs of “many...morning fast ferry travelers... that commute back and forth for work and need the quick half hour trip.”¹¹

The Affiants next maintain that the “*Islander* by design has attractive seating with respect to social distancing.” They also argue that by utilizing more fast ferry capacity, Interstate is “minimizing exposure time to other passengers.”¹²

Finally, the Affiants assert that “almost all of the travel from Newport to Block Island is elective, vacation travel... [while] Point Judith is the hub for a combination of lifeline and elective travel. They related that they feel that “by running the *Islander* and maximizing our resources out of Point Judith while we are subject to capacity restrictions... we are best serving the needs of the Island....”¹³

Findings

As an initial observation and finding, when Interstate notified the Division of its decision to move the M/V *Islander* from Newport to Point Judith on June 19, 2020, the Division criticized Interstate for not properly seeking and receiving

¹⁰ Id., p. 2.

¹¹ Id.

¹² Id., p. 3.

¹³ Id.

formal Division approval in advance.¹⁴ Now, in its July 24, 2020 request for approval to keep the M/V *Islander* in Point Judith for the remainder of 2020, Interstate sent its request in an email to the Division's Administrator (with a copy to this hearing officer) rather than as a formal filing sent to the Division's Clerk in accordance with the Division's Rules of Practice and Procedure.¹⁵ Notably, this email was sent on a Friday at 3:59 PM (Division offices close at 4:00 PM). As it is not uncommon for emails to Division staff members (including the Administrator) to appear in great numbers and go unread and/or unanswered for a day or two, or potentially longer, it is most disconcerting that Interstate would not make such a time-sensitive filing with the Division's Clerk, which it is required to do, for good reason, under the Rules. Filings made with the Clerk, assuming they are filed during proper business hours, get immediate attention and are immediately routed to appropriate Division staff. It was most fortunate that the Administrator discovered and read Interstate's email and informed this hearing officer before the July 31, 2020 deadline passed. The Division trusts that Interstate will abide by the Rules in all future filings made with the Division.

With respect to Interstate's request to keep the M/V *Islander* in Point Judith for the remainder of the 2020 season, the Division remains mindful and concerned that this request, if approved, also means that fast ferry service between Newport and Block Island will not be available for the entirety of the 2020 season.

¹⁴ See Order No. 23860, p. 3.

¹⁵ See 815-RICR-00-00-1.4(C).

While Interstate has a regulatory obligation to provide traditional lifeline services to Block Island, the Division does not consider Interstate's regulatory authority to provide discretionary fast ferry services to Block Island to be a component of the Company's lifeline ferry operations. Interstate has a standalone Division-issued Certificate of Public Convenience and Necessity ("CPCN") that authorizes fast ferry services between Point Judith and Block Island and, separately, fast ferry services between Newport and Block Island (CPCN # W-1169). The lifeline ferry service provided by Interstate is authorized under a separate CPCN (CPCN # W-1).

Interstate's fast ferry authority between: (1) Point Judith and Block Island and (2) Newport and Block Island was conferred by the Division after findings that there is a public need for such fast ferry services between these distinct sets of termini. Notwithstanding the opinions and statements made by municipal officials in Newport and New Shoreham, it is the needs and convenience of the riding public, Interstate's passengers, that is paramount. For this reason, the Division does not take lightly the prospect of abandoning the ideal of remaining true to the needs and convenience of the passengers that rely on Interstate's fast ferry services between Newport and Block Island without substantial supporting evidence to justify the elimination of this service for the entire 2020 season.

In its original June 19, 2020 offer of support for temporarily moving the M/V *Islander* from Newport to Point Judith, Interstate told the Division that "due to the COVID-19 emergency" and related "obstacles to providing adequate service" to Block Island, including a voluntary reduction in "passenger capacities to about 50% to conform with the state's social distancing guidelines for ferries... [and]

because of shipyard delays caused by the effects of COVID-19 [on] the repowering and rehabilitation of the M/V *Anna C*,” it [Interstate] needed to “add another vessel to fill these schedule gaps to meet the demand for passengers.” Interstate emphasized that the absence of the M/V *Anna C* from regular service, a vessel capable of carrying 1,150 passengers (or 575 under the 50% COVID-19 restrictions), necessitated additional ferry capacity to meet the demand for ferry services from Point Judith to Block Island.

The Division is taken aback by Interstate’s failure to provide a status report on the M/V *Anna C*. Surprisingly, there is no mention of the condition of the M/V *Anna C* in Interstate’s latest filing. Presumably, that vessel is back in service and able to carry an additional 575 passengers (at 50% capacity) on every run, multiple times each day. If so, it now appears that Interstate has shifted its primary rationale for using the M/V *Islander* in Point Judith from the loss of the M/V *Anna C* to now social distancing considerations and an increased demand for fast ferry services out of Point Judith.

The Division is aware, as Interstate has pointed out, that the Governor’s COVID-19 guidelines for ferries allows ferry operators to operate additional vessels to run the routes, based on ridership demand. However, that latitude does not translate into authorizing Interstate the regulatory freedom to unilaterally cancel services that it is required to provide under its CPCN.

Due to the Division’s concerns about Interstate’s plans to cancel its fast ferry services between Newport and Block Island for the entire 2020 season and also based on the shifting and questionable rationale behind Interstate’s proposal to move the M/V *Islander* to Point Judith for the rest of the 2020 season, the

Division finds insufficient support in Interstate's July 24, 2020 filing to grant Interstate's request. The Division will, however, conduct a public hearing on Interstate's request if Interstate requests such a hearing. Interstate may use this hearing to proffer additional evidence and argument to buttress its request.

Now, therefore, it is

(23874) ORDERED:

1. That Interstate's July 24, 2020 petition seeking approval from the Division to "keep the M/V *Islander* in Point Judith for the remainder of the summer of 2020," is hereby denied.
2. Starting on Saturday, August 1, 2020, the Division expects that the M/V *Islander* will be available to resume fast ferry services between Newport and Block Island.
3. Interstate may request a duly noticed public hearing on the matter to seek reconsideration from the Division. At which time, the Division will afford Interstate an opportunity to proffer additional evidence and argument in further support of its request to move the M/V *Islander* to Point Judith for the remainder of the summer of 2020. The Division will also afford other interested parties and/or persons an opportunity to participate and/or offer comment.
4. Interstate is hereby placed on notice that all filings made with the Division shall be filed with the Division's Clerk in accordance with the requirements contained in the Division's Rules of Practice and Procedure.
5. The Division hereby reaffirms that in the absence of vessel mechanical difficulties, the Division requires Interstate to seek and receive Division

approval before significantly interrupting authorized fast ferry services between Newport and Block Island.

6. That Interstate shall continue to adhere to the COVID-19 related social distancing guidelines established by the Rhode Island Department of Health.

Dated and Effective at Warwick, Rhode Island on July 30, 2020.



John Spirito, Jr., Esq.
Hearing Officer

APPROVED:



Linda George, Esq.
Administrator