

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: ISLAND HI-SPEED FERRY :
TARIFF FILING : DOCKET NO. 3599

REPORT AND ORDER

I. IHSF Revised Tariff and Terms & Conditions

On March 30, 2004, Island Hi-Speed Ferry, LLC ("IHSF") filed with the Public Utilities Commission ("Commission") a Notice of Revisions in Rates, Terms and Conditions of Filed Tariff which is intended to supersede the Tariff filed by IHSF on October 13, 1998 and effective March 31, 1999. IHSF listed an effective date of April 30, 2004.¹ According to IHSF, the purposes of its filing are to clarify IHSF's cancellation and refund policies in compliance with Commission request in Docket No. 2802, to clarify IHSF's policy regarding transportation of pets, to add new language regarding limitation of liability, and to give notice of new passenger rates.²

IHSF proposed an increase in its current rates as follows:

Ticket	Current Rate in effect since March 1999	Proposed Rate ³
Adult One-Way	\$14.00	\$15.50
Adult Round Trip	\$26.00	\$29.00
Child One-Way	\$ 8.00	\$ 8.75
Child Round Trip	\$12.00	\$13.50

In addition, IHSF is introducing a Frequent User Card which will entitle an adult passenger to ten trips for \$260.00 and a child passenger to ten trips for \$120.00. In response to a Commission Data Request, IHSF clarified that, like all IHSF round trip tickets that are recorded in IHSF's system as two passenger trips, the Frequent User Card

¹ On April 2, 2004, IHSF published a Notice of Revisions in Rates Terms and Conditions of Filed Tariff in the Providence Journal, a copy of which was provided to the Commission on April 5, 2004.

² Notice of Revisions in Rates, Terms and Conditions of Filed Tariff, p. 1.

³ IHSF Revised Local Tariff, Effective April 30, 2004.

will be recorded as twenty passenger trips and will be open ended for use any time during the season. In addition, IHSF clarified that the municipal landing fees collected on ten round trip tickets totaling \$8.50 will be assessed on the Frequent User Card at the time of purchase.⁴ In response to another Commission Data Request, IHSF indicated that there is no proposed change to bicycle rates which will remain at \$3.00 for a one way trip and \$6.00 for a round trip.⁵

In addition to clarifying its cancellation, refund and pet policy, IHSF proposed a new provision regarding limits on liability for personal injury and death. IHSF maintained that it is doing so in accordance with a 2001 decision by the Rhode Island Supreme Court. Specifically, the new proposed provision states:

PERSONAL INJURY AND DEATH. IHSF is not liable for any personal injury or death unless it receives written notification of the injury or death within six months of its occurrence from the injured passenger, their representative, or the representative of the estate of a deceased passenger and unless suit is instituted in the United States District Court for the District of Rhode Island as an admiralty or maritime action, without demand for jury trial, within one year of the occurrence of the injury or death.⁶

In addition to including the language in the Terms and Conditions, IHSF provided a copy of its boarding pass which will have the words “IMPORTANT NOTICE ON BACK” and both the “Cancellation Policy” and the “Personal Injury and Death” policy on the back.⁷

II. Division’s Position

On April 16, 2004, the Division of Public Utilities and Carriers (“Division”) filed a Memorandum authored by Stephen Scialabba, Chief Accountant regarding IHSF’s

⁴ IHSF Response to Commission Data Request 1-3.

⁵ IHSF Response to Commission Data Request 1-4.

⁶ IHSF Revised Local Tariff, IHSF Response to Commission Data Request 1-1.

⁷ IHSF Response to Commission Data Request 1-1.

Revised Tariff Filing, with the exception of the Personal Injury and Death provision. On April 19, 2004, the Division filed a Memorandum authored by John Spirito, Jr., Esq., Chief Legal Counsel, regarding the Personal Injury and Death provision.

Mr. Scialabba noted that in Docket No. 3495, the Commission examined the appropriate form of regulation for IHSF and determined that IHSF is to have a price floor, based on the rates originally approved in Docket 2802, likening IHSF to a competitive local exchange carrier (“CLEC”) because consumers have the discretion to choose the service. He also noted that the Commission determined that IHSF does not provide lifeline service and that its service is purely discretionary. Therefore, he indicated that the Commission determined that IHSF should have the flexibility to set its own rates as long as the rates are not anti-competitive.

Mr. Scialabba indicated that the Division has reviewed the proposed price changes and tariff language provisions and has determined that the proposed price changes, including the “frequent user card”, do not violate the price floor requirements of the Commission’s decision. Mr. Scialabba agreed with the IHSF response to data request 1-3 that the Frequent User card tariff language requires amendment to clarify that its use is available for 20 one-way trips.

Mr. Scialabba concluded that the Division does not object to the proposed rate changes proposed by IHSF and does not oppose the Frequent User Card, understanding that the tariff language needs revision to reflect the Company’s intent to allow for 20 trips, as per the IHSF data response.⁸

Mr. Spirito indicated that after a review of IHSF’s proposed language regarding “Personal Injury and Death,” although apparently based on the Rhode Island Supreme

⁸ Memorandum to Public Utilities Commission from Stephen Scialabba, Chief Accountant, April 16, 2004.

Court Case Tateosian v. Celebrity Cruise Services, 768 A.2d 1248 (R.I. 1001), the Division has concluded that the holding in the case does not require the provision to be included in IHSF's Terms and Conditions, and further, is a matter outside the scope of the regulatory authority. Additionally, in light of maritime law implications and resultant pre-emptions of state law to the contrary, Mr. Spirito indicated that the Division does not believe that the controlling provisions of federal law should be memorialized in Terms and Conditions approved by the Commission. Such inclusion and approval, according to Mr. Spirito, may lead a passenger to believe that the Commission has authority over maritime statutes of limitations.

Mr. Spirito concluded that IHSF does not need Commission approval to exercise a right granted by federal law. Therefore, he maintained that there is no reason for the Commission to directly, or indirectly, comment on whether IHSF has satisfied the requirements to comply with federal law. Finally, Mr. Spirito indicated that he had discussed the Division's position with Mr. Hagopian, Esq., counsel to IHSF, who offered his concurrence with the position.⁹

III. Town of New Shoreham

On April 26, 2004, after receiving a Notice that the Commission would consider IHSF's filing at its open meeting on April 29, 2004, the Town of New Shoreham ("Town") filed a Motion to Intervene. On April 27, 2004, IHSF filed an Objection to the Town's Motion. On April 29, 2004, the Town filed a Memorandum in support of its Motion to Intervene.

IHSF argued that the Town has failed to satisfy the requirements of Procedural Rule 1.13(b)(2). IHSF argued that the Town did not explain why the Division, through

⁹ Memorandum to Public Utilities Commission from John Spirito, Jr., Chief Legal Counsel, April 19, 2004.

the Attorney General, cannot adequately represent those interests. IHSF also argued that the Town did not set forth its position. Therefore, IHSF argued that the Town has failed to show how it will add to the debate over IHSF's form of regulation. Finally, IHSF argued that the Commission has previously denied intervenor status to the Town in Docket No. 3495, In Re: Island Hi-Speed Ferry Form of Regulation, finding that the Town did not have standing to participate in the proceeding.

IV. Findings

On April 29, 2004, at an open meeting, the Commission first considered the Town's Motion to Intervene. The Commission denied the Motion finding that that the Town does not have standing with regard to IHSF's rates because the service is not a lifeline service. While the Town does have a direct interest in the lifeline service provided by Interstate Navigation, it does not have a direct interest in the review of IHSF's rates for a discretionary service because the Division can adequately protect this interest.

The Town's Memorandum states that "the Town will be the only participant exclusively representing the specific and narrow interests of the year round residents...for year round walk on traffic, cars and freight." The Commission notes that IHSF carries no cars or freight and is a summer-only service.

As a summer-only service carrying only passengers, Block Island residents who choose this service may be categorized as being in the same situation as a non-resident passenger. The service is strictly discretionary and the Town's residents can choose the less expensive lifeline service provided by Interstate Navigation. The Memorandum states that this proceeding is different from Docket No. 3495 because in that case, IHSF

was not seeking a rate change as it is here. Regardless of this argument, the Town of New Shoreham still does not have an interest that can not be represented by the Division of Public Utilities and Carriers because the residents who choose the summer-only passenger-only service are in the same position of choosing one ferry service over another as a non-resident. Furthermore, when the Rhode Island Supreme Court questioned the Commission's wisdom in allowing intervention, IHSF's rates were being set.¹⁰

Next, the Commission notes that the form of regulation for IHSF is a price floor. The Town has not indicated that it will make an argument that the proposed rates are in violation of the price floor. Therefore, the Commission can decide this matter without assistance from the Town. The remaining arguments for intervention are identical to those currently pending before the Supreme Court, which the Commission has previously found unpersuasive. Therefore, intervention is denied.

Next, the Commission turned to IHSF's request and approved Island Hi-Speed Ferry, LLC Revised Local Tariff, Superseding the Tariff Approved in RIPUC Docket 2802, with the following caveats: (1) IHSF shall remove from its Terms and Conditions the provision entitled "Personal Injury and Death;" (2) IHSF shall include in its Tariff an amendment reflecting the terms of the Frequent User Card as explained in IHSF's Response to Commission Data Request 1-3; and (3) IHSF shall include its bicycle rates in its Revised Local Tariff. Accordingly, prior to commencing service for the 2004 season, IHSF shall file with the Commission a complete Revised Local Tariff to comply with the Commission's directives.

¹⁰ In re Island Hi-Speed Ferry, LLC, 746 A.2d 1240 (R.I. 2000).

The Commission found that IHSF's proposed rates are in compliance with the price floor approved in Commission Order No. 17619 (issued November 25, 2003). Furthermore, the approved rates will provide a larger differential between IHSF's passenger rates and the lifeline's passenger rates than currently exist, possibly providing further protections to the lifeline service, so important to the Town's residents.¹¹

To the extent the Town has indicated the Commission should hold a hearing, the Commission determined that a comprehensive rate proceeding is not required in this matter and therefore elected to exercise its option under R.I.G.L. § 39-3-12, finding good cause to exist to waive further notice and public hearing based upon the fact that the services, proposed by IHSF, do not constitute "lifeline" ferry services to a ratepayer population. Furthermore, IHSF provided 30 day notice of a rate change and the Commission undertook an investigation through data requests and through memoranda from the Division.

To the extent that the Town was attempting to use the Memorandum filed on the day of the open meeting as an access to public records request for financial data in this docket or as a request for all information contained in the docket under Title 39 of the Rhode Island General Laws, all data provided in this docket is public and the Town may copy the entire docket. If the Memorandum is being used to request information from or regarding IHSF that was contained in prior dockets, the matter has been addressed by the Commission and will not be addressed again. To the extent the Commission must

¹¹ The Commission is currently investigating Interstate Navigation's rates pursuant to its Filing for a General Rate Increase, Docket No. 3573. If approved as filed, a round trip adult ticket would still be subject to an \$11 differential off of IHSF's round trip adult ticket. The Division's filed position would require no passenger rate increase, resulting in a \$16.20 rate differential between the two carriers, compared to a \$13.20 differential that currently exists. Although the Town did not file a position regarding the appropriate rate design in Docket No. 3573, its filed position was a recommended overall rate increase of less than one-third of the Division's position.

respond under the Access to Public Records Act, the request was denied per Order Nos. 17102 and 17396 (issued August 20, 2002 and March 12, 2003, respectively), both of which are currently before the Rhode Island Supreme Court on appeal.

Accordingly, it is

(17819) ORDERED:

1. That the Town of New Shoreham's Motion to Intervene is hereby denied.
2. That Island Hi-Speed Ferry's proposed one-way and round-trip passenger and bicycle rates as filed on March 30, 2004, are approved effective April 29, 2004.
3. That Island Hi-Speed Ferry's proposed Frequent User Card is approved effective April 29, 2004.
4. That Island Hi-Speed Ferry shall file with the Commission an amendment to its Tariff reflecting the terms of the Frequent User Card prior to selling any such cards.
5. That Island Hi-Speed Ferry shall file with the Commission a Tariff reflecting its bicycle rates.
6. That Island Hi-Speed Ferry shall remove from its Terms and Conditions the provision entitled "Personal Injury and Death."
7. That Island Hi-Speed Ferry shall file with the Commission a complete Revised Local Tariff Naming Terms and Conditions Applying Between Points in the State of Rhode Island in accordance with the Commission's directives prior to commencing service for the 2004 season.
8. That, to the extent the Town, in its Memorandum in Support of Intervention, made a request under the State of Rhode Island's Access to Public Records Act

for Island Hi-Speed Ferry's financial records and was intended to request the same information denied in previous dockets, the request is hereby denied in accordance with Commission Order Nos. 17102 and 17396 (issued August 20, 2002 and March 12, 2003, respectively).

9. That Island Hi-Speed Ferry shall comply with all other direction of the Commission as contained herein.

EFFECTIVE AT WARWICK, RHODE ISLAND ON APRIL 30, 2004, PURSUANT TO AN OPEN MEETING DECISION ON APRIL 29, 2004. WRITTEN ORDER ISSUED ON MAY 5, 2004.

PUBLIC UTILITIES COMMISSION

Elia Germani, Chairman

Kate F. Racine, Commissioner

Robert B. Holbrook, Commissioner