

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
100 ORANGE STREET
PROVIDENCE, RHODE ISLAND 02903**

IN RE: Island Hi-Speed Ferry, LLC :
 Petition for Approval of Conveyance : Docket No. D-00-18
 Of Ownership Interest :

REPORT AND ORDER

On August 30, 2000, Island Hi-Speed Ferry, LLC (“IHSF”) and Harbor Cruises, LLC, d/b/a Boston Harbor Cruises (“BHC”) (collectively, the “Petitioners”) petitioned the Rhode Island Division of Public Utilities and Carriers (“Division”) for approval of the conveyance of a fifty (50%) percent ownership interest in the IHSF to BHC. The petition was filed pursuant to Rhode Island General Laws, Sections 39-3-24 and 39-3-25.

The instant petition recites the following relevant information:

- 1. IHSF is the holder of a Certificate of Public Convenience and Necessity (CPCN), number W-1163, authorizing it to provide high speed ferry service to the public between the Port of Galilee and New Harbor, Block Island, Rhode Island;*
- 2. BHC is the holder of a CPCN, number W-1167, authorizing it to provide ferry service to the public between Newport, Portsmouth and Providence, Rhode Island;*
- 3. IHSF has agreed to convey a fifty (50%) percent membership interest in IHSF to BHC;*
- 4. IHSF’s existing members are Galilee Cruises, Inc., which would become the owner of a thirty (30%) percent interest in IHSF, and The Galilee Group, Inc., which would become a twenty (20%) owner of IHSF if this transaction takes place;*

5. *BHC has been in the business of providing ferry service to the public in and around Boston Harbor for approximately seventy years, it has twenty four vessels in its fleet and it has purchased four INCAT design high speed ferries from Gladding-Hearn Shipbuilding during the last two years;*
6. *The existing members of IHSF believe that it would be in the best interests of IHSF and the public to bring BHC's depth and experience in the high speed ferry business to IHSF's organization;*
7. *BHC has agreed that it will make a capital contribution to IHSF equal to fifty (50%) percent of its sunk cost incurred in obtaining its CPCN and in related regulatory and judicial proceedings, as well as its other preoperational expenses, as consideration for its membership interest in IHSF;*
8. *BHC has agreed to use its business relationship with Gladding-Hearn to obtain the best possible purchase price for vessels purchased by IHSF from the shipbuilder;*
9. *BHC has agreed to use its purchasing power to obtain the lowest cost financing and to become a primary guarantor of all financing and related costs associated with the acquisition of vessels by IHSF;*
10. *BHC will contribute to IHSF its expertise in marketing, computerized ticketing, management information systems accounting and vessel maintenance; and,*
11. *BHC is capable of providing IHSF with a backup high speed ferry in the event its primary vessel suffers a mechanical problem which significantly interrupts service to the public (Petitioners' Exh. 2).*

In support of the proposed ownership interest conveyance, the Petitioners proffered the direct prefiled testimony of Mr. Frederick L. Nolan, Managing Partner of BHC (Petitioners' Exh. 1).

In response to the filing, the Division conducted a duly noticed public hearing on September 21, 2000. The hearing was held at the Division's

hearing room, located at 100 Orange Street in Providence. The following counsel entered appearances:

For IHSF and BHC:	Mark J. Hagopian, Esq. and Jon G. Hagopian, Esq.
For the Division's Advocacy Section:	Paul J. Roberti, Esq. Assistant Attorney General
For the Town of New Shoreham ¹	Merlyn P. O'Keefe, Esq.

Mr. Frederick L. Nolan testified that BHC is currently providing ferry services between Newport, Portsmouth and Providence, Rhode Island pursuant to authority conferred through Water Carrier Certificate No. W-1167 (Petitioners' Exh. 1, p. 1). He related that the Division awarded BHC's operating certificate on March 10, 2000.

In support of the instant petition, Mr. Nolan proffered a number of documents designed to further prove BHC's ability to operate as a passenger ferry service in Rhode Island. These documents provided information on BHC's company history, ownership profiles and its water transportation experiences (Id., exhibits 1-3). Mr. Nolan also provided testimony to supplement the information contained in these documents.

Mr. Nolan next explained that the agreement between IHSF and BHC requires BHC to make a capital contribution to IHSF equal to fifty percent of

¹ The town of New Shoreham filed a motion to intervene on September 19, 2000. The Petitioners filed an objection to the motion on September 20, 2000. After hearing arguments from the parties (arguments offered at the outset of the September 21, 2000 hearing), the Division decided to grant the Town's motion.

IHSF's:

Sunk costs incurred in obtaining its CPCN and in related regulatory and judicial proceedings, as well as its other preoperational expenses, which currently total approximately \$425,000 (Id., p. 3).

Mr. Nolan related that BHC has also agreed to use its business relationship with Gladding-Hearn Shipbuilders to obtain the best possible purchase price for IHSF's vessels (Id.). Mr. Nolan testified that BHC has already contacted Gladding-Hearn to discuss a "redesign of the vessel IHSF had intended to build" (Id.). He related that the redesigned vessel will have redundancy of propulsion systems, greater comfort in the main passenger salon and greater speed, without significantly increasing the size of the vessel (Id.). Mr. Nolan opined that the redesigned vessel "should be an achievement of economies which will give the ratepayer the highest level of service for the dollar" (Id., pp. 3-4).

Mr. Nolan further testified that BHC will become a primary guarantor of all financing and related costs associated with the acquisition of IHSF's vessels. As an example of BHC's purchasing power, Mr. Nolan related that BHC has the ability to obtain one hundred percent financing from one lender at a fixed annual percentage rate of eight percent. He contrasted these terms to IHSF, which Mr. Nolan opined:

... would have been floating at one and one half percentage points above the prime rate for its primary financing and four percentage points above the prime rate, plus a deferred interest payment, for its secondary financing (Id., p. 4).

Mr. Nolan also testified that BHC plans to contribute its established in-house marketing department, computerized ticketing systems, management information systems, accounting services and vessel maintenance services to the IHSF operation. He asserted that:

... [t]his will all but eliminate the learning curve for IHSF's principal managers and will reduce the need to rely upon outside vendors for equipment, systems and products necessary to providing service to the public (Id.).

Finally, Mr. Nolan testified that BHC will also be able to provide a back-up vessel to IHSF in the event its primary vessel suffers a mechanical problem. Mr. Nolan related that BHC has several high speed catamarans in its fleet and would be able to provide a replacement vessel to IHSF "in very short order" (Id.).²

The only public comments made during the hearing came from Attorney Michael McElroy, on behalf of the Interstate Navigation Company ("Interstate"). Mr. McElroy testified that his client operates year-round passenger and freight ferries between Block Island and Point Judith. He related that because Interstate and IHSF will be operating in close proximity to each other he looked into the safety record of BHC.

Mr. McElroy explained that he conducted research into BHC's Massachusetts's experience and discovered the following information:

- that BHC came under criticism in 1997 with allegations of safety violations, bad smells, constant lateness, running into

² IHSF additionally submitted a post-hearing memorandum in support of its petition.

docks and a gangway, and excessive drinking during happy hour;

- that in 1998, the crew of one BHC vessel tested positive for drug use after the vessel ran aground;
- that a BHC gangway collapsed in 1998, injuring seven people;
- that a BHC vessel struck a whale in 1998, and
- that BHC had been accused in 1998 of operating its vessels too fast.

Mr. McElroy also offered the following observations relative to BHC's Rhode Island operations:

- that the BHC vessel has been sideswiping the sides of the Providence hurricane barrier;
- that the BHC's vessel has been running behind schedule;
- that the BHC vessel struck a mooring chain in Newport Harbor;
- that several trips were missed after a water hose broke prior to departure out of Portsmouth; and
- that the BHC vessel was placed out of service after it experienced a problem with a transmission line (Tr. pp. 34-44).

Mr. McElroy subsequently requested that the Division and the Attorney General investigate the aforementioned incidents for the purpose of determining whether BHC ought to be permitted to become an owner of IHSF.

The town of New Shoreham (the “Town”) did not present any witnesses in this docket. However, at the conclusion of the hearing the Town did voice its opposition to the Petitioners’ proposed ownership interest conveyance. The Town also submitted a post-hearing brief in opposition to the instant petition and propounded post-hearing data requests.³

The Town’s opposition in this matter primarily hinged upon the Town’s belief that the proposed conveyance presents a substantial danger of absentee ownership. The Town opines that if BHC becomes a 50 percent owner in IHSF, IHSF’s operations in Rhode Island will become subservient to BHC’s large Massachusetts-based ferry operations. The Town asserted that this eventuality would not be in Rhode Island’s public interest. The Town also voiced concern relative to the safety questions raised by Mr. McElroy on behalf of Interstate.

The Advocacy Section did not present any witnesses in this docket. In contrast to the town of New Shoreham, however, the Advocacy Section expressed full support for the instant petition. The Advocacy Section recommended that the proposed transaction be approved:

... because it will result in a financially stronger

³ On October 6, 2000, 15 days after the public hearing conducted in this docket, the Town propounded data requests seeking additional information from IHSF regarding its business relationship with BHC and the vessel that IHSF plans to purchase. IHSF objected to the timeliness of the Town’s discovery request and questioned the propriety of the data requests posed. IHSF did, however, respond to an oral discovery request made by the Town during the hearing. As agreed by the parties at the September 21, 2000 hearing, IHSF provided the requested information under a confidentiality agreement.

Upon consideration of the Town’s request for post-hearing data and the objections raised by IHSF, the Division finds the Town’s post-hearing data requests to be improper and unreasonable. Such request is hereby quashed pursuant to the Division’s Rules of Practice and Procedure. The Town and Advocacy Section may examine the discovery responses submitted by IHSF subject to the confidentiality agreement of record. As none of the parties have requested additional time to review this information, the Division has not delayed the issuance of its decision in this matter.

company, it will also bring additional expertise to the company's operations and three, it will strengthen the chances that the public will have high speed catamaran service to and from Block Island (Tr. p. 174).

FINDINGS

In considering the merits of the arguments raised in this docket, the Division relied on the legal burden of proof established in Section 39-3-25 of the Rhode Island General Laws, supra. Section 39-3-25 sets forth the following criteria on which the Division must base its decision:

If, after the hearing, ... the division is satisfied that the prayer of the petition should be granted, that the facilities for furnishing service to the public will not thereby be diminished, and that the purchase, sale, or lease and the terms thereof are consistent with the public interest, it shall make such order in the premises as it may deem proper and the circumstances may require.

In view of the foregoing statutory language, the primary issue which must be addressed is whether the Division believes that IHSF's ability to provide ferry services between Block Island and the Port of Galilee will be adversely affected by the proposed ownership conveyance.

The town of New Shoreham questions BHC's commitment to local public interest. The Town also implies that if an out-of-state "heavyweight" is permitted to subsume IHSF, that the ferry service provided by IHSF to Block Island will likely suffer. The Division found this argument curious.

The curiousness comes not only from other comments made by the Town in this docket, but also by the Town's long record of opposition to IHSF's quest to provide ferry services to Block Island at all. During this docket, as in

previous dockets before both the Division and the Public Utilities Commission (“Commission”)⁴, the Town essentially described IHSF as a shell of a company, unable to provide any ferry services on its own. In keeping with this opinion, the Town expressed the following disparagements in this docket:

... they (IHSF) have nothing, they have no operation going and all they have is a shot at a certificate. It would seem a logical inference to draw that the only thing they would do with the certificate is sell it as quickly as they could (Tr. p. 174, quoting from the record of Town comments offered in a prior Division docket).

We have no contract for the lease of a vessel. We have no contract to build the vessel... we don't know if there is a lease for land over in New Harbor ... (Tr. 175).

The Town has previously appeared before this Division, and the Commission, and has consistently argued in opposition to IHSF's plans to provide passenger ferry services to Block Island. Indeed, the Town sought judicial review of the Division's decision to grant IHSF a certificate of public convenience and necessity authorizing the Block Island ferry services, and of the Commission's decision authorizing IHSF's initial rates. Both appeals were unsuccessful.

Now, curiously, having been unsuccessful in its prior attempts to scuttle IHSF plans to provide ferry services to Block Island, the Town has maintained in the instant docket that IHSF's proposed ownership conveyance to BHC is not in the public interest. The Town would have the Division believe that it now is concerned that BHC's involvement in IHSF's operations would somehow

⁴ See Division Docket 98MC16 and Commission Docket No. 2802.

impede or diminish IHSF's ability to provide ferry services in the future. Predicated on the Town's historic opposition to IHSF's Block Island ferry service, the Division puts little credence in the genuineness of the Town's purported concerns relative to the public interest. It's more likely the case that the Town has concluded that in the absence of BHC's ownership involvement in IHSF, the current level of preoperational expenses incurred by IHSF to date, now approximately \$425,000, will ultimately render the company insolvent and unable to effectuate its dream of operating a high-speed catamaran ferry service between Block Island and the mainland.⁵ In short, the Division is not persuaded by the Town's purported concerns for IHSF's survivability in the wake of the proposed ownership conveyance to BHC.

Similarly, the Division found little if any legitimate value to Interstate's impassioned plea for an investigation into BHC's safety record. Interstate's record of aggressive opposition toward IHSF's plans to operate as a ferry service provider to Block Island is also well documented. The Division must also query why Interstate didn't raise some of these safety concerns when BHC petitioned the Division for authority to operate a ferry service between Providence, Portsmouth and Newport.

Regarding the alleged safety violations, the Division finds that such matters would more appropriately be subject to the jurisdiction of the United States Coast Guard and/or the various harbor masters overseeing the

⁵ Most noteworthy, is the fact that much of the preoperational expenses incurred by IHSF resulted from having to respond to the protests and judicial proceedings generated by the Town and Interstate.

navigable waters over which BHC's vessels traverse. The record contained in this matter is devoid of any evidence that BHC has violated any federal or state laws.

Based on the remaining record, the Division finds no evidence to suggest that IHSF's ability to provide passenger ferry services to and from Block Island will be adversely affected by the inclusion of BHC as an owner. Conversely, the Division finds that BHC's ownership interest in IHSF will enhance IHSF's ability to serve its prospective ratepayers. BHC's experience, size and financial resources ensure the success of IHSF's ability to procure a vessel, maintain a regular schedule and minimize the costs of doing business. The Division also notes that BHC is currently operating in Rhode Island as a certificated common carrier, in good standing. Therefore, it is not necessary for the Division to consider the fitness of this Company or its principals.

Concerning the Town's negative characterization of BHC as a "heavyweight", the Division sees this attribute as an asset, not a liability. As noted above, the Division believes that BHC's size and resources will be advantageous for ratepayers. The Division reached similar conclusions in recent merger dockets involving the State's major electric and gas distribution companies.⁶ The Division can, therefore, not agree that there is a correlation between increasing commercial magnitude and decreasing service quality.

In conclusion, based on the evidence of record, the Division finds that the Petitioners' proposed ownership conveyance is in the public interest and of

⁶ See Order Nos. 16186 and 16338 in Division Docket Nos. D-99-12, D-00-03 and D-00-03.

no risk to the viability of IHSF or its ability to provide the passenger ferry services authorized under its operating certificate.

Accordingly, it is

(16457) ORDERED:

That the August 30, 2000 petition filing by Island Hi-Speed Ferry, LLC and Harbor Cruises, LLC, d/b/a Boston Harbor Cruises, seeking authority to convey a fifty percent ownership interest in IHSF to BHC, as described in the petition, is hereby approved.

Dated and Effective at Providence, Rhode Island on November 10, 2000.

John Spirito, Jr., Esq.
Hearing Officer

Thomas F. Ahern
Administrator