

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: ISLAND HI-SPEED FERRY'S :
REQUEST FOR CONFIDENTIAL : DOCKET NO. 2802
TREATMENT OF COMPLIANCE :
REPORT :

REPORT AND ORDER

On January 17, 2002 Island Hi-Speed Ferry, LLC ("Hi-Speed") filed a Compliance Report with the Rhode Island Public Utilities Commission ("Commission"). The Compliance Report contained Hi-Speed's financial and operations data for the year 2002 and projections for 2003. Hi-Speed requested that the Commission find portions of the Compliance Report to be proprietary and confidential pursuant to Rule 1.2(g) of the Commission's Rules of Practice and Procedure ("Rules") and the Access to Public Records Act ("APRA"). Hi-Speed argued that the disclosure of the information would cause substantial harm to Hi-Speed's competitive position. Also, Hi-Speed noted that the information in the 2002 Compliance Report is of the same nature and type as in the 2001 Compliance Report the Commission found to be exempt from disclosure in Order No. 17102.

On January 20, 2003, Interstate Navigation Company ("Interstate") objected to Hi-Speed's request for confidential treatment of the 2002 Compliance Report on the basis of the APRA and Title 39. On February 4, 2003, Interstate filed a lengthy memorandum in support of its objection. The arguments made were substantially the same as the arguments previously it raised in relation to Order No. 17102. The only new argument was the allegation that the Commission had waived its ability to deny Interstate access to Hi-Speed's Compliance Reports because the Commission did not issue a written denial

within 10 business days of Interstate's APRA request. On February 14, 2003, Hi-Speed responded to Interstate's objection by noting that Interstate's arguments are similar to the arguments it made for disclosure of the 2001 Compliance Report. Also, Hi Speed reiterated the arguments it made regarding the 2001 Compliance Report as applied to the 2002 Report. In conclusion, Hi-Speed requested that the Commission reaffirm its decision in Order No. 17102 and apply it to the 2002 Report. On February 19, 2003, Interstate responded to Hi-Speed by arguing that Hi-Speed's requests to the Commission to lift its profit cap and change its revenue ceiling required a public hearing under Title 39.

On another issue, on February 7, 2003, Interstate filed petitions with both the Commission and the Division of Public Utilities and Carriers ("Division") requesting an investigation of a contract between Hi-Speed and Boston Harbor Cruises ("BHC") as an inappropriate transaction with an affiliate under Title 39. On February 21, 2003, Hi-Speed objected to Interstate's petition by arguing that the arrangement with BHC was not an inappropriate transaction under Title 39.

COMMISSION FINDINGS

At an Open Meeting on February 27, 2003, the Commission reviewed all of the pleadings recently filed in this docket. At the outset, the Commission indicated it will defer to the Division relative to acting upon Interstate's petition to investigate Hi-Speed's transaction with BHC under Title 39. The relevant provisions of Title 39, specifically RIGL §39-3-28 through 39-3-30, give primary jurisdiction to the Division on the issues raised by Interstate. Accordingly, the Commission will await a decision of the Division on Interstate's petition.

As to Hi-Speed's request for confidential and proprietary treatment for the pertinent portions of the 2002 Compliance Report and Interstate's objection thereto, the Commission finds in favor of Hi-Speed for the reasons previously set forth in Order No. 17102. However, the Commission will specifically address an argument raised by Interstate for the first time regarding the 2002 Compliance Report. Interstate alleges argued that the Commission has waived its ability to deny Interstate's access to Hi-Speed's Compliance Reports because the Commission failed to issue a written denial within 10 business days of Interstate's APRA request.

This argument is flawed for numerous reasons. First, the Commission notes that Interstate never raised this argument at the February 27, 2002 hearing or in its pleadings relating to the 2001 Compliance Report, although Interstate stated it made APRA requests on November 6, 2001 and February 1, 2002. Those requests were made more than 10 business days before the hearing on February 27, 2002, and yet Interstate never raised the waiver argument. Consequently, Interstate has waived its argument. Second, RIGL §38-2-9 requires that civil actions brought under the APRA be heard by the Superior Court. Instead, Interstate appealed Order No. 17102 and raised this waiver argument before the Supreme Court. Interstate did not strictly adhere to the procedures outlined in the APRA. Third, throughout these proceedings, Interstate has linked its APRA request/arguments with its Title 39 objections. Interstate's arguments relating to the APRA and Title 39 became inextricably commingled to the Commission. Therefore, the Commission complied with the substantive provisions of Title 39 and the APRA but did not strictly adhere to the procedural aspects of the APRA. Fourth, the Commission would have had difficulty providing a written denial to Interstate's APRA request within

10 business days and still provide adequate due process to other parties, such as Hi-Speed, through such procedures as responsive pleadings, hearings and post-hearing briefs.

As for Interstate's arguments regarding the Commission engaging in ratemaking without a public hearing, the Commission emphasizes it has not granted Hi-Speed's requests to lift its profit cap, change its revenue ceilings or true-up its cost of service. The Commission has merely interpreted Order No.15816 to allow the Commission to review Hi-Speed's rates after a full season of operation data was available. Hi-Speed did not commence service until mid-summer 2001. Therefore, the 2002 season represents the first full season of operation. Accordingly, the Commission has opened a new docket to review Hi-Speed's form of regulation and to investigate the reasonableness of Hi-Speed's current rates. Hi-Speed's current rates should remain in place until the Commission completes the proceedings in this new docket or determines that the current rates are unreasonable. The Commission will move expeditiously in the new docket.

Accordingly, it is

(17396) ORDERED:

1. The Compliance Report filed by Island Hi-Speed Ferry, LLC on January 17, 2003 is deemed proprietary and confidential with respect to the portions identified as such by Island Hi-Speed Ferry.

2. The Interstate Navigation Company's request for disclosure of Island Hi-Speed Ferry's Compliance Report under the Access to Public Records Act is hereby denied.

3. A new docket to review Island Hi-Speed Ferry's form of regulation and to investigate the reasonableness of Island Hi-Speed Ferry's current rates is hereby opened.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN OPEN MEETING ON FEBRUARY 27, 2003. WRITTEN ORDER ISSUED MARCH 12, 2003.

Elia Germani, Chairman

Kate F. Racine, Commissioner

Brenda K. Gaynor, Commissioner