

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

IN RE: Interstate Navigation Company :
Ferry Services between : Docket No. 99-MC-107
Providence, Newport and :
Block Island :

REPORT AND ORDER

On November 3, 1999, the Interstate Navigation Company (“Interstate”) filed a notice with the Rhode Island Division of Public Utilities and Carriers (“Division”) concerning the seasonal¹ ferry services it is authorized to provide between Providence, Newport and Block Island.

In its notice, Interstate indicated that it is relinquishing that portion of Certificate of Public Convenience and Necessity No. W-2 (“Certificate No. W-2”), which authorizes passenger and freight transportation services by water vessel between Providence and Newport; and holding in abeyance the remaining portion of the same Certificate which authorizes passenger and freight transportation services between Newport and Block Island, pending the finding of overnight berthing space in Newport.

The Division established this docket for the purpose of determining whether Interstate’s plans regarding these ferry services are supportable under

¹ These seasonal ferry services have historically been provided between June and September.

the law and in the public interest. Toward this end, the Division conducted a duly noticed public hearing on January 25, 2000².

The following counsel entered appearances at the January 25 hearing:

For Interstate: Michael A. McElroy, Esq.

For the Division's
Advocacy Section and the
Department of Attorney
General: Paul J. Roberti, Esq.
Assistant Attorney General

Interstate proffered two witnesses in support of its proposals. The witnesses were identified as Mr. David Preston, a public relations consultant with the firm of McMahon & Preston Communications, Inc., 67 Cedar Street, Providence, Rhode Island; and Mrs. Susan Linda, Interstate's President. Neither the Division's Advocacy Section ("Advocacy Section") nor the Department of Attorney General ("Attorney General") proffered any witnesses.

Interstate's two witnesses were primarily offered to testify that despite increased advertising and public relations efforts, the ferry services that Interstate has provided between Providence and Block Island still remain substantially unprofitable. Interstate provided the following table as evidence of sliding ridership numbers:

<u>Year</u>	<u>Passengers</u>
1982 -	17,177
1983 -	12,119
1984 -	12,008
1985 -	12,171
1986 -	10,451

² Notice was published in the Providence Journal on January 14, 2000.

1987 -	11,951
1988 -	7,295 (no Providence boat)
1989 -	10,988
1990 -	10,780
1991 -	8,243
1992 -	8,056
1993 -	9,630
1994 -	8,618
1995 -	8,491
1996 -	6,757
1997 -	8,102
1998 -	9,215
1999 -	6,517

(Division Exh. 1)³

Documents prepared by Interstate's accountant were additionally proffered for the purpose of quantifying Interstate's business losses. According to this evidence, Interstate's ferry operations between Providence, Newport and Block Island have resulted in losses of \$170,705 in 1999, \$124,045 in 1998 and \$170,794 in 1997 (Division Exh. 1).

Interstate stated that it raised the issue of the losses associated with this ferry service during its last rate case in 1996 (Docket No. 2484). Interstate explained that it then agreed to continue with the service to see if ridership would improve. Mrs. Linda testified that Interstate thereafter included mention of the Providence/Newport/Block Island ferry service in all advertisements released by the Company to promote its Pt. Judith/Block Island ferry service (Tr. 122-123). She also related that Mr. Preston's public relations firm was retained, in part, to promote the Providence/Newport/Block Island ferry service

³ Division Exhibit 1 is comprised of several different documents which were aggregated to promote administrative economy.

(Tr. Id.). Interstate explained that in addition to the poor ridership and losses it has experienced since 1996, it recently discovered that the Rhode Island Public Transit Authority (“RIPTA”) has received federal grant money to establish a commuter and tourist ferry service between Providence and Newport. Interstate introduced evidence to show that RIPTA has already awarded a contract for the ferry service which is slated to begin in the summer of 2000 (Interstate Exh. 1)⁴. Interstate argued that the combination of its past losses and RIPTA’s new ferry services now compels it to surrender that portion of the authority conferred through Certificate No. W-2, which authorizes ferry services between Providence and Newport.

While it has opted to relinquish its Providence/Newport authority, Interstate proposes to hold on to its Newport/Block Island authority and wait for the availability of an overnight berth in Newport’s downtown tourist and business district (“business district”). Interstate maintains that a business district dock location is a necessity if it is going to be able to improve its ridership numbers and operate profitably.⁵ Therefore, Interstate seeks authority from the Division to hold its Newport/Block Island ferry services in abeyance until such an overnight berth can be located and successfully leased.

ISSUES

⁴ Interstate Exhibit 1 is comprised of several different documents which were aggregated to promote administrative economy.

⁵ Interstate has historically utilized dock space at Fort Adams in Newport, which is significantly outside the business district. Interstate has also represented that the Fort Adams dock is not available for overnight berthing.

The Division has considered Interstate's November 3, 1999 notice and its intended actions and finds that three regulatory issues are manifest.

First, whether Interstate has the legal freedom to simply relinquish its operating authority, specifically, the Providence/Newport component of Certificate No. W-2, without Division approval?

Second, whether Interstate has a legal right to unilaterally bifurcate Certificate No. W-2, for the purpose of reducing the operating authority granted therein?

Third, whether Interstate should be permitted to hold the Newport/Block Island authority component of Certificate No. W-2 in abeyance for an indefinite period of time, pending Interstate's ability to locate and acquire an overnight berth in Newport's business district?

FINDINGS

The record reflects that Interstate has been providing ferry services between Providence, Newport and Block Island for over sixty years. The record also shows that for many of the latter years, Interstate has provided these ferry services unprofitably. Indeed, over the last three years alone, Interstate has incurred an aggregate loss of \$465,544 (Division Exh. 1). These losses were fortunately able to be recovered through revenues generated by Interstate's analogous ferry service between Point Judith and Block Island.⁶ The concomitant effect, however, has been a need to keep Point Judith/Block

Island tickets priced higher than otherwise needed in order to maintain the subsidy.

Interstate has now decided to end the financial losses connected to its Providence/Newport/Block Island ferry services. Its plan is to refuse to operate any longer between Providence and Newport and to discontinue for an indefinite time its services between Newport and Block Island. Interstate asserts that it will not resume operations between Newport and Block Island until it can locate an overnight berth in Newport's business district, where traffic patterns greatly exceed its current limited-use docking facility at Fort Adams. Interstate opines that such relocation will result in improved ridership and profitability potential. Interstate further opines that without the Providence/Newport service to provide, it will be able to provide two daily round-trip runs between Newport and Block Island. These additional runs are perceived by Interstate as another way to improve ticket sales between Newport and Block Island.

The Division has thoroughly evaluated Interstate's plan and its request for permission to hold its Newport/Block Island ferry service in abeyance. The Division has also reached findings on what the Division believes are the three relevant issues in this matter. These findings are set forth below.

Issue 1 - Whether Interstate has the legal freedom to relinquish its Providence/Newport ferry transportation service?

⁶ These subsidies have been supported by the Division and approved by the Public Utilities

Interstate has provided passenger and freight transportation services by water vessel between the Rhode Island mainland and Block Island for many decades. Common carrier services of this nature are regulated by the Division pursuant to State law.⁷ The underlying rationale for this regulation comes from a legislative declaration that:

*[t]he businesses of ... offering to the public transportation of persons and property ... are affected with a public interest.*⁸

The legislature has further declared that:

*Supervision and reasonable regulation by the state of the manner in which such businesses ... carry on their operations within the state are necessary to protect and promote convenience, health, comfort, safety, accommodation and welfare of the people, and are a proper exercise of the police power of the state.*⁹

Regulation in common carrier cases typically begins with the filing of an application with the Division by a prospective common carrier. Thereupon, the Division will conduct a public hearing to determine whether the applicant is “fit, willing and able” to provide the transportation services being proposed.¹⁰ In most common carrier application matters, the Division must also determine

Commission.

⁷ See R.I.G.L. §§ 39-1-2 (7) and (20); and 39-3-3.

⁸ R.I.G.L. § 39-1-1(a)(1)

⁹ R.I.G.L. § 39-1-1 (a)(2)

¹⁰ See R.I.G.L. §§ 39-12-7 and 39-14-4.1; also, Yellow Cab Company of Providence v. Public Utility Hearing Board, 191 A.2d 23 (1963).

Notwithstanding the unusual genesis of Certificate No. W-2, the fact remains that Interstate's original right to the certificate rested in part on the legal foundation that it was "willing" to provide the service in the first place, supra. Implicit in this axiom is the converse rationale that Interstate may not be compelled to provide common carrier transportation services against its corporate will. The Division accepts this premise and acknowledges that it has little choice but to allow Interstate to stop providing ferry services between Providence and Newport.

While the Division accepts that it cannot force Interstate to provide common carrier services against its will, the Division is mindful that it is empowered to seek a court order to require Interstate to continue to service the public on a temporary basis until a replacement ferry service provider can be found. However, after substantial consideration, the Division finds that this course of action would be imprudent and without much chance for success, at least in the near future.

In reaching this conclusion, the Division thought about a number of factors. First, Interstate has been unable, despite its long history in the ferry business, to make the Providence/Newport service profitable. In large measure this has resulted from the relatively small demand for the service, approximately 225 passengers on average per year.¹⁴ Such low ridership demand certainly makes finding a replacement carrier difficult.

¹⁴ Interstate Exh. 1 reflects 2037 total passengers between 1991 and 1999.

Additionally, the ferry services that Interstate has provided between Providence and Newport have not been “lifeline” services. Unlike Interstate’s Pt. Judith/Block Island ferry service¹⁵, which represents the only means of regular and abundant daily passenger and freight exchange between Block Island and the Rhode Island mainland, the Providence/Newport ferry service is characteristically recreational in nature. The public comments offered in this docket reflect that the ferry service has been most popular for those individuals who use it as an economical means of enjoying the scenic beauty of Narragansett Bay. While clearly a recreational treasure for those passengers who have used it, the ridership numbers indicate that few, if any, passengers use the ferry service to satisfy “lifeline” transportation needs. The Division believes that such predominant recreational use would provide the Court with little justification to compel the involuntary resumption of the Providence/Newport service.

Lastly, as set forth in the Division’s legislative charge, the Division is mandated to supervise and regulate common carriers in a “reasonable” manner.¹⁶ In its regulation of common carriers, the Division must focus its attention on protecting the “... health, comfort, safety, accommodation and welfare of the people,” supra.¹⁷ In the instant case, the Division finds an

¹⁵ Authorized under Certificate No. W-1 (Tr. 182).

¹⁶ R.I.G.L. § 39-1-1 (a)(2)

¹⁷ Id.

insufficient nexus between the nominally utilized recreational services in issue and the protections described and contemplated above.

The instant record lucidly shows that Interstate is no longer willing to provide common carrier services between Providence and Newport. The Division finds that Interstate's lack of willingness to provide service is unfortunately dispositive of the issue. Consequently, the Division must regrettably conclude that it is powerless to compel Interstate to continue providing ferry services between Providence and Newport.

Issue 2 - Whether Interstate may unilaterally bifurcate Certificate No. W-2, for the purpose of reducing the operating authority granted therein?

Interstate states that although it will no longer provide ferry service between Providence and Newport, it plans to retain its Newport/Block Island authority. In effect, Interstate believes it has the unilateral ability to amend Certificate No. W-2, without Division approval.

In support of its contention, Interstate argues that the ferry services it has historically provided between Providence and Newport, and Newport and Block Island, constitute two separate common carrier services. Interstate asserts that because these two separate services existed prior to 1943 and the 1954 legislation, described above, it was entitled to two separate certificates when Certificate No. W-2 was issued back in 1954.

In further support, Interstate relies on the words "between termini" as contained in the 1954 legislation, supra. Interstate contends that the phrase

“between termini” connotes ferry service between only two points (Tr. 182-183). Interstate reasons that the two services it was providing prior to 1954 comprised two distinct operations between two distinct sets of termini. In view of this, Interstate opines that the issuance of the single certificate in 1954 was an inadvertent oversight.

The Division has considered Interstate’s argument on this issue and finds that it is without merit. Interstate has historically provided ferry service between Providence, Newport and Block Island as a consolidated transportation business. The record reflects that Interstate has always used a single vessel to provide passenger transportation services between Providence and Block Island, with a stop in Newport. The merger of these termini is obvious from the fact that Interstate has always limited its services to one round trip per day between the three locations. Although it is true that Interstate has separated its ticket sales into three destination groups (i.e., Providence/Newport, Newport/Block Island and Providence/Block Island), the record reflects that this was done to simply maximize ridership potential. The Division likens this arrangement to the jitney-related common carrier services that the Division regulates under Rhode Island General Laws, Chapter 39-13. Under this chapter, the Division shall approve routes over which a jitney may operate. The approved route, for example, may allow for operations between points A and E, with stops at points B, C and D. The relevant certificate of public convenience and necessity would describe the operating authority as

transportation between A, B, C, D and E. The Division would not issue ten separate certificates to individually account for each of the ten destination combinations. By selling tickets based on the specific destination of choice, the jitney company increases its chances of keeping the bus full between stops.

The Division was also particularly unpersuaded by Interstate's assertion that the language "between termini" in the 1954 legislation, connotes service between only two points. The word "termini" represents a variation plural of the word "terminus" which means "a terminal on a transportation line."¹⁸ The word "termini" simply connotes more than one terminal or part of the transportation service.¹⁹ In the jitney example described above, there would be five terminals or parts of the total authorized jitney transportation service (i.e., destinations A, B, C, D and E).

Accordingly, the Division finds that Certificate No. W-2 was correctly issued as a single certificate evidencing a consolidation of integral transportation services. As such, the Division finds that Interstate is effectively seeking an amendment to Certificate No. W-2, which it cannot effectuate without Division approval.

Certificate amendment matters customarily relate to requests for an augmentation of operating authority. In those matters, the Division is compelled to consider whether the applicant is fit, willing and able to provide the additional service; and whether public convenience and necessity requires

¹⁸ Webster's II "New College" Dictionary, 1995

the additional service. In the instant case, however, the issue relates to a reduction in services. In this case, due to Interstate's unwillingness to provide ferry service between Providence and Newport, the Division need only consider whether the abandonment of the Providence/Newport component of Certificate No. W-2 abrogates any of the public convenience and necessity concomitant with the Newport/Block Island component of Certificate No. W-2. The Division finds that it does not. The record reflects that over the last nine years, at least 50 percent of all ridership associated with Certificate No. W-2 has been derived from passengers traveling between Newport and Block Island (Interstate Exh. 1). In 1999, 4125 out of Interstate's 6517 total ridership or approximately 63 percent was attributable to passenger travel between Newport and Block Island. This data supports a finding that the "public convenience and necessity" has been served through the Newport/Block Island ferry service provided by Interstate.

Predicated on this finding, the Division will approve an amendment to Certificate No. W-2, which reflects the extrication of Interstate's current authority to transport, by water vessel, passengers and freight between Providence and Newport. The Division will reissue Certificate No. W-2 to officially document this change of operating authority.

Issue 3 - Whether Interstate should be authorized to hold its Newport/Block Island ferry service in abeyance for an indefinite period of time, pending Interstate's ability to

¹⁹ Id.

locate and acquire an overnight berth in Newport's business district?

In its November 3, 1999 notice to the Division, Interstate neglected to seek Division approval to suspend its Newport/Block Island ferry service. Interstate instead took the initial position that the Division's authorization was not required. However, in response to the Division's investigation and challenge, Interstate modified its initial position during the January 25, 2000 hearing and declared that it was seeking Division "consent and approval that our interpretation of the statute is correct" (Tr. 209).

In support of its interpretation, Interstate asserts that the Division must allow it to bifurcate Certificate No. W-2, and that the Division lacks the jurisdiction to revoke its Newport/Block Island operating authority (Tr. 181 - 183). Interstate further asserts that it has an absolute right to keep its Newport/Block Island operating authority dormant for an indefinite period of time. It bases this assertion on the fact that it has been operating since prior to 1943 and that State law has granted Interstate an absolute and irrevocable certificate.²⁰

The Advocacy Section and Attorney General disagree with Interstate's position on this issue. These parties argue that Interstate does not possess an irrevocable certificate. Rather, they maintain that the certificate can always be revoked if revocation is in the public interest (Tr. 203-204).

²⁰ R.I.G.L. § 39-3-4, supra.

The incongruity between Interstate's request for Division approval and its related assertions of an irrevocable certificate is curious. If the Division is powerless to revoke Certificate No. W-2, as Interstate asserts, and if Interstate believes it has an absolute legal right to keep its Newport/Block Island ferry service dormant, indefinitely, then why is Interstate now seeking Division "consent and approval"?

The Division finds Interstate's position and arguments on this issue to be perplexing and unconvincing. The 1954 law on which Interstate bases its assertions neither insulates Interstate from revocation nor permits it to unilaterally suspend its ferry services. This law had a singular purpose. Specifically, the law conferred a certificate of public convenience and necessity to "water carriers" who were providing common carrier services during a seven year period prior to 1943. The 1954 law simply rendered an otherwise obligatory public hearing on an application for water carrier/common carrier authority unnecessary. In short, Interstate did not have to satisfy the customary requisite burden of proof that it was fit, willing and able and that its services were required in the interest of "public convenience and necessity." The legislature in 1954 palpably recognized that if the services were already in place for a period of at least seven years, it would be illogical to compel the existing service provider to prove that the services would be utilized by the public if made available.

Accordingly, the Division finds that the manner in which Interstate acquired Certificate No. W-2 created no special “rights” to the certificate. Interstate’s proprietary interest in its certificate is, in the opinion of the Division, indistinguishable from any other certificate holder’s rights. Interstate’s certificate, therefore, can be revoked or modified by the Division, for cause and after a hearing.

Turning now to the issue of whether Interstate may suspend its Newport/Block Island ferry service until such time as it can locate and contract for an overnight berth in Newport’s business district. The Division is mindful that Interstate has historically berthed its boat at its Providence dock overnight. Now that Interstate has abandoned its Providence to Newport ferry service, Interstate opines that it must find a replacement overnight berth in Newport. Interstate explained that the landing it has historically used at Fort Adams in Newport is not available for the overnight storage of the boat. Interstate further explains that if a Newport/Block Island ferry service is ever going to operate profitably, the boat must be berthed overnight in Newport’s business district. On the dock location issue, Ms. Linda testified that “if we did get the proper [dock] location we could develop enough people to pay for the boat, pay for the expenses” (Tr. 128-129). Ms. Linda additionally related:

I believe it’s because of all the tourists that are in Newport during the summer. If we were in a downtown location, people saw the boat there, we might attract a lot of those people who don’t see the boat there because its over in Fort Adams, we might be able to increase ridership (Tr. 131).

The record supports a conclusion that the proposed suspension of services hinges upon Interstate's wishes to find and utilize dock space exclusively in Newport's business district. The Division contrasts this finding with Interstate's November 3, 1999 notice of its purported need to simply locate an overnight berth somewhere in the city of Newport.

The issue then boils down to one of profitability rather than a need to find an overnight berth. Essentially, Interstate demands that it be permitted to stop providing the ferry services authorized under Certificate No. W-2 until such time as it can relocate to a dock in the heart of Newport's lucrative tourist center. Interstate asserts that it will only resume operations under this condition.

The Division finds this demand unreasonable and inconsistent with past experience. Interstate maintains that it will not resume services between Newport and Block Island until it finds an overnight berth in Newport's business district. However, Interstate readily admits that finding such dock space is highly problematical. Indeed, Ms. Linda testified that Interstate has been looking for a business district dock location for years. She related that all attempts to find suitable berthing have been fruitless. Moreover, she testified that any dock space in Newport's business district would be very expensive (Tr. 127 - 129 and 163 - 166). Based on the testimony, the Division places little hope on Interstate's ability to ever locate a suitable and affordable overnight

berth in Newport. Consequently, the period of dormancy contemplated by Interstate would likely be intolerably long and not in the public interest.

Interstate clearly has the legal right to relinquish its certificate. The Division finds, however, that there is no comparable legal right which permits Interstate to refuse to provide service until an elusive ideal environment for maximizing profitability can be achieved. Interstate must elect to either completely relinquish the operating rights conferred through Certificate No. W-2 or continue to provide ferry services between Newport and Block Island.

The Division has previously herein made a finding that maintaining ferry services between Newport and Block Island would be in the public interest, specifically, in the context of the “public convenience and necessity” standard. The Division must, therefore, endeavor to preserve Interstate’s Newport/Block Island service or, alternatively, minimize the administrative obstacles facing a potential start-up ferry company wishing to step into Interstate’s “shoes.”

Unlike the ferry services route contained in Interstate’s Certificate No. W-3, which authorizes ferry services between Newport and Point Judith²¹, the Newport/Block Island route contained in Certificate No. W-2 has witnessed regular annual usage. Indeed, while not profitable for Interstate, the service has attracted over 44,000 passengers since 1991.²² This de facto historic usage clearly demonstrates a public need for ferry services of this nature.

Interstate proposes to discontinue its Newport/Block Island service for

²¹ Tr. 182

an indefinite period of time. In effect, keeping the service dormant until a subjectively ideal business location dock presents itself. The Division finds that this proposal is unreasonable, unsupported in the law and not in the public interest.

The Division recognizes that Rhode Island law does not contain a specific prohibition regarding the dormancy of water carrier services. However, the Division is guided by the dormancy prohibitions associated with other types of common carriers, such as motor carriers of property, taxicabs and limited public motor vehicles. For motor carriers of property, dormancy periods cannot exceed sixty consecutive days.²³ For taxicabs and limited public motor vehicles, the maximum allowable dormancy period is 180 consecutive days.²⁴ After these respective dormancy periods, the law deems the services abandoned and the Division is required to revoke the dormant operating certificates.

In addition to the issue of dormancy, the Division must also consider Interstate's decision to discontinue services in the context of its obligation as a public utility to satisfy the needs of its ratepayers. Rhode Island General Laws, Section 39-4-10 provides in pertinent part as follows:

If upon hearing and investigation had under the provisions of this chapter, the division of public utilities and carriers shall find that any practice, act, or service of any public utility is unjust, unreasonable, insufficient ... or that any service of any such public utility is inadequate or that any service which can be reasonably demanded cannot be

²² Interstate Exh. 1

²³ R.I.G.L. § 39-12-18

²⁴ R.I.G.L. § 39-14-26

obtained, the division shall have power to substitute therefor such other ... practices, services, or acts, and to make such order respecting, and such changes in the ... practices, service, or acts, as shall be just and reasonable ...

In the instant case, the record shows that there has been and continues to be a public need for ferry services between Newport and Block Island. Whereas, Interstate has proposed to suspend its services rather than relinquish its Newport/Block Island operating authority, the Division must find that Interstate's decision constitutes a failure to provide "sufficient" and "adequate" service.

Based on the above findings and in recognition of the authority provided under Section 39-4-10, above, along with the broad and incidental powers conferred to the Division pursuant to Rhode Island General Laws, Section 39-1-38, the Division has decided to limit the proposed dormancy period to one year. A one-year suspension (dormancy) period allows Interstate to search for an overnight berth in Newport's business district.

At the conclusion of the one-year period, Interstate must resume ferry services from either Newport's business district or an alternative berthing location. In the event that an affordable dock cannot be found in Newport's business district, Interstate should consider berthing in another location (e.g., Portsmouth, Middletown or Bristol). The Division also notes, in the absence of any other docking locations, that Interstate's own dock on Block Island affords a viable and economical berthing option.

The Division has concluded that public convenience and necessity interests require the continuation of ferry services between Newport and Block Island. Interstate has been afforded one year to resume these services or relinquish the balance of Certificate No. W-2. If Interstate fails to either resume service or relinquish the balance of Certificate No. W-2 within the time allotted, the Division will revoke Certificate No. W-2 in its totality.

Thereupon, the Division may take steps to advertise for a replacement ferry service provider. A replacement provider may then apply for operating authority free from the possibility of an adversarial intervention from Interstate. The public's need for ferry services between Newport and Block Island demands a speedy restoration. A contested case resulting from a possible Interstate intervention is clearly not in the public interest. While the Division will afford Interstate a one-year suspension of authority and encourages Interstate to resume its historic ferry service, the Division will not impede the start-up of a potential replacement service provider by requiring the replacement provider to also have to fend off a potential intervention by Interstate.

As an additional matter, Interstate has stated that the boat it has used for its Providence/Newport/Block Island ferry services over the years, the *Nelsec* will now be moved to Pt. Judith. Interstate plans to use the *Nelsec* to supplement its Pt. Judith/Block Island ferry services (Tr. 70). With this addition, Interstate will now have four boats operating between Pt. Judith and

Block Island. Namely, the *Carol Jean.*, the *Anna C.*, the *Block Island* and the *Nelseco*. Interstate also keeps two additional boats in reserve, the *Manitou* and the *Manisee*, for potential use between Pt. Judith and Block Island.

In Interstate's last rate case (Docket No. 2484), Interstate requested authority to place a new \$8 million freight/passenger boat into service. Interstate stated that this vessel would replace the *Manitou* and *Manisee* and would result in improved service. At that time, Mrs. Linda testified that the *Manitou* and *Manisee* must "remain available as standby boats during the shakedown period of the new vessel" (Order No. 15300, p. 73). This request was approved by the Commission with the understanding that after the "shakedown period," the two boats would be sold and the proceeds of the sale applied to offset Interstate's future cost of service requirements.

The *Block Island* has operated for almost three years. Despite this successful "shakedown," there has been no word on the sale of the *Manitou* and *Manisee*.

During the same three-year period, the Division notes that Interstate has added a significant number of additional off-peak season scheduled ferry services.²⁵ While these off-peak runs carry relatively few passengers, Interstate provides these services with vessels capable of carrying well over 1000 passengers each.

²⁵ Based on exhibits and testimony in Island Hi-Speed Ferry Docket No. 2802, See Order No. 15816, p. 40).

Interstate now plans to add the *Nelseco* to its Pt. Judith/Block Island fleet. The *Nelseco* is capable of carrying another 800 passengers per run. Mrs. Linda relates that the *Nelseco* will add at least two additional runs per day between Pt. Judith and Block Island (Tr. 145).

The Division has considered Interstate's current and proposed Pt. Judith/Block Island fleet of boats, both active and in reserve, in the context of Interstate's repeated claims of low ridership capacity, and finds reconciliation difficult.

Over the years Interstate has openingly admitted that it operates at only 20 percent of adult passenger capacity during the May to October months.²⁶ Despite this low ridership capacity, Interstate contends that it must utilize and maintain a fleet of three large boats, two smaller reserve boats and now the *Nelseco*. The Division must query whether the inclusion of the *Nelseco* into the Pt. Judith/Block Island fleet will further reduce ridership capacity utilization.

For these reasons, the Division finds that it must now examine the reasonableness of using and maintaining such a large fleet of high-capacity boats for servicing Block Island. The Division's examination will address the status of the *Manitou* and the *Manisee*, the factual basis for all current and proposed scheduled runs and the propriety and service characteristics of Interstate's vast fleet of boats.

Accordingly, it is

²⁶ For example, see Interstate Exhibit 15 in Division Docket No. 98-MC-16.

(16190) ORDERED:

1. That the Interstate Navigation Company's decision to relinquish that portion of Certificate No. W-2 which authorizes passenger and freight transportation services by water vessel between Providence and Newport, is hereby approved.
2. That Certificate No. W-2 shall be amended and reissued by the Division reflecting the change approved in paragraph "1," above.
3. That the Interstate Navigation Company's decision to hold in abeyance the remaining portion of Certificate No. W-2, which authorizes passenger and freight transportation services between Newport and Block Island, pending the finding of overnight berthing space in Newport, is hereby approved in part and denied in part. Specifically, Interstate shall be granted a temporary one-year suspension of ferry service operations between Newport and Block Island. The one-year suspension shall begin from the issue date of this report and order.
4. That at the conclusion of the one-year suspension period, Interstate shall either be prepared to resume ferry services between Newport and Block Island or surrender possession of Certificate No. W-2.
5. That Interstate shall submit to a formal investigation and public hearing designed to provide the Division with an opportunity to fully examine the utility of Interstate's current fleet of six boats, the factual basis for all current and proposed scheduled runs between Pt. Judith and Block

Island, and any other related issues deemed necessary and appropriate by the Division. The Division's clerk shall be instructed to provide notice to Interstate of all hearings related to the investigation of these issues.

Dated and Effective at Providence, Rhode Island on February 29, 2000.

DIVISION OF PUBLIC UTILITIES AND CARRIERS

John Spirito, Jr., Esquire
Hearing Officer

Thomas F. Ahern
Administrator