

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION

IN RE: PRUDENCE FERRY, INCORPORATED DOCKET NO. 2978

REPORT AND ORDER

This seafaring saga began on April 12, 1999, when Prudence Ferry Incorporated ("Prudence Ferry") filed a petition with the Division of Public Utilities and Carriers ("Division") seeking authority to immediately suspend its water carrier service to Hog Island until the Hog Island pier was repaired. With that petition, Prudence Ferry embarked on a legal odyssey much longer and more arduous than any routine journey in Narragansett Bay. The Division found the petition insufficient; Prudence Ferry was ordered to continue providing service to Hog Island.¹

This interim order did not deter the determined crew of Prudence Ferry. Five days after the initial filing, the captain unilaterally suspended ferry services to Hog Island. As a result, the Division conducted a hearing on April 28, 1999. At this hearing, the Advocacy Section of the Division offered the expert testimony of Mr. Ernest O. Rabideau. He concluded that the Hog Island pier was not in safe condition.² Although the Division strongly disapproved of the unilateral suspension of the ferry service, given the unsafe condition of the

¹ Order No. 15838 (issued April 16, 1999).

² Order No. 15854 (issued April 16, 1999), at pp. 5-6.

pier, the Division agreed to suspend Hog Island ferry service until adequate repairs were made.³

Prudence Ferry had dodged a torpedo but unfortunately soon entered a legal minefield. On June 10, 1999, Mr. Rabideau informed the Division that the repairs to the pier were adequate and ferry service to Hog Island could be resumed.⁴ Prudence Ferry responded with a report from its expert stating that further precautions were necessary before service could be resumed.⁵ On June 21, 1999, the Division conducted a hearing, and concluded that the ferry service to Hog Island should resume immediately.⁶

To ensure compliance with the Division's order, the Attorney General, at the request of the Division, filed a petition with Rhode Island Supreme Court pursuant to R.I.G.L. Section 39-4-23 to require Prudence Ferry to resume its service to Hog Island. On July 2, 1999, Prudence Ferry finally hoisted the flag of truce and resumed ferry service. The petition was subsequently dismissed.

Although the naval war had ended, a battle on another front was imminent. On July 8, 1999, the Division, pursuant to R.I.G.L. Section 39-1-26, billed Prudence Ferry for the Division's expenses relating to the investigation and hearings. The amount totaled \$12,375.81, including \$9,425.00 for Pare Engineering Services, \$2,084.50 for A-1 Court Reporters,

³ Ibid., at p. 13.

⁴ Order No. 15912 (July 1, 1999) at p. 2.

⁵ Id.

⁶ Ibid., at p. 19.

and \$866.31 for indirect cost recovery fee. On August 4, 1999, Prudence Ferry petitioned the Public Utilities Commission pursuant to R.I.G.L. Section 39-1-26 objecting to the Division's assessment of expenses.⁷

In its petition, Prudence Ferry argued that the phrase "shall pay a portion of the expenses reasonably so incurred" meant that Prudence Ferry should not be responsible for the entirety of the Division's expenses, and that the Division's decision to require Prudence Ferry to pay for all the expenses constituted an abuse of discretion. Prudence Ferry further asserted that the statute is vague and ambiguous since it does not clearly set forth guidelines as

⁷ "The public utility making an application or filing to the commission or division, or subject to a commission or division initiated investigation...shall be charged with and shall pay a portion of the expenses reasonably so incurred by the commission and by the division for the purchase of materials and for the employment of legal counsel, official stenographers, engineers, accountants, and expert witnesses, and for travel and other necessary expenses as are reasonably attributable to the investigation or the hearing of the proposal by the commission and the division...The administrator or the commission chairperson as appropriate, shall ascertain the expenses and shall determine the amount to be paid by the public utility company or companies, and bills shall be rendered therefor either at the conclusion of the investigation or hearing, or from time to time during its progress, and the amount of each bill so rendered shall be paid by the public utility to the administrator or the commission, as appropriate, within thirty (30) days from the date of its rendition unless within the thirty (30) day time period, the public utility so billed shall request an opportunity to be heard by the commission as to the amount thereof. The commission shall comply with any such request. Any amount of the bill not paid within thirty (30) days from the date of service of the determination upon the hearing, or if none shall be requested, within thirty (30) days from the date of rendition of the bill, shall draw interest at the rate of twelve percent (12%) per annum." R.I.G.L. § 39-1-26. (Emphasis added).

to the amount a utility must pay, and thus can be used in an arbitrary and discriminatory fashion.⁸

The Division objected on August 20, 1999, arguing that the statute had been properly construed and applied. The Division noted that this statute is typically invoked in situations involving more than one utility. The statutory language cited by Prudence Ferry is not relevant to this action. Further, the Division pointed out that a utility is placed on notice before the commencement of an investigation that it may be assessed for the expense of the investigation. The assessment is not arbitrary; by statute, the utility cannot be assessed more than \$160,000 in a calendar year.⁹

After conducting discovery, Prudence Ferry changed course and filed a motion to amend its petition on October 19, 1999. The Division did not object and thus the motion was granted. On October 21, 1999, Prudence Ferry filed its amended petition, arguing that the expenses of the investigation were not reasonable. Prudence Ferry claimed that since its own actions in unilaterally terminating Hog Island service were the grounds for the investigation into the pier's condition, it should not have to pay for the expenses of the investigation. Thus, Prudence Ferry argued that it is unreasonable to require it to pay for any expenses prior to July 1, 1999 when the Division ruled that the Hog Island Pier was safe. Prudence Ferry argued that the residents of Hog Island should pay

⁸ Prudence Ferry's Petition, filed August 4, 1999.

⁹ Opposition of Division of Public Utilities and Carriers to Petition, August 20, 1999.

for the expense of the investigation. Lastly, Prudence Ferry argued that the transcript provided by A-1 Court Reporters for the June 21, 1999 hearing at a cost of \$8 per page was also unreasonable.¹⁰

Following public notice, a hearing was conducted at the offices of the Commission, 100 Orange Street, Providence, Rhode Island on October 25, 1999. The following appearances were entered:

FOR PRUDENCE FERRY:	Thomas E. Wright, Esq.
FOR THE DIVISION:	Leo Wold, Esq. Special Assistant Attorney General
FOR THE COMMISISON:	Steven Frias Senior Legal Counsel

It appeared that the parties were on a collision course in stormy waters, but immediately prior to the hearing, the water calmed and they steered towards a settlement. On behalf of the Division, Chief Accountant Stephen Scialabba testified that, under the terms of the Settlement, the Division did not waive any of its rights under Section 39-1-26. Furthermore, the Settlement would not set any precedent.¹¹

¹⁰ Prudence Ferry's Amended Petition, October 21, 1999.

¹¹ T., 12.

A Settlement Agreement by and between Prudence Ferry and the Division was filed with the Commission on December 7, 1999.¹² Under the Settlement, Prudence Ferry agreed to reimburse the Division \$11,000.00 for expenses incurred as a result of the Hog Island investigation. The payments by Prudence Ferry will be made over two years, beginning November 29, 1999. The Division pledged not to oppose the inclusion of the \$11,000 settlement amount as a regulatory expense in a future cost of service filing, amortized over a reasonable period of not less than two years. Until such time the settlement amount is included in the cost of service, the Division would support the treatment of the \$11,000 as a regulatory asset without accrual of carrying charges.

At an open meeting conducted on December 16, 1999, the Commission considered the evidence presented in the case and found that the proposed Settlement was just and reasonable and in the best interest of the ratepayers.

Accordingly, it is

(16075) ORDERED:

1. The August 4, 1999, petition of Prudence Ferry is hereby denied and dismissed.

¹² A copy of the Settlement Agreement is attached as Appendix A and incorporated by reference.

2. The Settlement Agreement filed on December 7, 1999 by and between Prudence Ferry Incorporated and the Division of Public Utilities and Carriers is hereby approved.

EFFECTIVE AT PROVIDENCE, RHODE ISLAND, PURSUANT TO OPEN MEETING DECISION ON DECEMBER 16, 1999. WRITTEN ORDER ISSUED MARCH 1, 2000.

PUBLIC UTILITIES COMMISSION

Kate F. Racine, Commissioner

Brenda K. Gaynor, Commissioner

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE:

PRUDENCE FERRY INCORPORATED

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DOCKET NO. 2978

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between the Prudence Ferry Incorporated (“Prudence Ferry”) and the Division of Public Utilities and Carriers (“Division”) in order to resolve the issues pending in the above-captioned proceeding. Prudence Ferry and the Division jointly request approval of this Settlement Agreement by the Rhode Island Public Utilities Commission (“Commission”).

I. RECITALS

1. On April 13, 1999, Prudence Ferry filed a petition with the Division to suspend service to Hog Island until the Hog Island Pier could be repaired.
2. On April 16, 1999, the Division denied Prudence Ferry’s Petition on an interim basis.
3. On April 17, 1999, Prudence Ferry unilaterally suspended its service to Hog Island because of the alleged condition of the Hog Island Pier. The Advocacy Section of the Division retained the services of Pare Engineering in order to investigate the alleged condition of the Hog Island Pier.
4. On April 28, 1999, the Division held a hearing in connection with Prudence Ferry’s suspension of service to Hog Island.
5. On May 11, 1999, the Division issued a Report and Order granting Prudence Ferry’s petition. Prudence Ferry was permitted to suspend service temporarily subject to certain terms and conditions imposed by the Division.
6. On June 10, 1999, Pare Engineering concluded that the Hog Island Pier was safe for the purposes of unloading and offloading passengers from the Prudence Island Ferry.

7. On June 21, 1999, the Division held a hearing for the purposes of assessing whether or not Pare Engineering's conclusions concerning the safety of the Hog Island Pier were appropriate in light of conflicting conclusions of experts retained by Prudence Ferry.
8. By a Report and Order dated July 1, 1999, the Division ordered Prudence Ferry to resume service to Hog Island; Prudence Ferry refused to resume the service.
9. On July 2, 1999, the Administrator filed a petition with the Rhode Island Supreme Court to compel Prudence Ferry to resume service to Hog Island.
10. On July 2, 1999, the Rhode Island Supreme Court directed Prudence Ferry to obey the July 1, 1999 Order of the Administrator.
11. On July 16, 1999, the Administrator and Prudence Ferry settled the proceeding that was pending before the Rhode Island Supreme Court.
12. On July 8, 1999, the Division billed Prudence Ferry \$12,375.81 and on August 31, 1999, the Division billed Prudence Ferry an additional \$2,440.32 for costs associated with the consulting engineer, stenographic services and publishing the notice of the hearings.
13. On or about August 4, 1999, Prudence Ferry filed a petition with the Commission pursuant to R.I.G.L. § 39-1-26(b) challenging the legality of the Division's assessments. The Division filed an opposition to the petition on August 20, 1999.
14. Discovery was undertaken by the Division and Prudence Ferry in the form of exchanging respective sets of data requests and responses thereto.
15. On or about October 21, 1999, Prudence Ferry filed an amended petition with the Commission challenging the fairness and reasonableness of the Division's assessments.
17. The Commission scheduled a hearing in this docket on October 25, 1999. Prior to the commencement of the hearing, the Division and Prudence Ferry reached a settlement.
18. The Division and Prudence Ferry believe that this settlement, as a whole, constitutes a just and reasonable resolution of the issues in this proceeding, and jointly request its approval by the Commission.

II. TERMS AND CONDITIONS OF SETTLEMENT

The Division and Prudence Ferry agree to settle Docket 2978 pursuant to the following terms and conditions:

1. Prudence Ferry shall reimburse the Division \$11,000.00, for expenses incurred by the Division in Docket D-99-7 through November 29, 1999 (referred to hereinafter as the "Settlement Amount"). Prudence Ferry shall make payments over a two-year period commencing on November 30, 1999 pursuant to the attached payment plan, the terms of which are restated and incorporated into this Settlement Agreement. Payments must be mailed to the attention of:

Mr. Charles Brown
Rhode Island Division of Public Utilities and Carriers
100 Orange Street
Providence, RI 02903

Payments must be received by the Division on or before the date designated in the payment plan.

2. In the event that Prudence Ferry fails to make a payment pursuant to the terms of this Settlement Agreement, then this Agreement shall be null and void in all respects and Prudence Ferry may be held responsible for any and all sums (including interest) alleged to be due and owing to the Division.

3. The Division will not oppose the inclusion of the aforementioned Settlement Amount as a regulatory expense in a future cost of service filing, amortized over a reasonable period of not less than two years. Until such time as it is included in the cost of service, the Division would support the treatment of the Settlement Amount as a regulatory asset without accrual of carrying charges.

4. The Division will take under advisement Prudence Ferry's contention that the condition of the Hog Island Pier has deteriorated since July 2, 1999. However, in no event shall the Division be obligated to undertake any action with respect to the Hog Island Pier.

5. This Settlement Agreement is the product of negotiation and compromise. The making of this agreement does not establish any legal precedent.

6. In the event that the Commission: (i) rejects this Settlement Agreement, (ii) fails to accept this Settlement Agreement as filed, or (iii) accepts this Settlement Agreement subject to terms and conditions

unacceptable to any party hereto, then this Settlement Agreement shall be deemed withdrawn and shall be null and void in all respects.

7. The undersigned signatories hereby attest that each believes that this settlement is reasonable, in the public interest and in accordance with law and regulatory policy.

DIVISION OF PUBLIC UTILITIES
AND CARRIERS
By Its Attorneys,

SHELDON WHITEHOUSE
ATTORNEY GENERAL

Leo Wold
Special Assistant Attorney General
150 South Main Street
Providence, RI 02903
401-274-4400, ext. 2218

PRUDENCE FERRY INCORPORATED
By its attorneys,

Thomas E. Wright, Esq.
572 Main Street
P.O. Box 16
Warren, RI 02885
401-245-5650

PAYMENT PLAN

<u>Due Date</u>	<u>Amount Due</u>
November 30, 1999	\$2,567.00
January 31, 2000	550.00
April 30, 2000	550.00
July 31, 2000	550.00
October 31, 2000	2,567.00
January 31, 2001	550.00
April 30, 2001	550.00
July 31, 2001	550.00
October 31, 2001	<u>2,566.00</u>
Total	\$11,000.00