

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DIVISION OF PUBLIC UTILITIES AND CARRIERS  
89 JEFFERSON BOULEVARD  
WARWICK, RHODE ISLAND 02888**

IN RE: Prudence Ferry, Inc.'s Emergency Petition :  
To Suspend Service To Hog Island : Docket No. D-03-9

**REPORT AND ORDER**

On May 30, 2003, Prudence Ferry, Inc. ("PFI" or "Petitioner") filed a petition with the Rhode Island Division of Public Utilities and Carriers ("Division") seeking approval to immediately suspend ferry services to Hog Island. In support of its petition, PFI proffered a written report from a structural engineer who opines that the Hog Island dock is currently unsafe.

The Petitioner relies on the following observations, conclusions and recommendations contained in the engineer's report as the basis for the instant request:

*"...the existing Hog Island Dock is unfit for the intended service for the following reasons:*

- *The ferries that are using the dock are large (61.5 feet and 91.9 feet) steel hull ferries with a single propeller and no bow thruster.*
- *The dock substructure (piles) are [sic] in poor condition from visual observations.*
- *The dock configuration is not suitable for safe berthing of ferries (bow on approach or side loading).*
- *The dock handrails do not meet building codes for public assembly.*
- *The split caps (structural beams that connect transverse piles) do not have the structural capacity to safely support public assembly.*
- *The operating procedure for unloading propane tanks from ferry to the shore is unsafe.*

*At this time, I recommend that the Prudence Ferry not use the Hog Island dock until such time as significant improvements are made. At a minimum, if the ferry is to use the existing dock for passenger service, at no time during the docking or undocking shall pedestrians be allowed to wait on the timber dock (they must wait landward of the existing stone seawall). The transport of propane bottles by the ferry should not be allowed.”<sup>1</sup>*

In further support of its claim of exigency, PFI also noted in its petition that its ferry recently struck the dock on May 26, 2003, subsequent to the recent engineering inspection. PFI contends that the recent impact has damaged the fender piling located directly in front of the support piling under the southeastern most corner of the pier thereby increasing the dock’s risk of failure.

Shortly after receiving the instant petition, the Division received a responsive pleading from the Hog Island Improvement Association, Inc. (“HIIA”). HIIA objected to the Petitioner’s request to suspend ferry services to Hog Island. HIIA also indicated that it would be submitting a memorandum of law in support of its position.

In response to PFI’s “emergency” petition, the Division scheduled and conducted an expedited public hearing on June 11 and 12, 2003.<sup>2</sup> The Division duly notified the Department of Attorney General, the town of Portsmouth<sup>3</sup> and the Division’s Advocacy Section (“Advocacy Section”) regarding the instant petition and the “emergency” hearing. The hearing was

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<sup>1</sup> PFI Exhibit 1.

<sup>2</sup> The hearing was expedited pursuant to the Division’s broad emergency powers (e.g., See R.I.G.L. §§39-1-15, 39-1-38, 39-3-13, 39-4-11, 39-4-13 and 39-4-17).

<sup>3</sup> The town of Portsmouth contacted the Division on June 10, 2003 to state that it would not be participating in this docket.

held in the Division's hearing room at 89 Jefferson Boulevard in Warwick. The following counsel entered appearances at the June 11 and 12, 2003 hearings:

For PFI:	Thomas E. Wright, Esq. and Michael T. Farley, Esq.
For HIIA:	Kenneth D. Haupt, Esq.
For the Advocacy Section:	Paul J. Roberti, Esq. Assistant Attorney General, and William K. Lueker, Esq. Special Assistant Attorney General

The Petitioner proffered two witnesses in support of its petition. The witnesses were identified as Mr. Stanley M. White, P.E., a professional engineer who was hired by PFI to evaluate the current condition of the Hog Island dock; and Captain Eric A. Leite, one of PFI's two regular ferry captains. Mr. White sponsored a written report that detailed his findings and recommendations regarding the dock.<sup>4</sup>

HIIA additionally proffered an engineering expert witness to testify regarding the current condition of the Hog Island dock. HIIA's witness was identified as Mr. Ernest O. Rabideau, Jr., P.E. Mr. Rabideau also sponsored a written report detailing his findings and recommendations regarding the Hog Island dock.<sup>5</sup>

The Advocacy Section similarly proffered an engineering expert witness in this docket. The Advocacy Section's witness was identified as Mr. Ronald R.

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<sup>4</sup> PFI Exhibit 2.

<sup>5</sup> HIIA Exhibits 2 and 3.

Bourne, P.E., who also sponsored a written report detailing his findings and recommendations regarding the Hog Island dock.<sup>6</sup>

#### PFI's Direct Case

The Petitioner's request to suspend services to Hog Island relies exclusively upon the findings and recommendations of its expert witness, Mr. Stanley White, P.E.

Mr. White related that he inspected the Hog Island dock at PFI's behest on May 16, 2003. From this inspection, Mr. White concluded that:

*"...the Hog Island ferry pier is unsafe for the intended use and should be replaced with a pier that will provide the following:*

- 1. Safe mooring for a bow on berthing arrangement whereby materials can be safely loaded and unloaded.*
- 2. Safe mooring for a side loading berthing arrangement whereby passengers can safely access the ferry under all conditions.*
- 3. Properly designed breasting and mooring dolphins.*
- 4. Adequately designed structural support members, including support piles.*
- 5. Properly design [sic] handrail system."*<sup>7</sup>

He further offered the following recommendation:

*Until such time as the pier is upgraded or replaced it is recommended that the Prudence Ferry, Inc. not service Hog Island for passengers, propane tank delivery or the moving of other materials onto and off of the island.*<sup>8</sup>

Mr. White based his conclusions and recommendation on a brief inspection of the Hog Island dock, which included an inspection of the dock's deck, stringers, split caps, piles, handrail and breasting/mooring dolphins.

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<sup>6</sup> Advocacy Section Exhibit 1.

<sup>7</sup> PFI Exhibit 2, p. 6.

<sup>8</sup> Id.

Mr. White indicated that he applied the “BOCA Code” standards applicable for “places of public assembly” in forming his opinions regarding the overall “safety” of the dock. He also indicated that he witnessed a demonstration of the ferry’s berthing operations.<sup>9</sup>

Additionally, Mr. White offered opinions regarding PFI’s current propane tank unloading operations and the ramp being used at the Hog Island dock. Regarding the propane tank unloading operations, Mr. White described the current method of off-loading propane tanks as “*exceedingly dangerous and unsafe*”.<sup>10</sup> He related that the tanks are off-loaded by placing timber planks between the pier and the delivery truck on the ferry. He then related that approximately 75 tanks, weighing 175 pounds each, are turned on their sides and rolled off the truck and onto the pier. Mr. White called this procedure dangerous and unsafe because of the chance that the vessel could become misaligned causing the planks to fall off the pier or the truck. He noted that the planks could also break.<sup>11</sup>

Regarding the ramp being used by passengers to get on and off the ferry, Mr. White opined that the ramp is too short (12 feet), which results in very steep walking angles at times. He also expressed concerns that the ramp gets slippery when it is wet.<sup>12</sup>

The Petitioner also relied upon the testimony of one of its boat captains to support its petition. Captain Eric A. Leite testified that since reading Mr.

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<sup>9</sup> *Id.*, pp. 2-5.

<sup>10</sup> *Id.*, p. 5.

<sup>11</sup> *Id.*, pp. 5-6.

<sup>12</sup> *Id.*, p. 6.

White's recent engineering report he has refused to berth at the Hog Island dock. Captain Leite claims that as the ferry's captain he cannot put his crew or passengers in peril. He related that based upon Mr. White's conclusions and recommendation he felt compelled to suspend ferry services to Hog Island. The captain testified that he canceled passenger services to Hog Island on his own decision, and will not restore service without an order from the Division or the Court.

#### HIIA's Direct Case

HIIA disagrees with the Petitioner's assertion that the Hog Island dock is currently unsafe for berthing. HIIA's expert witness sponsored two engineering reports that contain findings and recommendations that differ significantly from those expressed by PFI's expert witness.

Mr. Ernest O. Rabideau, Jr., P.E. testified that he conducted two recent inspections at the Hog Island dock. He related that the first, conducted on March 17, 2003, was performed pursuant to a prior directive of the Division, which requires annual inspections of the Hog Island dock. Mr. Rabideau testified that he performed a second inspection on June 9, 2003 for the purpose of examining the recent fender pile damage sustained on May 26, 2003, as reported in PFI's petition.

Mr. Rabideau testified that when he inspected the Hog Island dock on March 17, 2003 he found the deck boards to be in "good structural condition" and well fastened; the stringers in "like new" condition; the pile caps in "good condition"; the railing in "good condition"; the pier support piles able to

“support the loads produced by ferry passengers and light pick-up truck use”; and the fender piles in “very good condition”.<sup>13</sup> He also testified that he discerned “no winter storm related damage” during the March 17, 2003 inspection. Mr. Rabideau related that the engineering report that he prepared after this inspection concluded that “*the Hog Island Ferry Pier is in good condition and ready for the resumption of normal passenger service*”.<sup>14</sup>

Mr. Rabideau’s second report, dated June 9, 2003, principally provides responses to PFI’s and Mr. White’s current safety concerns regarding the Hog Island dock. Mr. Rabideau doesn’t disagree with Mr. White’s finding that some of the dock’s support piles are in poor condition. However, Mr. Rabideau emphasized that the “applied loads are relatively small” and that the remaining strength in the piles is adequate to support current ferry operations.<sup>15</sup>

Mr. Rabideau rejected Mr. White’s concerns about the handrail as well. Significantly, Mr. Rabideau disagreed with Mr. White’s characterization of the dock as “a place of public assembly”. Mr. Rabideau opined that a privately owned dock couldn’t be considered “a place of public assembly” for purposes of design specifications. He noted that the Hog Island dock is only accessible to the dock’s owners and residents of Hog Island and that the general public does not use this facility.

Mr. Rabideau rejected Mr. White’s conclusions regarding the current strength of the dock’s “split caps” for the same reason. He opined that

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<sup>13</sup> HIIA Exhibit 2.

<sup>14</sup> *Id.*, p. 3.

<sup>15</sup> HIIA Exhibit 3, p. 1.

because the Hog Island dock is not “a place of public assembly” it was improper for Mr. White to base his conclusions on the dock’s “split caps” on that standard. Mr. Rabideau conceded that the Hog Island dock’s current strength is below the 100 pounds per square foot requirement for “a place of public assembly”. However, for the Hog Island dock, Mr. Rabideau believes that the BOCA Code’s 60 pounds per square foot standard for “Walkways and Elevated Platforms” should apply. He related that he has calculated that the dock “can support a uniform live load of 66 pounds per square foot”.<sup>16</sup>

Mr. Rabideau also took exception with Mr. White’s findings that the breasting dolphins in front of the Hog Island dock are in poor condition. Mr. Rabideau testified that he found them “to be in near excellent condition”.<sup>17</sup> He also took exception with Mr. White’s conclusion that the breasting dolphins do not provide proper mooring conditions. Mr. Rabideau stated that in view of the size of the vessels being used by PFI, and the distance between the dolphins, “...it should not be difficult to deploy breasting lines and spring lines to the mooring posts when the vessel docks”.<sup>18</sup> Mr. Rabideau did agree however, with Mr. White’s opinion that “bow to” berthings would currently be unsafe at the Hog Island dock.<sup>19</sup>

Mr. Rabideau did not offer any comments regarding propane tank handling at the dock. He related that while he has determined that the dock

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<sup>16</sup> Id., p. 2.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id., p. 3.

can support the associated vertical load, because he has never witnessed an actual unloading he could not offer an opinion concerning the procedure.

In his final comments, Mr. Rabideau stated that he could also not agree with Mr. White's conclusions regarding the steepness of the gangway used at the Hog Island dock. He rejected Mr. White's angle measurement of "1 vertical to 1.5 horizontal", instead relying on his own measurement of "1 vertical to 5 horizontal".<sup>20</sup>

Mr. Rabideau concluded his testimony with an opinion regarding the merits of the instant petition. He opined as follows: "...we believe there is no change in the condition of the pier since 1999 which would justify suspending ferry service".<sup>21</sup>

#### Advocacy Section's Direct Case

The Advocacy Section echoes the position of HIIA and disagrees with the Petitioner's assertion that the Hog Island dock is currently unsafe for berthing. The Advocacy Section's expert witness also sponsored an engineering report that contains findings and a recommendation that differ strikingly from those expressed by PFI's expert witness.

Mr. Ronald R. Bourne, P.E. conducted an inspection of the Hog Island dock over a two-day period between June 9 and 10, 2003. Predicated upon his inspection, he agreed with some of Mr. White's findings, but disagreed with most.

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<sup>20</sup> Id.

<sup>21</sup> Id.

Mr. Bourne agreed that the Hog Island dock is not currently suitable for bow-to berthing, finding that additional fender dolphins would be required.<sup>22</sup> He also agreed that the operation procedure for handling propane tanks “sounds dangerous and should not continue in this manner”.<sup>23</sup> He additionally agreed that some of the structural caps do not have structural capacity for 100 pounds per square foot loading.<sup>24</sup>

Nevertheless, Mr. Bourne disagreed with Mr. White’s findings regarding the dock’s substructure. He found the substructure in “fair condition” and with “adequate capacity to support loads”. He did note however, that some piles “need to be considered for replacement/repair”.<sup>25</sup>

In contrast to Mr. White’s conclusion, Mr. Bourne opined that the dock is safe for side (beam-to) berthing. He found the existing dolphins in good condition and adequate for side berthing loads.<sup>26</sup> Mr. Bourne also found the handrails to have adequate capacity for current code load requirements.<sup>27</sup>

On the issue of the gangway (ramp), Mr. Bourne agreed that the existing gangway is relatively steep and that a 20’ gangway should be considered. He also suggested that a lighter gangway be employed for easier positioning.<sup>28</sup>

In the final analysis, Mr. Bourne concluded that the Hog Island dock is currently safe for the side loading of passengers and other light loads. He also recommended that necessary repairs be made over the next several years.

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<sup>22</sup> Advocacy Section Exhibit 1, pp. 2-3.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id., p. 4.

## Findings

The Division has carefully considered the testimony of the three professional engineers who proffered expert opinions in this docket. The Division found all to be highly competent and credible. However, the weight of the evidence leads the Division to conclude that the Petitioner has failed to prove that the present condition of the Hog Island dock warrants an immediate suspension of ferry services.

In 1999, the Division issued a report and order directing the owner of the Hog Island dock, Hog Island, Inc., to have the dock inspected annually by a qualified engineer for the purpose of certifying its condition for continued use.<sup>29</sup> The report and order further directed Hog Island, Inc. to forward copies of the engineering inspection survey to PFI and the Division.<sup>30</sup> Hog Island, Inc. has abided by these directives since 1999. Indeed, Mr. Rabideau's March 19, 2003 inspection report (HIIA Exhibit 2) was prepared for Hog Island, Inc. under the title "2003 Annual Inspection".

Predicated on engineering reports that the Division has examined since 1999, the Division is mindful that the Hog Island dock has utility limitations.<sup>31</sup> Chief among the limitations is a design deficiency that makes a safe "bow-to" berthing at the dock practically impossible. Accordingly, the Division banned PFI from performing "bow-to" berthings in its 1999 report and order. As they

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<sup>29</sup> Order No. 15912, issued on July 1, 1999.

<sup>30</sup> Id.

<sup>31</sup> The Division began examining engineering reports regarding the dock in 1999 in the context of a similar petition filing by PFI in Docket No. D-99-7.

did in 1999, the engineers in this docket unanimously agree that the prohibition against “bow-to” berthings should remain in effect.

Another significant limitation is the vertical load that the dock is able to withstand. While 100 pounds per square foot is desirable (a code requirement for places of public assembly), the Hog Island dock does not universally meet this standard. Mr. Rabideau testified that he has rated the dock at 66 pounds per square foot. Nevertheless, Mr. Rabideau testified that this vertical load capacity is adequate for the passenger traffic and light loads that have traditionally moved around on this dock. Mr. Bourne concurred.

Fortunately, because the aforementioned limitations are known, the Division has taken regulatory steps to safeguard PFI and its passengers from the risks associated with these limitations. As noted above, the Division banned “bow-to” berthings in 1999. The Division has also directed that the Hog Island dock be “closed off to passengers and bystanders during ferry berthings”.<sup>32</sup> In furtherance of enforcing this latter safeguard, the Division has authorized PFI “to abort berthings for violations of this directive”.<sup>33</sup>

Since it first raised the issue in 1999, PFI has continually maintained that the location of the fender dolphins (timber pile clusters) and the condition of the fender piles, both at the end of the dock, create a risk of a ferry impact to the dock and possible catastrophic failure of the dock. However, it is undeniable that four years have elapsed since 1999 without PFI’s premonition of a dock calamity materializing. The Division must therefore either conclude

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<sup>32</sup> See Order No. 15912, supra.

<sup>33</sup> Id.

that simple luck as prevailed at the Hog Island dock over the last four years or that PFI's captains are exceptionally experienced and skilled professionals who are able to side berth PFI's vessels with little if any lateral load being placed on the fender piles that protect the dock. The Division finds the latter thesis more probable and also clearly a testament to PFI's fine hiring and training practices.

Albeit the Division does not find sufficient evidence in this record to warrant an "emergency" suspension of ferry services to Hog Island due to the current condition of the dock, the Division does recognize that the record reveals that some improvements and changes are indicated. Specifically, the Division agrees with the Petitioner that the 3-pile fender cluster at the southern most corner of the dock needs to be repaired or replaced. This repair/replacement should be accomplished as soon as possible, but no later than by the advent of the 2004 season.

Additionally, the first interior stringer from the south side at "Bent 7", which was recently found to have horizontal splits, must also be repaired. This repair should also be made before the start of the 2004 season.

Additionally, a number of piles were found to have a significant loss of carrying capacity, which must be repaired or replaced. These piles were identified as: Bent 5S - top 3 feet; Bent 5N - top 5 feet; Bent 4N - top 4 feet; Bent 3S - rot at high water; Bent 2S - top 3 feet; and Bent 10S - fishplated.<sup>34</sup> The Division finds that these piles should also be repaired or replaced as soon as possible, but no later than by the start of the 2005 season.

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<sup>34</sup> Advocacy Section Exhibit 1, p. 4.

Some of the “batter pile” connections to the vertical piles were found to be corroded. These connections should also be repaired prior to the start of the 2004 season.

Significantly, none of the engineers testifying in this docket could offer support for the current operating procedure for off-loading propane tanks at the dock. Two of the engineers called the current practice “dangerous”. The Division agrees. As a solution to this problem, Mr. Bourne proposed several alternative measures for off-loading the propane tanks. The Division finds all of Mr. Bourne’s proposals to be reasonable alternatives, and is welcome to other alternatives as well. However, the Division cannot allow the current off-loading practice to continue. The parties are therefore, invited to discuss and agree upon a new and safer procedure for off-loading propane tanks at the dock. In the absence of an agreement, the parties may seek relief from the Division.

Insurance protection was also discussed at length in this proceeding. Indeed, the same issue came up in the 1999 docket and was addressed by the Division in the order that was subsequently issued. In 1999, PFI requested that the dock owner, Hog Island, Inc., add PFI’s name to its insurance policy. The request was made for obvious reasons. The Division found the request reasonable and required PFI and Hog Island, Inc. to work out the details.

In the instant docket, the parties and the Division have learned that although PFI was added to the Hog Island, Inc. policy some time ago, the policy does not de facto indemnify PFI from any mishaps involving “watercraft” and,

as such, provides questionable liability insurance protection.<sup>35</sup> On this issue, the Division agrees with the Petitioner and finds the present Hog Island, Inc. insurance policy unacceptable to protect the interests of PFI and its ratepayers. Consequently, the Division cannot order a restoration of ferry services to Hog Island until this matter is resolved.

Accordingly, it is

(17494) ORDERED:

1. That Prudence Ferry, Inc.'s May 30, 2003 petition seeking approval to immediately suspend ferry services to Hog Island is hereby granted in part and denied in part.
2. That the petition is hereby denied as it relates to the safety-related assertions made by Prudence Ferry, Inc. regarding the current condition of the Hog Island dock.
3. That the petition is hereby granted as it relates to Hog Island, Inc.'s failure to purchase and maintain an insurance policy that indemnifies Prudence Ferry, Inc. from injuries or damage resulting from the use of the ferry vessels at the Hog Island dock.
4. That the suspension of ferry services to Hog Island shall remain in effect until such time as Hog Island, Inc. (or other residents of Hog Island) secures an insurance policy indemnifying Prudence Ferry, Inc. In the event that the adequacy of an insurance policy becomes an issue in

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<sup>35</sup> See HIIA Exhibit 4.

dispute between the parties, the parties may seek relief from the Division.

5. Upon a showing of adequate insurance protection, Prudence Ferry, Inc. and its captains shall be required to restore ferry services immediately, in accordance with approved schedules and tariffs.
6. That the completion of the repairs/replacements discussed herein, within the timeframes indicated, shall constitute ongoing conditions for the continued provision of ferry services to Hog Island.
7. That to ensure continued ferry service to Hog Island, Hog Island, Inc. shall continue to have its dock inspected on an annual basis by a qualified engineer. Regarding this annual inspection, the reporting requirements and dispute resolution procedures previously established by the Division in Order No. 15912 shall remain in effect.
8. That bow-to berthing at the Hog Island dock shall remain prohibited.
9. That the Hog Island dock shall remain closed off to passengers and bystanders during ferry berthing. PFI shall remain authorized to abort berthing for violations of this directive.
10. That Prudence Ferry, Inc. shall seek and employ a new procedure for off-loading propane tanks, consistent with the findings contained herein.

Dated and Effective at Warwick, Rhode Island on June 20, 2003.

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John Spirito, Jr. Esq.  
Hearing Officer

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Thomas F. Ahern  
Administrator

