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January 19, 2005

Cynthia Wilson, Esq.  
Senior Legal Counsel  
Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

Re: Prudence Ferry, Inc.  
Docket No. 3656 – Tariff Advice

Dear Cindy:

As you know, this office represents Prudence Ferry, Inc. (Prudence).

The purpose of this letter is to respond to the January 12, 2005, letter from Leo J. Wold, Special Assistant Attorney General, requesting that the Commission suspend the proposed tariff advice filing pending further investigation.

The proposed tariff advice change is very simple. The current tariff contains no eligibility requirement for discounted commuter passenger tickets. Prudence proposes to implement the same definition for discounted commuter passenger tickets that was implemented by Interstate Navigation Company d/b/a the Block Island Ferry (Interstate) with the consent of the Division, the Town of New Shoreham, and the Commission in Docket No. 3575, Order No. 17929, effective May 28, 2004.

As stated in the Commission's decision in the Block Island Ferry Order:

“The parties amended the eligibility requirements for discounted commuter rates, narrowing the field to be applied only to holders of a Rhode Island drivers license with a Block Island address on the license.” (at 44-45).

In addition, the Stipulation signed by the parties to the Block Island Ferry case, which included the Division, specifically stated in paragraph 5 that:

“The eligibility requirements for discounted commuter rates are hereby changed so that only the holders of a Rhode Island drivers license with a Block Island address on the license are eligible for commuter rates.” (at 3).

The proposed tariff advice for Prudence simply adds one sentence to the passenger tariff and states as follows:

“The eligibility requirements for discounted commuter tickets are that only the holders of a Rhode Island drivers license with a Prudence Island address (zip code 02872) on the license are eligible for commuter tickets.”

For the same reason this eligibility requirement was approved by the Commission, the Division, and the Town of Block Island in the recent Interstate rate case, it should be approved for Prudence and no hearing should be necessary.

The purpose of discounted commuter tickets is to recognize that both Interstate Navigation Company and Prudence Ferry provide lifeline services to Block Island and Prudence Island respectively. There is no way to get to these islands other than by boat or by air. Both Interstate and Prudence operate year-round. In the off-season, they both operate at a significant loss in providing lifeline services for passengers, freight, and vehicles. Both ferry operations remain afloat because of the significant infusion of cash provided by summer tourist revenues.

The commuter discount is not a “frequent tourist” discount. It is not similar to the frequent flyer discount that a commercial airline might offer. It is a discount available to a resident islander (Block Island or Prudence Island) who must use the ferry year-round for lifeline services.

Rate discrimination is generally prohibited by law. For example, R.I.G.L. § 39-2-2 prohibits rate discrimination for public utilities and R.I.G.L. §39-2-3 prohibits unreasonable preferences or prejudices for public utilities. R.I.G.L. § 39-2-4 prohibits any person or entity from knowingly soliciting or accepting an unlawful rebate or advantage.

There are, however, certain exceptions to the aforesaid anti-discrimination provisions. They are primarily set forth in R.I.G.L. § 39-2-5. The exception that seems to apply for commuter discounts is R.I.G.L. § 39-2-5(2) which provides in pertinent part that:

“With the approval of the Division any public utility may . . . grant special rates . . . to any special class or classes of persons . . . in cases where the same shall seem to the Division just and reasonable, or required in the interest of the public, and not unjustly discriminatory.”<sup>1</sup>

We are puzzled at the inconsistency in the Division’s position. The Division approved this exact provision for the Block Island Ferry, but is objecting to it for the Prudence Ferry. It may be that the Division’s position is founded in misunderstanding. For example, Mr. Wold’s January 12, 2005 letter claims that there are “important differences” between Block Island Ferry’s commuter tariff and Prudence Ferry’s proposed commuter tariff. Mr. Wold’s letter claims that:

“The Town of New Shoreham accepts responsibility for providing passenger ID cards to ‘eligible commuters’—full time Block Island residents who drive a vehicle and possess a Block Island address on their license and registration. Presentation of the passenger ID card and appropriate ticket allows these commuters to qualify for a special ‘commuter vehicle rate’ under Interstate’s tariffs.”

This statement is entirely incorrect. Mr. Wold is apparently thinking of the process that was in effect prior to the change approved by the Division, the Commission and the Town in Interstate’s Docket No. 3573. Prior to the change to the utilization of only a driver’s license with a Block Island address, the Town of New Shoreham did accept responsibility for providing I.D. cards, but the Town has now been relieved of that responsibility by the change that occurred in Docket No. 3573. Currently, the old Town-issued I.D. cards are no longer utilized for any purpose. For passenger tickets, only a driver’s license with a Block Island address is acceptable. (In order to obtain the commuter discount rate for a Block Island vehicle, the driver of the vehicle must present both a Block Island driver’s license, together with a registration which has a Block Island address for the vehicle being driven.)

Mr. Wold then goes on to claim that “Neither Prudence Ferry’s existing nor proposed tariff contains a separate ‘commuter vehicle’ rate.” Once again, this is incorrect. Although Mr. Wold is correct when he states that Prudence is not proposing a change in its vehicle tariffs, but is only proposing to implement a definition for commuter eligibility in its passenger tariff, there is the essential equivalent of a commuter discount vehicle rate in effect in the Schedule C passenger vehicle rates for Prudence Ferry. A regular passenger

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<sup>1</sup> Even though this subsection refers to the Division, under R.I.G.L. § 39-1-1 (c) most powers “to supervise, regulate, and make orders governing the conduct” of public utilities are vested jointly in the Commission and the Division.

car with a driver is charged a rate of \$15.50 one-way. However, a passenger car with a driver traveling on a Tuesday or Wednesday same day round-trip which originates from Prudence Island, traveling on a standby basis only (returning to Prudence Island on the same day), is allowed to purchase a discounted book of 12 tickets for \$100, which works out to \$8.33 per ticket. This discounted ticket is specifically shown on the passenger vehicle tariff as "non-transferable between passenger cars."

However, we are at a loss as to why Mr. Wold is referring to vehicles at all, because vehicles are not part of the tariff advice proposal made by Prudence in this matter.

Mr. Wold then goes on in his letter to claim that the proposed discount commuter eligibility requirement proposed by Prudence "may have two detrimental effects." He first argues that it may "unfairly disadvantage" Rhode Islanders who do not possess a Prudence Island address on their driver's license, but who nonetheless "commute" to and from the island on a regular basis. This is no different on Block Island, but the Division had no objection with regard to Interstate. There are Rhode Islanders who do not possess a Block Island address, but who nonetheless commute to and from Block Island on a regular basis. They may be frequent visitors, they may be family or friends of those who own or rent property on Block Island, they may be frequent tourists, they may even be workers on Block Island, yet none of those persons are entitled to the Block Island commuter discount because that discount is designed as a rate to be utilized by islanders for whom year-round lifeline service is necessary.

Mr. Wold's second allegation is that the proposed Prudence tariff definition may result in a "de facto rate increase for Prudence Ferry due to the elimination of the commuter discount." However, Mr. Wold has not specifically identified any group of persons who do not have a Prudence Island address on their driver's license, but who regularly commute to Prudence Island. But even if such groups exist, they should not be eligible for a commuter discount, since they do not live on Prudence Island, and Prudence Ferry is not providing a lifeline service to them.

The Division specifically approved a change in the eligibility definition for discount commuter tickets for Interstate. That definition is virtually identical to the definition being proposed for Prudence. Because this change is reasonable and in the best interest of the public served by the lifeline ferry service (i.e. those who live on Prudence Island), we respectfully request that there is no need for an order suspending the proposed tariff advice, especially since no objection has been filed by any member of the public or by the Town of Portsmouth. We respectfully submit that a small utility like Prudence Ferry should not be subjected to the fees and expenses associated with a hearing on this matter in order to make a sensible change that already applies to the largest lifeline ferry in the state and was approved by the Division at that time.

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If you have any questions, please feel free to call.

Very truly yours,



Michael R. McElroy

MRMc:tmg / PF:Wilson

cc: Leo Wold, Esq.  
Bruce and Erica Medley