

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: ISLAND HI-SPEED FERRY, LLC.

:

Docket No. 3669

MOTION OF INTERSTATE NAVIGATION COMPANY FOR SUMMARY DISPOSITION
DISMISSING IHSF'S RATE FILING

INTRODUCTION

Interstate Navigation Company (Interstate) by its undersigned counsel, respectfully moves, pursuant to Rule 1.15(e), for summary disposition of this matter. Island Hi-Speed Ferry's (IHSF) rate tariff filing should be summarily dismissed because the filing proposes new rates that are lower than the \$26 rate established by the Division of Public Utilities and Carriers (Division) in IHSF's water carrier operating certificate and related Division Orders.

ARGUMENT

Rule 1.15(e) entitled "Summary Disposition" provides in pertinent part that:

"The Division or any intervenor may file a motion for summary disposition of all or part of the rate tariff filing. If the Commission determines that there is no genuine issue of fact material to the decision, it may summarily dispose of all or part of the rate tariff filing."

IHSF's water carrier certificate requires it to operate at a price of no less than \$26 per adult round-trip ticket. Interstate is unaware of any application having been made by IHSF for a modification of that certificate. Accordingly, it would be illegal for IHSF to operate at the new, lower rates proposed by IHSF in

this docket. This docket should accordingly be summarily dismissed. A brief history of the minimum \$26 rate follows:

1. In Order No. 15652 dated August 25, 1998, the Division granted IHSF's application for a Certificate of Public Convenience and Necessity (CPCN), but conditioned the CPCN on IHSF operating at no less than \$26 per round trip. In its Order, the Division stated:

"The testimony indicates that the price differential between the two competing services may play the greatest role in evaluating the potential impact on Interstate and its ratepayers. For this reason, the Division considered the Applicant's filed passenger rate of \$26 per round trip. . . . Therefore, our granting of a certificate to Island Hi-Speed Ferry is conditioned upon the Commission's approval of a tariff. . . . By recommending that the Commission approve the [\$26] filed rate, the Division can ensure against predatory pricing that might jeopardize the scope and quality of Interstate's current operations. Clearly, the public interest is best served by our decision to factor price into our determination of 'public convenience and necessity'." (at 32-33, emphasis added).

In its "ordered" paragraphs, the Division ordered that IHSF's application was "approved subject to the following conditions" and those conditions included "that the Applicant file with the Public Utilities Commission and have approved, tariffs reflecting the rates and charges outlined in the business plan" (at 44-45).

2. A water carrier certificate (CPCN) No. W-1163 was issued to IHSF on October 20, 1999. In that certificate, IHSF was specifically ordered to operate "as per attached conditions in Order No. 25652 dated August 25, 1998." The conditions quoted above were attached to the certificate and incorporated by

reference. (Note that the Order number has a typographical error. It should be No. 15652, not No. 25652.)

3. In Order No. 15816 issued on March 31, 1999, the Commission approved the filed \$26 adult round-trip rate. In doing so, the Commission quoted the Division Order as follows:

"According to Division's report and order . . . the Division determined that Interstate and IHSF could co-exist and remain financially strong if a sufficiently large 'round-trip cost differential between Interstate and Hi-Speed (\$13.00 vs. \$26.00)' were established. . . ." (at 38).

Moreover, the Commission found:

"Based on the record currently before us, we find that this can be best be accomplished by allowing for the rates filed by IHSF, whose certificate to operate was contingent upon the Commission approving the rates presented by IHSF in the Division docket filing. These same rates were filed by IHSF in the instant docket, and are as follows:

Adults - \$26 round-trip and \$14 one-way

Child - \$12 round-trip and \$8 one-way." (at 54-55).

4. In a decision filed on August 31, 1999, the Superior Court approved the Division's granting of IHSF's CPCN. The Superior Court stated that:

"According to the application, Hi-Speed Ferry will charge \$26.00 for an open-ended round-trip ticket." (at 2).

5. In Report and Order of the Division No. 15993 dated September 17, 1999 establishing, among other things, a 3-year moratorium against Interstate operating a fast ferry to Block Island, the Division stated:

"In the absence of any regulatory protection afforded to IHSF, Interstate's market dominance is most assured given that it could offer the service at its currently authorized round-trip rate of \$13.50, in contrast to the starkly higher \$26.00 rate of IHSF." (at 20).

The Division ordered in part as follows:

"If and when the Division authorizes Interstate's entry into the high-speed ferry market, IHSF will be afforded an opportunity to petition for rescinding the condition requiring IHSF to operate at a roundtrip rate of \$26.00." (at 21, emphasis added).

6. In Commission Order No. 17452 issued on May 9, 2003, a ratemaking decision regarding IHSF, this Commission stated:

"Turning to the argument that Interstate could be harmed if IHSF is given rate flexibility to reduce its rates, IHSF pointed out that it is not seeking a rate change. Furthermore, even if IHSF were seeking a rate reduction in the instant docket, it would need to seek a change in its existing operating certificate issued by the Division because the operating certificate contains the restriction that IHSF's rates must be no lower than its current \$26 round trip ticket price."³²

³² IHSF stated that it does not intend to seek the flexibility to lower its rates unless Interstate at some point places its own high-speed ferry into service." (at 8, emphasis added).

Later in that same decision, this Commission stated:

"In fact, if IHSF were to seek to lower its rates below \$26, it would need to petition to the Division for a change in the terms of its operating certificate" (at 14, emphasis added).

CONCLUSION

By IHSF's own admission, this filing seeks to obtain Commission approval of rates less than \$26. IHSF is therefore asking this Commission to authorize illegal rates, because IHSF cannot legally operate at a rate lower than \$26 round-trip without seeking a change in the terms of its operating certificate from the Division. Having neither sought nor received any such change in its operating certificate, this filing should be summarily dismissed.

Respectfully submitted,
Interstate Navigation Company
By its attorney

Michael R. McElroy, Esq.
Schacht & McElroy
21 Dryden Lane
P.O. Box 6721
Providence, RI 02940-6721
Tel: (401) 351-4100
Fax: (401) 421-5696
E-mail: McElroyMik@aol.com

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of May 2005, I mailed and e-mailed a true copy of the foregoing by first class mail to the following:

Mark McSally, Esq.
Kelly, Kelleher, Reilly & Simpson
28 Caswell Street
Narragansett, RI 02882

Paul Roberti, Esq.
Attorney General's Office
150 South Main Street
Providence, RI 02903

Hagopian & Hagopian
60 South County Commons Way
Suite G5
South Kingstown, RI 02879

Packer & O'Keefe
1220 Kingstown Road
Peace Dale, RI 02883

Theresa M. Gallo