

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

IN RE: Application By Interstate Navigation :
 Company for Water Carrier Authority : Docket No. D-05-06

TABLE OF CONTENTS

	<u>PAGE</u>
1. INTRODUCTION.....	1
2. INTERSTATE'S DIRECT CASE.....	4
3. IHSF'S DIRECT CASE.....	24
4. ADVOCACY SECTION'S DIRECT CASE.....	33
5. TOWN OF NEW SHOREHAM'S DIRECT CASE.....	35
6. INTERSTATE'S REBUTTAL CASE.....	37
7. IHSF'S SURREBUTTAL CASE.....	40
8. ADVOCACY SECTION'S SURREBUTTAL CASE.....	42
9. INTERSTATE'S SUR-SURREBUTTAL CASE.....	44
10. PUBLIC COMMENTS.....	50
11. FINDINGS.....	53
A. Fitness, Willingness and Ability.....	54
B. Public Convenience and Necessity.....	55
1. Newport - Old Harbor.....	56
2. Point Judith - Old Harbor.....	57
3. IHSF's Objection.....	59
4. Lifeline Benefits.....	61
C. IHSF's Claim of Predatory and Irrational Acts by Interstate.....	62
D. IHSF's Ability to Compete and the General Public Interest.....	63
12. CONCLUSION.....	70
ORDER.....	72

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REPORT AND ORDER

1. INTRODUCTION

On December 6, 2004, the Interstate Navigation Company, 14 Eugene O'Neill Drive, New London, Connecticut ("Interstate"), filed an application with the Rhode Island Division of Public Utilities and Carriers ("Division") seeking authority to operate as a seasonal "fast ferry" water carrier of passengers and freight between (1) Point Judith and Old Harbor, Block Island; and (2) Newport and Old Harbor, Block Island.¹ Interstate's application was filed pursuant to Rhode Island General Laws, Sections 39-3-3 and 39-3-3.1, which require the issuance of a "certificate of public convenience and necessity" ("CPCN") by the Division before "water carrier" services can be provided between points within the State.

¹ Interstate Exhibit 1. The Division notes that "fast" or "high-speed" ferry service is distinguishable from conventional "slower" ferry services. This distinction was originally disputed by Interstate in a previous Division docket, which resulted in an appeal on the issue to the Rhode Island Supreme Court. The Court ultimately agreed with the Division and concluded that a "high-speed ferry substantially alters the kind of service that water carriers can provide. It requires different equipment, it provides faster service and it operates on the water in an entirely different way than a standard ferry does." (See Interstate Navigation Company v. Division of Public Utilities, 824 A.2d 1282 (R.I. 2003)). With respect to the issue of the speed of the faster service, the Division's experience with "fast ferry" service has suggested that a ferry must be capable of operating comparatively smoothly and quietly at a service speed of approximately 28 knots. (See Order No. 17081, issued in Docket No. 02-MC-56). The Division has decided to adopt this criterion as a minimum standard for "fast" or "high-speed" ferry service.

As background, the Division notes that Interstate currently operates as a certificated water carrier of passengers and property under authority granted by three separate CPCNs previously issued by the Division. These CPCNs authorize Interstate to operate as (1) a lifeline water carrier of passengers and property between Point Judith and Old Harbor, Block Island²; (2) a seasonal water carrier of passengers and property between Newport and Old Harbor, Block Island³; and (3) a seasonal water carrier of passengers and property between Point Judith and Newport⁴.

Following the docketing of Interstate's application⁵, the Division received motions to intervene from the town of New Shoreham ("New Shoreham")⁶; the town of Narragansett ("Narragansett")⁷; and Island Hi-Speed Ferry, LLC ("IHSF")⁸.

² CPCN No. MC # W-1.

³ CPCN No. MC # W-2.

⁴ CPCN No. MC # W-3. This certificate is currently dormant.

⁵ The instant application filing was initially mistakenly docketed as a "Motor Carrier" matter by the Division and given the Motor Carrier docket designation of "Docket No. 04-MC-174". The hearing officer discovered and corrected this error during a January 27, 2005 procedural conference and the matter was subsequently re-docketed as a "Division" matter. The current docket number reflects the change.

⁶ New Shoreham filed its motion to intervene on January 26, 2005. Interstate initially objected to New Shoreham's motion to intervene on January 31, 2005, but later withdrew its objection on March 8, 2005.

⁷ Narragansett filed its motion to intervene on January 31, 2005. Interstate filed an objection to Narragansett's motion to intervene on February 2, 2005. Narragansett filed a response to Interstate's objection on February 18, 2005. Interstate subsequently reaffirmed its objection to Narragansett's motion to intervene on February 21, 2005. Interstate, however, later withdrew its objection on the first day of hearings on June 13, 2005 (Tr. 9, 6/13/05).

⁸ IHSF filed its motion to intervene on February 15, 2005. Interstate did not object to IHSF's motion to intervene. IHSF currently possesses a certificate of public convenience and necessity (MC-W-1163), which authorizes it to transport passengers by water vessel between the port of Galilee in Narragansett, Rhode Island and New Harbor located in the town of New Shoreham (Block Island), Rhode Island (See: Order No. 15652 in Docket No. 98-MC-16, issued 8/25/98; and Order No. 17081 in Docket No. 02-MC-56, issued 8/2/02).

The Division scheduled and conducted a pre-hearing conference on January 27, 2005. An initial procedural and hearing schedule was established at the January 27, 2005 pre-hearing conference.⁹ The Division's Advocacy Section ("Advocacy Section"), an indispensable party, also entered an appearance in the instant docket at that time.

The Division subsequently conducted five public hearings in this docket. The hearings were duly noticed in conformance with the notice mandates contained in Rhode Island General Laws, Section 39-3-3.1. The hearings were conducted in the Division's hearing room located at 89 Jefferson Boulevard in Warwick, on June 13, 14, 15 and 22, and July 11, 2005. The following counsel entered appearances:

For Interstate:	Michael R. McElroy, Esq.
For IHSF:	Mark J. Hagopian, Esq., and Jon G. Hagopian, Esq.
For New Shoreham:	Merlyn P. O'Keefe, Esq.
For the Advocacy Section:	Paul J. Roberti, Esq. Assistant Attorney General
For Narragansett ¹⁰ :	Mark A. McSally, Esq.

⁹ The initial procedural and hearing schedule was subsequently modified due to discovery related disputes between Interstate and IHSF and extension of time requests by IHSF.

¹⁰ Narragansett indicated at the outset of the hearing on June 13, 2005 that it had two limited concerns in this matter. Specifically, Narragansett related that it intervened in this docket to address the issues of (1) whether Interstate's proposed high-speed ferry would have the effect of increasing congestion and traffic at Galilee, and (2) whether the new ferry would require additional dock space and have the effect of displacing Narragansett's fishing fleet (Tr. pp. 7-8). Narragansett later withdrew its concerns regarding its fishing fleet after Interstate stipulated that it would not seek any expansion of its dock space at Galilee (Point Judith) (Tr. 9, 6/13/05).

At the conclusion of the presentation of their respective cases, the parties were given an opportunity to submit post-hearing memoranda. Only Interstate and IHSF filed post-hearing memoranda in this docket.¹¹

2. INTERSTATE'S DIRECT CASE

Interstate proffered pre-filed direct testimony from seven witnesses with its application. The witnesses were identified as follows: Ms. Susan Linda, President, Secretary, and Treasurer, Interstate; Mr. Joshua Linda, Vice President, Interstate; Mr. Walter E. Edge, Jr., MBA CPA, Consulting Department Director and President of Bacon & Edge, p.c., a CPA firm specializing in utility regulation, One Worthington Road, Cranston, RI 02920; Dr. Timothy Tyrell, Professor, Department of Environmental and Natural Resource Economics, University of Rhode Island; Mr. Mark G. Brodeur, Director of Operations, Rhode Island Tourism Division, 1 West Exchange Street, Providence, RI 02903; Mr. Alan Slaimen, Contract Manager, Collette Vacations, 162 Middle Street, Pawtucket, RI 02860; and Mr. David Laraway, Chapel Street, Block Island, RI 02807.

After providing a brief summary of Interstate's most recent rate cases before the Public Utilities Commission ("Commission"), Ms. Linda testified regarding Interstate's "general financial situation, [and] the Company's financial fitness, willingness, and ability to run a Fast Ferry service". She also discussed Interstate's ability to add the proposed service to its current service.

¹¹ Interstate submitted its post-hearing memorandum on September 12, 2005. IHSF submitted its post-hearing memorandum on September 16, 2005.

Ms. Linda also provided an update on Interstate's plans to purchase the M/V Anna C, and a general overview of Interstate's future goals.¹²

Ms. Linda cited six reasons behind Interstate's decision to seek authority to provide fast ferry services. First, she related that although she did not believe there was a public need or demand for fast ferry travel when IHSF applied for its fast ferry authority in 1998, she now admits that she was wrong. Ms. Linda testified, "I did not realize how important speed has become to ferry customers, and how much they are willing to pay for it".¹³ Ms. Linda noted that there are currently 1900 fast ferries in service or on order worldwide. She identified 12 fast ferries operating locally in Rhode Island, Massachusetts and Connecticut.¹⁴ She admitted that Interstate "was late in recognizing this quickly developing trend."

Ms. Linda next observed that, based on the success of IHSF; the new Connecticut fast ferry, Block Island Express ("BI Express")¹⁵; and the new Quonset to Martha's Vineyard fast ferry, Vineyard Fast Ferry ("VFF")¹⁶; she now believes that the future of the ferry business is in providing fast ferry service. Ms. Linda related that, to test this belief, Interstate enlisted the help of Dr. Timothy Tyrell, who designed a survey that was administered to Interstate's current customers. She related that the survey reflected that 35% of the

¹² Interstate Exhibit 2, p. 2.

¹³ *Id.*, p. 4.

¹⁴ *Id.*, p. 9.

¹⁵ Block Island Express provides seasonal (May – October) high-speed ferry service between New London, Connecticut and Old Harbor, Block Island.

¹⁶ Vineyard Fast Ferry Express provides seasonal (May – October) high-speed ferry service between Quonset Point, North Kingstown, Rhode Island and Martha's Vineyard, Massachusetts.

responders traveling from Point Judith to Block Island, and 73% of the responders traveling from Newport to Block Island said that they would have taken a fast ferry, at double the rate, if Interstate had made one available. Ms. Linda noted that the Point Judith customers surveyed “were Interstate customers who had chosen not to travel on IHSF’s fast ferry”.¹⁷

Ms. Linda next testified that when these statistics were given to Mr. Edge, he calculated that a fast ferry service would be immediately financially successful and would even help keep Interstate’s current lifeline rates down. Ms. Linda stated that “keeping the rates for the lifeline customers as low as possible” is also one of the reasons why Interstate seeks fast ferry authority.¹⁸ She observed that for each of Interstate’s existing customers who takes Interstate’s new fast ferry instead of Interstate’s conventional ferries, “that is the equivalent of adding a new customer to our customer base because the rate will be approximately twice the current rate”. Ms. Linda stated that this is a method that “we can use to increase our revenues by simply servicing our existing customers’ needs.”¹⁹

Ms. Linda testified that Interstate also believes that there are “many prospective customers” who have avoided the trip to Old Harbor due to “seasickness issues.” She opined that in view of the quicker trip to the Island

¹⁷ Id., pp. 4-5.

¹⁸ Id., p. 5.

¹⁹ Id., pp. 9-10.

and the special stabilizing design of the fast ferry, these individuals might try an Interstate fast ferry service to Old Harbor.²⁰

Ms. Linda also mentioned the elderly who often travel on Interstate's boats. She related that Interstate's elderly passengers, who enjoy the shops, restaurants and hotels located in Old Harbor "should be given the choice of taking Interstate's current fleet or Interstate's new fast ferry service directly to Old Harbor."²¹

Lastly, Ms. Linda reasoned that the "addition of a small car/freight deck on the fast ferry will allow better service to those customers that can afford to take their car on the fast ferry." She noted that 6% of those surveyed said they would take their cars on an Interstate fast ferry at a rate of \$200 per round trip. She added that this carrying capacity could also be used for ambulances, homeland security activities and the quick delivery of essential parts and supplies to the Island.²²

Ms. Linda next discussed Interstate's fitness, willingness and ability to provide the proposed fast ferry service to Block Island. She testified that Interstate "has the knowledge and experience to run about six more trips to and from Point Judith (about three trips) and Newport (about three trips) to Old Harbor per day."²³ She emphasized that Interstate has been running a ferry business to Block Island for over sixty years and has the management and crew to operate a successful fast ferry service. She added that Interstate also

²⁰ Id., pp. 5-6 and 11.

²¹ Id., p. 6.

²² Id.

²³ Id., p. 7.

has the financial capability to borrow the monies needed to build the new fast ferry vessel.²⁴

Ms. Linda testified that Interstate hopes to begin its proposed fast ferry service by the summer of 2006. She related that Interstate would need approximately one year of lead-time for the construction of the vessel. Ms. Linda opined “we should easily produce a profit in the first year ...assuming that we run at the same prices that IHSF is running.”²⁵

In order to protect Interstate’s ratepayers in the event that the fast ferry service proves unprofitable, Ms. Linda stated that Interstate has identified three options to safeguard its current ratepayers. She testified that the first option would be to cover the losses from Interstate’s retained earnings. Ms. Linda explained that Interstate could also charter the vessel, which she predicted could raise \$30,000 per month. She added that Interstate could also always sell the vessel. Regarding the option to sell the vessel, Ms. Linda related that Interstate has learned that INCAT design catamaran ferries have resold in the United States, on average, “for about 8% more than the price at which they were purchased.”²⁶

Ms. Linda testified that Interstate does not plan to market the new fast ferry. She opined that Interstate and IHSF “can coexist” due to the fact that Interstate’s customers “prefer to travel with us by fast ferry to Old Harbor”. She related that Interstate does not plan to travel to New Harbor, where IHSF

²⁴ Id.

²⁵ Id.

²⁶ Id., p. 8.

runs. Ms. Linda contended that IHSF fulfills a public need by taking customers from Point Judith to New Harbor. She also stated that over the last four years IHSF has “established a substantial loyal customer base and has been quite successful.” She concluded that IHSF has a “committed customer base for its New Harbor service.”²⁷

Ms. Linda also believes that Interstate can expand its Newport to Block Island customer base by the addition of a fast ferry service. She related that Interstate currently provides one run each day from Newport to Block Island. She noted that the run takes two hours each way and has been declining in popularity. She opined that a fast ferry, which would provide two or three trip options per day from Newport, would greatly expand Interstate’s Newport-to-Block Island market. She also observed that, a fast ferry would also provide a new Block Island to Newport market for Interstate.²⁸

Finally, on the issue of financing, Ms. Linda testified that Interstate has already had discussions with the Washington Trust Company. Ms. Linda noted that Interstate has had a long borrowing history with the Washington Trust Company, including an approximately \$8 million construction loan for the M/V *Block Island*, an approximately \$3 million loan for the reconstruction of the M/V *Carol Jean*, and a \$3.1 million loan for the acquisition of the M/V *Anna C*. Ms. Linda testified that the Washington Trust Company is “very

²⁷ *Id.*, p. 10.

²⁸ *Id.*, pp. 11-12.

interested, and in fact excited, about providing financing to us for the approximate \$6 million fast ferry.”²⁹

Mr. Joshua Linda identified himself as Susan and Raymond Linda’s son.³⁰ Mr. Linda testified that he is a licensed Captain and the holder of a Coast Guard 100-ton Master’s license. He related that he has been working with Interstate in various capacities for over 20 years, including work as a deck hand, an engineer, a mate, and as a captain. He related that he is currently the Company’s Vice-President and a Director.³¹

Mr. Linda was offered by Interstate to provide a description, and the estimated cost, of the proposed fast ferry vessel, the crew requirements for the vessel, a proposed schedule of trips, and the estimated costs of providing the crew for the new vessel in the first year of operation.

Mr. Linda testified that Interstate is in discussions with Gladding-Hearn Shipbuilding of Somerset, Massachusetts, for the construction of the fast ferry. He related that the proposed vessel would be approximately 38 meters (about 125 feet) in length. He stated that it would be a passenger/vehicle catamaran ferry, of INCAT design, with a capacity of approximately 350 passengers and approximately six vehicles.³² According to the witness, four caterpillar engines and four water jets would power the vessel. He related that stability would be greatly improved over Interstate’s conventional vessels by installation of an

²⁹ Id., p. 12.

³⁰ Raymond Linda is Interstate’s General Manager.

³¹ Interstate Exhibit 3, p. 1.

³² INCAT is a successful Australian fast ferry company that has licensed their aluminum fast ferry design to Gladding-Hearn Shipbuilding. Id., p. 3.

“active trim tabs ride control system”. Mr. Linda testified that the vessel would have a top speed of about 30 knots (about 35 mph) at full power and fully loaded. Mr. Linda noted that Interstate’s newest ferry, the M/V *Block Island* has a top speed of only 18 knots.³³ Mr. Linda stated that the proposed fast ferry vessel has an estimated price of \$5.4 million to \$5.5 million. He noted that with change orders the cost could escalate to as much as \$6 million.

Mr. Linda stated that the vessel would operate with six crewmembers, consisting of: a captain, a mate, an engineer, two deck hands and a bartender. He related that the crew salary would cost about \$6,000 per week, plus taxes. Mr. Linda testified that because Interstate plans to run daily from June 18 until September 5 (80 days), he calculated the related crew expense at about \$67,000 for the period. He said that if Interstate decides to run on weekends only between September 9 and October 10 (16 days), crew expense would be an additional \$13,000, for a total of about \$80,569 for the season.³⁴

Mr. Linda testified that Interstate tentatively plans (predicated on actual demand) to run three trips per day from Point Judith to Block Island (Old Harbor), which he said takes 30 minutes per trip. He related that after leaving Block Island, the ferry would travel 50 minutes to Newport, and then back to Block Island, and then return to Point Judith. He testified that this schedule would allow passengers to ride from Point Judith and Newport to Block Island and back three times each day.³⁵

³³ Interstate Exhibit 3, p. 2.

³⁴ *Id.*, pp. 3-4.

³⁵ *Id.*, p. 4.

Mr. Linda also discussed Interstate's fitness and ability to provide the proposed fast ferry service. Chiefly, he emphasized the vast number of years that he and his parents have been working in the ferry business. He also noted his involvement in the building of the M/V *Block Island* and the rebuilding of the M/V *Carol Jean*.³⁶

Mr. Linda also weighed in on the likelihood of success for a new fast ferry. He related, "the industry has shown that essentially 'if you build it, they will come', and according to Fast Ferry Information, Ltd., over 1900 fast ferries are currently in service or on order."³⁷ As further support, Mr. Linda detailed the recent successes realized by IHSF's fast ferry services over the last four years, and other fast ferry operations located at Quonset Point (VFF), and in Connecticut (BI Express) and Massachusetts. Mr. Linda concluded that there is abundant evidence "of the local popularity of fast ferries."³⁸ He observed that even though fast ferries are much more expensive to travel on, the number of fast ferries operating in the area, and the large volume of passengers being transported by these fast ferries continues to increase. He added that this conclusion was clearly borne out by the survey conducted by Interstate.³⁹

Mr. Walter E. Edge was offered by Interstate to provide expert witness testimony in support of Interstate's CPCN application. Mr. Edge offered comments and evaluations on several CPCN-related issues. To start, Mr. Edge

³⁶ Id., p. 5.

³⁷ Id.

³⁸ Id., pp. 5-7.

³⁹ Id., p. 8.

testified that after reviewing Interstate's 2004 financial statements, he is confident that "Interstate remains a financially sound operation ...[and] will have no difficulty adding a new fast ferry to its current fleet and schedule."⁴⁰

Relative to the statutory CPCN criterion of "public necessity", Mr. Edge contended that there "are actually many needs for Interstate to provide a fast ferry from Point Judith and Newport to Block Island."⁴¹ Mr. Edge emphasized that Interstate has "suffered considerable loss of ridership as a result of competition from two other fast ferries traveling to Block Island..."⁴² Mr. Edge testified that this lost ridership has resulted in lost revenue and significant rate increases to Interstate's remaining customers. He related that Interstate needs the fast ferry in order to slow down or eliminate future passenger losses.⁴³

Mr. Edge points to Interstate's recent survey of its current customers as a source of additional evidence of need. He related that the survey reflects that Interstate's passengers expressed a need for a fast ferry service so that they can have a choice between fast ferry and conventional services. Mr. Edge concluded that Interstate's customers need access to faster transportation than Interstate can currently provide, and that Interstate's proposed fast ferry service would address this need.⁴⁴

Mr. Edge also echoed Ms. Linda's prognostication regarding "prospective customers that have gotten sick when traveling on Interstate's current fleet..."

⁴⁰ Interstate Exhibit 4, p. 3.

⁴¹ Id., p. 3.

⁴² Id., p. 4.

⁴³ Id.

⁴⁴ Id.

He stated that the fast ferry might bring these individuals and their families back to Old Harbor.⁴⁵

Mr. Edge also agreed with Ms. Linda regarding the likelihood that some of the elderly passengers that Interstate currently carries on its conventional vessels would also use a fast ferry. He agreed with Ms. Linda that “this choice for the elderly is necessary to adequately serve... [Interstate’s] customers.”⁴⁶

Mr. Edge next discussed the proposed schedule. He agreed with Mr. Linda’s assessment that “three trips a day [to Newport] would address many needs currently not serviced by one trip a day.” He opined that this schedule would be more attractive for individuals and families visiting Newport to also spend a half-day or more on Block Island. Mr. Edge also emphasized that the proposed schedule, which would provide service from Block Island to Newport, would open the door for an entirely new customer base not being served at this time.⁴⁷

Mr. Edge also testified that Interstate’s proposed fast ferry service would provide “a small freight/car deck”, which he described as a transportation service not currently addressed by current fast ferry service to Block Island. He related that this new service “will provide choice to Interstate’s current customers to travel with their vehicle on a fast ferry to Block Island and return.”⁴⁸ Mr. Edge emphasized that this new service will also allow Interstate to “satisfy urgent needs of the Island such as for ambulance transport, medical

⁴⁵ Id.

⁴⁶ Id., p. 5.

⁴⁷ Id.

⁴⁸ Id., p. 6.

supplies, critical parts needs for Island businesses (such as Block Island Power Company, the Sewer Commission, and the Water Department), 911 type emergencies, etc.”⁴⁹

Mr. Edge also opined that the proposed fast ferry service “will provide convenience for the public”. He related that the vessel would provide a “faster, quieter, smoother, and more comfortable ride” than Interstate’s existing fleet.⁵⁰

With respect to the question of whether Interstate can afford the new vessel, Mr. Edge opined that the “fast ferry will not only pay for itself it will help subsidize the other rates charged by Interstate to help keep lifeline rates lower.” He testified that Interstate also plans to lease the vessel during the off-season and apply the resulting revenues to the benefit of ratepayers.⁵¹

Regarding rates, Mr. Edge related that Interstate believes the Division and the Commission would not want Interstate to gain a competitive pricing advantage over IHSF, since IHSF is regulated by a price floor (currently \$29 per adult round trip). Mr. Edge stated that Interstate believes that the same price floor would be appropriate for Interstate’s fast ferry service rates. Mr. Edge added, “wherever possible, Interstate will use the exact same rates as IHSF if the Division and the Commission feel that is the most favorable way for Interstate to operate its fast ferry.”⁵² For freight and vehicle rates, Mr. Edge

⁴⁹ Id.

⁵⁰ Id., p. 7.

⁵¹ Id.

⁵² Id., p. 8.

related that Interstate has assumed vehicle rates at \$200 per car round trip, and freight rates at twice the conventional ferry rate.⁵³

Mr. Edge also stated that if Interstate were permitted to match IHSF's rates, Interstate would not earn a greater return on its investment than its current authorized rate of return. He explained that the intent of Interstate's proposal is to allow the current ratepayers to benefit from new customers choosing Interstate's fast ferry service.⁵⁴

Mr. Edge was also confident that the new fast ferry would generate new customers for Interstate. Relying on the success being realized by a new fast ferry from New London, Connecticut to Block Island (BI Express), Mr. Edge opined that "a significant new demand for the service" has appeared. He also believes that the proposed Newport to Block Island fast ferry runs will provide many new customers. Mr. Edge stated that although the "total number of people traveling to Block Island is growing each year, ...fewer of them are traveling to Block Island on Interstate's ferries." He attributed the lost business to the introduction and popularity of the fast ferry services currently provided by IHSF from Point Judith, and the BI Express out of New London, Connecticut. Based on this new popularity for fast ferries, Mr. Edge opined that Interstate's proposed fast ferry services from Point Judith and Newport "will encourage additional travelers."⁵⁵

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id., pp. 8-9.

To show that Interstate's proposed rates will generate profits that can be used to subsidize current rates, Mr. Edge prepared an analysis that projects revenues and expenses for Interstate's proposed fast ferry service on a stand alone basis (excluding any overhead allocation from Interstate's current operations). He related that the analysis "clearly shows" that Interstate will make money on its proposed fast ferry service even with no revenue from off-season charters.⁵⁶ Mr. Edge related that the analysis projected revenue in the first year of operations in the amount of \$1,739,908 and projected expense for the first year of operations of \$1,242,128, for a projected profit of \$497,781.⁵⁷ Mr. Edge explained that Interstate plans to include this profit in the rate-setting process to keep current passenger, vehicle and freight rates as low as possible and reduce the need for and the size of future rate increases.⁵⁸

Mr. Edge next provided details on how he calculated the revenues for Interstate's fast ferry in the first year of operations. He proffered a number of schedules to illustrate the components and assumptions contained in the calculation.⁵⁹ He also explained the differences between revenue from current customers and that of new customers. He noted that unlike a new customer base, the projected fast ferry revenue from Interstate's current customer base must be reduced by the amount of revenue that will be lost from Interstate's current revenue base. Mr. Edge related that he projected \$1,132,368 net revenue from Interstate's current customers and \$457,540 from new

⁵⁶ Id., p. 9 and Schedule WEE-1.

⁵⁷ Id., pp. 10-12.

⁵⁸ Id.

⁵⁹ Id., Schedules WEE-2 through WEE-8.

customers. He also noted that he expects that about 70% of the fast ferry revenue will be generated from Interstate's own current customer base.

Mr. Edge additionally testified that Interstate intends to try to sell the M/V *Nelseco* (the boat currently used on the Newport to Block Island run) after the fast ferry is in service. He related that the proceeds from the sale would be used to reduce the net cost of the new fast ferry. He declared that this revenue source would go directly to the benefit of the current ratepayers, without any reduction in service.⁶⁰

Mr. Edge also provided some clarification on how Interstate will pass the expected fast ferry-related profit/subsidy on to current ratepayers. He explained that when Interstate files its first full rate case after the first year of operations, the revenues and expenses from the fast ferry operation will become part of the cost of service calculation to determine Interstate's rates. He explained that since the fast ferry revenues will exceed the fast ferry expenses, the increase needed in rates will be less than if the fast ferry did not exist. Mr. Edge testified that at that time the benefit of running the fast ferry would be passed to the current ratepayer base.⁶¹ Mr. Edge also noted that if Interstate does not file a rate increase request immediately after the fast ferry's first year of operations, the current customer base would similarly benefit from the "freeze" in rates.⁶²

⁶⁰ Id., p. 12.

⁶¹ Id.

⁶² Id., p. 13.

As further clarification, Mr. Edge emphasized that in the event that the fast ferry loses money, Interstate would not file for a rate increase relating to the loss from the fast ferry operation, and “therefore the loss would not be passed on to the ratepayers.”⁶³ Mr. Edge added that if the fast ferry operation results in a financial hardship for Interstate, Interstate would sell or charter the vessel. Mr. Edge also noted that Interstate is prepared to lease a fast ferry from a “related entity, either Nelseco Navigation Company or some other company owned and operated by the Linda family” to further protect the current ratepayers. He related that under this approach “the ratepayers would only be exposed to the lease payments rather than the \$6,000,000 purchase price...”⁶⁴

In his final comments, Mr. Edge discussed the subject of whether Interstate’s proposed fast ferry would adversely impact IHSF’s operations. He testified that because Interstate intends to offer its fast ferry service predominantly to its own customer base, he didn’t believe that IHSF would be adversely impacted. He also noted that IHSF does not provide service from Newport to Block Island. Lastly, Mr. Edge contended that Interstate believes that its proposed fast ferry service “will have more of a positive impact on Interstate’s current operations...than it will impact [IHSF’s] operations at New Harbor.”⁶⁵

⁶³ Id.

⁶⁴ Id., p. 14.

⁶⁵ Id., p. 15.

Dr. Timothy Tyrell was offered by Interstate as an expert witness on tourism. In his introductory comments, Dr. Tyrell related that he was not being compensated by Interstate for his testimony. He stated that he was providing the testimony “as a public service.”⁶⁶

Dr. Tyrell testified that he assisted Interstate in designing a passenger survey during the summer of 2004. He related that the survey was designed to determine the interest of Interstate’s current passengers in having a high-speed ferry alternative from the same company.

Dr. Tyrell testified that the questionnaire was written according to best current practices in order to obtain an unbiased estimate of the percentage of Interstate’s ridership that would switch to a high-speed alternative if one were offered by Interstate.⁶⁷ He testified that Interstate implemented the survey during the summer and fall of 2004 on their own boats.⁶⁸

Dr. Tyrell stated that although he did not participate in the survey work itself, from discussions with Interstate, he believes that Interstate’s survey procedures were reliable and unbiased. He also opined that the results reported to him by Interstate “are both reliable and conservative figures”. He related that the results reflected that “...from 35% to 43% of Interstate’s

⁶⁶ Interstate Exhibit 5, p. 1.

⁶⁷ Interstate’s passenger survey “instrument” was admitted into the record, by agreement between the parties, after the record was closed in this docket. The admission of the exhibit was precipitated by a motion filed by IHSF on September 16, 2005. Based on the agreement reached between the parties, the Division has entered the “passenger survey instrument” as IHSF Exhibit No. 22.

⁶⁸ *Id.*, p. 2.

current passengers would switch to a high-speed ferry alternative if Interstate offered one..."⁶⁹

Mr. Alan Slaimen identified himself as the Transportation Contract Manager at Collette Vacations in Pawtucket. Mr. Slaimen testified in support of Interstate's application. Mr. Slaimen began his testimony by stating that both he and his company use Interstate's ferries. He related that he personally uses the ferries three or four times per season.⁷⁰ Mr. Slaimen testified that he and Colette Vacations would use Interstate's proposed high-speed ferry service between Point Judith and Block Island. He opined that the expected thirty-minute ride to Old Harbor would be "convenient for the public" and make "better sense for our groups."⁷¹

Mr. Slaimen further opined that Interstate's proposed high-speed ferry service between Newport and Old Harbor would be useful to members of the public staying on Block Island who would like to visit Newport for the day. He related: "it now becomes a better day trip for them."⁷²

On the issue of Interstate's fitness, Mr. Slaimen testified, "they have always been great and helpful to deal with on both a business and personal level." He related: "I think the history they have operating today is proof enough they can handle anything in a professional manner. I feel it would be a natural step for them."⁷³

⁶⁹ Id.

⁷⁰ Interstate Exhibit 6, p. 1.

⁷¹ Id., pp. 1-2.

⁷² Id., p. 3; Tr. 96-106 (6/13/05).

⁷³ Id., pp. 3-4.

Under cross-examination by IHSF, Mr. Slaimen agreed that Old Harbor was a more attractive tour destination than New Harbor. He opined that there is more for a tourist to see and do at Old Harbor.⁷⁴

Mr. David Laraway described himself as a self-employed construction worker who travels to Block Island bi-weekly on Interstate's ferries. Mr. Laraway testified that he would use Interstate's proposed high-speed ferry service between Point Judith and Old Harbor primarily because of the "quicker" travel.⁷⁵ He also believed that the faster boat would make the proposed service between Newport and Old Harbor attractive to the public as well.⁷⁶ Mr. Laraway also believed that Interstate is fit, willing and able to provide the proposed service. He related, "they have grown, and are more efficient."⁷⁷

Under cross-examination by IHSF, Mr. Laraway explained that he does not use IHSF's high-speed boat to New Harbor because he works in Old Harbor and that the secondary trip from New Harbor to Old Harbor takes too much time.⁷⁸

Mr. Mark Brodeur identified himself as the Director of Operations for the Rhode Island Tourism Division. He testified that he currently travels between Point Judith and Old Harbor on Interstate's ferries approximately five times per year.⁷⁹ Mr. Brodeur testified that the travel time associated with the proposed high-speed service between Point Judith and Old Harbor "is an important

⁷⁴ Tr. 101 (6/13/05)

⁷⁵ Interstate Exhibit 7, pp. 1-2.

⁷⁶ *Id.*, p. 3.

⁷⁷ *Id.*, p. 3.

⁷⁸ Tr. 109-110 (6/13/05).

⁷⁹ Interstate Exhibit 8, p. 1.

factor when planning for a vacation.”⁸⁰ He opined that the public would prefer the high-speed service because a faster boat means “more time can be spent at the destination.” He also suggested that some passengers don’t enjoy being aboard a boat and would prefer the shorter time spent on the high-speed ferry.⁸¹ Mr. Brodeur also opined that any increase in tourism to Block Island “would result in [a] positive economic impact.”⁸²

Mr. Brodeur also testified on the issue of “public need”. He stated that Interstate has a positive and professional reputation. He added: “high end clients that frequent the Island will have no problem paying the small increase for the convenience.”⁸³

Mr. Brodeur additionally supported the proposed high-speed service between Newport and Old Harbor. He contended that the faster crossing would make a substantial difference. He predicted, “this would be a positive for the tourism industry as a whole.” He opined: “the tourism season on the Island would begin earlier and end later if there were a more convenient connection between Newport and [Block Island].” Mr. Brodeur further opined that separating the passengers from the freight and automobiles being carried on Interstate’s conventional ferries will lead to greater comfort and convenience for the passenger.⁸⁴

⁸⁰ Id.

⁸¹ Id., p. 2.

⁸² Id.

⁸³ Id.

⁸⁴ Id., p. 3.

Regarding the issue of Interstate's fitness and ability to provide the proposed services, Mr. Brodeur related that Interstate "offers substantial experience supported by a professional and knowledgeable staff." He opined: "they are the most likely candidate to take on this endeavor."⁸⁵

Under cross-examination by IHSF, Mr. Brodeur agreed that IHSF has and continues to provide excellent high-speed ferry service between Point Judith and New Harbor, but that the Rhode Island Tourism Division sees Interstate's proposal to offer high-speed services between Point Judith and Old Harbor, and between Old Harbor and Newport, as new markets that will further promote tourism in the State. Mr. Brodeur also agreed that losing IHSF would be unfortunate, but opined that "it doesn't have to be that way" if proper marketing is done to promote IHSF's services to New Harbor.⁸⁶

3. IHSF'S DIRECT CASE

IHSF proffered pre-filed direct testimony from two witnesses in opposition to Interstate's application. The witnesses were identified as follows: Mr. Frederick L. Nolan, III, member of Harbor Cruises, LLC, d/b/a Boston Harbor Cruises, which is a member of IHSF and its Operations Manager; and Mr. Lawrence R. Kunkel, President and Chief Economist, Kunkel Strategic Services, IBC, an economic and strategic management consulting firm, 83 North Pearson Drive, Warwick, RI 02888.

In his introductory comments, Mr. Frederick Nolan testified that Boston Harbor Cruises ("BHC") has been in the passenger ferry transportation

⁸⁵ Id., p. 4.

⁸⁶ Tr. 78-94 (6/13/05).

business and marine excursion business for over 78 years. He related that BHC operates 23 vessels in Boston Harbor, Massachusetts Bay and the U.S. Virgin Islands. He testified that in addition to its private interests, BHC operates commuter ferry routes for the Massachusetts Bay Transportation Authority. He also related that BHC, with his participation, has designed and constructed five INCAT high-speed catamarans at Gladding-Hearn shipyard, including IHSF's vessel, *Athena*. He noted that he and BHC also have extensive experience in the high-speed ferry charter and resale markets.⁸⁷ Mr. Nolan also related that he manages the operations of BHC and interacts with IHSF on a daily basis, through IHSF's Director of Operations, Jon Hagopian; and its General Counsel, Mark Hagopian.

Mr. Nolan testified that after reading the pre-filed testimony submitted by Interstate with its application filing, he concluded that Interstate's management and their financial advisor have a false sense of security as to the viability of existing markets for both off-season charters and the resale of high-speed ferries. He related that the "rosy revenue predictions made in that testimony simply do not reflect reality."⁸⁸

Mr. Nolan explained that although it was recently profitable to charter high-speed ferries, "that simply is no longer true." He explained that the off-season charter market that existed in New York Harbor after "911" and through the spring of 2004, no longer exists. He explained that one of the infrastructure casualties inflicted on New York on September 11, 2001

⁸⁷ IHSF Exhibit 10, p. 1.

⁸⁸ *Id.*, p. 3.

included the destruction of the New York/New Jersey Subway tunnel and the station below the World Trade Centers. He testified that the loss of this critical transportation corridor in lower Manhattan's financial district created an immediate and unique demand in New York Harbor for traditional and high-speed ferries. He related that local marine transportation operators in New York and New Jersey experienced immediate increased daily ridership of between 50% and 100% after 9/11. He testified that "New York Waterway", the oldest and largest of those operators, chartered many vessels from along the east coast, including the *Athena*, to meet the artificial demand. He stated that during this charter period, New York Waterway "went about building their own new fast ferries."⁸⁹ Mr. Nolan added that since the re-opening of the "Path Train line" last winter, ferry ridership levels have returned to pre-9/11 levels and New York Waterway is selling off the majority of the fast ferries it built over the last few years.⁹⁰ Mr. Nolan also noted that IHSF had to sue New York Waterway to recover its final installment payment for the *Athena* charter.

Mr. Nolan added that other marine transportation operators in New York Harbor experienced financial difficulties trying to profit from the "post-911 artificial demand." He testified that "SeaStreak", a division of a large international shipping business called "Sea Container", rapidly built a number of fast ferries at Gladding Hearn Shipyard in response to the demand. He related that SeaStreak took delivery of the last vessel, *The Highlands*, last winter. He testified that SeaStreak is now trying to charter or sell that vessel.

⁸⁹ Id., p. 4.

⁹⁰ Id.

Mr. Nolan also noted that another marine transportation operator, “New York Fast Ferry”, was forced into bankruptcy.⁹¹

Mr. Nolan testified that there used to be a non-New York customer for such vessels in the off-season market. He described the customer as a casino vessel operator off the west coast of Florida. He related however, that these charters ended on May 1, 2005, after the casino owner took delivery of its own vessels to replace the chartered vessels.⁹² In short, according to IHSF’s witness, there are no longer any charter opportunities for fast ferry owners to charter their vessels during the off-season. Mr. Nolan indicated that this reality forced IHSF “to take the extraordinary risk of establishing a new winter service between the islands of Puerto Rico.”⁹³

Mr. Nolan also discussed the projected monthly charter rate of \$30,000 contained in Interstate’s testimony. He related that if this rate were achievable, it would only support roughly 50% of the monthly fixed cost of the vessel Interstate is proposing to build.⁹⁴

Mr. Nolan next testified that Interstate’s opinion that there is a ‘high demand’ for high-speed ferries in the resale market “...does not reflect the realities of today’s market.” Mr. Nolan said while it was once true that a fast ferry owner could expect an 8% profit on a resale, the resale market has gone through dynamic changes over the past several years that have significantly diminished the resale values of such vessels. As an example, Mr. Nolan related

⁹¹ Id., pp.4-5.

⁹² Id.

⁹³ Id., pp. 5-6.

⁹⁴ Id., p. 6.

that the most recent Gladding-Hearn fast ferry to sell on the resale market, *Voyager III*, sold for about \$3 million. He testified that this amount reflects a \$1.3 million loss compared to the initial cost of this 3-year old vessel. He added that another Gladding-Hearn fast ferry, the *Grey Lady II*, has been on the resale market for two years, with no buyers.⁹⁵

Mr. Nolan attributed the recent correction in the resale market to three factors. First, he believes that the glut of New York Harbor fast ferries and others being advertised for resale has softened the market. Secondly, he attributes the decline to the fact that there are more shipyards constructing fast ferries today than during the 1990s. He testified that during the 1990s there were only two shipyards building fast ferries in the United States. He stated that during these years demand was high and there were backlogs that drove prices higher. Mr. Nolan related that today there are eight shipyards in the United States building such vessels and that none of these shipyards currently has a backlog. Thirdly, Mr. Nolan claims that fast ferries are expensive to build and expensive to operate. He noted that this is especially true now in view of the “spiraling cost of petroleum products”.⁹⁶

Mr. Nolan next addressed Interstate’s contention that IHSF has a loyal ridership that will follow it even if Interstate offers fast ferry service from Point Judith, with identical rates, to a terminal in Old Harbor. He abruptly replied: “that contention cannot be taken seriously”.⁹⁷ Mr. Nolan asserted that New

⁹⁵ Id.

⁹⁶ Id., p. 7.

⁹⁷ Id., p. 8.

Harbor is clearly less appealing than Old Harbor. He cited several reasons, specifically: (1) the approximate 12 to 15 minute slow ride through the heavily trafficked 1.2 nautical mile no-wake zone in between the entrance to New Harbor and Payne's Dock; (2) the lack of ground transportation to the tourist/business center in Old Harbor; (3) the cost of a taxi ride to Old Harbor; and (4) the additional time necessary to travel from Payne's Dock to Old Harbor. Mr. Nolan argued that the "idea that IHSF could sustain itself by servicing the relatively few people who use it *because* it lands in New Harbor is ridiculous."⁹⁸

Mr. Nolan added that Interstate would have other "natural advantages" if allowed to provide fast ferry service to Old Harbor. He stated that Old Harbor provides Interstate with "adequate parking at the point of embarkation and seamless links with other modes of transportation at the point of embarkation."⁹⁹

Mr. Nolan contented that IHSF does not have the capability or resources to compete directly with Interstate. He maintained that even if IHSF's CPCN conditions were lifted, Interstate would continue to have the advantage, primarily due to Interstate's monopoly over the available infrastructure in both Point Judith and Block Island's Old Harbor. Mr. Nolan observed that Interstate has long-term leases with the State for all available ferry docks at Point Judith. Mr. Nolan explained that Interstate's long-term leases with the State means that "IHSF will never be able to grow out of its allotted 100 feet of dock space"

⁹⁸ Id., p. 8.

⁹⁹ Id., p. 9.

at Point Judith.” As a consequence, Mr. Nolan observed that IHSF is “permanently limited to using a vessel with a 250 passenger capacity limit...” Mr. Nolan related that without additional passenger capacity, IHSF couldn’t lower its rates to effectively compete with Interstate, regardless of whether the Commission removes IHSF’s rate floor requirement.¹⁰⁰

In his final comments, Mr. Nolan testified that the only way IHSF could compete with Interstate would be if IHSF were allowed to use Interstate’s dock in Old Harbor. Mr. Nolan contended that the Division could also help “level the playing field” by allowing IHSF to provide free jitney service to its passengers on Block Island, and by mandating that Interstate’s fast ferry ticket price be significantly higher than IHSF’s.¹⁰¹

Mr. Lawrence Kunkel was offered by IHSF to provide expert witness testimony regarding the claims made by Interstate in its direct case. He began his testimony by asserting that the Division would be making “a monumental mistake” if it granted Interstate’s application.¹⁰² Mr. Kunkel outlined four arguments against granting Interstate a fast ferry CPCN.

Mr. Kunkel first argued that if Interstate’s application were granted, IHSF and Interstate would be direct competitors. He defined the term “direct competitors” as “two or more firms supplying a product or service to the same market (in this case fast ferry service to Block Island), where the product or service offered is characterized largely of the same attributes at or about the

¹⁰⁰ *Id.*, p. 10.

¹⁰¹ *Id.*, p. 11.

¹⁰² IHSF Exhibit 11, p. 3.

same price (and quality) and the competing firms draw their customers from largely the same geographic area.”¹⁰³ Using this definition, Mr. Kunkel testified that IHSF is currently experiencing “direct” and “indirect” competition from other fast ferry operators. He described BI Express, which operates between New London, Connecticut and Block Island as a direct competitor. He described the VFF, which operates between Quonset Point and Martha’s Vineyard, Massachusetts as an indirect competitor, inasmuch as it draws away potential IHSF passengers who otherwise may have gone to Block Island.¹⁰⁴

Mr. Kunkel testified that the existing level of direct and indirect competition has resulted “in a very sharp decline in ridership of 14.4 percent in 2004”, compared to 2003. He noted that BI Express began operations in 2004. Mr. Kunkel testified that prior to the start-up of BI Express in mid-July 2004, approximately 48% of IHSF’s passenger base was from the Connecticut – New York – New Jersey market. Mr. Kunkel related that by July and August, 2004, however, ridership had declined dramatically. He explained that in July 2004 IHSF’s ridership had dropped 19% compared to July 2003, and 16% compared to July 2002. Mr. Kunkel related that August’s numbers were worse, dropping 26% compared to 2003 and 25% compared to 2002.¹⁰⁵ Mr. Kunkel opined that IHSF’s losses are directly attributable to direct competition from BI Express.

Mr. Kunkel also attributed IHSF’s ridership losses to the “regulatory and market-imposed restrictions”, imposed by the Commission and the Division,

¹⁰³ Id., p. 4.

¹⁰⁴ Id.

¹⁰⁵ Id., pp. 4-5.

which prevent IHSF from operating its service to Old Harbor and requiring that it maintain at least a \$10 ticket price differential over Interstate's rates. He opined that indirect competition from VFF has further eroded IHSF's ridership.

Mr. Kunkel testified that at present there are approximately 966,700 seats of high-speed ferry capacity serving Block Island. He related that based on IHSF's and BI Express' 2004 ridership numbers, "only 16 percent of the total market capacity was utilized."¹⁰⁶ Mr. Kunkel related that this means that at existing market capacity over 800,000 passenger seats remain unutilized and available to the Block Island market. Mr. Kunkel emphasized that this excess capacity problem is worsened when you add the approximately 320,000 passenger seats offered by VFF. Mr. Kunkel related that in economic terms, Interstate's proposed fast ferry would represent another fast ferry carrier in an already "saturated" market. Mr. Kunkel stated that based on these facts, Interstate's entry into this market would be "absurd, economically irrational and contrary to the public interest".¹⁰⁷

Mr. Kunkel next discussed the impact that Interstate's entry into the fast ferry market would have on IHSF. Mr. Kunkel contended that if Interstate were allowed to operate a fast ferry to Block Island, IHSF "would be caught in a competitive crossfire, with BI Express on one side and Interstate Fast Ferry on

¹⁰⁶ Id., p. 5.

¹⁰⁷ Id., pp. 5-7.

the other, and with [VVF] acting as a sapper.”¹⁰⁸ Mr. Kunkel predicted, “IHSF would no doubt be forced into bankruptcy.”¹⁰⁹

Mr. Kunkel also warned that if Interstate enters the fast ferry market, there is a chance that both companies “could...be forced to exit the market.” He explained that through a convergence of adverse market developments, such as “two consecutive poor weather summers, the financial losses would be enormous, especially for Interstate..., which would suffer a double financial hit – on the fast ferry side and the life-line side of the business.” He opined, “this could lead to the financial collapse of IHSF, Interstate Fast Ferry and Interstate Navigation.”¹¹⁰

4. ADVOCACY SECTION’S DIRECT CASE

Dr. John Stutz was offered by the Advocacy Section to address Interstate’s CPCN application. Dr. Stutz was qualified as an expert witness in public utility regulatory matters.

Dr. Stutz testified that the Division has indicated in a recent decision, in Docket No. 98-MC-18, that applicants for a water carrier CPCN must prove (1) that public convenience and necessity require the proposed services; and (2) that the applicant is fit, willing, and able to provide the proposed services.¹¹¹ He related that according to the aforementioned decision, the Division concluded that an applicant need not prove “absolute convenience or absolute necessity” for the granting of a CPCN. He stated that a finding of “a blend of

¹⁰⁸ Id., p. 8.

¹⁰⁹ Id.

¹¹⁰ Id.

¹¹¹ Advocacy Section Exhibit 1, p. 3.

the two” is all that is required.¹¹² He also testified that the same Division decision noted the possibility of conflict between the public’s need for service and the impacts on existing businesses.” In addressing this possible conflict, Dr. Stutz related that the Division found that “public service is the basic issue to be considered... [and] that protecting existing investments from even wasteful competition is secondary to the fundamental obligation of securing adequate service for the public.”¹¹³

Dr. Stutz thereupon observed that Interstate’s proposed fast ferry would provide services that are not currently available. He related that there are currently no fast ferry services between Newport and Block Island or between Point Judith and Old Harbor.¹¹⁴ Regarding the demand for the services proposed, Dr. Stutz related that the results from Interstate’s survey supports Interstate’s contention that their current customers would utilize a fast ferry service to Old Harbor. He also opined that the additional cost for the enhanced speed and comfort provided by the proposed fast ferry would not significantly impact the total cost for a “long weekend...or a week-long stay” on Block Island.¹¹⁵

In addressing the CPCN-related issues of fitness, willingness and ability to provide the proposed service, Dr. Stutz testified that he believes that Interstate has demonstrated, through its discovery responses and the

¹¹² Id.

¹¹³ Id.

¹¹⁴ Id., pp. 3-4.

¹¹⁵ Id., p. 4.

testimony of its witnesses, that it possesses the requisite experience and financial resources to acquire and operate the proposed fast ferry.¹¹⁶

After concluding that Interstate had satisfied the required burden of proof for the issuance of a CPCN, Dr. Stutz briefly discussed the anticipated impact the new fast ferry service would have on IHSF's current fast ferry operation and Interstate's existing conventional ferry services. First, he opined that the proposed fast ferry services "provides potential economic benefits to Interstate."¹¹⁷ He explained that the potential benefit comes from the likelihood that Interstate would be able to reverse the downward trend in its revenue numbers, which he noted have been declining since 2001. As for IHSF, Dr. Stutz related that since Interstate plans to accept the same 'rate floor' as IHSF, he believes that the "comparable pricing" would "prevent Interstate from attracting IHSF customers who are satisfied with IHSF's service..." However, Dr. Stutz concluded that: "even wasteful competition may be acceptable if it is accompanied by expanded and improved service, as is likely the case here." ¹¹⁸

5. TOWN OF NEW SHOREHAM'S DIRECT CASE

The Town of New Shoreham opted not to submit pre-filed direct testimony in this docket, but did request an opportunity for its First Warden to offer comments. The Division granted this request, and subsequently, First Warden John T. Savoie offered both written and oral comments.¹¹⁹

¹¹⁶ Id., p. 5.

¹¹⁷ Id., p. 6.

¹¹⁸ Id., pp. 6-7.

¹¹⁹ Tr. 10-35 (7/11/05).

First Warden Savoie offered “no formal position with regard to the application”; instead, he asked the Division to take the Town’s “two areas of significant interest” into consideration. The First Warden related that the Town would like to, first, “preserve passenger choice and options for ferry service to Block Island” and, second, to maintain “the viability of winter service and the ability to generate sufficient revenues in the summer to help support that winter service.”¹²⁰

First Warden Savoie related that although high-speed ferry service is relatively new to Block Island, it has proved to be very popular, and for this reason, “we hope that this service remains available from multiple ports of embarkation.” The First Warden, however, observed that “anything that potentially aids Interstate’s competitiveness, and income, in the summer seasons has to be supported as it can only strengthen the year-round service.” First Warden Savoie, therefore, requested that the Division evaluate Interstate’s proposal to determine whether the proposal could have a “negative effect” on the company’s financial stability. He stated that the Town would want “assurances that the conventional ferries - that transport our food supplies and all our services such as trash, sludge, fuel oil, school trips, etc. - will not be decreased in the future in favor of any high-speed ferry runs.”¹²¹ The First Warden qualified his comments, however, by asking the Division not to

¹²⁰ Town of New Shoreham Exhibit 1, p. 1.

¹²¹ Id.

“discount the fact that fast transport to the mainland for our ambulance when weather only permits boat travel is welcomed...”¹²²

6. INTERSTATE’S REBUTTAL CASE

Interstate filed rebuttal testimony from Mr. Walter E. Edge and Mr. Joshua Linda. Mr. Edge responded to the direct testimony of IHSF’s witnesses, Frederick L. Nolan III and Lawrence R. Kunkel. Mr. Linda also briefly responded to Mr. Nolan’s direct testimony.

Mr. Edge maintained that Mr. Nolan’s testimony about off-season charters and the resale values of high-speed ferries have nothing to do with the profit and loss calculations contained in his [Mr. Edge’s] direct testimony. Mr. Edge related that he “did not use either of these two concepts” in his calculations. Mr. Edge stated that even if Mr. Nolan’s assumptions were true, Interstate still projects “an almost \$500,000 profit” in the first full year of operations.¹²³

Mr. Edge testified that while he mentioned off-season charters and the resale values in his direct testimony, he only identified these concepts “as possible additional options” for Interstate’s management should the actual results of the proposed fast ferry service be unfavorable. Mr. Edge was not concerned, however, as he contended that he believes his initial projections are conservative and that Interstate would meet or exceed the profit level that he has projected. Mr. Edge also observed that there was “nothing in either Mr. Nolan’s or Mr. Kunkel’s testimony” that challenged the revenue or expenditure

¹²² Id., pp. 1-2.

¹²³ Interstate Exhibit 10, p. 1.

calculations contained in his direct testimony.¹²⁴ Mr. Edge also took exception to Mr. Nolan's claim that Interstate has a monopoly over the available infrastructure at Point Judith and Old Harbor. He emphasized that Interstate does not own the dock at Old Harbor.¹²⁵

With respect to Mr. Kunkel's testimony, Mr. Edge contended that Mr. Kunkel "has significantly exaggerated the 'risk to the survival' of Interstate's lifeline service as a result of the introduction of Interstate's fast ferry into the market." Mr. Edge asserted that the pro-forma calculations clearly show that Interstate's fast ferry will "actually help control rates for Interstate's lifeline business." Mr. Edge opined "the two Interstate services will flourish..."¹²⁶ Mr. Edge also reiterated that Interstate's management has offered to protect the ratepayers of the lifeline service from losses that may occur in the first year of operations.¹²⁷

Mr. Edge testified that Mr. Kunkel chooses to ignore the fact that Interstate's lifeline service has no competition in providing the transport of vehicles and freight. He also took exception to Mr. Kunkel's assertion that the Division should not distinguish between Old Harbor and New Harbor for purposes of determining the need for additional fast ferry service to Block Island. Mr. Edge related that IHSF had a different opinion regarding the two harbors when it applied for its own CPCN back in 1998.

¹²⁴ Id., pp. 2-3.

¹²⁵ Id., p. 3.

¹²⁶ Id., p. 3.

¹²⁷ Id.

Mr. Edge next related that despite Mr. Kunkel's opinion on the matter, Interstate is not entering into the fast ferry market to Block Island. Mr. Edge maintained that Interstate is only "improving and expanding a long standing ferry service that it has provided to Old Harbor for decades."¹²⁸

In his final comments, Mr. Edge criticized Mr. Kunkel for suggesting that the Division permit IHSF to provide service to Old Harbor. He declared that "this is unrealistic because it is simply not doable by the PUC, the Division or Interstate." He further disagreed with Mr. Kunkel's characterization about IHSF being caught in a 'competitive crossfire'. Mr. Edge related that it is Interstate that is caught in the competitive crossfire between IHSF and BI Express.¹²⁹

Mr. Joshua Linda was proffered by Interstate to rebut Mr. Nolan's comments about off-season charters and the resale value of fast ferries.¹³⁰ Mr. Linda first echoed Mr. Edge's comments that Interstate had not factored charter revenues into the projected revenues for the new service. While he agreed that the New York charter market has "dried up", Mr. Linda believes that Caribbean off-season charters are still possible. He opined that the planned car deck on the proposed fast ferry makes the vessel attractive for charter. Mr. Linda also related that the "casino vessel off of Tampa, Florida is still viable." He explained that even though the casino vessel owner has

¹²⁸ Id., p. 5.

¹²⁹ Id., p. 6.

¹³⁰ Interstate Exhibit 11.

acquired two vessels to shuttle passengers, he understands that additional chartered vessels may be needed in the future.¹³¹

Regarding the issue of resale value, Mr. Linda contended, “high speed vessels in general have a good record of strong resale values.” He testified that Mr. Nolan’s comments were misleading, as the glut of fast ferries on the market are mostly smaller boats with little capacity and very low freeboard. He also noted that one of the fast ferries mentioned by Mr. Nolan that sold for less than its initial construction cost, resulted from the owner being “pressed to sell the vessel to reduce debt.”¹³²

7. IHSF’S SURREBUTTAL CASE

IHSF proffered its expert witness, Mr. Lawrence Kunkel, as a surrebuttal witness. Mr. Kunkel’s surrebuttal testimony was primarily offered to buttress the validity of a passenger survey that IHSF conducted between May 27 and June 9, 2005.¹³³

Mr. Kunkel related that the IHSF survey reflects that only 13 percent of the respondents reported that the ability to disembark in New Harbor was an important factor for using IHSF’s service, while at the same time nearly 87 percent of the respondents reported that speed was the most important factor in their choice of IHSF. Mr. Kunkel added that over 57 percent responded that they would cross the dock and use Interstate’s fast ferry instead of IHSF’s service, because arriving at and departing from Old Harbor would be more

¹³¹ Id., p. 1.

¹³² Id., p. 2.

¹³³ The results of the survey are contained in IHSF exhibit 18.

convenient. He also related that the survey shows that nearly 80 percent of the respondents would continue to use IHSF if IHSF offered high-speed service to Old Harbor at the same price.¹³⁴

Mr. Kunkel opined that the survey results “debunk the myth that people use IHSF’s service because it travels to and from New Harbor.” He stated that the survey also shows that people use IHSF’s service despite the fact that the overwhelming majority of them would prefer to go to Old Harbor. Mr. Kunkel related that the survey also shows that IHSF’s passengers would likely take another fast ferry service if the service traveled to Old Harbor.¹³⁵

Mr. Kunkel opined that if 57 percent of IHSF’s passengers crossed the dock to use Interstate’s proposed fast ferry service to Old Harbor, “it would result in the financial collapse of IHSF and a reconstitution of Interstate’s monopoly on ferry transportation from mainland Rhode Island to Block Island.”¹³⁶ Mr. Kunkel asserted that this result “absolutely” would “contravene the regulatory intent of the Division” as set forth in the order granting IHSF’s CPCN, which according to the witness “was to break Interstate’s monopoly stranglehold on ferry transportation from mainland Rhode Island to Block Island.”¹³⁷

Mr. Kunkel testified that Interstate’s entry into the high-speed ferry market to Block Island “can only be characterized as one of two things: either it

¹³⁴ IHSF Exhibit 15, p. 3.

¹³⁵ Id., p. 4.

¹³⁶ Id.

¹³⁷ Id.

is economically irrational, or it is predatory.”¹³⁸ Mr. Kunkel explained that “no rational business person would enter a market characterized by extraordinary excess capacity, intense competition, which requires a capital intensive investment and which is highly regulated in the sense that management does not have the ability to adjust prices on a discretionary basis.” Mr. Kunkel stated that because he didn’t believe that Interstate’s management is economically irrational, he must conclude that “Interstate’s motivation can only be predatory.”¹³⁹ Based on this conclusion, Mr. Kunkel related that he is convinced that “the ultimate economic payoff which Interstate seeks is the elimination of a market participant, namely IHSF, and the reestablishment of its monopoly market position.” Mr. Kunkel opined that “Interstate’s intent is not necessarily to serve a public need as much as it is to prey upon a less powerful market rival...”¹⁴⁰ Mr. Kunkel further opined that Interstate’s business plan violates federal anti-trust laws. In his concluding comments, Mr. Kunkel urged cooperation between Interstate and IHSF, even suggesting that the competing companies consider a merger.¹⁴¹

8. ADVOCACY SECTION’S SURREBUTTAL CASE

The Advocacy Section’s direct case witness, Dr. John Stutz, also proffered surrebuttal testimony in this docket.¹⁴² Dr. Stutz offered a response to Mr. Kunkel’s surrebuttal testimony.

¹³⁸ Id., p. 5.

¹³⁹ Id.

¹⁴⁰ Id., pp. 6-7.

¹⁴¹ Id., p. 7.

¹⁴² Advocacy Section Exhibit 2.

Dr. Stutz rejected the argument that Interstate's decision to enter the high-speed ferry market is irrational. He related that Interstate has experience in the ferry business and that its proposed high-speed ferry could obtain revenues from a number of sources. Dr. Stutz emphasized that Mr. Edge's comparison of revenues to costs shows that Interstate's proposed high-speed service was likely to be profitable. Dr. Stutz concluded that "entering an area in which Interstate has expertise and in which it expects to earn a profit is rational." ¹⁴³

Dr. Stutz also discussed the possible economic impacts connected to the Division's decision in this docket. Dr. Stutz opined that if the Division grants Interstate's petition and demand for high-speed ferry service increases, or if IHSF is able to offer service to Old Harbor, IHSF and Interstate might be able to co-exist. Conversely, Dr. Stutz opined that if demand for high-speed service does not increase and Interstate is exclusively providing high-speed ferry service to Old Harbor, "then IHSF could go out of business."

On the other hand, Dr. Stutz related that if Interstate's petition were denied by the Division and demand for high-speed ferry service increases, or if IHSF is able to offer service to Old Harbor, Interstate's is likely to lose passenger revenues from its lifeline operations. Dr. Stutz also noted that even if the Division denied Interstate's petition, IHSF would still face competition from Block Island Express, which may, over time, force IHSF from the market.

¹⁴³ Id., p.1.

9. INTERSTATE'S SUR-SURREBUTTAL CASE

Interstate recalled Mr. Walter Edge to respond to Mr. Lawrence Kunkel's surrebuttal testimony. Mr. Edge initially observed that Mr. Kunkel never challenged his calculations that show that Interstate's fast ferry will make about \$500,000 of profit in the first year of operations.¹⁴⁴ He therefore concluded that Interstate has proved that its decision to provide "better and faster service to its own customer base, and to open up two new fast ferry markets... is a rational business decision."¹⁴⁵

Mr. Edge also criticized Mr. Kunkel for what Mr. Edge described as "numerous problems with his [survey-related] calculations and conclusions". Mr. Edge pointed to the following seven specific issues:

1. Date Errors: Mr. Edge noted that there were inconsistencies in the dates on which the IHSF surveys were taken and the range of dates contained in Mr. Kunkel's surrebuttal testimony. As a result, Mr. Edge questioned whether Mr. Kunkel "had truly reviewed the surveys."¹⁴⁶
2. Numbering Errors: Mr. Edge noted that on page 3 of Mr. Kunkel's testimony he states that the survey instruments were numbered. But Mr. Edge observed that the surveys reflected both preprinted and hand written numbers, in different locations, and that there was no sequence in the numbers. He

¹⁴⁴ Interstate Exhibit 12, p.1.

¹⁴⁵ Id.

¹⁴⁶ Id., p. 2.

concluded, “one can not be sure that all of the surveys were accounted for and provided to Interstate.”¹⁴⁷

3. Duplication Errors: Mr. Edge observed that on page 3 of Mr. Kunkel’s testimony he states that there were controls over the issuance of and collection of the surveys to assure that no one person filled out two or more surveys. Mr. Edge questioned the value of this assurance based on his discovery that two individuals filled out multiple surveys. Mr. Edge also noted that 65 out of the 300 surveys were filled out anonymously, “making it impossible to determine any duplication in those responses.”¹⁴⁸
4. Scheduling Errors: Mr. Edge also criticized IHSF’s survey because the surveys “did not address the major scheduling differences between the two fast ferries.” Mr. Edge called this a “significant weakness” because the individual filling out the survey had to assume that “both fast ferries would be available at similar times”, which Mr. Edge emphasized is not true. He contended that this error “renders the survey results virtually meaningless.”¹⁴⁹
5. New Harbor Errors: Mr. Edge noted that Mr. Kunkel incorrectly calculated the percentage of survey respondents that

¹⁴⁷ Id.

¹⁴⁸ Id., pp. 2-3.

¹⁴⁹ Id., p. 3.

stated that they preferred New Harbor or considered New Harbor one of the 'important factors' for choosing IHSF. Mr. Edge related that Mr. Kunkel's 13% number is actually 21%. Mr. Edge concluded that "given that there were many other respondents that had no harbor preference reflected on their surveys makes Mr. Kunkel's conclusion that people do not use IHSF 'because it travels to and from New Harbor' incorrect."¹⁵⁰

6. Speed Errors: Mr. Edge observed that Mr. Kunkel states that 87% of the respondents 'reported that speed was the most important factor'. Mr. Edge disagreed, indicating that the survey "did not request that the individual rate the factors from most to least important." Mr. Edge further noted, "there were only 23 respondents (about 8%) that listed only speed as important." Mr. Edge concluded that Mr. Kunkel has misstated the facts.¹⁵¹

7. Preference Errors: Mr. Edge asserted that Mr. Kunkel's claim that 57% of those surveyed stated that they would cross the dock to Interstate's fast ferry to Old Harbor "is also wrong." Mr. Edge related that he found that 135 of the 300 respondents (about 45%) checked off that they would use Interstate's fast ferry to Old Harbor. Mr. Edge contended that the survey shows that 26 of the 135 "actually would prefer Interstate over IHSF

¹⁵⁰ Id.

¹⁵¹ Id., p. 4.

even if they were both running to Old Harbor. Mr. Edge described these respondents as “fairly loyal Interstate customers that IHSF has serviced with a high speed boat for a few years and that were not part of some previously unserved ‘niche’ market.” Mr. Edge stated: “if Interstate gets these customers back, it would be only fitting.” Mr. Edge additionally observed that 37 of the 135 respondents provided no name on the survey; and that 24 of the 135 were new customers to Block Island that had never been on an Interstate boat. Based on these observations, Mr. Edge concluded that IHSF’s survey respondents were confused as to the difference between IHSF and Interstate.¹⁵²

Mr. Edge next criticized Mr. Kunkel for stating that ‘nearly 80% reported that they would continue to use IHSF...if both Interstate and IHSF offered high speed service to Old Harbor at the same price’. Mr. Edge rejected the 80% figure, noting that he found that 171 of the 300 respondents, or 57%, stated that they would prefer IHSF if they went to Old Harbor. Mr. Edge concluded that Mr. Kunkel has exaggerated the truth by ignoring the fact that many surveyed did not answer the question as to which company they preferred.¹⁵³

¹⁵² Id.

¹⁵³ Id., p. 5.

Mr. Edge next attacked Mr. Kunkel's use of "57%" as the basis for an opinion proffered by Mr. Kunkel in response to a question about what would happen to IHSF if it lost 57% of its passengers. Mr. Edge declared that the survey results do not support that percentage. Additionally, Mr. Edge asserted that when a respondent says that he would "cross the dock" that does not necessarily mean that IHSF will lose that customer's business. Mr. Edge observed that Interstate will be running only three runs a day compared to IHSF's six runs a day. Mr. Edge concluded that many of IHSF's customers might not have the use of Interstate's fast ferry as an option.¹⁵⁴

Using the aforementioned issue as an example, Mr. Edge opined that the results from IHSF's survey are not directly transferable to the larger population of all of IHSF's customers. Mr. Edge further noted that the survey was designed to provide the name of the survey taker, the date that the survey was completed and the 'run' the individual who completed the survey was traveling on. Nevertheless, according to Mr. Edge, "...for the most part that information was simply not included on the survey." Mr. Edge explained: "the fact that the surveys were so poorly administered has resulted in survey information that is not directly transferable to the total population of all IHSF customers and cannot be used to support any conclusion about customer switching."¹⁵⁵

Mr. Edge also responded to Mr. Kunkel's perception about the "Division's...intention... to break Interstate's monopoly stranglehold on ferry transportation from the mainland Rhode Island to Block Island". Mr. Edge

¹⁵⁴ Id.

¹⁵⁵ Id., p. 6.

countered that the Division “was not trying to knock down Interstate’s life line monopoly service to Block Island (because it still exists) but rather its intent was to provide a new, faster, and better service for ratepayers and to give the ratepayers choice.” Mr. Edge asserted: “it is not the Division’s responsibility to kill monopolies.”¹⁵⁶

Mr. Edge also rejected IHSF’s argument that it is about to fail because it suffered a loss in FYE June 30, 2005. He opined that normalized losses in one year could be the result of any number of activities. Mr. Edge contended that without more revenue and expense information “no firm conclusion can be drawn.”¹⁵⁷

Mr. Edge next took exception with Mr. Kunkel’s claim that Interstate’s management is being “predatory”. Mr. Edge described Interstate’s business plan as “well thought out” and a “viable reason why Interstate wants to get a fast ferry CPCN.” Mr. Edge also compared Interstate and IHSF to “McDonald’s” and “Burger King” and offered hope that both ferry companies could coexist.¹⁵⁸ Mr. Edge testified that although IHSF could be forced from the market if Interstate’s application is granted, “it is not Interstate’s intent nor is it the reason for Interstate requesting its own fast ferry CPCN.” Mr. Edge emphasized that Interstate’s authorized “rate of return will not change” if “IHSF stays in

¹⁵⁶ Id., p. 7.

¹⁵⁷ Id.

¹⁵⁸ Id., p. 8.

business or not.” He declared that Interstate’s “decisions are made for the good of Interstate’s lifeline ratepayers.”¹⁵⁹

In his final comments, Mr. Edge agreed with Mr. Kunkel’s opinion that it might be better if IHSF and Interstate cooperated instead of competing. He also related that Interstate might be willing to purchase IHSF “at a reasonable price”, which Mr. Edge quantified at “\$4,000,000 to \$5,000,000.”¹⁶⁰

10. PUBLIC COMMENTS

When Interstate submitted its pre-filed direct case in this docket, the filing included testimony from nine individuals that Interstate planned to call as witnesses. Interstate subsequently indicated that many of these prospective witnesses were no longer available to appear at the scheduled hearings. Interstate thereupon requested that the pre-filed direct testimony of these individuals be alternatively accepted as public comment. As these individuals were not available to authenticate and sponsor their written testimony and/or appear for cross-examination, the Division agreed to accept the written testimony for identification purposes only. Testimony from the following nine individuals, initially proffered as direct case witnesses for Interstate, was identified on the record: Ms. Joy A. Marx, Owner, Landmark Tours and Cruises, 208 College Highway, Southwick, MA 01077; Ms. Nancy Reese, Tour Operator, Starr Tours, 1646 Nottingham Way, Trenton, NJ 08619; Mr. Thomas D. Donnelly, Tour Operator, Celebration Tours, 500 Victory Road, Quincy, MA 02171; Mr. David Eaton, General Manager, Conway Tours, 3240 Mendon Road,

¹⁵⁹ Id., p. 9-10.

¹⁶⁰ Id., p. 10.

Cumberland, RI 02864; Ms. Karen Smith, Enjoyable Journeys, 40 Dean Street, Taunton, MA 02780; Mr. Leone Leone, Aldo's Bikes; Mr. Frank Reeves, 76 Halstead Avenue, Apt. #2, Port Chester, NY 10573; Mr. Merrill Slate, 478 Old Town Road, Block Island, RI 02807; and Mr. Robert J. Closter, Jr., P.O. Box 732, Block Island, RI 02807.¹⁶¹

Several public members did appear at the scheduled hearings to offer comment on Interstate's application. These individuals were identified as: Mr. William A. McCombe, a Block Island resident and an Interstate employee; Mr. James Hurton, representing the Narragansett Chamber of Commerce; Ms. Kathleen Szabo, Executive Director of the Block Island Chamber of Commerce; Mr. Edward Cunnie, a resident of Narragansett and an IHSF employee; and Mr. Evan Smith, President of the Newport Convention and Visitor's Bureau.

Mr. William McCombe related that he has been a resident of Block Island for 25 years, 24 years of which he served on the Town's police department, the last 13 years as the Chief. He stated that he currently works for Interstate.¹⁶² Mr. McCombe supported Interstate's application, principally because the proposed fast ferry would include a vehicle deck capable of transporting an ambulance, which Mr. McCombe observed would be a "great option for any medivacs." Mr. McCombe noted that a medivac by airplane "can run anywhere between three and \$5000."¹⁶³

¹⁶¹ Tr. 7-8 (7/11/05); See Public Comment Exhibits 1-9.

¹⁶² On cross-examination, Mr. McCombe related that he was Interstate's "security officer" and a member of Interstate's management. Tr. 22 (6/13/05).

¹⁶³ Tr. 19-20, (6/13/05).

Mr. James Hurton related that the Narragansett Chamber of Commerce supports Interstate's application because the businesses in the Galilee area would benefit from the addition of a high-speed ferry operating between Point Judith and Old Harbor. Mr. Hurton stated: "hopefully more people would be coming into Galilee and they would require the use of restaurants, the hotels, other stores that are in the area." ¹⁶⁴

Ms. Kathleen Szabo related that the Block Island Chamber of Commerce also supports Interstate's application; particularly for the speed of transportation service it would offer day-trippers traveling between Old Harbor, Newport and Point Judith.¹⁶⁵

Mr. Edward Cunnie related that he has lived in Narragansett for 25 years and is currently a licensed commercial fisherman. He clarified that although he also works as a crewmember on IHSF's boat, he wanted his comments on Interstate's application accepted as his personal remarks and not related to his employment with IHSF. Mr. Cunnie related that IHSF is a fine company that offers a valuable high-speed ferry service, but he feels that if Interstate's application is granted IHSF will "be lost in the shuffle" and forced out of business.¹⁶⁶

Mr. Evan Smith related that the Newport County Convention and Visitor's Bureau ("NCCVB") supports Interstate's proposed high-speed ferry service between Fort Adams in Newport and Block Island. He stated that

¹⁶⁴ Tr. 27 (6/13/05).

¹⁶⁵ Tr. 32-33 (6/13/05).

¹⁶⁶ Tr. 70-74 (6/13/05).

NCCVB believes that the proposed service will enhance tourism in Newport as “the interest in coming to Newport would be heightened because of the ease of travel” to Block Island. He added that there would also be “residual benefits for us in that I believe that people would stay and see historic Fort Adams, see the Museum of Yachting, perhaps take in meals in Newport.” Mr. Smith also emphasized the importance of “developing new products to keep our tourism program fresh.” He concluded, “connecting service to Block Island will create new packaging opportunities.”¹⁶⁷

11. FINDINGS

Before addressing the relevant findings, the Division notes that Rhode Island General Laws, Section 39-3-3 establishes the requisite burden of proof that Interstate must satisfy in order to receive the “water carrier” CPCN that it seeks. The pertinent provisions state as follows:

*No common carrier of persons and/or property operating upon the water between termini within this state shall hereafter furnish or sell its services unless the common carrier shall first have made application to and obtained a certificate from the division certifying that public convenience and necessity required the services.*¹⁶⁸

In addition to a determination of whether the “public convenience and necessity require[s] the services” the Division must also evaluate the

¹⁶⁷ Tr. 63-68 (6/14/05).

¹⁶⁸ Under R.I.G.L. §39-1-2 (7), the definition of a “common carrier” includes “ferry companies”.

applicant's "fitness, willingness and ability" to provide the proposed transportation services.¹⁶⁹

A. Fitness, Willingness and Ability

Regarding these criteria, the Division notes that the parties stipulated that Interstate "is fit and willing" to provide the high-speed ferry services proposed in its CPCN request.¹⁷⁰ No agreement was reached, however, regarding Interstate's "ability" to provide the proposed high-speed ferry services.

In examining Interstate's "ability" to provide the proposed fast ferry services, the Division considered a number of factors. Specifically, the Division first observed that none of the parties claimed that Interstate lacked the ability to operate a fast ferry service. In fact, one of IHSF's principal members and an IHSF witness in this case, Mr. Nolan, agreed that Interstate is fit, willing and "able" to operate a fast ferry service.¹⁷¹

The Division also acknowledges that Interstate has been in the "lifeline" and "seasonal" ferry business for a very long time, over fifty uninterrupted years. Over these many decades, the Company has grown significantly, presently into a \$7 million-plus ferry business, which currently operates four large boats, each capable of carrying large volumes of passengers and freight.¹⁷² The Company has seasoned management, captains and crew.

¹⁶⁹ See generally R.I.G.L. §§39-1-1, 39-1-38 and 39-3-3.1; also *Interstate Navigation Co. v. Division of Public Utilities and Carriers*, 1999 WL 813603 (R.I. Super. 1999).

¹⁷⁰ Tr. 14-15 (6/13/05).

¹⁷¹ Tr. 88-89 (6/22/05).

¹⁷² Based on the Company's last approved revenue requirement (\$7,348,276).

Further, Interstate already has long-term leases on the three docks that it will require to provide the proposed fast ferry services. The Company additionally has demonstrated ready access to the financial markets that would loan Interstate the necessary funds to buy, or lease, the expensive high-speed vessel.

Based on the foregoing, the Division finds abundant evidence that Interstate possesses the requisite “ability” to successfully initiate and maintain a fast ferry service between Point Judith, Block Island and Newport. The Division similarly agrees with the parties with respect to Interstate’s “fitness” and “willingness” to provide the proposed “fast ferry” services.

B. Public Convenience and Necessity

In its application, Interstate has requested authority to provide high-speed ferry services over two (joined) routes: (1) between Point Judith and Block Island (Old Harbor) and (2) between Newport and Block Island (Old Harbor). Interstate describes the proposed joined routes as necessary to “serve three separate and distinct fast ferry markets”.¹⁷³ Interstate contends that the public would benefit from this combined tri-terminal fast ferry service and that the evidence it has presented sufficiently satisfies the “public convenience and necessity” test mandated under Section 39-3-3, supra. The Division agrees, with qualifications, infra.

¹⁷³ Interstate Post- Hearing Memorandum, pp. 2-3. Interstate identifies the three markets as: the Point Judith to Old Harbor market, a new Block Island to Newport Market, and an expansion of the current Newport to Block Island market.

1. Newport – Old Harbor

First, Interstate has proffered abundant, credible and incontrovertible evidence that the public would benefit from its proposed fast ferry services between Block Island and Newport. The “tourism” witnesses enthusiastically supported this facet of the proposed tri-terminal fast ferry service. Mr. Mark Brodeur, from the Rhode Island Tourism Division, supported the high-speed connection between Newport and Old Harbor chiefly because the “present 2 hour crossing is a deterrent.” He concluded that vacationing tourists in Newport, and on Block Island, would likely extend their stays if they were able to access a high-speed ferry service between these two vacation destinations.¹⁷⁴

Mr. Alan Slaimen, from Collette Vacations, testified that high-speed ferry service would afford vacationers on Block Island with “a better day trip” opportunity to Newport.¹⁷⁵

Ms. Kathleen Szabo, representing the Block Island Chamber of Commerce, opined that the current two-hour one-way ride between Newport and Block Island discourages day trips between Newport and Block Island.¹⁷⁶

The most enthusiastic of all was Mr. Evan Smith, representing the Newport County Convention and Visitor’s Bureau. Mr. Smith declared the proposed service beneficial for several reasons. He opined that the “new service will attract new visitors to our area”, who would be attracted to Newport due to the quicker access to Block Island. Mr. Smith concluded that Interstate’s three

¹⁷⁴ Interstate Exhibit 8, pp. 3-4.

¹⁷⁵ Interstate Exhibit 6, p. 3.

¹⁷⁶ Tr. 32 (6/13/05).

planned high-speed ferry runs between Newport and Block Island each day represents a new tourism “product” and a “new packaging opportunity” that will “enhance” Newport’s current tourism industry. Mr. Smith opined that the proposed ferry service would also encourage travelers to use “Newport as a hub” for their planned vacations.¹⁷⁷

Additionally, as further evidence of need and convenience, Interstate offered some data generated from a survey that it conducted of passengers riding on its conventional mono-hull ferry (*M/V Nelseco*) between Newport and Block Island during the summer of 2004. According to the survey data offered by Interstate, 73% of the responders (representing 86% of the passengers surveyed) indicated that they would have taken a fast ferry (at about double the rate) if Interstate offered such a service (the current adult round-trip regular fare is \$13.00, including port taxes).¹⁷⁸

2. Point Judith – Old Harbor

To buttress its assertion that the public would benefit from a fast ferry service between Point Judith and Old Harbor, Interstate principally relies on the results of a survey that it conducted on passengers riding on its conventional mono-hull ferries (*M/V Block Island*, *M/V Carol Jean* and *M/V*

¹⁷⁷ Tr. 64-68 (6/14/05).

¹⁷⁸ Neither Interstate nor any of the parties offered any survey-related documentation for inclusion on the record. The only record evidence regarding the survey is the references to key survey-derived percentage numbers contained in the testimony of some of Interstate’s witnesses, and a copy of the one-page questionnaire that was used on the Point Judith to Block Island runs (IHSF Exhibit 22). All survey data was fully evaluated by the parties during the discovery phase of this case and never became a disputed matter in this case. Indeed, the pre-filed direct testimony of the designer of Interstate’s survey, Dr. Timothy Tyrell, PhD, was never challenged by IHSF or any other party. The only survey-related issue raised by IHSF appeared in IHSF’s post-hearing memorandum, wherein IHSF questioned why the survey did not ask passengers if “they would *not* use Interstate’s service if they were *not* offered the high-speed option.” (IHSF Post-Hearing Memorandum, p.1).

Anna C) between Point Judith and Old Harbor, Block Island during the summer of 2004. The survey data reflects that approximately 35% of the responders (representing 43% of the passengers surveyed) indicated that they would pay \$30 for faster round-trip ferry transportation (the current adult round-trip regular fare is \$15.15, including port taxes). Dr. Timothy Tyrell, the designer of Interstate's survey, testified that "Interstate's survey procedures were reliable and unbiased", an expert opinion that was never challenged in this case.

Building on this survey data, Interstate also predicted that additional patronage would come from travelers who get seasick on the slower ferries. Interstate's witnesses also touted the planned 30-knot ferry as a faster medivac option for injured individuals in need of immediate transport to the mainland. Interstate additionally emphasized that the fast ferry would provide a faster option for elderly passengers, who may not enjoy the current longer ride to the Island. Interstate also points out that the boat's planned freight and vehicle deck will provide additional benefit and choice for transporting passenger automobiles and ambulances. Regarding the car/freight deck, Interstate's survey data reflects that 6% of those surveyed on the Point Judith to Block Island run said they would be willing to pay \$200 to transport their personal cars between the mainland and Old Harbor on the fast ferry.

Interstate's tourism witnesses, and all but one of the public members offering comment in this docket, proclaimed that the proposed fast ferry service between Point Judith and Old Harbor is necessary and/or desirable.

Mr. Slaimen testified that Colette Vacations would put its groups on Interstate's proposed Point Judith to Old Harbor fast ferry because the reduced travel time would make "better sense" for Colette's planned destination packages. He agreed that the thirty-minute ride would be very "convenient" for the public.

Mr. Brodeur testified that the Rhode Island Tourism Division supports Interstate's fast ferry service between Point Judith and Old Harbor because the public wants to maximize the time spent at their selected travel destination and minimize the time needed to get there. He observed that a shorter ferry ride translates into more time at Old Harbor. Mr. Brodeur opined that any advances in Block Island's tourism industry would be positive for the whole State.

The Block Island Chamber of Commerce's Executive Director, Ms. Szabo, concluded that the faster service between Point Judith and Old Harbor would make traveling more convenient for day-trippers.

Mr. David Laraway described himself as a self-employed construction worker who frequently travels between Point Judith and Old Harbor. He testified that he would personally benefit from the faster transportation service between these two locations.

3. IHSF's Objection

Interestingly, IHSF never disputed Interstate's contention that there is a public need for high-speed ferry service between Point Judith and Old Harbor. In fact, IHSF's case ironically supports Interstate's claim that the "public

convenience and necessity” requires the fast ferry service between Point Judith and Old Harbor. According to Mr. Kunkel’s surrebuttal testimony, IHSF’s survey reflects that 57 percent of its respondents said that they “would essentially cross the dock and use Interstate’s fast ferry instead of IHSF’s service, because arriving and departing from Old Harbor [rather than New Harbor] would be more convenient.” Mr. Kunkel concluded that IHSF’s survey proves that the “overwhelming majority of [its customers] would prefer to go to Old Harbor.”¹⁷⁹

Despite its admission that Interstate’s proposed high-speed service to Old Harbor would accommodate existing and future customers, IHSF maintains that Interstate has failed to meet its “public convenience and necessity” burden of proof because it has failed to prove that the “general public interest” would benefit from Interstate’s expansion into the fast ferry market. The Division cannot accept this argument, infra.

IHSF also adds a strained argument that Interstate’s proposed high-speed services between Point Judith and Old Harbor are not needed due to the high-speed interstate services BI Express started providing between New London and Old Harbor in 2004. The Division rejects this argument in its entirety, as BI Express’ services have no bearing on the needs and convenience of Rhode Island’s intrastate travelers.

¹⁷⁹ IHSF Exhibit 15, pp. 3-4.

4. Lifeline Benefits

Interstate has asserted in this docket that its proposed fast ferry services are needed, in part, to keep its “lifeline” service-related rates from increasing. Interstate contends that the popularity of IHSF’s and BI Express’ high-speed ferries has resulted in lost business and revenues for Interstate, which Interstate says is exerting pressure on its lifeline service rates. Interstate argues that the need to keep its lifeline service rates “as low as possible” ought to be determining factor in the Division’s assessment of whether the “public convenience and necessity” requires Interstate’s proposed fast ferry service. The core of Interstate’s argument rests on the expected profitability of its fast ferry services (approximately \$500,000 annually) and the Company’s promise to “pour all of that profit into the lifeline ferry service to control rates on its conventional ferry service for the benefit of its ratepayers.”¹⁸⁰

Notwithstanding the fact that the Advocacy Section has also embraced this anticipated economic benefit to Interstate’s lifeline operation, the Division sees little, if any, relevance in this prospect. The Division has previously determined that “fast” ferry services and “conventional” ferry services are two distinctly different water carrier operations. The Rhode Island Supreme Court has thoroughly vetted the issue and has agreed with the Division. Therefore, the Division cannot accept Interstate’s argument that the economic viability of the two services should be linked for licensing purposes.

¹⁸⁰ Interstate’s Post-Hearing Memorandum, p. 10.

While the accounting and ratemaking treatments of Interstate's high-speed services and conventional-speed services may be inextricably linked, the Division finds that it would be improper to base the issuance of a high-speed water carrier CPCN on the needs of a public utility ratepayer population that will not be utilizing any of the services authorized under that high-speed water carrier CPCN. As an analogy, the Division would not authorize the issuance of a taxicab CPCN to a company that already possessed a jitney CPCN in order to take the pressure off jitney (bus) fares. In short, the Division finds the argument illogical from a licensing perspective.

C. IHSF's Claim of Predatory and Irrational Acts by Interstate

IHSF has attacked Interstate's application in this docket under the exclusive theory that Interstate's entry into the fast ferry market between Point Judith and Old Harbor is being driven by predatory and/or irrational behavior designed to bankrupt IHSF and eliminate competition.

The Division has carefully examined the record in this case and must conclude that the reasoning behind Interstate's decision to enter the high-speed ferry market cannot be characterized as "irrational". To start with, the evidence is undeniable that high-speed ferry services are now pervasive throughout the region and beyond. The advent and expansion of these fast ferry services in the New England area clearly demonstrates that there is a public demand for such services. Further, Mr. Edge and Dr. Stutz both persuasively concluded that Interstate is not only capable of providing the proposed high-speed services, but that the proposed fast ferry services would

be immediately profitable, a conclusion that IHSF does not dispute. Moreover, Interstate's business plan provides reasonable safeguards to minimize or possibly eliminate losses in the event that the business venture proves less profitable than predicted, such as, plans to charter or sell the boat if necessary. Based on the evidence, the Division finds Interstate's business plan well reasoned and within Interstate's ability and experience to effectuate.

Similarly, the Division must reject IHSF's claim that Interstate is being purposely predatory. Regarding this issue, the Division adopts the conclusion of Dr. Stutz, who testified that because Interstate "had a sound business case for entry" its actions couldn't be described as predatory. Dr. Stutz defined a "predatory market entry" as "a strategy where one enters a market, not to succeed in that market, but rather to adversely affect another party...succeeding in that market".¹⁸¹ Relying on Dr. Stutz's definition, the Division finds that Interstate wants to succeed in the fast ferry market.

D. IHSF's Ability to Compete and the General Public Interest

IHSF asserts that if the Division approves Interstate's application it will no longer be able to compete, a result that IHSF contends would return Interstate to a monopolistic posture and be inimical to the general public interest. Regarding this issue, IHSF argues that Interstate has failed to meet its burden of proof because it has failed to prove that the "general public interest" would benefit from Interstate's expansion into the fast ferry market

¹⁸¹ Tr. 52-55 (6/15/05)

and the inevitable “financial collapse” of IHSF that would result from the direct competition.

As the legal basis for this argument, IHSF relies on the cases of Pan-American Bus Lines, 1 M.C.C. 190 (I.C.C. 1936), and Abbott vs. Public Utilities Commission, 48 R.I. 196, 136 A. 490 (R.I. 1927). Citing language from both cases, IHSF argues that the Division must reject Interstate’s foray into the high-speed ferry market as entry by another high-speed ferry would ultimately weaken existing services and therefore “is not required in the public interest.” While the Division agrees that destructive competition is certainly not in the public interest, the Division finds insufficient evidence on the record to support a conclusion that Interstate’s entry into the Block Island fast ferry market will eventually diminish high-speed ferry services between Point Judith Block Island. Moreover, Rhode Island law mandates that “even wasteful competition must be treated as secondary to the first and most fundamental obligation of securing adequate service for the public”.¹⁸²

IHSF maintains that the evidence shows there is already too much capacity in the Block Island ferry market and adding more will have anti-competitive effects. IHSF asserts that such effects would be contrary to the public interest. IHSF emphasizes that “with the hit... [it] has already taken from BI Express’s high-speed service from New London, it would not take a large shift of ...[its] passenger base, percentage-wise, for...[its] service to

¹⁸² See Breen v. Division of Public Utilities, 59 R.I. 134, 194 A. 719 (1937).

become economically unviable”¹⁸³ At the heart of IHSF’s objection to Interstate’s entry into the Block Island fast ferry market is a mindset that most intrastate travelers going to Block Island would currently prefer to go to Old Harbor and that Interstate is best positioned to provide that intrastate service. While the evidence presented in this docket appears to support that conclusion, the Division is not persuaded by IHSF’s assertion that the public interest will suffer or that it will be forced from the market if Interstate is permitted entry.

The Division finds ample evidence on the record to suggest that many of IHSF’s ratepayers will continue to use its high-speed services to New Harbor, even after Interstate begins high-speed service to Old Harbor. For example, the evidence suggests that the vast majority of Interstate’s future fast ferry customers will come from Interstate’s existing conventional ferry service customer base, conceivably up to 70 percent.

The record also reflects that IHSF’s current schedule of six round trips between Point Judith and New Harbor provides significantly more travel opportunities than Interstate’s planned three round trips. Moreover, the record reveals that two of Interstate’s three planned runs from Point Judith are not scheduled at peak travel times.

Additionally, the survey conducted by IHSF may not provide an accurate forecast of IHSF customer migration to Interstate. Dr. Stutz and Mr. Edge both

¹⁸³ Post-Hearing Memorandum, p. 14, quoting from testimony of Frederick Nolan.

identified potential errors in IHSF's survey results, which calls the validity of Mr. Kunkel's customer migration conclusions into question.

Finally, the evidence also suggests that New Harbor is a destination of choice for many of IHSF's passengers. The record reflects that there is a great deal of development at New Harbor, comprising about 40 percent of the business activity on the Island. New Harbor also contains most of the boat moorings on Block Island; and hosts a number of special events during the summer that attract large numbers of visitors. Notably, this evidence is consistent with the evidence presented by IHSF in its CPCN application case before the Division in 1998, which the Division relied upon in its decision to grant IHSF the Point Judith/New Harbor authority it requested.¹⁸⁴

Even after recognizing that many visitors to Block Island prefer New Harbor to Old Harbor, out of an abundance of caution, the Division will take regulatory steps to reduce the possibility of a "worse case" IHSF "financial collapse" scenario. These actions will help ensure the preservation of competition and serve the general public interest. Toward this end, the Division finds that there are a number of restrictions it can impose on Interstate's fast ferry operations in order to minimize the impact on IHSF's fast ferry services. Further, the Division finds that certain other measures can be adopted to augment IHSF's ability to compete.

- First, the Division will mandate that Interstate adhere to its filed plan to operate three trips per day between Point Judith and Old Harbor and

¹⁸⁴ See IHSF Exhibit 12.

three trips per day between Newport and Old Harbor. The Division rejects Interstate's suggestion that it be allowed to modify this schedule in response to actual demand. With this restriction in place, Interstate would be prohibited from potentially providing additional high-speed runs between Point Judith and Old Harbor and putting further competitive pressure on IHSF.

- As an additional restriction, the Division will modify Interstate's proposed departure times to remove the advantage that Interstate would otherwise enjoy over IHSF's currently scheduled departures. The Division will compel the following changes, which are consistent with an IHSF recommendation in this docket¹⁸⁵:

Interstate's Proposed Departure Times From Point Judith:

Division Mandated Departure Times From Point Judith:

7:45 AM

8:15 AM

11:50 AM

12:20 PM

5:00 PM

5:30 PM*

* IHSF would be permitted to move its current 5:30PM departure time from Point Judith to 5:00 PM if desirable to IHSF.

In its decision to modify Interstate's proposed schedule, the Division considered Mr. Linda's warning that delaying the 11:50 AM run from Point Judith until 12:15 PM would interfere with "our Newport run" and Interstate's planned afternoon layover for cleaning, maintenance and resting the crew. As the Division has decided to set back Interstate's entire schedule by 30 minutes,

¹⁸⁵ IHSF Post-Hearing Memorandum, p. 18.

the anticipated interference with the Newport run and the Company's planned layover should no longer be a problem.

- The Division will also prohibit Interstate from marketing its fast ferry service to IHSF's customer base. No mention of "New Harbor" will be allowed in any marketing strategy utilized by Interstate.

- With regard to the issue of rates, Interstate has stated that it will seek Commission authority for the same \$29 (adult round trip) price floor-regulated rate currently charged by IHSF. Interstate maintains that by charging the same \$29 rate, it will not be able to gain a competitive pricing advantage over IHSF.¹⁸⁶ IHSF has requested that, if the Division decides to grant Interstate a fast ferry CPCN, that the "CPCN must be conditioned upon the approval by the Commission of at least a \$29 rate for Interstate".¹⁸⁷ IHSF has alternatively argued that if it "is not able to gain access to an Old Harbor dock, Interstate's CPCN should be conditioned on approval of some higher rate, which in the sole discretion of the Commission would create a sufficient differential to protect IHSF from predatory competition by Interstate."¹⁸⁸

The Division has considered these positions and has decided that it will not impose any rate-related conditions on Interstate's CPCN. Albeit the Division imposed such a restriction on IHSF's CPCN when issued in 1998, the reason for that rate restriction was based on a regulatory perception and effort to insulate the "lifeline" services that Interstate provides to Block Island's

¹⁸⁶ Interstate has stated that "wherever possible, ...[it] will use the exact same rates as IHSF." (Interstate Exhibit 4, p. 8).

¹⁸⁷ IHSF Post-Hearing Memorandum, p. 18.

¹⁸⁸ Id.

residents and businesses from the then perceived possibility of destructive competition.¹⁸⁹ There is, however, no “lifeline” service risk associated with the instant petition. Moreover, in retrospect, the Division now questions the wisdom of incorporating “rate” restrictions into the operating licenses of water carriers, public utilities whose rates are regulated solely by the Commission. After having witnessed the litigious outcome that resulted from that earlier decision, the Division regrets not having adopted an alternative regulatory approach to safeguarding Block Island’s lifeline services. If rate restrictions are to be imposed in the interest of averting or minimizing destructive competition, the imposition of such rate regulation ought to be calculated by and implemented through the Commission, the regulatory body that possesses jurisdiction over the rates of ferry companies and concurrent jurisdiction to protect ratepayers from destructive and wasteful competition.¹⁹⁰

With this regulatory forum in mind, and recognizing that Interstate will need to pursue a tariff filing with the Commission before it may provide its proposed fast ferry services, the Division commits to evaluating the issue of rate restrictions and designs in the context of Interstate’s future rate filing before the Commission. The Division will also provide the Commission with a recommendation on the matter of IHSF’s ability to compete with Interstate when the time is appropriate.

¹⁸⁹ In its report and order approving IHSF’s CPCN request in 1998, the Division conditioned the issuance of IHSF’s CPCN on the acceptance, by the Commission, of “tariffs reflecting the rates and charges outlined in ...[IHSF’s] business plan.” (Order No.15652, issued on 8/25/98).

¹⁹⁰ See O’Neil v. Interstate Navigation Company, 565 A2d. 530 (R.I. 1989).

- Next, the Division will entertain a petition from IHSF to lift all existing restrictions on its CPCN. The current major restrictions include a rate differential, a scheduling freeze, and a requirement that its Block Island terminus be located at New Harbor.¹⁹¹ Under the circumstances, the Division no longer believes these restrictions are relevant or necessary. However, the Division would offer the towns of Narragansett and New Shoreham, and the public, an opportunity to be heard on the subject before any final decision on these current restrictions is made.¹⁹²

In the final analysis, the Division must reject IHSF's contention that the general public interest will suffer if Interstate is permitted to operate a fast ferry between Point Judith and Old Harbor. Although it is possible that IHSF may continue to experience reduced ridership in the future, the record does not support definitive conclusions that Interstate's high-speed services between Point Judith and Old Harbor will either force IHSF from the market or create any significant service hardship for the general public. On the other hand, the record is replete with evidence that there is a public desire for fast ferry services to Old Harbor. The Division finds that the satisfaction of this need is paramount to the public interest.

12. CONCLUSION

The Division finds that Interstate has adequately demonstrated that it is fit, willing and able to provide high-speed ferry services between Point Judith,

¹⁹¹ See Order No. 17081.

¹⁹² The Division notes that Interstate indicated that it would not object to eliminating the condition in IHSF's CPCN that it use New Harbor as its Block Island terminus once Interstate was granted a fast ferry CPCN (Tr. 180 (6/14/05)).

Block Island (Old Harbor) and Newport. The Division additionally finds that the “public convenience and necessity” requires Interstate’s proposed fast ferry services between Point Judith, Block Island (Old Harbor) and Newport.

The Division also believes that IHSF provides valuable fast ferry services between Point Judith and New Harbor. In her comments, the Executive Director of the Block Island Chamber of Commerce related that many travelers to Block Island prefer New Harbor to Old Harbor. She related that New Harbor has its own hotels, restaurants, boat, car and moped rentals, charter fishing boats, and moorings. She also noted that 40 percent of the Island’s businesses are located at New Harbor.¹⁹³ Mr. Brodeur, speaking for the Rhode Island Tourism Division, described IHSF’s fast ferry services to New Harbor as “excellent” and “performed exceptionally well.” Mr. Brodeur opined that IHSF and Interstate should both be able to provide their respective unique services. Mr. Cunnie, an IHSF engineer, passionately described IHSF as a company with a “stellar track record” whose customers “love” the service. The Division concurs with these observations and opinions, and finds that the public convenience and necessity would be best served by the continued coexistence of IHSF and Interstate on Block Island.

In the interest of promoting continued coexistence, the Division has identified several CPCN restrictions and regulatory measures that the Division believes will facilitate IHSF’s efforts to coexist with Interstate. The Division has adopted these restrictions and protective measures as an initially crafted safety

¹⁹³ Tr. 37-41 (6/13/05).

net, and may take additional steps to ensure the continued coexistence of these two water carrier companies as future circumstances warrant.

Finally, with respect to First Warden Savoie's two articulated concerns, the Division finds no evidence that Interstate will suffer a financial calamity in the event that its high-speed service falters. The Division is satisfied that the Company's contingency planning will sufficiently protect the Company's financial stability. Similarly, the Division finds no evidence, in this docket, which suggests the likelihood of any future degradation in the services currently provided by Interstate's conventional ferries.

Accordingly, it is

(18506) ORDERED:

1. That the December 6, 2004 application filing by the Interstate Navigation Company, 14 Eugene O'Neill Drive, New London, Connecticut, seeking authority to operate as a seasonal "fast ferry" water carrier of passengers and freight between (1) Point Judith and Old Harbor, Block Island; and (2) Newport and Old Harbor, Block Island, is hereby granted.
2. That the authority conferred herein shall be subject to the following three restrictions:
 - a. Interstate shall adhere to its filed plan to operate three trips per day between Point Judith and Old Harbor and three trips per day between Newport and Old Harbor;

- b. Interstate's three departure times from Point Judith shall be 8:15 AM, 12:20 PM and 5:30 PM; and
 - c. Interstate is prohibited from marketing its fast ferry service to IHSF's customer base.
3. The Division commits to fully evaluating the issue of whether IHSF may benefit from imposing rate restrictions/designs on Interstate's high-speed services in the context of Interstate's future tariff filing before the Commission. The Division's recommendation to the Commission will address measures to avoid destructive and wasteful competition between Interstate and IHSF.
4. As discussed herein, the Division will entertain a petition from IHSF to lift all existing restrictions on its CPCN. IHSF is free to file such petition at any time.

Dated and Effective at Warwick, Rhode Island on January 23, 2006.

John Spirito, Jr., Esq.
Hearing Officer

APPROVED: _____
Thomas F. Ahern
Administrator