

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DIVISION OF PUBLIC UTILITIES AND CARRIERS**

IN RE: INTERSTATE NAVIGATION CO. : DOCKET NO:  
and ISLAND HI-SPEED FERRY, LLC

**JOINT VERIFIED PETITION FOR APPROVAL OF TIME CHARTER**

Now come Interstate Navigation Company (Interstate) and Island Hi-Speed Ferry, LLC (IHSF) and, pursuant to R.I.G.L. §39-3-24 and §39-3-25, request that the Division approve a Time Charter of the Motor Vessel *Athena* from IHSF to Interstate, for the period May 24, 2006 through October 9, 2006, pursuant to the terms contained in the Time Charter Agreement attached to the pre-filed testimony of Lawrence R. Kunkel filed in support of this joint petition.

Petitioners also incorporate by reference the pre-filed testimony of Walter E. Edge in the companion docket filed by Interstate requesting Amendment of Interstate's Fast Ferry CPCN.

Both Messrs. Edge and Kunkel have been previously qualified as experts by the Division in other dockets and both agree that the proposed transaction would be consistent with the public interest. As a result, Petitioners further request that this joint petition be granted without public hearing, as provided for in §39-3-25.

Interstate Navigation Company  
By its attorney

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Michael R. McElroy, Esq. (#2627)  
Schacht & McElroy  
21 Dryden Lane  
P.O. Box 6721  
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ISLAND HI-SPEED FERRY, LLC  
By its Attorneys  
HAGOPIAN & HAGOPIAN

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Mark J. Hagopian, Esq. (#3281)  
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60 South County Commons Way  
Suite G-5  
South Kingstown, RI 02884  
(401) 783-9787  
(401) 783-9977 (Fax)

**VERIFICATION**

We the undersigned have read the foregoing joint petition and attest to its truthfulness.

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Susan E. Linda  
President  
Interstate Navigation Co.

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Frederick L. Nolan, III  
Member Manager  
Island Hi-Speed Ferry, LLC

**CERTIFICATION**

I hereby certify that I mailed a true copy of the within “Joint Petition” electronically and by regular mail, postage pre-paid on the \_\_\_\_\_ day of April, 2006, to the following:

Merlyn P. O’Keefe, Esq.  
Packer & O’Keefe  
1220 Kingstown Road  
Peace Dale, RI 02879

Paul Roberti, Esq.  
Assistant Attorney General  
150 South Main Street  
Providence, RI 02903

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

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**DIRECT TESTIMONY OF  
LAWRENCE R. KUNKEL  
President and Chief Economist  
Kunkel Strategic Services, IBC**

**For  
ISLAND HI-SPEED FERRY, LLC**

**Regarding**

**JOINT PETITION OF INTERSTATE NAVIGATION COMPANY AND ISLAND  
HI-SPEED FERRY, LLC FOR APPROVAL OF TIME CHARTER  
AND  
PETITION OF ISLAND HI-SPEED FERRY, LLC TO HOLD CPCN IN  
ABEYANCE**

**April 6, 2006**

1 Q. **Please state your name and business address for the record.**

2 My name is Lawrence R. Kunkel and my business address is 83 North

3 Pearson Drive, Warwick, Rhode Island 02888.

4 Q. **By whom are you employed and in what capacity?**

5 A. I am the President and Chief Economist of Kunkel Strategic Service, IBC

6 (KSS). KSS is an economics and strategic management consulting firm that

7 specializes in economic analysis, antitrust, the economics of regulation, financial

8 analysis and corporate strategy.

9 Q. **Mr. Kunkel, are you the same Lawrence R. Kunkel who has filed expert**

10 **testimony on behalf of Island Hi-Speed Ferry in other filings before the**

11 **Division of Public Utilities and Carriers (DPUC) and the Rhode Island**

12 **Public Utilities Commission (PUC)?**

13 A. Yes.

14 Q. **Mr. Kunkel, what is your educational background?**

15 A. I received my A.B Degree in Economics from Providence College and my A.M.

16 Degree in Social Sciences (Economics) from The University of Chicago. While

17 at The University of Chicago, I was the Research Assistant to George Stigler, the

18 1982 recipient of the Nobel Prize in Economic. In addition, during my graduate

19 studies at the University of Chicago, I had the opportunity to study under several

20 other Nobel Laureates in Economics.

21 Q. **Have you been qualified as an expert witness by the DPUC and the PUC?**

22 A. Yes. I have been qualified as an economics expert in Division Docket 98-MC-16

23 and in Commission Dockets 2803 and 3495, all of which were IHSF cases.

1 Q. **What is the purpose of your testimony in this Docket?**

2 A. I have been asked by Island Hi-Speed Ferry and Interstate to analyze and provide  
3 expert testimony regarding their joint petition for approval of a Time Charter of  
4 the MV Athena from IHSF to Interstate. I have also been asked by IHSF to  
5 provide expert testimony regarding its petition for authority to hold its Certificate  
6 of Public Convenience and Necessity in dormancy for one year.

7 Q. **In sum, what is your opinion regarding these two petitions?**

8 A. They should be summarily granted.

9 Q. **What is the basis for that opinion?**

10 A. As I testified in Division Docket D-05-06, the Block Island high speed ferry  
11 market is characterized by an unsustainable level of excess capacity. It was my  
12 considered opinion in that docket that “[n]ormally, market entry would take place  
13 [in such a market] in the form of a merger with one of the existing firms in the  
14 market or an outright acquisition of one of the existing firms, especially if the  
15 entry is capital intensive [as Interstate’s will be]. The point being, of course, is  
16 that with a merger or acquisition, entry takes place with NO new capacity added  
17 to the market, which makes much more economic sense and is less risky for both  
18 the public and the market participants”.

19 Q. **How is that opinion applicable to the circumstances of these petitions?**

20 A. Quite simply, the proposed Time Charter is about as close to an actual merger of  
21 Interstate and IHSF as one could ever achieve. It removes IHSF from the market.  
22 It allows uncontested entry of Interstate, to the benefit of each company, and the  
23 public benefits, because Interstate absorbs IHSF’s excess capacity. Allowing

1 IHSF to hold its CPCN in dormancy allows this economic theory to be tested,  
2 while giving the Division the flexibility to return the parties to the status quo  
3 should the experiment fail (and should the parties so desire).

4 **Q. Is there precedent for this?**

5 A. Yes. In Division Docket 99-MC-107, the Division allowed Interstate to suspend  
6 its non-lifeline service from Newport to Block Island and to hold its CPCN in  
7 dormancy for a period of one year, due to market driven circumstances similar to  
8 those here, including a decline in ridership and additional market entry by  
9 RIPTA's new Providence to Newport ferry service.

10 **Q. Are the terms of the proposed Time Charter fair, in your opinion?**

11 A. Yes. Based upon my knowledge of previous charters of the *Athena*, they are more  
12 than fair. The charter agreement is attached as Exhibit 1.

13 **Q. Does this conclude your testimony?**

14 A. Yes.

15

\_\_\_\_\_  
Lawrence R. Kunkel

12 Subscribed and sworn to before me this \_\_\_\_ day of April, 2006.

\_\_\_\_\_

**TIME CHARTER**

THIS TIME CHARTER, made and concluded as of this 5<sup>th</sup> day of April, 2006, effective as of May 24, 2006, is between Island Hi-Speed Ferry, LLC, of 60 South County Commons Way, Suite G-5, South Kingstown, Rhode Island ("Owner") and Interstate Navigation Company, Inc. d/b/a The Block Island Ferry, 14 Eugene O'Neill Drive, P.O. Box 482, New London, Connecticut ("Charterer") with regard to the Motorship ATHENA (the "Vessel"), official number 1113316, having aluminum hull and 249-passenger capacity.

WITNESSETH, that the Owner is the disponent owner of the Vessel under a Bareboat Charter Party dated March 31, 2001 between KeyCorp Leasing, a division of Key Corporate Capital Inc., of 66 South Pearl Street, Albany, New York 12207, G.E. Capital Corp., ARA Lockbox #827933, Philadelphia, Pennsylvania 19182-793, as assignee, and Owner.

WITNESSETH, that the said Owner agrees to let, and the said Charterer agrees to hire the said Vessel, from the time of delivery, for such period as set forth below as the Charterer may determine within below mentioned trading limits.

Vessel to be delivered and placed at the disposal of the Charterer, in the Point Judith, Rhode Island area, in such dock or at such wharf or place (where she may safely lie, always afloat, at all times of tide), as the Charterer may direct. If such dock, wharf or place is not available, time to count toward charter hire. Vessel on her delivery to be ready to receive passengers and tight, staunch, strong and in every way fitted for the service, to be employed in carrying passengers in such lawful trades, between safe port and/or ports between Point Judith, Rhode Island and Block Island, Rhode Island (the "Trading Area"), as the Charterer or its agents shall direct, on the following conditions:



1. (a) That the Charterer shall provide and pay Owner for all, wages, benefits, and discharging fees of Owner's Captains and Deck Engineer at the all inclusive rates as set forth in Exhibit "A" attached hereto, and the sum of Two Hundred (\$200.00) Dollars per day for training of Charterer's Captains and crew, until they are trained to the reasonable satisfaction of the Owner to operate the M/V Athena, within seven (7) days of the receipt of Owner's invoice. Insurance shall be provided by Charterer for the period the Vessel is under charter to Charterer (i.e., until redelivery), as follows: hull and machinery, with Owner being named as an additional insured, and Protection and Indemnity coverage in the amount of Nine Million (9) Dollars. The Charterer shall be responsible for all deductibles under the hull and machinery insurance and its protection and indemnity insurance and there shall be no recourse against Owner for damage to the hull and machinery. The Owner shall maintain the Vessel's class. Charterer shall be responsible for all vessel maintenance and repair requirements resulting from operations under this charter, including scheduled maintenance, but excluding major overhaul work to the engines or water jets which ordinarily would have been performed by Owner, were it not for the charter. Notwithstanding anything to the contrary contained herein, Owner shall be responsible to deliver the Vessel to Charterer as Purchaser pursuant to the terms of paragraph 14 of the Purchase and Sale Agreement dated of even date herewith. Owner shall correct any deficiencies cited by the U.S. Coast Guard in a New-to-Zone or equivalent inspection.

(b) Neither Owner nor Charterer will do any act or suffer any act to be done whereby any insurance required herein shall or may be suspended, impaired or defeated, and neither will suffer the Vessel to be operated under any conditions or in any geographic area where the effect would be to place the Vessel outside the coverage of the insurance policies in effect.

2. That the Charterer shall provide and pay, after delivery and until redelivery, for all the fuel except as otherwise agreed, port charges, pilotages, agencies, commissions, landing fees and all other usual expenses incurred during the charter period, except as stated herein.

3. That the Charterer, at the port of delivery, and the Owner, at the port of redelivery, shall take over and pay for all fuel remaining on board the Vessel at the current prices in the respective ports.

4. That the Charterer shall pay for the use and hire of the Vessel at the rate of U.S. One Thousand Two Hundred Eighty Five Dollars (\$1,285.00) per day, to be billed and paid monthly in advance, commencing on and from May 24, 2006 until October 11, 2006 and shall continue until the hour of the day of her redelivery in like good order and condition, ordinary wear and tear excepted, to the Owner (unless lost) at port of in or near Point Judith, Rhode Island, unless otherwise mutually agreed. Charterer is to give Owner not less than 24 hours notice of Vessel's expected date and location of redelivery. Hire is to be paid monthly in advance. In the event that any monies are past due, the Charterer will be allowed a five-day grace period on payment to cure after written notice by Owner.

5. Intentionally Omitted.

6. (a) That the Vessel shall load and disembark passengers in any dock or at any wharf or place that Charterer or its agents may direct, so long as all permits, licenses, and other permissions required to do so are valid, unexpired, and enforceable, and provided the Vessel can safely lie always afloat at any time of tide.

(b) The Vessel shall only be used to carry passengers and their usual carry on items such as luggage, bicycles and strollers in the Trading Area unless otherwise approved by Owner, which approval shall not be unreasonably withheld.

7. That the whole reach and burthen of the Vessel's passenger accommodations and lawful deck capacity shall be at the Charterer's disposal.

8. The Captain, deck engineer and crew shall be under the orders and directions of the Charterer as regards employment and agency. However the Captains and Deck Engineer furnished by Owner shall remain employees of owner.

9. Intentionally Omitted.

10. That the Charterer and the Captain shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Owner or its agents, and furnish the Owner or its agents, when required, with a true copy of daily Logs, showing the course of the Vessel and distance run and the consumption of fuel. Except for Coast Guard certificate of documentation and certificate of inspection, which shall be obtained and maintained by the Owner, Charterer shall be responsible at Charterer's expense to obtain and maintain all permits, licenses, or other permission required to operate the Vessel in the municipalities and jurisdictions covered by this Charter Party, and such permits, licenses or other permission shall be displayed to Owner upon request.

11. That in the event of the loss of time from deficiency of men or Owner's stores, fire, breakdown or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, dry-docking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the Vessel, the payment of hire shall cease for the time thereby lost; and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any extra fuel consumed in consequence thereof, and all extra expenses shall be deducted from the hire.

12. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterer at once. The act of God, enemies, fire, restraint of princes, rulers and People, and all dangers and accidents of the seas, rivers, machinery, boilers and steam navigation, and errors of navigation throughout this Charter Party, always mutually excepted. The Vessel shall have the liberty, at the discretion of the Captain, with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.

13. That any controversy, claim, or dispute arising out of or in relation to this Charter or breach thereof shall be referred to arbitration in the State of Rhode Island, under the Rules of the Society of Maritime Arbitrators, New York, New York. Should any such dispute arise, the matter in dispute shall be referred to a single arbitrator, if the parties can agree on the identity of such arbitrator, or, in the alternative, the matter in dispute shall be referred to three (3) persons pursuant to the Rules of the Society of Maritime Arbitrators, New York, New York, each of the parties hereto to choose one arbitrator, and the third by the two so chosen. The decision resulting from any arbitration proceeding shall be final, and may be enforced by the prevailing party in any appropriate court of competent jurisdiction. The prevailing party in any such proceeding and in any ancillary or related proceedings to enforce an arbitral award or to seek an injunction or other interim relief shall be entitled to recover its costs and reasonable attorneys' fees.

14. Charterer will not suffer, nor permit to be continued, any lien or encumbrance incurred by it or its agents, on the Vessel.

15. Vessel to work night and day, if required by Charterer, up to a maximum of 16 hours per day, in accordance with Vessel's certificate of inspection.

16. The Vessel shall not be required to enter any ice-bound port, or any port where lights or light-ships have been or are about to be withdrawn by reason of ice, or where there is risk that in the ordinary course of things the Vessel will not be able on account of ice to safely enter the port or to get out after having completed loading or disembarking. If the Vessel is or becomes ice-bound, the Charterer agrees to continue to pay hire to Owner.

17. This is a time charter and nothing herein stated is to be construed as a demise of the Vessel to the Charterer.

18. Owner shall pay the costs of positioning the Vessel from its current place of operation to the delivery port at time of delivery, and of repositioning the Vessel back to the redelivery port upon termination of this Charter Party. The Charterer shall pay the cost of any On-Hire Survey done at the time of delivery and the Owner shall pay the cost of any Off-Hire Survey done at the time of redelivery.

19. Notwithstanding any other provision of this Charter Party, Charterer may terminate this Charter Party within fifteen (15) business days of delivery. In the event of such termination, Charterer shall pay the reasonable costs of positioning the Vessel from its then current place of operation to the delivery port at the time of delivery and repositioning the Vessel back to the redelivery port and Owner shall return to Charterer at once hire paid in advance and not earned (reckoning from the date of the termination).

20. (a) Charterer shall indemnify and hold the Owner, Vessel, Captain, crew and Owner's agents harmless from any liability or costs (including reasonable legal fees) incurred in defense of any claim made by any person arising from injuries or death to persons or damages to property alleged to have been caused by the consumption of alcohol by passenger(s) on the Vessel.

(b) Charterer will protect and indemnify Owner in full against and for any amounts Owner is required to pay to any third party, including passengers, for personal injuries, death and any other loss to person or property in connection with operation of the Vessel during the term of this Charter Party, including reasonable costs and reasonable attorneys' fees in defense, where caused by the negligent acts of Charterer, its employees or agents but excluding any injury, death or loss where caused by negligent acts of Owner, its employees or agents. Owner will protect and indemnify Charterer in full against and for any amounts Charterer is required to pay to any third party, including passengers, for personal injuries, death and any other loss to person or property in connection with operation of the Vessel during the terms of this Charter Party, including reasonable costs and reasonable attorneys' fees in defense, where caused by the negligent acts of Owner, its employees or agents, but excluding injury, death or loss where caused by negligent acts of Charterer, its employees or agents.

21. Owner represents and warrants that it has obtained all consents required to enter this Time Charter, including without limitation, the consent of G.E. Capital Corp. under the Bareboat Charter.

22. The persons executing this Charter Party each expressly represent that he or she is authorized to execute said Charter on behalf of his or her organization.

23. This Charter Party constitutes the entire agreement between Charterer and Owner. No oral modification thereof shall be valid or binding nor shall it have any force or effect.

24. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THIS SUBCHARTER AND ANY SUBCHARTERS MADE BY CHARTERER HEREIN ARE EXPRESSLY SUBJECT AND SUBORDINATE TO THE MARCH 31, 2001 BAREBOAT CHARTER PARTY BETWEEN KEYCORP LEASING, A DIVISION OF KEY CORPORATE

CAPITAL INC., G.E. CAPITAL CORP., AS ASSIGNEE, AND ISLAND HI-SPEED FERRY, LLC (THE "KEYCORP CHARTER"), THE CHARTERER ACKNOWLEDGES NOTICE OF THE KEYCORP CHARTER, HAS RECEIVED AND REVIEWED A COPY OF THE SAME, IT ACKNOWLEDGES AND AGREES THAT ANY CLAIM AND ANY RIGHTS IN AND TO THE VESSEL ARE SUBJECT TO THE KEYCORP CHARTER AND IT ACKNOWLEDGES AND AGREES THAT ANY RIGHTS CHARTERER MAY HAVE AGAINST OWNER OR THE VESSEL ARE SUBJECT TO THE KEYCORP CHARTER AND ARE SUBORDINATE TO THE RIGHTS OF G.E. CAPITAL CORP., AS ASSIGNEE, UNDER THE KEYCORP CHARTER.

25. Charterer may cover the existing Owner logo and sign and replace it with a logo and sign of its choosing, provided that the cover and new sign shall be temporary in nature such that the Owner's logo and sign can be readily restored.

26. Charterer and Owner shall submit and prosecute such applications as may be necessary in order to permit Charterer to use the berthing permit currently available to owner at State Pier 3.

27. Charterer acknowledges that if Charterer desires to serve alcoholic beverages, Charterer shall be required to obtain a liquor license from the State of Rhode Island or, if possible, to obtain agent authority to utilize the liquor license of Owner. If Charterer utilizes owner's licensee, Charterer shall, as a condition thereof, provide owner in advance evidence of liquor liability insurance reasonably satisfactory to Owner, naming Owner as an additional insured. Owner shall cooperate with Charterer to the extent reasonably necessary with respect to such application. If Charterer pursues its own application, the application shall be prosecuted

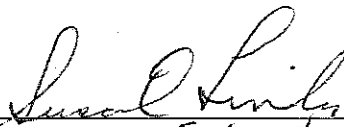
such that the license does not issue in Charterer's name until all other conditions to this Charter becoming effective have been satisfied.

28. Charterer shall be responsible for developing its own Vessel Security Plan and shall provide owner with proof of acceptance by the Department of Homeland Security.


29. Charterer shall not license, lease, sub-charter or otherwise permit the use of the vessel by any third party without the prior written consent of the Owner, which consent will not be unreasonably withheld or delayed by Owner.

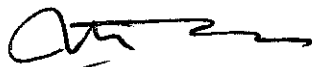
IN WITNESS WHEREOF, the parties have entered into this Time Charter by the signatures of their duly authorized representatives below effective on the date first shown above.

INTERSTATE NAVIGATION COMPANY, INC.  
d/b/a The Block Island Ferry (AS CHARTERER)

By:   
Name: Susan E. Linda  
Title: Pres

ISLAND HI-SPEED FERRY, LLC (OWNER)

By:   
Name: Frederick Nolan  
Title: Operations Manager

By:   
Name: Mark Hagopian  
Title: Manager and General Counsel



**EXHIBIT "A"**

**OWNER'S CAPTAIN/CREW RATES PER HOUR (All Inclusive)**

1. Captain Leon "Tiger" MacDonald - \$30.94 per hour.
2. Captain Benjamin Miller - \$21.43 per hour.
3. Deck Engineer Edward Cunnie - \$39.02 per hour.