

Island on December 1, 2013. Mr. Medley later reversed his decision sometime in July, 2013, *infra*.

Following the docketing of A&R Marine's application, the Division received timely motions to intervene from the Town of Portsmouth ("Portsmouth");² and the Town of Bristol ("Bristol")³. Subsequently, on October 29, 2013, the day of the first public hearing conducted in this docket, Prudence Ferry, Inc. ("PFI"), appeared and moved to intervene in the instant docket as well. PFI currently possesses a certificate of public convenience and necessity (MC-W-9), which authorizes it to transport passengers and freight between the town of Bristol, Rhode Island, and Prudence Island and Hog Island, in Portsmouth, Rhode Island (see: Order No. 12218, issued on December 30, 1986 in Docket No. 86-MC-219).⁴

The Applicant did not object to any of the foregoing motions to intervene.

The Division's Advocacy Section ("Advocacy Section"), which is afforded party status as a matter of right in all CPCN proceedings before the Division, also entered an appearance in the instant docket.

The Division subsequently conducted two 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

² Portsmouth filed its motion to intervene on October 23, 2013. The Applicant contacted the Division's Clerk that same day to state that it had no objections to Portsmouth's Motion to Intervene.

³ Bristol filed its motion to intervene on October 23, 2013. The Applicant contacted the Division's Clerk that same day to state that it had no objections to Bristol's Motion to Intervene.

⁴ PFI's obligation to provide ferry services to Hog Island was suspended by the Division on June 20, 2003 (See Order No. 17494 in Docket No. D-03-9).

conducted in the Division's hearing room located at 89 Jefferson Boulevard in Warwick, on October 29, and December 5, 2013. The following counsel entered appearances:

For A&R Marine:	Michael R. McElroy, Esq.
For PFI:	Timothy J. Dodd, Esq.
For Portsmouth:	Terence H. Tierney, Esq., and Kevin Gaven, Esq.
For Bristol:	Andrew M. Teitz, Esq.
For the Advocacy Section:	Leo J. Wold, Esq. Assistant Attorney General, and Christy Hetherington, Esq. Spec. Asst. Attorney General

At the conclusion of the presentation of their respective cases, the parties were given an opportunity to submit post-hearing memoranda, to either supplement their closing statements, or to rely upon in lieu of offering a closing statement. Four of the five parties submitted post-hearing memoranda in this docket.⁵

2. A&R MARINE'S DIRECT CASE

The Applicant proffered direct testimony from twelve (12) witnesses in support of its application. The witnesses were identified as follows: Mr. Stephen Antaya, the Applicant's President; Mr. Ethan Rossi, the Applicant's Vice President - Operations; Mr. Daniel Antaya, the Applicant's Vice President -

⁵ A&R Marine submitted its post-hearing memorandum on December 27, 2013; PFI submitted its post-hearing memorandum on January 14, 2014; the Advocacy Section submitted its post-hearing memorandum on January 21, 2014; and Portsmouth submitted its post-hearing memorandum on January 28, 2014.

Engineering; Ms. Patricia Rossi, the Applicant's Secretary; Mr. Matthew Rossi, a member of the Applicant's Board of Directors; Mr. David Bebyn, President of Bacon & Edge, p.c., a CPA firm specializing in utility regulation, One Worthington Road, Cranston; Dr. Harry Sterling, Ph.D, Chairman, Prudence Island Planning Commission and a resident of Prudence Island; Andrew Teitz, Esq., Assistant Town Solicitor for the Town of Bristol (representing Bristol in the instant case); Mr. Robert Marshall, 13 Holbrook Avenue, Prudence Island; Mr. Frank Jurnak, 106 Stevens Landing Lane, Prudence Island; Mr. James Oswald, Esq., John Oldham Road, Prudence Island; and Ms. Robin Weber, 119 Hillside Road, Prudence Island.

In his introductory comments, Mr. Stephen Antaya testified that his family's roots on Prudence Island go back to the early 1900's. He related that his grandfather first built a house on the Island in 1910. Mr. Antaya related that in later years many other family members also built homes on the Island, and that many family members have summer homes on the Island today.⁶

Mr. Antaya testified that he works for Antaya Technologies Corporation ("ATC"), as a Vice President and member of the Board of Directors. He explained that his company makes "electrical connectors for the automotive industry." Mr. Antaya noted that he has worked for ATC since 1989; and that ATC has three facilities in Rhode Island and employs about 200 workers. He

⁶ Tr. 86-87 (10/29/13).

related that ATC had \$28.8 million in sales in 2013 and expects \$39 million in sales in 2014.⁷

Mr. Antaya testified that A&R Marine was first created with an eye toward providing mooring and dock services, and doing marine construction and salvage work. He related that he only considered going into the ferry business after the Town of Portsmouth (Gary Crosby, *infra*) contacted him to see if he would be interested in replacing PFI, whose owner had announced his intent to cease operations.⁸

Mr. Antaya next addressed the “adequacy” of the ferry services being provided PFI. He testified that after the Town of Portsmouth began looking for an alternative ferry service provider, his company conducted an “informal survey” among the residents of Prudence Island in an effort to design a business plan for continuing ferry services to the Island. Mr. Antaya related that through his survey, A&R Marine determined that a number of changes would be required to improve on the ferry services being provided by PFI. He testified that improving “customer service” is paramount. Mr. Antaya testified that A&R Marine would begin by making it more convenient for its customers to make reservations for transporting their vehicles to and from the Island. He related that A&R Marine would utilize its website for this purpose and also to provide:

...all kinds of information... about the Town of Bristol, where to eat, what kind of services they provide, directions, where to park and then who’s

⁷ Tr. 87-88 (10/29/13).

⁸ Tr. 88-89 (10/29/13).

going to meet them at the dock, what you do when you get to the dock, how to load, how to unload. I mean, there's [sic] a lot of really simple solutions, to a lot of the problems that we've learned of through the survey and through the Town[s] of Bristol and Portsmouth.⁹

Mr. Antaya testified that A&R Marine will permit passengers to make vehicle reservations over the telephone or online, through the Company's website. He related that A&R Marine will utilize the latest technology to make this possible.¹⁰

Mr. Antaya added that A&R Marine would also address the complaints it heard about the current service provider, related to the availability of restrooms on the ferry, snow removal on docks and parking areas, lighting and heating. He said that these deficiencies are "fairly easy" to rectify and that A&R Marine's business plan addresses them. In response to other complaints, Mr. Antaya added that A&R Marine would also agree to provide morning and afternoon ferry services on Thanksgiving;¹¹ allow its customers to purchase tickets with credit cards, and conduct "annual meetings with the Islanders to discuss service and schedules."¹² Mr. Antaya additionally testified that A&R Marine plans to purchase and use a vessel with a greater passenger and vehicle carrying capacity than the vessel currently used by PFI.¹³

Mr. Antaya next discussed A&R Marine's financial ability to provide the ferry services he envisions. In support of his claim of financial ability, Mr.

⁹ Tr. 90-92 (10/29/13).

¹⁰ Tr. 97-98.

¹¹ Tr. 92 and 96-97 (10/29/13).

¹² Tr. 103 (10/29/13).

¹³ Tr. 104-106 and Applicant Exhibit 10.

Antaya sponsored an exhibit from Bank of America, which confirms the financial strength of ATC, and which addresses A&R Marine's proposed ferry services as a "new project" within the financial sphere of ATC and Mr. Antaya.¹⁴ Mr. Antaya later explained that the commitment from the bank is predicated on A&R Marine being the sole ferry service provider to Prudence Island. In the event of a circumstance where A&R Marine and PFI are both operating, Mr. Antaya testified that he is prepared to personally fund the operations of A&R Marine.¹⁵

Mr. Antaya next talked about the management team at A&R Marine. He identified the several members of the Rossi and Antaya families with employment positions within the Company and the various experiences and skill sets each of these individuals brings to A&R Marine. Mr. Antaya also identified the consultants he plans to use to assist A&R Marine in building a successful business.¹⁶

Mr. Antaya next addressed how A&R Marine's initial plans have changed as a consequence of the reversal of PFI's earlier decision to cease ferry operations to Prudence Island on December 1, 2013. Mr. Antaya related that he was prepared to begin servicing Prudence Island on December 2 (the day after Mr. Medley first indicated PFI planned to discontinue its ferry services); but now knows that PFI has a leasehold on the Bristol dock through June 14, 2014, which delays his company's entry into the market at least until that

¹⁴ Tr. 92-94; Applicant's Exhibit 2.

¹⁵ Tr. 107-108, 112 and 119 (10/29/13) and Applicant's Exhibit 1.

¹⁶ Tr. 97-103, 118 and 119 (10/29/13) and Applicant's Exhibit 1.

date.¹⁷ Mr. Antaya related that Bristol has informed him that it wishes to keep using the Bristol Dock for ferry services to Prudence Island and that it would be willing to enter into a new lease after the current lease it has with PFI expires on June 14, 2014. Mr. Antaya also testified that if there are two carriers licensed to provide ferry services to Prudence Island on June 14, 2014, the Town would likely seek bids from the two carriers for permission to use the dock.¹⁸

Mr. Antaya also noted that Portsmouth had originally indicated that it would take responsibility for providing a dock on Prudence Island, which, he has since learned, is no longer the case. Portsmouth has instead indicated that it would make land that it owns on Prudence Island available to the Applicant under a leasing agreement. The land is located “just north of Mr. Medley’s landing.”¹⁹

Mr. Antaya next described the primary boat A&R Marine plans to “buy or lease” if the Division’s approves its application. He related that A&R Marine has already located a vessel and will begin customizing the vessel for use in providing the proposed ferry services as soon as its application is approved. The Applicant provided photographs and construction details of the vessel to be used.²⁰ Mr. Antaya also related that his company plans to start looking for a second “back-up” boat after the Company’s first boat goes into service; and

¹⁷ Tr. 108-109 (10/29/13).

¹⁸ Tr. 109-111 (10/29/13).

¹⁹ Tr. 109 (10/29/13).

²⁰ Tr. 116-117 and Applicants Exhibit 1.

that A&R Marine will use a “landing craft” as a “temporary solution” to begin services if its primary boat is unavailable by June 14, 2014.²¹

As for routes and schedules, Mr. Antaya testified that A&R Marine is committed to maintaining the current Prudence Island schedule and will meet with the Islanders each year to determine if scheduling changes are required. He also committed to reestablishing ferry services between Bristol and Hog Island as soon as the dock on Hog Island is placed back in service.²²

In his final comments, Mr. Antaya explained why he believes there is a “public need” for A&R Marine’s proposed services. He opined that “the island has gone unserved with a reliable service that eliminates uncertainty, and allows the homeowners that live there that commute back and forth, to be confident that they will... get to their... job, to their appointment... to school.” Mr. Antaya added that A&R Marine will also be prepared to address any customer service or scheduling issue that comes up.²³

During cross-examination, PFI inquired how long Mr. Antaya would be willing to personally fund A&R Marine’s operations while in competition with PFI. Mr. Antaya indicated that he did not know.²⁴ PFI also wanted to know if A&R Marine was committed to charging the same rates being charged by PFI in view of A&R Marine’s much higher debt exposure. Mr. Antaya responded that

²¹ Tr. 116-117 and 138-139; and Applicants Exhibit 1.

²² Tr. 115 and 118 (10/29/13).

²³ Tr. 119-120 (10/29/13).

²⁴ Tr. 129 (10/29/13).

his company would initially charge the same rates. However, he related that a rate increase may be required after ridership data becomes available.²⁵

During cross-examination, PFI also questioned how the Applicant would use a website to facilitate the process of taking vehicle reservations. Mr. Antaya was unable to offer details, instead stressing that he planned to hire experts to assist in setting up the website.²⁶

PFI also attacked Mr. Antaya's claim that A&R Marine has a vessel already lined up for providing ferry services to Prudence Island. In reply, Mr. Antaya conceded that he would not commit to a vessel until after the Applicant was granted a license by the Division.²⁷

A&R Marine next proffered Mr. David Bebyn, an expert in utility accounting and rate matters, for the purpose of discussing the Applicant's pro forma financial statement, which was included with A&R Marine's application.²⁸ Mr. Bebyn's calculations were all based on the Applicant operating without competition from PFI.²⁹

At the outset of his testimony Mr. Bebyn admitted that projecting a proper level of ridership for the Applicant's initial year of service was difficult as the only data he could rely upon was the monthly ridership numbers contained in PFI's fuel surcharge filings with the Division.³⁰ By using PFI's ridership data and applicable rates, Mr. Bebyn calculated the anticipated revenues that the

²⁵ Tr. 129-133 (10/29/13).

²⁶ Tr. 133-135 (10/29/13).

²⁷ Tr. 135-137 (10/29/13).

²⁸ Applicant's Exhibit 1.

²⁹ Tr. 153 (10/29/13).

³⁰ Tr. 142-144 (10/29/13).

Applicant has provided in its pro forma. He also testified that based on the Applicant's projected total expenses, he calculated that the Applicant would have a loss of \$17,963.00 "at the current rates" in its first year of operations.³¹ Mr. Bebyn thereafter concluded that the Applicant "would need probably about a 6 percent rate increase, based on the current numbers to recover the \$17,000.00 loss, plus provide the adequate rate base rate of return..."³²

When questioned about the Applicant's ability to operate in direct competition with PFI, Mr. Bebyn related that it would be difficult to judge the Applicant's likelihood for success without knowing how the ridership numbers would be divided between the two carriers. Mr. Bebyn opined that both carriers would likely require rate increases if required to compete against each other.³³

During cross-examination by PFI, Mr. Bebyn defended his decision to predicate the Applicant's pro forma on 100% of the ridership numbers due to his understanding that the Town of Bristol had stated that it was only going to permit one carrier to operate from the Bristol Dock.³⁴ Mr. Bebyn also admitted that his original opinion that the Applicant would need a 6 percent rate increase to compensate for the projected losses in the first year would change if PFI was also competing for ridership.³⁵

³¹ Tr. 145-151 (10/29/13) and Applicant's Exhibit 1.

³² Tr. 149 (10/20/13). Mr. Bebyn noted that the projected loss also includes an adjustment for fuel surcharges that A&R Marine would, like PFI, also be charging.

³³ Tr. 151-152 (10/29/13).

³⁴ Tr. 153-154 (10/29/13).

³⁵ Tr. 155-157 (10/29/13).

A&R Marine also proffered Bristol's attorney, Mr. Andrew Teitz, as a witness to provide a status report on the availability of the Bristol dock ("Bristol Dock") as a terminal for continuing ferry services between Prudence Island and the mainland. Mr. Teitz identified himself as Bristol's Assistant Town Solicitor. Mr. Teitz testified that Bristol purchased the Bristol Dock from Mr. Medley and subsequently executed a lease agreement with Mr. Medley, which authorizes PFI to use the dock until June 14, 2014. A copy of the lease agreement was entered into the record.³⁶

Mr. Teitz testified that although the lease expires on June 14, 2014, the lease contains a special provision that could terminate the lease before the delineated expiration date. Specifically, the lease states that it remains in effect until June 14, 2014 "or until such time as the current President of the Tenant [PFI] either no longer owns or operates the current ferry service, whichever is sooner to occur, but in no event later than June 14, 2014."³⁷ Mr. Teitz related that based on the provisions in the lease, the Town of Bristol would consider the lease terminated if Mr. Medley sold PFI or attempted to assign or sublease his rights under the lease.³⁸

Mr. Teitz also testified that after the lease expires on June 14, 2014, Bristol would be "willing to enter into a lease under commercial reasonable terms with one or more license holders of the Certificate of Need." Mr. Teitz related that Bristol wants to maintain its ferry service connection to Prudence

³⁶ Applicant's Exhibit 6.

³⁷ Tr. 68-69 (10/29/13) and Applicant's Exhibit 6.

³⁸ Tr. 69-70 (10/29/13).

Island. He explained that Bristol believes that the ferry traffic is beneficial to its waterfront commercial interests. Mr. Teitz testified that Bristol “is currently concerned about the certainty of the service in this short term, particularly, what happens December 2, 2013, and is also concerned to the lesser extent into the long-term business. It is the Town’s position [that] it would like to maintain this service in downtown Bristol.”³⁹

On cross-examination by PFI, Mr. Teitz admitted that he is now aware of Mr. Medley’s change of mind about ending ferry operations on December 1, 2013. Mr. Teitz also related that Bristol is prepared to lease the dock to the Applicant when PFI’s current lease expires on June 14, 2014.⁴⁰

On cross-examination by the Advocacy Section, Mr. Teitz stated that at the time the Town purchased the dock from Mr. Medley it was apparent to the Town that “Mr. Medley wanted to get out of the business, and retire.”⁴¹

The Applicant’s next witness was Dr. Harry Sterling, PhD, who identified himself as the Chairman of the Prudence Island Planning Commission (“PIPC”).⁴² Dr. Sterling sponsored a letter that he had sent to Mr. John C. Klimm, Portsmouth’s Town Administrator, dated October 19, 2013, which reflects the results of a meeting that took place on Prudence Island on October 15, 2013, during which, Island residents discussed the prospects of losing their current ferry services and possible replacement services.⁴³

³⁹ Tr. 71-72 (10/29/13).

⁴⁰ Tr. 72-74 (10/29/13).

⁴¹ Tr. 74 (10/29/13).

⁴² Applicant’s Exhibit 3 states that the PIPC was established by the Portsmouth Town Council on October 6, 1986 to “serve as the island’s liaison with the Town Council.”

⁴³ Applicant’s Exhibit 3.

Dr. Sterling testified that there is much uncertainty in the minds of those living on Prudence Island concerning the likelihood of uninterrupted ferry services. Dr. Sterling related that during the meeting the Islanders discussed this concern and also various quality of service issues they feel need to be addressed. He related that the Islanders have identified the following shortfalls in service, which they believe must be resolved in order to improve services to Prudence Island:

- 1.** Consistent and thorough snow removal from the docks (parking lots, ramps, and the like). Many of us have slipped going to and from the ferry. As Islanders age, they are less agile and bones break more easily.
- 2.** A morning and afternoon ferry on Thanksgiving Day. For many years, Islanders have had extended families visit to share Thanksgiving Dinner on the Island. This Thanksgiving, many families have had to cancel their family Thanksgiving dinner.
- 3.** Restroom on the ferry. After years of complaints, a portable toilet was installed at the Bristol dock. A more friendly service would have a restroom on the ferry.
- 4.** Adequately heated and lighted cabins. Islanders are tough and resilient, but we don't need to shiver all winter. Enough light to allow reading on winter mornings and nights would be a treat.
- 5.** Both telephone and online vehicle reservations. Many persons have called, again and again, and failed to connect in order to make a reservation.
- 6.** Text messaging for changing schedules and cancellations.
- 7.** Ability to use credit cards for ticket purchases. The rest of the world uses credit cards.

8. An annual meeting with Islanders to discuss service and schedules.⁴⁴

Ms. Traci Whitney also testified for the Applicant. In addition to her testimony, Ms. Whitney authenticated a letter that she mailed to the Division (date stamped October 28, 2013) in which she criticizes PFI's failure "to provide online access to a reservation system."⁴⁵

Ms. Whitney testified that she is a self-employed graphic designer who spends summers on Prudence Island with her family. She related that unless one books their vehicle reservations months in advance "then you're not going to get it..." Ms. Whitney opined that in order to make the reservation process more user-friendly, an online system must be used. She related that she even offered to design one for PFI in 2010, at her cost, but Mr. Medley said he "wasn't interested."⁴⁶

Ms. Whitney additionally faulted PFI for not having a restroom on the ferry. She called this a problem when you are traveling with small children.⁴⁷

Ms. Whitney supported A&R Marine's application. She related that after reading the Company's business plan, she feels that "they have a lot of good ideas."⁴⁸

Ms. Robin Weber also testified in support of A&R Marine's application. Ms. Weber related that she has been a full-time resident of Prudence Island for 13 years. Ms. Weber stated that she was supporting the Applicant because she

⁴⁴ Tr. 77-80 (10/29/13) and Applicant's Exhibit 3.

⁴⁵ Applicant's Exhibit 9.

⁴⁶ Tr. 82-83 (10/29/13) and Applicant's Exhibit 9.

⁴⁷ Tr. 83-84 (10/29/13).

⁴⁸ Tr. 84 (10/29/13).

does not believe that the PFI's services are reliable. She explained that when Mr. Medley declared that he would discontinue service that "indicated to me that he is, at the least, unreliable, and is not going to be willing, in the future, to meet the Islanders' needs."⁴⁹ Ms. Weber also testified that if the Division approves A&R Marine's application, she "fully expect[s] Bruce to quit and leave us high and dry." She asserted that this type of behavior "would be entirely within character." She added: "[h]e's been doing that sort of manipulation, really, since he started."⁵⁰ Ms. Weber also indicated that she was "acquainted" with the Antaya family "and have known the Rossis for 30 years or more." She related that she "fully expect[s] them to do what they have promised to do without threatening to quit on us."⁵¹

Mr. James R. Oswald also testified in support of A&R Marine's application. Mr. Oswald stated that he owns a house on Prudence Island and lives there in the summer. Mr. Oswald related that he is supporting the Applicant chiefly due to the "uncertainty" surrounding the services offered by PFI. Mr. Oswald offered the following explanation for his support:

It's nice to have clean bathrooms, sure it does. It is nice to have heated cabins in the winter. It is nice to be able to read in the morning when you're taking the ferry, all of that is great stuff, and I wish we had it, but the principal concern for me is the uncertainty that we were placed in by the present ferry operator. It wasn't a fluke. It wasn't due to weather. It was the ferry operator who chose - - I was going to say threaten, to stop service, there was no threat to stop service, there was an actual

⁴⁹ Tr. 162 (10/29/13).

⁵⁰ Tr. 163 (10/29/13).

⁵¹ Tr. 164-167 (10/29/13) and Applicant's Exhibit 8.

statement, I'm stopping service, and at that point, I said to myself, how am I going to get to my house, I have a house that's worth money. That's an investment. I need to have access to that house. So, for me the issue is one of uncertainty, and the fact that he comes back, the present ferry operator, and says, no, just kidding, I'm going to continue service, is frankly, in my opinion, not worth anything.... It really gets down to, you know, third grade. Action speaks louder than words, and the present ferry operator's actions are such that he blows left, he blows right. He does whatever he wants to do when he wants to do it. Those actions to me signal real serious uncertainty with respect to the future of this ferry.⁵²

Mr. Oswald could not speak to the "fitness" of the Applicant but stated that he was "encouraged to see that a new potential ferry operator had stepped up to the plate." Mr. Oswald was further encouraged by the fact that the Applicant's owners "are islanders." Mr. Oswald opined that due to their connection to the Island, "they have at least as much interest as I do in having access to the island via a viable... ferry service."⁵³

Mr. Frank Journak appeared as another witness for the Applicant. Mr. Journak is a full-time Prudence Island resident. Mr. Journak testified that he is "not completely satisfied with the way the present [ferry] business is being managed." He added: "I don't think they've taken enough interest in customers."⁵⁴

⁵² Tr. 170-171 (10/29/13).

⁵³ Tr. 171-172 (10/29/13).

⁵⁴ Tr. 180-181 (10/29/13).

Mr. Journak testified that he became “extremely concerned” when he learned that Mr. Medley was discontinuing service on December 1, 2013. He explained:

I moved there with the intention that this is my home; this is the place where I want to retire to. I want my grandchildren, my children to come over and enjoy the benefits of the island. When I got threatened by discontinued ferry service, I said to myself, wait, wait, is this the way I want to live on the island. I’m being threatened with the things I want, the things I worked for, my family worked for, I really felt threatened about, and I was very, very disappointed in that.⁵⁵

When questioned about the management changes he envisioned, Mr. Journak started with the vehicle reservation process. He stressed that it is very difficult to make reservations over the telephone. Mr. Journak related that the process is “unwritten” and requires much timing and patience. He related: “I’ve called up and the phone just keeps ringing, to me, that’s not right, that’s not the correct procedure if you’re going to make reservations. I can understand it sometimes, but it happens quite often.”⁵⁶

Mr. Journak was also dissatisfied with PFI’s failure to keep the dock areas in Bristol and on Prudence Island free of snow and ice. Mr. Journak related that he is 70 years old and has fallen multiple times. Similarly, Mr. Journak asserts that something needs to be done about the lack of heat in the ferry’s passenger cabin, where it can be 25 degrees; and the lack of lighting on the

⁵⁵ Tr. 182 (10/29/13).

⁵⁶ Tr. 182-183 (10/29/13).

dock in Bristol. He related that there are “ruts in the ground” and that he has “fallen on the docks several times already.”⁵⁷

Mr. Jurnak supported A&R Marine’s application. He testified that he likes the fact that the Company’s owners live on the Island. Mr. Jurnak observed: “[w]hat better chance do you have to start over new than with people who are already living on the island and who know the problems associated with it.” Mr. Jurnak opined that he knows the Rossi family and that he feels “they would do a stand-up job.”⁵⁸

Mr. Robert Marshall was the Applicant’s next witness. Mr. Marshall is also a full-time resident on the Island. Mr. Marshall testified that he regularly uses PFI’s ferry to commute to and from Prudence Island, and from his experiences on the ferry he believes “that Mr. Medley has become increasingly less fit to provide ferry service on the island.” Though he finds PFI’s staff to be professional, Mr. Marshall testified that Mr. Medley has created much uncertainty concerning the long-term reliability of ferry services to the Island. Mr. Marshall pointed specifically to Mr. Medley’s inconsistent statements relative to the issue of whether PFI will continue providing ferry services.⁵⁹

Mr. Marshall also expressed dissatisfaction with the lack of available restroom facilities on PFI’s boat. On this subject, Mr. Marshall shared a heartfelt story which involved his young daughter riding the ferry on her way to school. He related that during one early morning commute to school his

⁵⁷ Tr. 183-184 (10/29/13).

⁵⁸ Tr. 185-186 (10/29/13).

⁵⁹ Tr. 187-189 (10/29/13).

daughter became so distressed by her need to use a restroom that she was forced to seek relief “in an improper place on the ferry.” Mr. Marshall testified that the crew subsequently discovered what she had done and punished her by denying her access to the ferry for “a couple of weeks.”⁶⁰

Mr. Marshall related that he has known Ethan Rossi and his parents for many years. He believes “all the individuals involved are doing this for the very best interest of the Island, and for operating a good sound business. Mr. Marshall opined that Ethan Rossi “will either provide adequate service or die trying.” In contrast, Mr. Marshall testified that he “always found... the current operation to put their battle with the PUC ahead of the good of the island or the operation of the business.” Mr. Marshall related that the “main decisions I’ve seen over the years... always seems [sic] to be driven by defying the PUC, and I think we’ve paid a lot for those fights.”⁶¹

In his final comments, Mr. Marshall related that the islanders first learned of the possibility that Mr. Medley was thinking of retiring during a visit by the Town’s Administrator to the Island in the summer of 2012. Mr. Marshall related that while the Town Administrator was holding a public meeting on the Island he mentioned that Mr. Medley had informed him that he was planning to retire and that the Island “could be left without a ferry.” Mr. Marshall testified that he subsequently learned in April of 2013 of Mr. Medley’s decision to shut down his ferry business. Mr. Marshall related, however, that he had later seen a “Facebook page,” during the summer of 2013, that

⁶⁰ Tr. 190-191 (10/29/13).

⁶¹ Tr. 191-193 (10/29/13).

indicated that Mr. Medley “had secured a dock and parking in Fall River, and intended to run a freight operation from Fall River, in place of the operation he was currently running in Bristol.”⁶²

A&R Maine also offered its other officers as witnesses in this docket. Mr. Ethan Rossi, the Applicant’s Vice President of Operations, testified that he is currently also working as a boat captain for Bristol Marine, in Somerset, Massachusetts. In that capacity, Mr. Rossi related that he transports vessels from 20 to 90 feet from moorings to docks. Mr. Rossi testified that he also worked for *Clean the Bay* for three years “running a 56-foot Navy landing barge... all around Rhode Island and even to New Bedford.”⁶³ Mr. Rossi also testified that he is a trained firefighter and emergency medical technician (EMT); and also possesses a 100-ton Master Captain’s License, which he will use to captain the Applicant’s ferry if its application is approved.⁶⁴

Mr. Rossi also offered an opinion regarding PFI’s “fitness” as a ferry operator and on the issue of whether PFI is providing adequate service. Based on his lengthy experience as a passenger aboard PFI’s ferry, Mr. Rossi related that he finds it “ridiculous” that elderly passengers are forced to travel in the cold, in an unheated cabin. He called this level of service “unnecessary and inadequate.” Mr. Rossi asserted that PFI “is not a fit company.”⁶⁵

Mr. Rossi also asserted that “the needs of the public and the public convenience would be served if the Division licensed A&R Marine.” He stressed

⁶² Tr. 194-195 (10/29/13).

⁶³ Tr. 196-197 (10/29/13).

⁶⁴ Tr. 199-200 (10/29/13).

⁶⁵ *Id.*

that the Applicant's principals are from the Island and "we know what it's like to run businesses from there, and we know how important having a company that you can rely on is, and we are absolutely ready to give them that."⁶⁶

Ms. Patricia Rossi, the Applicant's Secretary, began her testimony by saying that she has been a full-time resident of Prudence Island since 1983. Ms. Rossi testified that she has driven Prudence Island's school bus for the last 18 years; delivers fuel oil to 57 customers on the Island; and also operates a farm on the Island that raises beef, pork and chickens.⁶⁷

Based on her experiences riding on PFI's ferry, Ms. Rossi opined that there are several changes necessary to improve customer service. She related that there is inadequate lighting on the docks and in the parking lots. Ms. Rossi also described the mix of passenger and vehicle traffic on the docks as "a little chaotic." She also echoed earlier complaints about the lack of a restroom on the boat. Of significant concern, Ms. Rossi criticized PFI for the difficulty experienced by the Portsmouth School Department in trying to contact someone at PFI when weather conditions could prompt the cancellation of ferry runs. Ms. Rossi explained that when the wind is blowing and the water is rough, "the school department will be trying to get in touch with the ferry company to find out whether they should be letting the children off the bus in Bristol, and they can't get the phone answered." She added: "[t]he ferry

⁶⁶ *Id.*

⁶⁷ Tr. 201-202 (10/29/13).

company, even when they cancel, hasn't called the bus company to say, ho, don't drop those kids off."⁶⁸

To address some of these issues, Ms. Rossi testified that A&R Marine plans to offer its customers text messaging alerts to keep them informed of ferry-related developments in real time. She remarked: "Block Island Ferry does it, why doesn't the Prudence Ferry do it?"⁶⁹

Ms. Rossi also related that A&R Marine also plans to upgrade the ramp in Bristol so that a "regular highway load" can be transported to the Island. She explained that the current ramp has a limited capacity, which necessitates smaller loads of cement and other construction materials. She related that these limitations place additional costs on "homeowners" and "carpenters."⁷⁰ She added that the new ramp will also be longer to "reduce muffler hang-ups."⁷¹

Ms. Rossi also testified that the vessel A&R Marine plans to use will be capable of carrying at least 4 additional regular-sized vehicles per trip, will have a wheelchair-accessible and heated cabin, two heated bathrooms, and additional deck space for small cargo deliveries (i.e., lumber orders, appliances, take-out and Peapod deliveries).⁷²

Mr. Daniel Antaya, the Applicant's Vice President – Engineering, testified that he is currently completing his degree in Marine Affairs at the University of

⁶⁸ Tr. 202-204 (10/29/13).

⁶⁹ Tr. 205 (10/29/13).

⁷⁰ Tr. 206-207 (10/29/13) and Applicant's Exhibit 7.

⁷¹ Applicant's Exhibit 7.

⁷² Applicant's Exhibit 7. "Peapod" is a Stop & Shop grocery deliver service.

Rhode Island. He related that if the application is approved, he will work as a deckhand on the boat and “handle the day-to-day accounting and maintenance of the boat.” Mr. Antaya similarly questioned the fitness and adequacy of the current ferry services due to the “uncertainty” surrounding its future operations.⁷³

During cross-examination, PFI challenged Mr. Antaya’s competence in accounting and vessel maintenance. Though Mr. Antaya admitted a lack of practical experience, his responses to PFI’s questions suggests that his anticipated initial duties are not overly technical or complicated and that he plans to rely on the more experienced members of the Company to guide him through the learning process.⁷⁴

Mr. Mathew Rossi testified that he has been a full-time resident of Prudence Island since 1988, and before that, a part-time resident since 1956. Mr. Rossi is currently retired. Mr. Rossi related that before his retirement he worked as a crane operator on a construction barge. With respect to the instant application, Mr. Rossi testified that he expects to be “supervising the younger guys, trying to help them out any way I can.”⁷⁵

Mr. Rossi testified that he has a great deal of experience “with the heavier boats.” He related that he has “overhauled diesel engines” and “fixed all kinds

⁷³ Tr. 210-212 (10/29/13).

⁷⁴ Tr. Tr. 212-215 (10/29/13).

⁷⁵ Tr. 216-217 (10/29/13).

of heavy equipment.” Mr. Rossi also noted that he once possessed a 100-ton captain’s license.⁷⁶

Mr. Rossi also questioned the fitness and adequacy of the current ferry services due to the “uncertainty” surrounding its future operations. Mr. Rossi stated:

I don’t know if he [Mr. Medley] understands how much he hurt the people when he did that. How much fear he put in their hearts. People want to live on that island; people want to commute back and forth. They can’t live on the island if they can’t commute back and forth. He just basically, scared the hell out of them. It’s just no way to treat human beings.⁷⁷

3. PORTSMOUTH’S DIRECT CASE

Portsmouth proffered direct testimony from one witness in response to A&R Marine’s application. The witness was identified as Mr. Gary Crosby, Portsmouth’s Town Planner, who stated that he had been authorized to testify in this proceeding by the Town Council.

In his introductory comments, Mr. Crosby related that Portsmouth wants to make it clear that its interest is “to make sure that there is a solid long-standing, safe and responsible ferry service to our citizens who live on Prudence Island.”⁷⁸

Mr. Crosby testified that the Town became involved in this matter after it received an e-mail message from the president of PFI (Bruce Medley) on April 23, 2013 that stated that PFI intended to cease service to Prudence Island as of

⁷⁶ Tr. 217-218 (10/29/13).

⁷⁷ Tr. 219 (10/29/13).

⁷⁸ Tr. 35-36 (10/29/13).

December 1, 2013. Mr. Crosby related that after the e-mail became known, the Prudence Island Planning Commission (PIPC) contacted the Town on May 9, 2013, to request that the Town “begin the process of seeking... alternatives and looking for a replacement ferry service.”⁷⁹

Mr. Crosby testified that he subsequently started the process of finding a replacement ferry service. In furtherance of this goal, Mr. Crosby related that he prepared a Request for Information (RFI), which was released in June, 2013, and which resulted in four responses from interested parties. Mr. Crosby testified that he contacted each of them and explained that they needed to submit an application with the Division in order to be considered for the required license. Mr. Crosby acknowledged that only A&R Marine took this next step.⁸⁰

Mr. Crosby related that the Applicant and the Town met twice, in July and September, 2013, to discuss the location of a possible “landing spot” on Prudence Island. Mr. Crosby noted that the Town owns a piece of property adjacent to PFI’s dock that could be used. Mr. Crosby added that the Town has set aside some funding to explore the possibility of using this land for a dock, to be used to conduct various surveys “that A&R Marine could use... to design a dock if they so chose.” Mr. Crosby related that the Town has already spent \$18,000 to conduct a water depth survey.⁸¹

⁷⁹ Tr. 36-38 (10/29/13) and Portsmouth Exhibit 1.

⁸⁰ Tr. 39-40 (10/29/13).

⁸¹ Tr. 40-41 and 43 (10/29/13).

Mr. Crosby also testified that in early July, 2013, the Town became aware of statements that PFI had made on social media sites that it was in “discussions to... possibly establish, a ferry terminal at Fall River to substitute for the Bristol ferry terminal.” Mr. Crosby related that this was very concerning to the Town as the Town relies on the Bristol dock to facilitate various Town services to Prudence Island, including police and fire protection, trash hauling, and student transportation.⁸²

Mr. Crosby also testified that Portsmouth immediately thereafter contacted the Town of Bristol to attempt to coordinate efforts in finding a solution to a cessation of ferry services between the two towns. Mr. Crosby related that Bristol was very supportive of the plan to maintain the ferry link between the two communities. He also noted that Bristol now owns the dock where the ferry boat lands.⁸³

Mr. Crosby next discussed the Islanders and the PIPC’s participation in addressing PFI’s decision to stop providing services. He related that at the Town Council’s request, he met with the Islanders on October 19, 2013 to discuss the matter. Mr. Crosby stated that after the meeting, the PIPC immediately sent to Town Administrator John Klimm a letter listing the type of services the Islanders expected to see in a ferry service provider.⁸⁴

Under cross-examination by the Applicant, Mr. Crosby also authenticated a copy of the e-mail message that Mr. Medley sent Administrator

⁸² Tr. 42-43 (10/29/13).

⁸³ Tr. 43-44 (10/29/13).

⁸⁴ Tr. 46-47; see also the summary of Dr. Sterling’s testimony contained in this Report and Order and Applicant’s Exhibit 3.

Klimm, on April 23, 2013, which formally announced PFI's decision to "cease all operations as of the last ferry on Sunday December 1, 2013."⁸⁵

The Applicant also questioned Mr. Crosby about his meetings with Stephen Antaya and his accountant, John Doherty, about discussions that took place regarding the ferry services that Portsmouth desired. Mr. Crosby indicated that he was pleased with the level of services being proposed by Mr. Antaya.

The Applicant also questioned Mr. Crosby about a voice mail message he received from Mr. Medley on September 9, 2013. Mr. Crosby testified that he was so "disturbed" by the message that he reported it to the Portsmouth Police Department. The message from Mr. Medley is reproduced below:

Good morning, this is Bruce Medley from the Prudence Island Ferry. I understand you've had engineers or surveyors or something snooping around the Homestead property. Be warned; keep your people out of my property over there. Keep your face out of my business over there. And I don't want to hear anything more from you about the poor condition of the dock or whatever over there; otherwise I will take legal action against you... and your buddy Klimm. You understand English? Thank you.⁸⁶

Mr. Crosby related that he shared Mr. Medley's message with Portsmouth's acting police chief and Mr. Terrence Mercer at the Division. He testified that he thought the Division should also be aware of the phone message.⁸⁷

⁸⁵ Tr. 47-48 (10/29/13) and Applicant's Exhibit 4.

⁸⁶ Tr. 49-50 (10/29/13) and Applicant's Exhibit 5.

⁸⁷ Tr. 50-51 (10/29/13).

Mr. Crosby also testified that he has a high level of confidence in A&R Marine's ability to satisfy Prudence Island's long-term ferry service needs. He also testified that even though Mr. Medley has reconsidered his decision to cease operations, he is unconvinced that "it won't happen again."⁸⁸

In response to questions from the Advocacy Section, Mr. Crosby related that Mr. Medley changed his mind about ceasing operations during a Town Council meeting that took place on Prudence Island sometime in July, 2013. Mr. Crosby stated that although PFI's website and social media later reflected this change of plans, the July meeting was the first and only time Mr. Medley made his new plans known directly to the Town. However, Mr. Crosby noted that because there was also talk that PFI was considering moving its operations from Bristol to Fall River, he still is not sure what PFI's long-term plans are.⁸⁹

4. PFI'S DIRECT CASE

Although PFI had indicated at the October 29, 2013 public hearing that it was planning to present a direct case in this docket, PFI subsequently decided to waive its right to offer any witness testimony in this proceeding. Alternatively, PFI proffered a single exhibit, consisting of a copy of a page from the Code of Federal Regulations, which provides the legal basis for PFI's decision to not provide a restroom(s) on its ferry. The applicable regulation is reproduced below:

⁸⁸ Tr. 53-56 (10/29/13).

⁸⁹ Tr. 58-61 (10/29/13).

Vessels shall be provided with toilets and wash basins... except that vessels operating on short runs of approximately 30 minutes or less need not be fitted with toilets or wash basins.⁹⁰

5. ADVOCACY SECTION'S DIRECT CASE

The Advocacy Section did not present a direct case in this docket, but did ask the Division to take administrative notice of Report and Order No. 14235, issued in Docket No. 2090. This decision relates to PFI's last general rate filing before the Public Utilities Commission, which was issued on July 16, 1993. The Advocacy Section also submitted a Post-Hearing Memorandum, setting forth its recommendations with respect to A&R Marine's application filing, *infra*.

6. BRISTOL'S DIRECT CASE

Bristol did not present a direct case in this docket, but did provide a closing statement with the Town's recommendation with respect to A&R Marine's application filing, *infra*.

7. PUBLIC COMMENTS

Eight public members appeared at the October 29, 2013 scheduled hearing to offer comment on A&R Marine's application. These individuals were identified as: Ms. Judi Staven, Mr. Albert Bielitz, Mr. Ron Jenness, Mr. Robert Gaulin, Mr. Brian Spero, Mr. Don Friswell, Ms. Susan Murray and Mr. Ed Bishop. Their comments are summarized below.

Ms. Judi Staven opposed A&R Marine's application. Ms. Staven began her comments by mentioning that she was a member of the Portsmouth Town

⁹⁰ Tr. 5 (12/5/13); PFI Exhibit 1, excerpt from 46 CFR §177.30-5.

Council from 2002 to 2004 and again from 2010 to 2013. She related that while she was on the Town Council she was not aware of any problems associated with PFI's ferry services. Ms. Staven opined that PFI's services are "adequate" and "reliable," and that "I truly don't believe there's a need for another one."⁹¹

Mr. Albert Bielitz also opposed A&R Marine's application. Mr. Bielitz identified himself as a Prudence Island resident and a retired lawyer. In support of his opposition, Mr. Bielitz opined that there is insufficient business to support two ferry services on the Island. Mr. Bielitz also believes that PFI operates an adequate and reliable ferry service; and that the complaints he has heard about PFI's unheated cabin are less important. Indeed, Mr. Bielitz opined that heat on the boat "is not a necessity."⁹²

Mr. Ron Jenness supported A&R Marine's application. Mr. Jenness' support stems primarily from his negative feelings toward PFI, which he explained come from an experience he had seven years ago while riding the ferry. Mr. Jenness explained that after complaining to PFI personnel about the rate PFI was charging for certain baggage Mr. Jenness was carrying, he was "evicted from the ferry" and told never to ride the ferry again. Mr. Jenness stated that because he must rely on his small boat now for transportation to and from the Island, he is supporting A&R Marine's application. Mr. Jenness

⁹¹ Tr. 24-25 (10/29/13).

⁹² Tr. 25-27 (10/29/13).

added that he feels that PFI is “run by an unstable, vengeful and vindictive man.”⁹³

Mr. Robert Gaulin opposed A&R Marine’s application. He related that he has been taking the ferry for the last 40 years and that “the service is impeccable.” Mr. Gaulin also related that he “never had a problem as far as bathrooms or any of that stuff.” He believes that Mr. Medley provides excellent service.⁹⁴

Mr. Brian Spero supported A&R Marine’s application. Mr. Spero identified himself as a resident of Portsmouth. To buttress his position, Mr. Spero pointed out that the Rossi and Antaya families have lived on Prudence Island for “generations” and that A&R Marine clearly “shows financial stability.” Mr. Spero opined that these families “care for the welfare of the people that are on the Island.” Mr. Spero also opined that PFI operates “more like a private carrier” than “a public utility.”⁹⁵

Mr. Don Friswell opposed A&R Marine’s application. Mr. Friswell related that he has been taking the ferry since 1951. He also related that although he considers the “current” and “proposed” “operators” to be friends, he has concerns about two carriers providing ferry services to Prudence Island. Mr. Friswell opined: “I believe it will mean the demise of both.” Mr. Friswell also questioned whether the Applicant’s plans to offer online vehicle reservations

⁹³ Tr. 27-29 (10/29/13).

⁹⁴ Tr. 29 (10/29/13).

⁹⁵ Tr. 29-30 (10/29/13).

and payments by credit card will actually lead to better service. He opined that there are some things you cannot “automate.”⁹⁶

Ms. Susan Murray supported A&R Marine’s application. Ms. Murray identified herself as a 28-year resident of Hog Island. She related that she supports the application because A&R Marine has indicated that it wishes to provide seasonal ferry service to Hog Island. Ms. Murray stated that Hog Island has “not had a ferry service in quite awhile” and that this lack of service “has presented a hardship to Hog Island residents.”⁹⁷

Mr. Edward Bishop opposed A&R Marine’s application. Mr. Bishop shared that he has owned property on Prudence Island since 1964, and that he also uses PFI’s ferry during the winter months. Mr. Bishop stated that he has survived the “cold cabin” and lack of a restroom over the years, and that he stands “reasonably satisfied” with the services he has received from PFI. Mr. Bishop also related: “and I will say this, I don’t feel I have ever been overcharged... [for] what’s been delivered.”⁹⁸

In addition to the eight (8) individuals who offered public comments during the October 29, 2013 hearing, the Division also received eight (8) letters from residents of Prudence Island wishing to express their opinion relative to the A&R Marine application filing, but who were unable to attend the public hearing. The Division identified these letters and summarized their content during the December 5, 2013 hearing held in this docket. Briefly, six of the

⁹⁶ Tr. 30-32 (10/29/13).

⁹⁷ Tr. 33-34 (10/29/13).

⁹⁸ Tr. 34 (10/29/13).

letters were supportive of A&R Marine's application; two of the letters were supportive of the current ferry service. The rationale offered for their respective comments are consistent with the observations and remarks received during the October 29, 2013 hearing.⁹⁹

8. PFI'S FINAL POSITION

In its closing statement, PFI asserted that A&R Marine's application "fails completely for a number of reasons." Chief among PFI's claimed failures is the Applicant's inability to prove "that the public convenience and necessity will be served by two competing services." PFI declares that it "is not going anywhere voluntarily" and that it "never filed any formal notification with the [Division] that they were intending to stop operations."¹⁰⁰ PFI argues that Mr. Medley's e-mail to Portsmouth, "although perhaps impertinent," did not constitute an "appropriate" notification of "a real intention to suspend or to terminate a lifeline service."¹⁰¹

PFI also asserts that A&R Marine's case "is woefully, woefully inadequate" in that it provides no evidence of an actual vessel or the ability to finance the proposed ferry operations. PFI points to the fact that Mr. Bebyn's testimony, regarding the Applicant's pro forma, was based on the assumption the Applicant would not be competing with PFI. For this reason, PFI contends that Mr. Bebyn's numbers are "completely wrong."¹⁰²

⁹⁹ Tr. 3-4 (12/5/13).

¹⁰⁰ Tr. 21 (12/5/13).

¹⁰¹ Id.

¹⁰² Tr. 22-24 (12/5/13).

PFI next commented on the complaints made about the restroom on PFI's boat, which it described as mostly hearsay. PFI asserts that the boat has a bathroom and that a key is available if anyone needs to use it. However, PFI also asserts that it is not required to provide its passengers with a restroom under federal law.¹⁰³

PFI also attacked the Applicant's proposed online reservation system. PFI argues that before you can take reservations "you've got to know how many vehicles, what size, are they trucks, are they cars, are they commercial vehicles, will they fit, et cetera, versus how many passengers." PFI maintains that you cannot accomplish this with an online system.¹⁰⁴

In its post-hearing brief, filed on January 15, 2014, PFI urges the Division to disregard the comments made by the Applicant's counsel during his closing remarks as the remarks have no evidentiary value. PFI characterizes the Applicant's closing statement as "simply arguments of counsel" peppered with "rumor, innuendo, and other unsubstantiated allegations regarding Prudence Ferry, Inc, which are nowhere to be found in the record..."¹⁰⁵

PFI asserts that A&R Marine's application must be denied because the Applicant "has not established that it is fit, willing and able to provide the ferry service to Prudence Island." PFI further asserts that the Applicant "has not demonstrated that the public convenience and necessity require the service of A&R Marine and Prudence Ferry, Inc." and therefore "fails to comport with the

¹⁰³ Tr. 24-25 (12/5/13).

¹⁰⁴ Tr. 25-26 (12/5/13).

¹⁰⁵ PFI's Post Hearing Brief, p. 1.

standards set forth in the matter of *Abbott v. Public Utilities Commission*, 136 A. 490, 491-91 (RI 1927).”¹⁰⁶

9. A&R MARINE’S FINAL POSITION

A&R Marine adopted its closing statement as its post-hearing brief in this docket, which was filed on December 30, 2013. In its closing statement, A&R Marine asserted that it has satisfied the three-prong test for the issuance of a CPCN as established in the *Abbott v. Public Utilities Commission*¹⁰⁷ case, namely, (1) the A&R Marine’s proposal is fitting and suited to the public need, (2) the proposal tends to promote the accommodation of the public, and (3) the proposal would be conducive to the public welfare.¹⁰⁸

In support of this assertion, A&R Marine relied on the testimony of its witnesses, and in particular their business successes, experiences, work ethic, education and roots to Prudence Island.¹⁰⁹ The Applicant also relies on the testimony of Portsmouth’s witness, Mr. Crosby, who made it very clear that Mr. Medley “intentionally stated in writing” to the Town that PFI would be ceasing all ferry operations to Prudence Island on December 1, 2013; and that this is what prompted Portsmouth to issue a Request for Information (RFI), which precipitated the filing of the instant application.¹¹⁰

A&R Marine argues that Mr. Medley’s written declaration that PFI was ceasing operations was not just an “intemperate comment,” as PFI

¹⁰⁶ *Id.*, pp. 1-2.

¹⁰⁷ 136 A. 490, 491-92 (RI 1927).

¹⁰⁸ Tr. 37-38 (12/5/13).

¹⁰⁹ Tr. 38-39 (12/5/13).

¹¹⁰ Tr. 39-40 (12/5/13).

characterized it. A&R Marine maintains that the residents of Prudence Island need a reliable lifeline ferry service, and have “no idea” how they will be treated by PFI in the future if A&R Marine’s application is denied. The Applicant asserts that there will be nothing to prevent Mr. Medley from threatening to discontinue service again “the next time he doesn’t get his way on something.”¹¹¹

The Applicant also focused on the concerns expressed by Portsmouth’s witness, Mr. Crosby, who testified that the Town remains concerned that Mr. Medley could change his mind again, including moving his mainland terminus to Fall River. A&R Marine argues that this “would be very inconvenient to the Town and the islanders and especially the kids that are bussed from the island to the school on the mainland.”¹¹²

The Applicant also emphasized that the PIPC has stated that the Islanders expect “a ferry that is responsive to its customers,” and that according to Mr. Crosby, PFI’s current services are not in compliance with any of the eight “minimum service” items enumerated in the PIPC’s letter to the Town.¹¹³ In further support of its application, A&R Marine highlighted Mr. Crosby’s testimony that the Town will assist A&R Marine with the construction of a landing facility on land that the Town owns on Prudence Island. The Applicant also highlighted Mr. Crosby’s comments about the threatening voice

¹¹¹ Tr. 41-42 (12/5/13).

¹¹² Tr. 43-44 (12/5/13).

¹¹³ Id.

mail message he received from Mr. Medley in connection with the survey work the Town was doing on the Island.¹¹⁴

A&R Marine also argued that it is committed to obtaining all the necessary permits and docking locations as quickly as possible in order to begin service. It also reiterated that it is prepared to use a landing craft until permanent docking facilities and its planned vessel are available. The Applicant emphasized that it is prepared to meet the requirements set forth in its business plan even if PFI continues to operate.¹¹⁵

The Applicant also underscored that there is nothing new about two ferry companies providing services to Prudence Island. Regarding this issue, the Applicant reminded the Division that “Mr. Medley was in that exact situation when he was operating in a competitive situation with Mr. Blount.” The Applicant noted that “Mr. Medley [eventually] bought out Mr. Blount and it was one operation, but for a while there were two ferries operating in competition with each other out there. So this is not an unheard-of or impossible situation by any means.”¹¹⁶

A&R Marine conceded that its pro forma assumed that it would be the sole service provider. But the Company stressed that Stephen Antaya is prepared to “fund this out of pocket” if necessary. The Applicant stresses that

¹¹⁴ Tr. 44-45 (12/5/13).

¹¹⁵ TR. 47-48 (12/5/13).

¹¹⁶ Tr. 48-49 (12/5/13).

Mr. Antaya is a “very successful businessman” who has the “financial capability” to fund this start-up enterprise.¹¹⁷

A&R Marine next summarized its witnesses’ testimony to highlight the services A&R Marine will provide and how these services have been designed around the expressed needs of the Island residents. The Applicant asserted that these witnesses also made it clear that PFI is not providing the level of service that is expected by its customers.¹¹⁸

To further contrast its proposed services from PFI’s, A&R Marine observed that in a 1993 rate case before the Division, in Docket No. 2090, PFI “agreed ‘to operate and maintain all restrooms in a clean and deodorized condition.’” The Applicant argues that despite this stipulation, PFI “has blatantly ignored that requirement to the detriment of its passengers. It has simply locked its restroom and not made it available.” A&R Marine characterized this as an “egregious breach of the responsibilities of a public utility to its ratepayers.”¹¹⁹

In its concluding arguments, A&R Marine revisited the question of whether an Applicant seeking a water vessel CPCN is properly permitted to finalize its vessel and dock plans after the CPCN has been granted. Regarding this question, A&R Marine argues that “there are rarely CPCNs that are granted with boats in place, dock, leases signed, et cetera.” The Applicant

¹¹⁷ Tr. 49-51 (12/5/13).

¹¹⁸ Tr. 51-54 (12/5/13).

¹¹⁹ Tr. 55-56 (12/5/13). A&R Marine also cited a “fitness” docket that was established by the Division in 1993 to examine whether Mr. Medley (and PFI) had violated a previous Division directive. However, as this previous “fitness” matter has no direct bearing on the instant application, the Division finds insufficient reason to dwell on the Applicant’s arguments relative to this 21-year old docket (Tr.56-58 (12/5/13)).

argues that “it is the usual practice of the Division to enter an order stating that the applicant has shown that it is fit, willing and able and that the public convenience and necessity would be served by the application being granted, but that the CPCN itself will not be issued by the Motor Carrier Section until certain conditions have been met.”¹²⁰

10. PORTSMOUTH’S FINAL POSITION

Although Portsmouth took no position in its direct case, the Town now argues through its post-hearing memorandum (filed on January 28, 2014) that the testimonial and documentary evidence presented by A&R Marine in this case satisfies the legal standard required for the issuance of a CPCN. Portsmouth contends that Stephen Antaya and the other Company representatives “presented a convincing case that A&R Marine has sufficient experience in business and marine affairs that would enable it to operate a successful ferry business, as well as the support of a major bank and personal guarantee of financial backing.”¹²¹

Portsmouth also points out that it presented evidence indicating that it would be willing to lease dock space on Prudence Island to the Applicant, and has already expended funds to conduct surveys of this property and adjacent waters to facilitate the construction of a ferry dock. Portsmouth also notes that Bristol has similarly presented testimony that it would be willing to lease a dock on the Bristol waterfront to the Applicant starting on June 14, 2014. Portsmouth asserts that based on the record evidence presented on the

¹²⁰ Tr. 58-60 (12/5/13).

¹²¹ Portsmouth Post Hearing Brief, p. 13.

qualifications of the Applicant's personnel and financial wherewithal of the Company, coupled with the availability of these docks, A&R Marine has adequately proven that it is fit, willing and able to operate the proposed service.¹²²

Portsmouth additionally claims that A&R Marine has proven "that its proposal is suited to the public need, is conducive to the public welfare, and will tend to promote the accommodation of the public that depends on a ferry to the island." To buttress this conclusion, Portsmouth relies on comments and testimony from Prudence Island residents who "described substantial difficulties experienced with PFI in, e.g., making reservations, accessing the docks and parking areas during inclement weather, having to use unheated cabins with inadequate lighting, and encountering locked restrooms." Portsmouth also relied on the letter it sponsored from the PIPC "showing that a ferry service operated in the manner proposed by A&R would accommodate the public's need for basic conveniences such as heated cabins with accessible rest rooms."¹²³

As additional evidence of "an immediate and urgent public need" for the Applicant's proposed services, Portsmouth emphasized that the record reflects that PFI not only publicly expressed its decision to cease ferry services to Prudence Island, but later publicly expressed an interest in relocating its "mainland ferry landing facility to an out-of-state location that would cause the Town to incur substantially greater costs in providing essential governmental

¹²² *Id.*, pp. 13-14.

¹²³ *Id.*, p. 14.

services to island residents.” Portsmouth maintains that “[g]reat uncertainty continues to exist on the part of the Town of Portsmouth regarding the long-term commitment of the existing provider, (notwithstanding a reversal of the position it announced about a planned cessation of services).” Portsmouth contrasts this concern with the commitment made from the Applicant “ensuring that any ferry it operates would continue to operate from Bristol, and would have well-heated and lighted facilities, improved reservation procedures, accessible restrooms, and maintained parking areas.”¹²⁴

Portsmouth argues that the evidence contained in the administrative record “clearly demonstrates that granting A&R’s application for a CPCN will be responsive to the public’s needs, conducive to the public welfare, and will promote the accommodation of the public’s needs for a reliable ferry service to Prudence Island over the long term.” Accordingly, Portsmouth “urges the DPUC to approve the application (subject to the customary conditions that the applicant acquires an appropriate vessel which passes a safety inspection, obtains liability insurance, and secures landing rights on the island and mainland).” Additionally, Portsmouth urges the Division to “consider imposing additional conditions on the requested CPCN requiring A&R to adhere to the commitments it made at the hearing (i.e., to provide accessible parking areas, unlocked restrooms, adequately heated and lighted passenger cabins, on-line reservation capabilities, etc.).”¹²⁵

¹²⁴ *Id.*, pp. 14-15.

¹²⁵ *Id.*, p. 15.

Portsmouth also argues that PFI's arguments in opposition to the grant of the requested CPCN "are based on mischaracterizations of the evidence, and they should be rejected as unpersuasive." Portsmouth observes that PFI presented no witnesses at the hearing, and only one exhibit, "which appeared to be completely irrelevant to the application before the Division." Portsmouth discounts PFI's assertion that federal law does not require it to provide a restroom on its boat, when, in Portsmouth's opinion, the "public's convenience and needs surely include easy access to restrooms on ferry trips lasting 25 minutes, and these needs must be accommodated by ferries that are operated under a Rhode Island CPCN, regardless of the minimum federal requirements cited by PFI." Portsmouth relies on the PIPC's letter as evidence of the public's demand for restrooms on the ferry, and asserts that "if that is PFI's position... the public should be afforded the opportunity to choose a competing ferry that will provide accessible bathrooms."¹²⁶

Portsmouth also argues that PFI's claim that the public convenience and necessity would not be served by two competing ferry services should be rejected. Portsmouth observes that PFI "had ample opportunity to present evidence showing that PFI will continue to operate the ferry after its lease with Bristol expires, yet nothing in the administrative record substantiates such a position." Instead, Portsmouth argues that the record shows that PFI's ferry landing facility rights in Bristol expire in six months, "that the company President has indicated a desire to 'get out of the business' and that PFI has

¹²⁶ *Id.*, p. 16.

never provided written assurance to the Town of Portsmouth that it has reversed the plan to cease operations that was communicated in writing to the Town.” Portsmouth also notes that PFI formally announced its decision to cease operations on December 1, 2013, to the Division in May of 2013 (referring to Order in Docket No. 13 MC 22) and that PFI has never “retracted the official position it took before the DPUC.”¹²⁷

Portsmouth also urges the Division to reject PFI’s argument for denying the application “because there’s no boat.” Portsmouth argues that the record shows that A&R Marine “understands and agrees that any CPCN issued would be conditional on securing a vessel and making any necessary modifications to it.” Portsmouth argues that it is unrealistic to expect a prospective CPCN holder to expend funds to purchase and modify a vessel before knowing if a CPCN will be granted.¹²⁸

Portsmouth similarly urges the Division to reject PFI’s argument that the Applicant’s financial plans are “inaccurate’ (because they account for only one ferry service, rather than two).” Portsmouth asserts that the argument is unpersuasive because “there is absolutely no evidence in the record proving that PFI intends to continue providing service after its dock lease expires... or even that it has the legal right to use docking facilities anywhere on the mainland after that point.” Portsmouth also relies on the fact that the record provides no evidence that PFI has attempted to negotiate an extension of the lease of the Bristol Dock after its lease expires in June of 2014. As an

¹²⁷ *Id.*, p. 17.

¹²⁸ *Id.*, pp. 17-18.

alternative argument, Portsmouth contends that there is no evidence on the record “to show that two competing services could not co-exist.” Additionally, Portsmouth observes that the Division rejected the same “argument when it granted a CPCN to a high speed ferry boat to Block Island that allowed it to compete against an existing provider, and should likewise reject such argument in this matter.”¹²⁹

Portsmouth also urged the Division to reject PFI’s critique of the Applicant’s proposed website for booking online reservations. Portsmouth stresses that PFI “again presented no evidence that would contradict A&R’s sworn testimony...” Portsmouth contends that PFI’s argument only proved that PFI continues to find no reason to establish the type of online reservation services that island residents say they need...”¹³⁰

Finally, Portsmouth emphasizes that although PFI claimed in its closing argument that it has “no intention of stopping” ferry service to Prudence Island, PFI offered no evidence to support this statement. Portsmouth asserts that “argument” is not “evidence” and that if “PFI truly had ‘no intention of stopping’ service it should have presented some sort of reliable evidence to that effect, such as demonstrating that it is negotiating a lease renewal with the Bristol dock’s owner.” Portsmouth argues that in the absence of such a showing, “a fair and reasonable inference to be drawn from the evidence is that PFI may be

¹²⁹ *Id.*, p. 18.

¹³⁰ *Id.*, pp. 18-19.

stopping ferry service next June due to a lack of a landing area, or a desire of the company's President to get out of the ferry business, or both."¹³¹

11. BRISTOL'S FINAL POSITION

Bristol offered its closing position at the conclusion of the December 5, 2013 hearing. In its closing statement, Bristol supported the application of A&R Marine.

Bristol states that it wishes to remain as the terminus for ferry service to Prudence Island, and, therefore, is prepared to lease the Bristol Dock to either PFI or the Applicant, or both, if both are authorized to provide ferry services to Prudence Island. The Town declared that having the ferry dock in Bristol is beneficial to the Town's downtown business district. Bristol also contends that having the terminus in Bristol is in the best interest of the Island residents as well, as Bristol is the closest access point to the mainland that offers suitable facilities for the Islanders' transportation, parking and shopping needs.¹³²

Bristol also argues that PFI's decision to sell its dock to the Town and maintain only a one-year lease for its continued use represents a key indicator of PFI's "lack of intention to continue service... effectively abandoning their secured landward base as of this coming June in 2014."¹³³

12. THE ADVOCACY SECTION'S FINAL POSITION

The Advocacy Section filed its post-hearing memorandum with the Division on January 21, 2014. In its opening argument, the Advocacy Section

¹³¹ *Id.*, p. 19.

¹³² Tr. 29-31 (12/5/13).

¹³³ Tr. 31-32 (12/5/13).

contends that “no real debate exists” that A&R Marine is “fit and willing” to provide the proposed ferry service. According to the Advocacy Section, the record reflects “that the principal members of A&R’s management team are Islanders, and, as a result, have a vested interest in ensuring that they and their families and neighbors receive reliable, efficient, and appropriate ferry services.” The Advocacy Section also contends that because the Applicant’s management team members are also long-standing customers of PFI, they are in the position of being intimately familiar with the reliability, efficiency, and appropriateness of the services offered by the incumbent carrier. For these reasons, the Advocacy Section argues that their testimony “cannot be considered as simply self-serving in the same way that a taxicab CPCN applicant who does not reside within the service territory he seeks to serve and has never used taxicab services in that service area himself might be considered self-serving.”¹³⁴

The Advocacy Section also rejects PFI’s assertion that the application must be denied because A&R Marine is not currently “able” to provide the service proposed. The Advocacy Section argues that the Division “has always recognized the flexible nature of the CPCN process, approving the grant of ferry certificates (as well as many other types of transportation CPCNs) ‘subject to the fulfillment of... terms and conditions prior to the commencement of transportation services,’ *e.g.*, obtaining all U.S. Coast Guard, State and local permits, proof of insurance, and Division inspection that the applicant has

¹³⁴ Advocacy Section Post-Hearing Memorandum, p. 1.

satisfied the material terms of the business plan.”¹³⁵ In the opinion of the Advocacy Section, the uncertainties alleged by PFI, here, are no different than those the Division has addressed on a conditional basis in other matters; “likewise, they may easily be satisfied as conditions of A&R Marine’s CPCN.”¹³⁶

The Advocacy Section next turned to the question of the adequacy of PFI’s service. The Advocacy Section argues that “Mr. Medley’s decision to terminate his lifeline service is contrary to his customers’ need for the provision of certain and continuous service.” The Advocacy Section observes that Mr. Medley’s decision to terminate service “caused considerable and understandable consternation among Islanders and town officials that is, by definition, contrary to the ‘public convenience’ and, truth be told, led to the very application at issue in this docket.” The Advocacy Section adds: “[w]hile Mr. Medley eventually retracted his decision to terminate service as of December 1, 2013, the Advocacy Section is not convinced his change of heart guarantees that he will not discontinue his service with little or no notice sometime this year.”¹³⁷

Moreover, the Advocacy Section argues that because PFI sold the Bristol Dock and that the Company only has legal access to the dock until June 14, 2014, PFI and the Applicant are similarly situated with respect to the issue of accessing a dock in Bristol after June 14, 2014. The Advocacy Section

¹³⁵ Id., p. 2 (Citing: In Re: Aquidneck Ferry & Charter, Inc., Docket No. D-10-05, Order No. 19966 at 13; and In Re: Island Hi-Speed Ferry, LLC, Docket No. 98 MC 16, Order No. 15652 at 26.

¹³⁶ Id., p. 2.

¹³⁷ Id.

contends that based on this common footing, and the willingness of PFI and A&R Marine to both provide lifeline services to Prudence Island, the Division should refrain from picking “winners and losers,” and instead, let the ratepayers, “through the marketplace,” decide which carrier they prefer to use.¹³⁸

In support of this position, the Advocacy Section argues that “the modern regulatory trend is to implement a regime that promotes competition.” Quoting from the *Yale Journal on Regulation*, the Advocacy Section offers the following excerpts:

Competitive markets are the preferable economic mechanism for achieving, allocative, productive and dynamic efficiency.... Deregulation can achieve greater efficiency in entry and investment decisions, lower administrative costs, elimination of pricing distortions, increased innovation and greater opportunities for customer choice.

Competition means that the most efficient and creative firms prosper. The market cannot be expected to discover the best competitors unless all companies begin on an equal regulatory footing.¹³⁹

The Advocacy Section notes that the General Assembly has already recognized the benefits of competition in the electric industry, which, like “lifeline” ferry service, “is critical to the health, safety and welfare of the public.”¹⁴⁰ Similarly, with respect to the ferry industry, the Advocacy Section points out that the Division has a record of embracing competition among

¹³⁸ *Id.*

¹³⁹ Citing from “Deregulation and Managed Competition in Network Industries” by J. G. Sidak and D. F. Spulber, *Yale Journal on Regulation* at 4 (Winter 1998).

¹⁴⁰ Citing R.I.G.L. §39-1-1(d)(4) and *In Re: R.I. Hope Energy Limited Partnership*, Docket No. SB-98-1, Order No. 35 at 9.

water carriers operating in Rhode Island. Relying on the Division case of In Re: Aquidneck Ferry & Charter, Inc., the Advocacy Section observes that the Division has previously recognized that the “public interest would be served from the competitive interplay that will invariably exist between competing services.”¹⁴¹ The Advocacy Section also cites a number of other Division decisions wherein the Division approved additional CPCNs for a given utility industry based, in part, on the benefits the anticipated competition would bring to ratepayers. These citations included references to new applicants approved for entry into the jitney and cable television industries.¹⁴²

The Advocacy Section argues that based on this regulatory precedent, the Division should grant A&R Marine’s application for a CPCN. The Advocacy Section asserts that permitting A&R Marine and PFI “to compete assuredly satisfies the Division’s ‘most fundamental obligation of securing adequate service for the public.’”¹⁴³ The Advocacy Section maintains that the “fittest utilities survive because they offer the ‘products, price, [and] features’ that their customers demand.”¹⁴⁴ As an example, the Advocacy Section cites the case of Island Hi-Speed Ferry, which sold its CPCN to incumbent Interstate Navigation Company “when a competitor offered ferry service from New London

¹⁴¹ Id., pp. 2-3. In Re: Aquidneck Ferry & Charter, Inc., Docket No. D-10-01, Order No. 20292 at 45.

¹⁴² Id., pp. 3-4.

¹⁴³ Id., citing: Breen v. Division of Public Utilities, 59 R.I. 134, 194 A. 719, 720 (1937).

¹⁴⁴ Id., citing: Application Filing for a Certificate of Authority to Operate by Verizon New England, Inc., Docket No. 2007-C-1, Order No. 19148 at 10.

to Block Island that rendered its business model unprofitable.”¹⁴⁵ As another example, the Advocacy Section offered the following case history:

...in the mid-1980’s PFI (then owned by Luther Blount) was providing ferry services between Prudence Island, Hog Island and Bristol in direct competition with Island Transport Company (then owned by Bruce Medley) providing ferry services between Portsmouth and Prudence Island.” In this case, the Advocacy Section observes that “[t]he Prudence Islanders appeared to prefer the route being offered by PFI over that offered by Island Transport, and were not happy with the way PFI was being managed. Blout got fed up with the Islanders’ constant complaints about his service, and put out overtures about selling his company. Accordingly, by 1986, PFI was transferred to Mr. Medley and his partner, and the services of Island Transport Company discontinued.¹⁴⁶

The Advocacy Section argues that when a ferry operation “can no longer be run in a profitable manner, history shows that the industry consolidates. The weaker operator exits the market, typically transferring its assets to a surviving entity that continues in business as a financially stronger entity, offering the superior services that customers demand.”¹⁴⁷

In its final arguments, the Advocacy Section discussed the reasons why the Division should not be concerned with the possibility of “wasteful” or “destructive” competition from the approval of the instant application. The Advocacy Section asserts that the Division has observed in previous cases “that ‘wasteful competition’ may be a ‘secondary consideration’ for denying a CPCN

¹⁴⁵ *Id.*, citing: Interstate Navigation Company, Docket Nos. D-06-51 and D-06-53, Order No. 19477.

¹⁴⁶ *Id.*, pp. 4-5, citing: In Re: Prudence Ferry Company (Luther Blount), Docket No. 86-MC-219, Order No. 12218.

¹⁴⁷ *Id.*, p. 5.

when the fundamental obligation of securing adequate service cannot be achieved.”¹⁴⁸ The Advocacy Section also emphasizes that in the pending matter, “no evidence exists to support a finding that, were the Division to grant A&R a CPCN, the market would become subject to ‘destructive competition.’” The Advocacy Section argues that PFI “did not present a case in chief, and the mere fact that A&R and Prudence Ferry may compete to garner the Prudence Island – Bristol route is not, in itself, evidence of such destructive competition.”¹⁴⁹ The Advocacy Section asserts that “there is no public policy condemning competition in the field of public utilities.”¹⁵⁰

13. 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 A&R Marine 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.¹⁵¹

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

¹⁴⁸ Id., citing: In Re: Application by Interstate Navigation Company for Water Carrier Authority, Docket No. D-05-06, Order No. 18506 at 64.

¹⁴⁹ Id., citing: Breen v. Division of Public Utilities, 59 R.I. at 134, 194 A. at 720.

¹⁵⁰ Id., citing: State Utilities Commission v. American Courier Corp., 174 S.E. 2d 808, 813 (N.C. Ct. App. 1970).

¹⁵¹ 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.¹⁵²

A. Fitness, Willingness and Ability

Regarding these criteria, the Division notes that none of the parties, or for that matter, any members of the public who offered comments in this docket, challenged the "fitness" or "willingness" of A&R Marine to provide the ferry services proposed in its CPCN request. Conversely, however, PFI challenged A&R Marine's "ability" to provide the proposed ferry services.

In examining A&R Marine's "ability" to provide the proposed ferry services, the Division considered a number of factors. Specifically, the Division first observed that none of the parties claimed that A&R Marine lacked the ability to operate the 100-ton ferry it plans to use to provide ferry services between Bristol and Prudence Island. To the contrary, the record reflects that Ethan Rossi currently possesses a 100-ton Master Captain's License, and is at present working as a boat captain for Bristol Marine, in Somerset, Massachusetts. The record also suggests that Mr. Rossi has considerable experience as a boat captain in Rhode Island waters.

With respect to A&R Marine's ability to construct and/or lease suitable dock locations for its proposed ferry services, the record contains abundant evidence that the towns of Portsmouth and Bristol intend to accommodate A&R Marine with proper dock space in order to guarantee continued ferry services between Bristol and Prudence Island. Portsmouth has even spent \$18,000

¹⁵² 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).

conducting surveys on Prudence Island (near PFI's dock) for the purpose of assisting the Applicant in locating a desirable area for installing a new dock. Clearly, based on the complete support the towns of Portsmouth and Bristol have displayed for A&R Marine's application, it is obvious the towns are fully invested in providing dock space for A&R Marine's ferry services.

PFI questions A&R Marine's ability to provide the service without proof that it already possesses suitable docks and a vessel. On this matter, the Division agrees with the Applicant's and Advocacy Section's assertions that possessing the docks and vessel at the time of the application filing is economically impractical and contrary to Division precedent. The Division acknowledges that it has, in the past, granted applications for water carrier CPCNs without *de facto* evidence of immediate access to docks and a vessel. The cases cited by the Advocacy Section represent accurate examples of this regulatory practice. The critical element for regulatory purposes is that the applicant whose application has been granted is subject to various conditions-subsequent (i.e., availability of docks and a vessel, consistent with the applicant's business plan and/or the Division's Report and Order; proof of insurance; satisfaction of applicable Coast Guard and municipal permitting requirements; and a Division inspection) as a prerequisite before the Division actually issues a CPCN and before services may legally begin. Therefore, the Division finds nothing improper with the Applicant's decision to seek approval of its application before expending any funds on a vessel and docking privileges.

PFI additionally challenges the Applicant's financial wherewithal to purchase a vessel and operate its proposed ferry service in a business environment where PFI continues to exercise its CPCN authority to provide ferry services to Prudence Island. In support of this challenge, PFI points to the financial commitment letter that A&R Marine proffered from the Bank of America (Applicant's Exhibit 2) and Mr. Bebyn's pro forma financial analysis (Applicant's Exhibit 1), which A&R Marine readily admits contain assumptions that were predicated on A&R Marine being the sole ferry service provider to Prudence Island. PFI also questions how the Applicant could realistically compete against PFI, under PFI's 20-year-old rates, when the Applicant has much higher debt exposure than PFI; or if both companies are forced to keep raising their rates to compensate for shifts in shared ridership.

The Division has considered these arguments and finds that A&R Marine's ability to finance a competitive service against PFI, and for how long, hinges exclusively upon Mr. Stephen Antaya's willingness and ability to personally bankroll A&R Marine's fledgling ferry company. Even when it believed it would be the only service provider, A&R Marine conceded that it expected a loss of \$17,963 in its first year of operation and the likely need for a 6-percent rate increase the following year. By all accounts, with PFI in direct competition with the Applicant, the Applicant knows it will realize a much greater loss in its initial year of operation, especially at PFI's current rates, and potentially, a much larger need for rate increases going forward. A&R Marine and Stephen Antaya are unquestionably aware of this unfavorable financial

situation; yet, they remain resolute in their quest for an opportunity to replace or displace PFI as Prudence Island's lifeline ferry service company. Why is the Applicant taking this chance and should this financial unknown reflect on A&R Marine's "ability" to fund its proposed ferry services?

The Division finds that the record suggests that Mr. Antaya's personal fortune is significant. One would expect a respected senior of a family that owns and operates a company that has been in business for decades (ATC), which has three facilities in Rhode Island, employs about 200 workers, and expects \$39 million in sales in 2014, to be financially secure. As a successful businessman, Mr. Antaya may also believe he can use his business acumen and innovative customer service ideas to persuade the Islanders to utilize his professed superior ferry services over those currently offered by PFI, which many Islanders have described as inadequate. Perhaps he hopes to buy out PFI someday. In any case, the Division finds that Mr. Antaya genuinely believes he has the financial resources and business experience to provide a successful ferry service to Prudence Island, with or without PFI competing alongside. Moreover, it is Mr. Antaya's money that is on the line and at risk, which speaks favorably on Mr. Antaya's perception of his own ability to see this venture through to fruition. Considering Mr. Antaya's devotion to his company's business plan, and his personal financial position, the Division must conclude that the Applicant has the monetary "ability" to offer the ferry services contemplated in the Company's business plan, even if PFI holds true to its declaration that "it is not going anywhere."

As an additional finding, the Division fails to see how PFI will be prejudiced in any way if, as it asserts, A&R Marine and Mr. Antaya are unable to raise the necessary funds to purchase or lease a vessel and/or build or lease the necessary docks. In such case, the status quo is preserved; PFI remains the sole ferry service provider to Prudence Island.

Based on the foregoing, the Division finds sufficient evidence to support a determination that A&R Marine is “fit” and “willing” to provide its proposed ferry services and that the Company possesses the requisite “ability” to successfully initiate and maintain a ferry service between Bristol, Prudence Island and Hog Island.

B. Public Convenience and Necessity

In its application, A&R Marine has requested authority to provide ferry services between Bristol, Prudence Island and Hog Island. According to the application, the direct route between Bristol and Prudence Island covers a distance of 3.5 miles; the route between Bristol and Prudence Island, with a stop at Hog Island covers a distance of 4.5 miles.¹⁵³ A&R Marine contends that the public would benefit from these ferry services and that the evidence it has presented sufficiently satisfies the “public convenience and necessity” test mandated under Section 39-3-3, supra.

1. Hog Island

A&R Marine has requested authority to provide ferry services between Bristol and Hog Island. However, as there is not currently an adequate dock

¹⁵³ See Applicant’s Exhibit 1 “The Ferry Route.”

facility at Hog Island, the Applicant has not provided any details of where and when the Applicant's ferry would stop at Hog Island. Alternatively, the Applicant has committed to reestablishing ferry services between Bristol and Hog Island as soon as the dock on Hog Island is placed back in service.¹⁵⁴

At present, there is no public ferry service provided to Hog Island. Public ferry service to Hog Island was suspended on June 20, 2003, in response to a petition filing by PFI, which has authority under its CPCN to provide ferry services between Bristol and Hog Island. In its 2003 petition, PFI requested authority to suspend service to Hog Island based on its belief that the dock at Hog Island was unsafe. In response to the petition, and after public hearing, the Division agreed to the suspension of service until such time "as Hog Island, Inc. (or other residents of Hog Island) secures an insurance policy indemnifying Prudence Ferry, Inc."¹⁵⁵ To date, service to Hog Island remains suspended due to Hog Island Inc.'s failure to satisfy the insurance condition established through the Division's Order.¹⁵⁶

2. Prudence Island

A&R Marine has requested authority to provide ferry services between Bristol and Prudence Island. If granted such authority, Mr. Antaya testified that A&R Marine is committed to maintaining the current PFI schedule and will meet with the Islanders each year to determine if scheduling changes are

¹⁵⁴ Tr. 115 and 118 (10/29/13).

¹⁵⁵ See Order No. 17494, issued on June 20, 2003.

¹⁵⁶ The Division also recognizes that prior to its concerns regarding the condition of the dock on Hog Island, PFI had requested Division permission to terminate all ferry services to Hog Island based on PFI's assertions that it was not economically practical to continue to provide ferry services to Hog Island and that, moreover, it had no regulatory obligation to continue to provide such services. See Order No. 17342, issued on January 24, 2003.

warranted.¹⁵⁷ The record also reflects that the Applicant plans on using the Bristol Dock as soon as Bristol's lease with Mr. Medley expires on June 14, 2014; the Applicant plans to use a landing craft-type vessel (an "LCM") alone (for both vehicles and passengers) or an LCM in conjunction with a passengers-only boat, until adequate docking is available on Prudence Island.¹⁵⁸

The record also reflects that after docks at both terminal locations have been secured, A&R Marine plans to purchase a vessel, through a licensed broker, which can be "licensed and certified within 90 days of approval of our DPUC application." Photographs and specifications of the preferred vessel were contained in A&R Marine's application package. A preliminary Purchase and Sale Agreement was also offered by the Applicant.¹⁵⁹ A&R Marine also indicates that it plans to acquire two ferries "so that there will not be any interruption of service due to mechanical issues."¹⁶⁰

3. Customer Service

Much of A&R Marine's direct case was about criticizing PFI for what the Applicant calls "inadequate service," and to detail what services the Applicant would provide instead. In sum, A&R Marine promised that it could and would improve "customer service" for those Islanders who frequently rely on ferry services. In contrast to PFI's services, A&R Marine committed to the following customer service improvements:

¹⁵⁷ Tr. 115 and 118 (10/29/13) and Applicant's Exhibit 1.

¹⁵⁸ Applicant's Exhibit 1.

¹⁵⁹ Applicant's Exhibit 10.

¹⁶⁰ Applicant's Exhibit 1.

- Meet with Prudence Island residents (and presumably Hog Island Residents when service is restored) and Town officials on an annual basis to discuss their scheduling needs;¹⁶¹
- Design and install a website service that would permit customers to purchase tickets and make vehicle reservations online;¹⁶²
- Include on the Company's website, information about local parking, restaurants, and businesses in Bristol, in addition to providing prospective travelers with loading and boarding instructions and advice on when to arrive in advance of their scheduled run;¹⁶³
- Provide heated and lighted cabin space on the ferry;¹⁶⁴
- Provide two heated restrooms on the ferry;¹⁶⁵
- Make additional runs on Thanksgiving;¹⁶⁶
- Keep the dock and parking areas free of snow and ice;¹⁶⁷
- Allow customers to purchase their tickets with credit cards;¹⁶⁸
- Utilize a ferry with greater passenger, freight and vehicle transport capacity, and additional deck space for small cargo deliveries ;¹⁶⁹
- Be responsive to any customer service or scheduling issues;¹⁷⁰

¹⁶¹ Applicant's Exhibit 1.

¹⁶² Tr. 90-98 (10/29/13).

¹⁶³ Id.

¹⁶⁴ Id.

¹⁶⁵ Id., and Applicant's Exhibit 7.

¹⁶⁶ Id.

¹⁶⁷ Id.

¹⁶⁸ Id.

¹⁶⁹ Tr. 103 (10/29/13) and Applicant's Exhibit 7.

¹⁷⁰ Tr. 119-120 (10/29/13).

- Making sure that the school department is contacted when weather-related cancellations impact the transportation of school children; and offer customers a text-messaging alert service;¹⁷¹ and
- Upgrade the Bristol Dock ramp so that a “regular highway load” can be transported to the Island and to reduce muffler hang-ups.¹⁷²

The level of customer service currently being offered by PFI is a “hot button issue” for many of those Islanders who support A&R Marine’s application, and also for the Town of Portsmouth. From the testimony and comments received, it appears that many Islanders are frustrated and unhappy with the spartan amenities offered on PFI’s ferry (e.g., no lights or heat in the cabin and no restrooms); the way PFI maintains its docks, ramps and parking areas; the failure of PFI to modernize its operation (e.g., online reservation and information services, acceptance of credit card payments, and text messaging alerts); and the treatment they receive from Bruce Medley, PFI’s President (e.g., claims that he is “unresponsive”, “unstable”, “manipulative” and “vindictive”). Both the Town of Portsmouth and the PIPC have echoed these sentiments.

The record reflects that A&R Marine has designed its business plan to address all of these customer service issues. As enumerated above, A&R Marine has committed to rectifying all of the perceived deficiencies in PFI’s current provision of ferry services. As an additional finding, the Division cannot help but focus on the fact that PFI offered no direct or rebuttal case to

¹⁷¹ Tr. 201-204 (10/29/13).

¹⁷² Tr. 206-207 (10/29/13); and Applicant’s Exhibit 7.

address the myriad complaints voiced during this case, which, by logical implication, suggests that PFI does not dispute the claims and that it has no plans to implement any changes to its existing service practices. The Division also found it quite disingenuous for PFI, through Counsel, to ridicule the Islanders' complaint about a lack of restroom facilities on the ferry by maintaining that access has always been available by simply asking for the key; especially when PFI is contemporaneously asserting that it is not required to provide such restroom facilities under federal law. In view of the overwhelming record evidence to the contrary, including a father's heartfelt story of his daughter's dehumanizing experience on PFI's boat, it is surprising that PFI would address this complaint in such a flippant fashion.

4. Commitment to the Future

Obvious from the record, the one overarching complaint that is causing the most consternation among Islanders, and Portsmouth, is whether PFI (and Mr. Medley) can be trusted to maintain its ferry services on a going-forward basis, and if so, for how long. The record is replete with expressions of concern over the "uncertainty" of continuing ferry service from PFI. Further intensifying this concern was PFI's decision to decline to offer a direct case in this docket. Clearly, Mr. Medley had an opportunity to proffer testimony on this matter, which would have been perceived as a monumental step in allaying the concerns of the Islanders, as well as Portsmouth. However, he opted to offer no such comfort. And though PFI's counsel offered a declaration that PFI "is not going anywhere voluntarily," this statement neither represents competent

evidence nor is it consistent with PFI's April 2013 voluntary announcement that it was terminating its ferry services to Prudence Island.

The record in this docket shows that Mr. Medley contacted Portsmouth's Town Administrator, John Klimm, on April 23, 2013 to formally announce PFI's decision to cease all service to Prudence Island on December 1, 2013. The relevant message read as follows: "Hello John: I said I would keep you posted. Prudence Ferry Inc. will cease all operations as of the last ferry on Sunday December 1, 2013."¹⁷³ The record also reflects that Mr. Medley subsequently reiterated his decision to cease all ferry operations to Prudence Island during an unrelated public hearing before the Division on May 8, 2013.

Conversely, the only evidence that exists on the record that Mr. Medley changed his mind, despite the assertions of PFI's counsel, is Mr. Crosby's testimony that Mr. Medley verbally retracted his earlier decision to cease operations during a Town Council meeting conducted sometime in July, 2013, and Messrs. Crosby's and Marshall's statement that they saw an indication of Mr. Medley's change of mind on Mr. Medley's "Facebook" page. There is, however, no evidence on the record to indicate that Mr. Medley ever provided Portsmouth with a formal written reversal of his April 23, 2013 e-mail message to Town Administrator Klimm or that PFI posted any notices of its decision to not cease operations on PFI's vessel. Similarly, Mr. Medley never filed anything in writing with the Division after he confirmed his intention to stop providing service during a May 8, 2013 Division hearing.

¹⁷³ Applicant's Exhibit 3.

To add more fuel to the fire of confusion and uncertainty, it appears that Mr. Medley issued an announcement sometime during the summer of 2013, again apparently via his Facebook page, that PFI “had secured a dock and parking in Fall River” and intended to run a freight operation to Prudence Island from that Massachusetts location.¹⁷⁴ This disclosure was not challenged by PFI during the proceeding.

There was also some testimony presented on the record that Mr. Medley’s decision to cease operations, and later reverse that decision, may have been linked to an unsuccessful legislative effort to create a “ferry authority” in Portsmouth.¹⁷⁵ However, this discussion was only mentioned in a cursory fashion and never corroborated by PFI. Therefore, the Division is unable to assign any meaningful weight to this evidence.

Additional uncertainty over PFI’s long-range plans is manifest from the testimony offered by Mr. Teitz, who related that during the negotiations that took place between Bristol and Mr. Medley relative to the sale of the Bristol Dock, it became apparent to the Bristol officials that “Mr. Medley wanted to get out of the business, and retire.” Such raises an additional dimension to the “uncertainty” question; specifically, what assurances Mr. Medley believes he has for continuing PFI’s ferry services to Prudence Island, from Bristol, after he has sold his dock in that town. Indeed, the fact that Mr. Medley sold his dock only reinforces the concern that he is planning to retire or move his business to Fall River. In fact, the record suggests that Portsmouth’s support for A&R

¹⁷⁴ Tr. 60-61 and 194-195 (10/29/13).

¹⁷⁵ Id.

Marine's application is, in part, being driven by the additional costs it would incur if it had to transport Town vehicles and school buses to and from Prudence Island from Fall River. As further suggestion of this possible eventuality, Portsmouth points out that the record is devoid of any evidence that PFI has attempted to negotiate an extension of the lease for use of the Bristol Dock after its lease expires in June 2014, which is but a few months away.

After a thorough examination of the record, the Division must agree with Portsmouth that PFI has offered no evidentiary proof that it is dedicated to maintaining its current ferry services to Prudence Island for the foreseeable future. Simply stated, there is no credible documentary or testimonial evidence on the record to substantiate the assertions made by PFI's counsel during this case.

5. Would competing ferry operations be in the public interest?

Other than argument offered by PFI, the record contains very little evidence of opposition to A&R Marine's application based on a concern that two carriers would be inimical to Prudence Island's future ferry service interests. Three individuals who offered public comment questioned whether the Island's small population could support two competing ferry companies; during cross-examination by PFI, the Applicant's witnesses conceded that A&R Marine may have to charge higher rates in order to compete with PFI.

The Division examined this issue in the context of pertinent law and Division precedent. As an initial observation, the law under which PFI was

granted a CPCN (R.I.G.L. §39-3-3) does not confer monopoly control or an exclusive franchise over the market it serves.¹⁷⁶ Therefore, the Division is free to authorize additional carriers if the additional carriers meet the requisite burden of proof required under applicable law.

Under Rhode Island law, the seminal case of Abbott v. Public Utilities Commission¹⁷⁷ provides that in determining whether to approve an application for a common carrier CPCN, the Division must find that the proposed service “will conduce to the general public welfare.” Abbott also permits the Division to consider the existing means of transportation, its “character” and “probable permanence,” the capital invested, the service rendered, whether the existing “service is adequate” and the effect of admitting competition. Abbott also provides that the expression “public convenience” has reference to something fitting or suited to the public need, and the word “necessity” has reference to the fact that the route in question appears to be reasonable and tends to promote the accommodation of the public.

Subsequent cases have provided the Division with additional guidance. The word “necessity” in the expression under consideration does not have reference to an “indispensable necessity,” but rather that the route in question appears to the Division to be “reasonably requisite.”¹⁷⁸ That is, before a CPCN may be issued the Division must have before it “evidence that there is a public

¹⁷⁶ See Albert Capaldo v. Public Utility Hearing Board, 71 R.I. 245 (1945).

¹⁷⁷ 48 R.I. 196, 136 A. 490 (12927).

¹⁷⁸ See Interstate Navigation v. Division, 1999 WL 813603 (R.I. Super.) (1999).

need for the proposed additional service.”¹⁷⁹ The “primary purpose of the regulation” of common carriers “is to provide the public with safe and adequate transportation.” “A secondary purpose is to preserve the investment of those conducting such business from the deleterious effects of wasteful competition.” The basic question respecting the issuance of CPCNs is whether the “service available to the public is reasonably adequate to supply the public need therefor.”¹⁸⁰ In granting a CPCN, it is proper to consider “such factors as competitive stimulation and anti-monopoly prophylaxis.”¹⁸¹ Increased competition is not a valid ground for denying a CPCN. “Public service is the test” in granting a CPCN; “Protecting existing investments... from even wasteful competition must be treated as secondary to the first and most fundamental obligation of securing adequate service for the public.”¹⁸²

a. Adequacy of existing service

In the instant case, there is much discussion concerning the “adequacy” of PFI’s current ferry services to Prudence Island. The Applicant’s witnesses repeatedly opined that PFI’s services are inadequate. Many of the public supporters of A&R Marine’s application, the PIPC and Portsmouth agree. PFI offered no case to refute these claims.

In addition to the customer services that the Applicant contends PFI is not offering, *supra*, the adequacy of PFI’s services was also addressed in the context of the “uncertainty” surrounding PFI’s future plans. In short, many

¹⁷⁹ See Murray, et al v. La Tulippe’s Service Station, Inc., et al, 277 A2d 310 (1971).

¹⁸⁰ See Yellow Cab Co. v. Public Util. Hearing Board, 96 R.I. 247 (1963).

¹⁸¹ See Domestic Safe Deposit Co. v. Hawksley, 301 A.2d 342 (1973).

¹⁸² See Breen v. Division, 194 A. 719, 720 (1937).

Islanders and Town officials believe that Mr. Medley, who has been operating PFI since 1986, is looking for a change in direction. The evidence reflects that Mr. Medley publicly declared that PFI was ceasing ferry services in December, 2013, that he sold his dock in Bristol, that he has explored moving his ferry business to Fall River, and that he has convinced many Islanders, as well as the towns of Bristol and Portsmouth, that he wishes to retire. Compounded by the fact that he opted to remain silent in this docket, it is no wonder that a cloud of uncertainty persists.

In response to the “uncertainty” and related “inadequacy” concerns expressed during the hearing, PFI, through counsel, contests that PFI ever formally announced that it would be terminating ferry services to Prudence Island. PFI argues that it never “filed any formal notification with the PUC [Division] that... [it was] intending to stop operations.” PFI maintains that “this all was precipitated through a comment in an e-mail and I think a newspaper article, which, although perhaps impertinent, was not what would be appropriate if there was going to be a real intention to suspend or to terminate a lifeline service...” However, to accept such an argument, in view of the record evidence present in this case, would require stretching the credulity of most people to the absolute limit.

The difficulty in accepting PFI’s argument is less about the e-mail sent on April 23, 2013, than it is about the fact that Mr. Medley allowed several months to pass after sending the e-mail, while panic ensued on Prudence Island and Portsmouth struggled to find a replacement ferry service provider.

Mr. Medley informed Mr. Klimm and Portsmouth on April 23, 2013, and a Division Hearing Officer on May 8, 2013, that PFI was ending ferry services on December 1, 2013. Based on these unambiguous written and face-to-face declarations of intent, neither the Division nor the Town of Portsmouth could have concluded, as PFI now suggests, that Mr. Medley was simply being “impertinent” and really had no intentions of terminating service. PFI’s argument is further weakened by Mr. Medley’s decision to say nothing when PIPC contacted Portsmouth officials on May 9, 2013, to request that the Town “begin the process of seeking... alternatives and looking for a replacement ferry service.”¹⁸³ The record further reflects that Mr. Medley continued to remain silent after Portsmouth issued a “Request for Information” (RFI), in June, 2013. Mr. Medley also sold his dock in Bristol around this time, which added an additional element of finality to his earlier announcement, and confirmation to the Division, that operations would end on December 1, 2013.

It was not until sometime in July, 2013, that comments made by Mr. Medley at a Town Council meeting and through social media suggested that Mr. Medley was changing his mind. Perhaps the change of mind had to do with legislative outcomes, or perhaps because Portsmouth’s RFI generated interest from the Applicant; unfortunately, however, the record offers no solid evidence for what was behind the change of mind, because PFI elected to remain silent during this proceeding as well. Whatever, the reason behind Mr. Medley’s actions, though impertinence certainly may be part of it, the Division

¹⁸³ Tr. 36-38 (10/29/13) and Portsmouth Exhibit 1.

cannot accept PFI's argument that its April 23, 2013 decision should never have been taken seriously and that its change of heart must be accepted as unquestionable truth.

Accordingly, on the matter of adequacy, the Division would agree that the "uncertainty" surrounding the continuation of PFI's ferry services to Prudence Island must be considered a relevant component in the evaluation of the adequacy of the existing ferry services that PFI currently provides between Prudence Island and Bristol. The Abbott case provides that the Division may consider the "probable permanence" of the incumbent carrier when deciding whether the "public need" is being adequately served. In view of the record evidence discussed above, the Division finds that uncertainly over this important issue unquestionably remains strongly in effect.

b. Wasteful competition

Some Islanders and PFI contend that A&R Marine's application must be denied because granting A&R Marine's application may result in wasteful competition that could end all ferry services to the Island. However, in the Division's experience, that prediction has never proven accurate. The several cases summarized below are instructive.

On May 14, 1981, Bruce Medley filed an application with the Division seeking a CPCN for authority to transport freight between the Melville section of Portsmouth and Prudence Island. At the time, the Prudence Island Navigation Company ("PINC") was operating as a passenger and freight carrier between Bristol and Prudence Island. Due to the anticipated adverse impact

an additional freight carrier would have on PINC's ferry business, PINC intervened and opposed Mr. Medley's application. After considering all the evidence, the Division determined that Mr. Medley's proposed freight services would be superior to those offered by PINC in that Mr. Medley's vessel was capable of carrying more freight. The Division approved the application and the Islanders benefited from the competing services offered by PINC and Mr. Medley.¹⁸⁴

On October 9, 1984, Island Transport Company (Mr. Medley) ("ITC") filed an application with the Division seeking a CPCN for authority to transport passengers between the Melville section of Portsmouth and Prudence Island. Again, at the time, PINC was operating as a passenger and freight carrier between Bristol and Prudence Island. Again, due to the anticipated adverse impact an additional passenger carrier would have on PINC's ferry business, PINC intervened and opposed ITC's application. PINC asserted that if the Division approved ITC's application, neither company would survive. Notwithstanding the prognostications of doom offered by PINC, the Islanders supported ITC's application based on the improved customer services that ITC was offering (i.e., direct service to Portsmouth, year-round service, additional parking spaces, ability to have cars transported, etc.); "or because they dislike the services of... [PINC]." The Town of Portsmouth similarly supported ITC's application. In its decision to approve ITC's application, the Division took into consideration "the concerns of the islanders" and the fact that "most of those

¹⁸⁴ See Order No.10651 issued in Docket No. MC-W-15 on March 25, 1982.

testifying indicated that they wanted Island Transport to provide this service.”¹⁸⁵ As a result of the foregoing decision, two competing ferry services were authorized to provide passenger and freight ferry services to Prudence Island. Contrary to the predictions by some, both did not go out of business. Rather, Mr. Medley purchased his competitor’s business and a new, stronger, PFI was born, which provided superior services in comparison to the services his predecessor offered; the Islanders benefited from the new company and the customer service improvements that followed.¹⁸⁶

As another example, on February 20, 1998, Island Hi-Speed Ferry filed an application with the Division seeking a CPCN for authority to transport passengers by high-speed ferry between Point Judith and Block Island. At the time, the Interstate Navigation Company (“Interstate”) was operating as a passenger and freight carrier between Point Judith and Block Island. Due to the anticipated adverse economic impact an additional passenger carrier would have on Interstate’s conventional “slow-boat” and “lifeline” ferry business, Interstate intervened and opposed Island Hi-Speed Ferry’s application. In addition to questioning the public need for high-speed ferry services in general, Interstate also argued “that Division approval of the proposed ferry service would result in higher rates and/or curtailed service, and eventually, could force Interstate Navigation to go out of business.” However, the Division ultimately found Interstate’s concerns to be overstated and approved Island Hi-Speed Ferry’s application; and with this approval came the advent of high-

¹⁸⁵ See Order No. 11474 in Docket No. MC-W-31, issued on January 3, 1985.

¹⁸⁶ See Order No. 12218 in Docket No. 86-MC-219, issued on December 30, 1986.

speed ferry services in Rhode Island.¹⁸⁷ Not only did Interstate not go out of business, it later purchased Island Hi-Speed Ferry's CPCN and high-speed vessel in 2006,¹⁸⁸ and today, customers have the ability to choose between conventional "slow-boat" ferry services or advanced amenity-laden "high-speed" ferry services between Point Judith and Block. Indeed, high-speed ferry services are now also provided by Interstate between Newport and Block Island; all was made possible by the Division's decision to approve Island Hi-Speed Ferry's original application for high-speed ferry services in 1998.¹⁸⁹ In retrospect, the public need clearly was properly served by the approval of high-speed ferry services in a market already being served by an incumbent "lifeline" carrier.

From the evidence and arguments proffered in the instant matter, as well as the cases referenced above, the Division finds little possibility that A&R Marine and PFI will both suffer financial ruin from the competition that would result from the granting of A&R Marine's application. On the contrary, the Division finds that history strongly suggests that the better carrier, the one that provides the better customer services, will survive, and in the process, the Islanders and visitors to the island(s) will benefit. It is also important to stress that Portsmouth, which most closely represents the interests of Prudence and Hog Island residents, fervently supports the granting of A&R Marine's application. It is abundantly clear from Portsmouth's position in this case that

¹⁸⁷ See Order No. 15652 in Docket No. 98-MC-16, issued on August 25, 1998.

¹⁸⁸ See Order No 18728 in Docket D-06-53, issued on October 3, 2006.

¹⁸⁹ See Order No. 21032 in Docket No. D-13-19, issued on May 9, 2013.

the Town does not believe that ferry service to the islands will be forever lost if A&R Marine's application is approved. The Division finds that it must afford great deference to the Town in its assessment of what is best for its citizens.

14. CONCLUSION

The Division finds that A&R Marine has adequately demonstrated that it is fit, willing and able to operate as a water (ferry) carrier of persons and property between Bristol, Rhode Island and Prudence Island and Hog Island in Portsmouth, Rhode Island. The Division additionally finds that the "public convenience and necessity" requires A&R Marine's proposed ferry services between Bristol, Rhode Island and Prudence Island and Hog Island in Portsmouth, Rhode Island.

Additionally, in the interest of promoting a proper regulatory framework to facilitate coexistence between A&R Marine and PFI, the Division finds that if it becomes necessary to examine and adjust the operating schedules of these two carriers, it will open a docket to address this concern. PFI and A&R Marine are also free to petition the Division for such review at any time. The Division may also take additional steps to ensure the continued coexistence of these two water carrier companies as future circumstances warrant.

In the final analysis, the Division must reject PFI's contention that the general public interest will suffer if A&R Marine is permitted to operate a ferry between Bristol and Prudence Island. Although it is possible that PFI may experience reduced ridership in the future, the record does not support definitive conclusions that A&R Marine's ferry services between Bristol and

Prudence Island will either force PFI 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 A&R Marine's proposed ferry services. The Division finds that the satisfaction of this need is paramount to the public interest.

Accordingly, it is

(21363) ORDERED:

1. That the September 19, 2013, application filing by the A&R Marine Corporation, d/b/a Prudence & Bay Islands Transport, 894 Neck Farm Road, Prudence Island, Rhode Island, seeking authority to operate as a common carrier of persons and property upon water between Bristol, Rhode Island and Prudence Island and Hog Island in Portsmouth, Rhode Island, is hereby granted. Under this authority, A&R Marine is required to provide daily, year-long, ferry services to Prudence Island unless inclement weather conditions or mechanical failures warrant a temporary suspension of service.
2. That the approval granted herein is subject to the following conditions: Before a CPCN is issued, A&R Marine must demonstrate to the Division that: (1) it has access to suitable docking/landing facilities in Bristol and on Prudence Island; (2) that it has leased or purchased a vessel for use in providing its proposed ferry services consistent with the commitments and evidence presented during this case; (3) that it has satisfied all Coast Guard requirements associated with the provision of

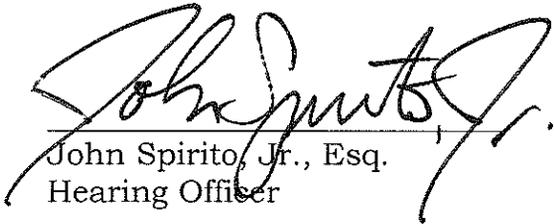
its proposed ferry services; (4) that it has satisfied any applicable municipal permitting requirements; (5) that it has adequate liability and cargo insurance in effect; and (6) that it has passed a Division inspection to ensure regulatory compliance.

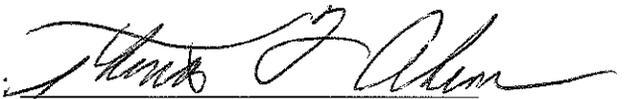
3. That A&R Marine shall satisfy the conditions contained in "Ordered" paragraph "2," above within 180 days from the issue date of this Report and Order. Failure to satisfy these conditions within the time specified shall result in the nullification and voiding of the authority granted herein. Continuances may be granted by the Division for just cause.
4. That A&R Marine must have a Public Utilities Commission-approved tariff in effect before it provides any ferry services authorized under the authority granted herein.
5. That A&R Marine shall, as a condition of its continued authority to operate, provide its passengers with services substantially consistent with the services described in its business plan and/or the testimony presented by its principals during this case. Any deviation from these specified services must be approved by the Division.
6. That A&R Marine shall begin the provision of ferry services to Hog Island as soon as a suitable dock, with adequate indemnity protections, is available.
7. That A&R Marine shall provide the Division with a copy of its initial operating schedule, and all subsequent changes thereto, at least 30 days prior to adoption and use. The Division reserves the right to

suspend any scheduling proposals and conduct a public hearing if deemed by the Division to be in the public interest.

8. The Division commits to facilitating coexistence between A&R Marine and PFI. Toward this end, the Division finds that if it becomes necessary to examine and adjust the operating schedules of these two carriers it will open a docket to address this concern. PFI and A&R Marine are also free to petition the Division for such review at any time. The Division may also take additional steps to ensure the continued coexistence of these two water carrier companies as future circumstances warrant.

Dated and Effective at Warwick, Rhode Island on February 28, 2014.


John Spirito, Jr., Esq.
Hearing Officer

APPROVED: 
Thomas F. Ahern
Administrator



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 Jefferson Boulevard
Warwick R.I. 02888
(401) 941-4500

FAX (401) 941-9248
TDD (401) 941-4500

NOTICE OF AVAILABILITY OF JUDICIAL REVIEW

(PROVIDED PURSUANT TO R.I.G.L. §42-35-12)

Please be advised that if you are aggrieved by this final decision (report and order) of the Rhode Island Division of Public Utilities and Carriers (“Division”) you may seek judicial review of the Division’s final decision by filing an appeal with the Rhode Island Superior Court. You have thirty (30) days from the mailing date (or hand delivery date) of the Division’s final decision to file your appeal. The procedures for filing the appeal are set forth in Rhode Island General Laws, Section 42-35-15.

Proceedings for review may be instituted by filing a complaint in the Superior Court of Providence or Kent Counties. Copies of the complaint must be served upon the Division and all other parties of record in your case. You must serve copies of the complaint within ten (10) days after your complaint is filed with the Superior Court.

Please be advised that the filing of a complaint (appeal) with the Superior Court does not itself stay enforcement of the Division’s final decision. You may however, seek a stay from the Division and/or from the Court.

The judicial review shall be conducted by the Superior Court without a jury and shall be confined to the record. The Court, upon request, shall hear oral argument and receive written briefs.