

Public utilities – Ferry service – Block Island

Superior Court

By: [R.I. Lawyers Weekly Staff](#) April 13, 2023

Where the Rhode Island Division of Public Utilities and Carriers conditionally approved an application for authority to operate a seasonal, passenger-only fast-ferry service between Quonset Point in North Kingstown and Old Harbor in New Shoreham, that decision should be upheld, as the division applied the proper legal standard to assess public convenience and necessity and did not err when it determined that the applicant was fit, willing and able to provide the service proposed in the application.

"Before this Court for decision is the consolidated administrative appeal of the Town of New Shoreham (Town) and Interstate Navigation Company d/b/a The Block Island Ferry (Interstate) (collectively Petitioners) from various orders of the Rhode Island Division of Public Utilities and Carriers (Division); most notably, a September 22, 2016 Report and Order No. 22548, conditionally approving Rhode Island Fast Ferry, Inc's (RIFF) application for authority to operate a seasonal, passenger-only fast-ferry service between Quonset Point in North Kingstown and Old Harbor in New Shoreham (Block Island). ...

"This Decision also resolves Petitioners' various appeals from the Division's: (1) September 24, 2013 Order No. 21170, issued in response to Petitioners' Motions to Intervene, ...; (2) June 23, 2017 Order No. 22823, finding insufficient cause to revisit issues related to a proposed docking facility, ...; (3) July 16, 2018 Report and Order No. 23217, declining to revisit the Division's prior denial of the Town's Motion for Summary Disposition, again relating to the docking issue, ..; and (4) September 26, 2018 Order No. 23283, granting RIFF a one-year continuance to satisfy certain conditions imposed in Order No. 22548, specifically — again — the docking issue. ...

"On September 22, 2016, the Division issued Report and Order No. 22548, approving RIFF's Application for a water carrier certificate of public convenience and necessity (CPCN Order). ...

"... Specifically, Petitioners argue that: (1) the Division did not apply the proper legal standard to determine public convenience and necessity; (2) findings of public convenience, necessity, and ability were unsupported by competent evidence; (3) the Division allowed two fatal procedural irregularities to infect the proceedings; (4) Interstate should have been granted full intervention rights; and (5) the Division erred when it granted RIFF a 'stay' of deadlines associated with the CPCN Order. ...

"In sum, the Division applied the proper legal standard to assess public convenience and necessity and its findings and conclusions are supported by legally competent record evidence. ...

"In sum, although the Town made it clear to the Division that it would oppose RIFF's attempts to obtain docking approval on Block Island, there is no evidence in the record as to the Town's likelihood of success in mounting that opposition, nor is there any evidence that [the Rhode Island Coastal Resources Management Council (CRMC) or [the United States Army Corps of Engineers (USACE)] had denied RIFF the necessary permits. Considering [Charles] Donadio's proven track record and RIFF's documented

ongoing efforts with Bluewater [LLC], the Division did not err when it determined that RIFF was 'fit, willing, and able' to provide the service proposed in the Application. ... "After review of the entire record, this Court: (1) affirms the CPCN Order, as well as the September 2013 Order, the July 2018 Order, and the September 2018 Order; and (2) declines to address the issues raised in relation to the now-vacated June 2017 Order." *Interstate Navigation Company v. Town of New Shoreham, et al.* (Lawyers Weekly No. 61-027-23) (44 pages) (Taft-Carter, J.) (Providence Superior Court) (C.A. Nos. PC-2016-4804, PC-2017-3409, PC-2018-5806, PC-2018-7658, PC-2016-4758, PC-2017-3405, PC-2018-5679 and PC-2018-7687) (April 11, 2023).