

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. A-100, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Study of Rates and Charges of Passenger)	ORDER REQUIRING FILING OF
Ferry Public Utilities)	RATES AND ALLOWING
)	COMMENTS

BY THE COMMISSION: North Carolina General Statutes Section 62-3(23)(a)(4) defines public utility to include “a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for . . . [t]ransporting persons or household goods by motor vehicles or *any other form of transportation for the public for compensation*, except motor carriers exempted in G.S. 62-260, carriers by rail, and carriers by air.” Emphasis added.¹ Pursuant to this statutory authority, the Commission currently regulates the following eight passenger ferries:

- Bald Head Island Transportation, Inc., Docket No. A-41;
- Barrier Island, Inc. dba Island Ferry Adventures, Docket No. A-40;
- Cape Lookout Cabins & Camps Ferry Service dba Cape Lookout Cabins & Camps, Docket No. A-66;
- Crystal Blue Holding Co., LLC dba Morehead City Ferry Service, Docket No. A-76;
- Davis Shore Ferry Service, LLC, Docket No. A-65;
- Island Express Ferry Service, LLC, Docket No. A-75;
- Morris Marina, Kabin Kamps & Ferry Service, Inc., Docket No. A-26; and
- Portsmouth Island Boat Tours, Docket No. A-30.

Among other things, Commission jurisdiction over passenger ferries includes the authorization of initial operation, N.C.G.S. §§ 62-110(a), 62-262(a), merger or sale of the franchise, N.C.G.S. § 62-111(a), and approval of rates and any rate changes, N.C.G.S. §§ 62-130, 62-134. Passenger ferries shall file with the Commission all schedules of rates and shall keep copies open to public inspection, N.C.G.S. § 62-138(a), and shall not charge any rate other than that prescribed by the Commission. N.C.G.S. § 62-139(a).

¹ In applying the provisions of Chapter 62, a passenger ferry is a common carrier, N.C.G.S. § 62-3(6), but it is not a common carrier by motor vehicle, which operates “upon the highways within the State,” N.C.G.S. §§ 62-3(7), (18), or a motor carrier. N.C.G.S. § 62-3(17).

Since at least 1980, the Commission has used the following procedure in reviewing an application for new passenger ferry service and proposed initial rates:²

- An applicant applies for authority to transport passengers in ferry operations.
- The application is set for hearing near the town or city in which the applicant proposes to operate no sooner than 30 days after the date the application is filed.
- The Commission issues an order giving notice of the application and hearing date. That order is mailed to all ferry operators having authority to conduct operations in the same territory the applicant has requested.
- If no protest of the application is filed prior to 10 days before the date of the hearing, the hearing may be canceled at the request of the applicant.
- At the hearing, the applicant must establish by proof as set forth in N.C.G.S. § 62-262(e) that a public demand and need exists for the proposed service in addition to existing authorized service; that the applicant is fit, willing, and able to perform the proposed service; and that the applicant is solvent and financially able to furnish adequate service on a continuing basis. If no protests are filed and the hearing canceled, the above information may be submitted in the form of affidavits or notarized statements of support.
- Following the hearing or receipt of appropriate support if the hearing is canceled, the Commission issues an order approving or denying the application.
- After an order granting common carrier authority is issued, the applicant must (a) file with the Commission proof of liability insurance and designation of a process agent and (b) file with the Public Staff Transportation Rates Division a tariff of rates and charges and timetable. If the above filings are not made within 30 days of the date of the order the operating authority will cease.
- The Public Staff reviews the filed tariff of rates and charges. If the Public Staff disagrees with the proposed rates and cannot settle with the applicant, the Commission will set the rates for hearing, and the operating authority is suspended until rates have been approved.

Pursuant to N.C.G.S. § 62-130, “[t]he Commission shall make, fix, establish or allow just and reasonable rates for all public utilities subject to its jurisdiction.” Moreover, “[e]very rate made, demanded or received by any public utility . . . shall be just and reasonable.” N.C.G.S. § 62-131(a). In fixing the rates for any public utility, the Commission determines, based on an historic test year, reasonable expenses, capital investment less depreciation, and rate of return on that investment to fix rates as shall be fair both to the utility and its customers. N.C.G.S. § 62-133. The General Assembly has authorized alternative ratemaking mechanisms for certain types of public utilities, such as the maximum rate tariff for motor common carriers of property authorized by N.C.G.S. § 62-146(e), none of which apply to passenger ferries.

² The Commission currently maintains on its website an Application for Certificate of Authority to Transport Passengers in Ferry Operations, <https://www.ncuc.gov/appforms/trans/ferryapp.pdf>, and Application Instructions, <https://www.ncuc.gov/appforms/trans/frryinst.pdf>.

As described above, historically the Commission has allowed proposed initial rates to become effective for passenger ferries subject to review by the Public Staff. A review of the Commission's dockets reveals at least nine general rate cases filed by passenger ferries since 1999. Of the eight passenger ferries operating currently, the Commission has held rate cases to fix the rates for the following four: Bald Head Island Transportation, Inc.; Barrier Island, Inc. dba Island Ferry Adventures; Morris Marina, Kabin Kamps & Ferry Service, Inc.; and Portsmouth Island Boat Tours. In 2009 the Commission allowed passenger ferries to apply for approval of a fuel surcharge, which was implemented by Bald Head Island Transportation, Inc., until terminated in 2019. Thus, rates filed in accordance with the Commission's orders granting common carrier authority have not been explicitly fixed but allowed to become effective for the remaining four passenger ferries: Cape Lookout Cabins & Camps Ferry Service dba Cape Lookout Cabins & Camps; Crystal Blue Holding Co., LLC dba Morehead City Ferry Service; Davis Shore Ferry Service, LLC; and Island Express Ferry Service, LLC.³

Based upon the foregoing, the Commission finds good cause to initiate this study of rates and charges of passenger ferry public utilities. The Commission will require each of the eight currently authorized passenger ferries to file in this docket a copy of their current tariffs of rates and charges and timetables. The Commission will further allow the passenger ferries, the Public Staff, and any other interested parties to file comments on the Commission's ratemaking treatment of passenger ferry rates and charges. Without intending to limit the scope of parties' comments, the Commission specifically requests that the parties address whether the Commission's current ratemaking treatment of passenger ferry rates and charges complies with state law; whether lesser regulation of rates and charges is appropriate for passenger ferries, particularly those offering competitive leisure service; factors to be considered in determining whether proposed rates and charges are just and reasonable; and whether changes should be made to the Commission's rules or procedures.

IT IS, THEREFORE, ORDERED as follows:

1. That each of the eight currently authorized passenger ferries — Bald Head Island Transportation, Inc.; Barrier Island, Inc. dba Island Ferry Adventures; Cape Lookout Cabins & Camps Ferry Service dba Cape Lookout Cabins & Camps; Crystal Blue Holding Co., LLC dba Morehead City Ferry Service; Davis Shore Ferry Service, LLC; Island Express Ferry Service, LLC; Morris Marina, Kabin Kamps & Ferry Service, Inc.; and Portsmouth Island Boat Tours — are hereby made parties to this docket without the need to file petitions to intervene;

³ The rates charged and service provided by Island Express Ferry Service, LLC, are subject to the concession contract with the United States Department of Interior, National Park Service (NPS), in providing ferry services from Beaufort and Harkers Island to South Core Banks and Shackleford Banks and in providing land transportation services on the South Core Banks within Cape Lookout National Seashore.

2. That each of the eight currently authorized passenger ferries shall file their current tariffs of rates and charges and timetables with the Commission in this docket on or before Wednesday, October 25, 2023;

3. That any person having an interest in this docket may file a petition to intervene stating such interest on or before Wednesday, November 15, 2023;

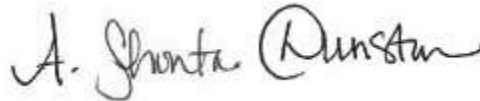
4. That parties may file initial comments as provided herein on or before Wednesday, November 15, 2023; and

5. That parties may file reply comments on or before Wednesday, December 6, 2023.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of October, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "A. Shonta Dunston".

A. Shonta Dunston, Chief Clerk