

STATE OF MAINE  
KENNEBEC, ss

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. AP-18-27

INHABITANTS OF THE TOWN OF  
ISLEBORO, GABRIEL PENDLETON,  
PHILIP T. SEYMOUR, PAUL C.  
HATCH, JR., and CRAIG R. OLSON,

Plaintiffs

**ORDER STAYING  
PROCEEDINGS**

v.

MAINE DEPARTMENT OF  
TRANSPORTATION,

Defendant

On October 4, 2018 the Court conducted a teleconference with counsel for the parties at their request. The Court was informed that the Defendant in this matter, Maine Department of Transportation (MDOT) had decided to undergo rulemaking in regard to Tariff No. 8 which had previously been the subject of an adjudicatory proceeding as defined by 5 M.R.S. Section 8002(1). Plaintiffs brought this litigation in large part because they claim that MDOT is required by Maine law to undergo rulemaking before repealing and replacing tolls in the Maine State Ferry Service.

The Court discussed with the parties the option of staying proceedings in this matter until rulemaking was complete, but the parties could not agree on the course of future proceedings. The Court informed the parties that it would therefore rule on the motions pending before the Court: Plaintiffs' Motion to Stay the decision of MDOT adopting Tariff No. 8 pending appeal; and both parties' cross motions for partial summary judgment on Count I of Plaintiff's Complaint.

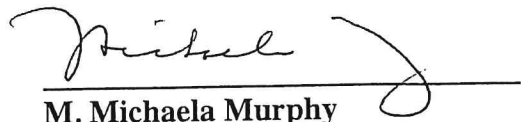
After further consideration, the Court on its own motion is staying proceedings in this matter until January 1, 2019 or until rulemaking is complete, whichever occurs first. The Court on

this same date has issued an Order denying the Plaintiff's Motion to stay MDOT's adjudicatory decision pending appeal. While the Court has determined that Plaintiffs have a likelihood of success as to Count I's claim that rulemaking is required, it determined that harm to the Plaintiffs was not irreparable as they may in fact obtain relief from the MDOT if rulemaking results in a different apportionment of the fare increases which MDOT is seeking in order to meet operating costs of the Ferry system and to remain in compliance with 23 M.R.S. Section 4210-C(2). The Court also found that substantial harm could result to the Ferry system in the form of service disruptions if a stay is granted.

Until rulemaking is complete, the Court is concerned that any ruling on the merits of Plaintiffs' claim in Count I could create instability or unintended consequences while the new the administrative process of rulemaking is still ongoing. The Court is also mindful that it is quite possible it will not be the last Court that reviews Tariff No. 8. The Court concludes that judicial economy would be best served by a temporary stay of further proceedings to allow completion of rulemaking. The parties will then be given an opportunity, if they would like, to alter or refine their positions on the legal issues which remain unresolved.

The entry will be: The Court on its own motion stays further proceedings in this matter until January 1, 2019 or until rulemaking is complete regarding Tariff No. 8. The Court will conduct a telephonic status conference on January 7, 2019 at 9:00 am, notice to follow. If rulemaking is complete before January 1, 2019 MDOT shall so inform the Plaintiffs and the Court in writing and a different date will be scheduled for this conference. The Clerk may note this Order on the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

Date: 11/2/18

  
M. Michaela Murphy  
Superior Court Justice