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 Order 20235 RI Public Towing Assoc.: Petition for Declaratory
 Judgement

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**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
 DIVISION OF PUBLIC UTILITIES AND CARRIERS
 89 JEFFERSON BOULEVARD
 WARWICK, RHODE ISLAND 02888**

IN RE: Petition for Declaratory Judgment
 From the Rhode Island Public Towing
 Association

Docket No. D-10-26

RULING ON PETITION FOR DECLARATORY JUDGMENT
(Decision in response to Petitioner's "Request For A Stay")

Whereas: On May 26, 2010, the Rhode Island Public Towing Association ("RIPTA" or "Petitioner") filed a "Petition for Declaratory Judgment or Declaratory Ruling" ("Petition") with the Rhode Island Division of Public Utilities and Carriers ("Division") pursuant to R.I.G.L. §42-35-8 and Rule 13 (c) of the Division's Rules of Practice and Procedure. In its petition, RIPTA sought a ruling from the Division on the following issue:

Whether the storage fees imposed by a certificated tower on a police department instigated motor vehicle storage impoundment at a private storage lot may be assessed against the owner of said motor vehicle, or is it the liability and financial responsibility of the police department instigating the tow?

Whereas: In response to RIPTA's petition, the Division conducted scheduling conferences on June 9, and July 21, 2010. The following counsel entered appearances:

For the Petitioner/RIPTA: Michael F. Horan, Esq.

For the Division's Motor Carrier

(Advocacy) Section: Karen Lyons, Esq.

Spec. Asst. Attorney

General

For the City of Warwick and

Towns of Jamestown and Charlestown: Peter D. Ruggiero, Esq.

For the Town of Foster: John J. Bevilacqua, Esq.

For the Town of Middletown: Francis S. Holbrook, II,
Esq.

For the City of Cranston: Anthony Cipriano, Esq., and
Christopher M. Rawson,
Esq.

For the Town of Westerly:

John J. Turano, Esq.

For the Town of Smithfield:

Edmund L. Alves, Jr., Esq.

For the Town of Cumberland:

Thomas E. Hefner, Esq.

For the Town of Coventry:

Jon M. Anderson, Esq.

For the City of Pawtucket:
Esq.

Margaret Lynch-Gadaleta,

For the Town of West Warwick:

Albert A. DiFiore, Esq.

With respect to the issue presented, legal memoranda and reply memoranda were submitted by the Petitioner and participants on September 28, 2010 and October 12, 2010, respectively.

Whereas: The Division issued a ruling on the Petitioner's "Petition for Declaratory Judgment or Declaratory Ruling" on December 6, 2010. That ruling, identified as **Order** Number 20200, is hereby incorporated by reference into the instant decision. In conclusion, after a thorough examination of the legal arguments presented, the Division ruled as follows:

"1. In reply to this question, as discussed at length herein, the Division finds that the vehicle owner cannot be held responsible for the "involuntary" storage fees resulting from police department "holds" imposed on vehicles resulting from non-consensual police

department instigated tows. Further, notwithstanding its initial opinion on the subject, the Division finds that certificated towers may not hold these vehicles against the wishes of their owners, and must release these vehicles to their owners upon demand and after all appropriate fees have been paid. "Appropriate" fees, in cases of non-consensual police department instigated tows, shall constitute the charge for the tow service required to "remove" the vehicle from the public roadway, an after-hours release fee (when applicable), and all storage time linked to retrieval delays directly caused by the vehicle owner (or lienholder).

2. That the Division also hereby adopts the conclusions, findings and rulings contained herein as its comprehensive response to RIPTA's May 26, 2010 Petition for Declaratory Judgment.

3. That the Division will not officially opine on the propriety of impounds that take place on municipally-owned property."^[1]

Whereas: Subsequently, on December 20, 2010, the Division received a "Request for a Stay" from the Petitioner. In its motion, the Petitioner argues that the Division has committed error by: (1) compelling a reversal of "established practice and procedures," (2) rejecting the Petitioner's previous argument that its members are acting "in full compliance with statutory law and the Division's rules and regulations," (3) ignoring the fact that police departments are directing that the Petitioner's members not release impounded motor vehicles until after a release is obtained, (4) refusing "to address the issue directly of who is responsible for the storage fees during any period of hold by the police department," and (5) improperly shifting

the expenses associated with storing impounded vehicles to the cities and towns.

Whereas: The Division has considered the arguments proffered by the Petitioner in support of its motion for a stay and finds that the Division's previous ruling in this docket sufficiently addressed all of the Petitioner's arguments and concerns. In short, the Division has already evaluated and rejected these arguments and concerns and, therefore, finds no reason to delay the enforcement of its December 6, 2010 ruling.

Accordingly, it is
(20235) ORDERED:

That the Petitioner's December 20, 2010 "Request for a Stay" in this docket is hereby denied.

Dated and Effective at Warwick, Rhode Island on December 23, 2010.

John Spirito, Jr., Esq.
Hearing Officer

APPROVED: _____
Thomas F. Ahern
Administrator

[\[1\]](#) **Order** No. 20200, pp. 69-70.

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