

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

Docket No.: 01 MC 72

In Re: Diesel Price Emergency Surcharge Program for Water Carriers

REPORT AND ORDER

The Rhode Island General Assembly passed Senate Bill 01-0978, as amended, which was enacted on July 13, 2001, as Public Law Chapter 307. This law, which, in part, amends R.I.G.L. §39-12-13, requires the Administrator of the Division of Public Utilities and Carriers to

“...implement a diesel price emergency surcharge program whereby a person licensed under R.I.G.L. section 39-3-3, 39-3-3.1, or 39-3-4 to perform as a ‘commom (sic) carrier of persons and/or property upon water between termini within the state’ shall be permitted to impose and collect a surcharge, not to exceed fifty cents (\$.50) for each passenger and vehicle carried, during periods when it is determined that the average retail price of diesel (sic) fuel in this state exceeds one dollar and twenty cents (\$1.20) per gallon.”

Further, this law requires the Division to develop and implement such a program on or before September 1, 2001.

Following the opening of this docket, and notification to the public via a display advertisement that appeared in the Providence Journal on August 3, 2001, the Division conducted a public hearing on this matter on August 23, 2001.

APPEARANCES:

William K. Lueker, Esq. for the Advocacy Section of the Division
Michael McElroy, Esq. for Interstate Navigation and Prudence Ferry

FINDINGS

The provision of Public Law Chapter 307 that relates to water carriers contains a phrase that is the subject of a difference of opinion between the parties. The offensive phrase is “the average retail price of diesel (sic) fuel.”

Interstate Navigation and Prudence Ferry argue that this phrase should be interpreted by the Division to mean the retail price of “over the road” diesel. Thus, when the price of “over the road” diesel exceeds one dollar and twenty (\$1.20) cents, they would be able to reap the benefit of the emergency surcharge. In contrast, the Advocacy Section

argues that the retail price of marine diesel is the only logical basis upon which to implement the emergency surcharge, since that is the type of diesel used by these water carriers.

The reason that this is a matter of significant concern is that the average price of a gallon of “over the road” diesel is approximately fifty (\$0.50) cents higher than the average price of a gallon of marine diesel.

As the subject to which the phrase relates is “water carriers,” the Division finds the Advocacy Section’s view to be the only tenable reading of the law.

With the issue resolved regarding the type of diesel that will trigger the authorization of the surcharge, the Division turns to establishing the proper way to determine the average retail price of marine diesel in Rhode Island.

The most efficient method of determining the retail price of marine diesel in Rhode Island begins with accessing the AAA of Southern New England’s web-site at www.aaasne.com. At this site, the average retail price of “over the road” diesel in Rhode Island is posted on a daily basis. From the price of “over the road” diesel, Division staff can subtract the federal taxes¹ and the Rhode Island taxes² which are not assessed on marine diesel. This figure could then be adjusted to include the Rhode Island sales tax³ that is assessed on marine diesel.

Using this method, Division staff will calculate the average retail price of marine diesel on the first and third Wednesdays of each month. These prices will then be averaged to determine whether the average retail price of marine diesel in a particular month exceeds the one dollar and twenty (\$1.20) cents per gallon price which triggers the implementation of the program by the Division.

This method of calculating the average retail price of marine diesel is based on information that is easily accessible to the public. It permits both the regulated water carriers and their customers to access the information and make their own calculations and determinations about whether the Division will authorize a surcharge in any given month.

The Division has striven to ensure that some nexus exists between the authorization of a diesel price emergency surcharge for water carriers and the actual price that these entities have paid for fuel. The Division is concerned that the price paid by many of the water carriers that will reap the benefits of this surcharge program may be far less than the average retail price of marine diesel. As major and long-standing customers, many of these water carriers are able to negotiate for long-term contracts with prices significantly lower than the retail average, and the Division will not allow them to be unjustly enriched at the expense of the consumer.

In an effort to comply with the mandate that it implement a surcharge, and the mandate that the Administrator ensure that rates over which he has jurisdiction are not

¹ Currently assessed at twenty-four and four-hundredths (\$0.244) cents per gallon.

² Currently assessed at twenty-eight (\$0.28) cents per gallon.

³ Currently set at seven (7%) percent.

“unjust or unreasonable,”⁴ the Division will require each water carrier to prove that its actual payments for marine diesel have also been in excess of one dollar and twenty (\$1.20) cents per gallon.

The Division will require the water carrier to provide information establishing a nexus between the actual price that it has paid per gallon of marine diesel and its operations costs over the thirty (30) day period on which it is basing its request for a surcharge. The water carrier must submit actual fuel invoices, the number of passengers and vehicles carried, the number of trips made, the number of gallons of marine diesel used per trip, and the price per gallon which it paid for marine diesel during that period. With this information before it, the Division will be able to establish a just and reasonable surcharge, not to exceed fifty (\$0.50) cents per passenger and vehicle carried, which will compensate the water carrier for an increase in the cost of marine diesel.

The Division is cognizant of the possibility that a water carrier may be paying more than one dollar and twenty (\$1.20) cents per gallon for marine diesel even though the average retail price of marine diesel is less than one dollar and twenty (\$1.20) cents per gallon. In such a case, the proposed program would not permit the water carrier to petition the Division for a surcharge. The Division is aware of this possibility, yet is of the opinion that the law does not contemplate compensating water carriers who have made poor business decisions at the expense of the rate-paying public.

The Division will modify this program if it deems it necessary.

Accordingly, it is

(16701) ORDERED:

That the “Marine Diesel Price Emergency Surcharge Program” detailed below will be implemented on September 1, 2001.

“Marine Diesel Price Emergency Surcharge Program”

Available To:

A person or entity licensed under Rhode Island General Laws §§39-3-3, 39-3-3.1 or 39-3-4 to perform as a “common carrier of persons and/or property upon water between termini within the state.”

Application of surcharge:

If a person or entity is authorized to implement a surcharge it must be applied non-discriminatorily to all persons and vehicles carried.

⁴ R.I.G.L. §39-12-13(a)

Application for authorization of a surcharge:

When the average retail cost of marine diesel in Rhode Island exceeds one dollar and twenty (\$1.20) cents per gallon, a water carrier may request authorization to impose a surcharge.

A water carrier requesting authorization to impose a surcharge must demonstrate a nexus between the actual price that it has paid per gallon of marine diesel and its operations costs over the thirty (30) day period on which it is basing its request for a surcharge.

The water carrier must submit actual invoices, including a price per gallon assessment, for the marine diesel it purchased during the period, the number of passengers and vehicles it carried, the number of trips it made, and the number of gallons of marine diesel it used per trip. This information must be delivered to the Division by the fourth Tuesday of the month before the calendar month for which the water carrier is requesting authorization to impose a surcharge.

The Division will notify the entity within five (5) business days after receipt of all submitted data as to whether a surcharge may be collected, and what amount of surcharge the water carrier is authorized to collect.

If the water carrier chooses to impose the surcharge, it must do so no later than three (3) days from the date on which it was notified that the Division had authorized the imposition of a surcharge.

The authorization of the surcharge will expire thirty (30) days after the water carrier has begun collecting the surcharge.

Amount of surcharge:

The amount of the surcharge will be determined based on evidence presented by the water carrier. However the amount of the surcharge will not exceed fifty (\$0.50) cents per person or vehicle carried.

The following method will be used to calculate the average retail price of marine diesel in Rhode Island:

The average retail price of marine diesel in Rhode Island will be determined by the Division based on the retail price of “over the road” diesel which is posted on the Rhode Island portion of the AAA of Southern New England’s web-site on the first and third Wednesday of each month.

The Division will determine the retail price of marine diesel on each of those days by first subtracting from this price of “over the road” diesel the amount of federal and state taxes which are assessed on each gallon which are not assessed on marine diesel⁵. Then, the

⁵ Currently, twenty-four and four-hundredths (\$0.244) cents in federal taxes and twenty-eight (\$0.28) cents in Rhode Island taxes are assessed on each gallon.

Division will adjust that figure to include the Rhode Island sales tax that is assessed on marine diesel⁶.

Notification to regulated water carriers of activation of program:

1. On the fourth Monday of each month preceding a month in which the Division will announce the activation of the program, the Associate Administrator of the Motor Carrier's Section of the Division will issue an Administrative Order stating:
 - a) The retail price of marine diesel in Rhode Island on the first and third Wednesday of each month as determined by the Division using the above stated method;
 - b) The average retail price of marine diesel in Rhode Island, based on these two data points; and,
 - c) The activation of the program for the following calendar month.
2. The Associate Administrator of the Motor Carrier's Section of the Division will cause this administrative order to be posted on the Division's web-site on the day it is issued, where it will remain at least until the expiration of the month to which it relates.
3. The Associate Administrator of the Motor Carrier's Section of the Division will cause a message, announcing this administrative order, to be recorded and accessible by telephone on the day such administrative order is issued.

Notification to customers of surcharge:

A water carrier who receives Division authorization to implement a surcharge must conspicuously post a notice stating that a marine diesel surcharge is in effect pursuant to R.I.G.L. §39-12-13(c) which must also state the amount of the surcharge that has been authorized. This notice must also state the date on which it began collecting the surcharge and the date on which it will stop collecting the surcharge. The Associate Administrator of the Motor Carrier's Section of the Division will make sample notices available.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND, THIS 30th DAY OF AUGUST, 2001.

Patricia F. McVicker, Esq.
Hearing Officer

APPROVED:

Thomas F. Ahern
Administrator

⁶ Currently, Rhode Island sales tax is assessed at a rate of seven (7%) percent.