

Order 18247 - RI Taxicab Industry: Petition to Amend Emergency Surcharge

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

In Re: Request for increase in fuel surcharge for taxicabs

Docket: 04 MC 122

Hearing Dates: March 22, 2005
November 23, 2004
July 30, 2004

REPORT AND ORDER

On June 15, 2004, several members of the Rhode Island taxicab industry petitioned the Administrator of the Division of Public Utilities and Carriers (Division) to amend the taxicab gasoline price emergency surcharge as provided for in Rhode Island General Laws §39-14-2.2 (e). The petitioners requested the Administrator increase the surcharge from twenty-five cents (\$0.25) for all metered fares up to and including ten dollars (\$10.00), and fifty cents (\$0.50) for all metered fares exceeding ten dollars (\$10.00) to a new surcharge level of one dollar (\$1.00) for every metered fare over four dollars (\$4.00).

Following notification to the public via a display advertisement which appeared in the Providence Journal on Tuesday, July 13, 2004, the Division conducted a public hearing on this matter on July 30, 2004 at 9:00 am.

APPEARANCES:

William K. Lueker, Esq. for the Advocacy Section of the Division

Paul A. Desrosiers, Petitioner, *pro se*

In Division Order #16700, the Division established the “Gasoline Price Emergency Surcharge Program – Taxicabs and Limited Public Motor Vehicles” [“Program”]. This program dictated that when the price of regular gasoline in the State of Rhode Island exceeds one dollar and fifty cents (\$1.50) per gallon, the Division will authorize a surcharge to be charged to customers utilizing

taxicabs and limited public motor vehicles. The surcharge was set at twenty-five cents (\$0.25) per fare when the meter shows a fare of ten dollars (\$10.00) or less. The surcharge would increase to fifty cents (\$0.50) when the meter shows a fare of more than ten dollars (\$10.00). The Program came into effect and was implemented commencing September 1, 2001.

In the instant docket, three hearings were held at the Division's offices located at 89 Jefferson Boulevard in Warwick, Rhode Island. At the first hearing, the Advocacy Section of the Division presented Mr. David R. Stearns as its first witness. Mr. Stearns is employed by the Division as a Public Utilities Analyst V. Mr. Stearns testified that he appeared before the Division to offer testimony on August 30, 2001, when the initial Program was being considered by the Division. Mr. Stearns identified and authenticated Advocacy Section Exhibit #1 which is a photocopy of the prefiled testimony of Mr. Stearns in the instant matter. Without objection, the exhibit was admitted as a full exhibit. Mr. Stearns testified that he adopted the contents and testimony contained within Advocacy Section Exhibit #1 as part and parcel of his testimony at the hearing. Mr. Stearns' prefiled testimony explains the rationale behind his recommendation as to how the Program should be amended. Mr. Stearns stated that, "To determine the proper fuel surcharge that would be necessary to make the taxicab owners whole, I prepared a schedule DRS I, submitted with this (prefiled) testimony. Schedule DRS I incorporates the following information from the Motor Carrier Section and from other sources and assumptions:

- Statistics for five of the vehicle models most widely used as taxis, Ford Crown Victoria, Mercury Grand Marquis, Toyota Camry, Dodge Intrepid, and Dodge Caravan, indicate that the average miles per gallon rating for in-city driving is 19 MPG;
- The distance of the average Rhode Island **taxi** fare is 4 miles;
- Current rates were calculated using \$1.50 per gallon as the average gasoline price. This was the average price at the time of the most recent fare increase approved in Docket No. 02 MC 114 filed in September 2002; and
- A metered four-mile trip would result in a charge of at least \$11.75, resulting in surcharge of \$0.50 per trip under the current Program.

Mr. Stearns' prefiled testimony continues as follows:

"Given that the average metered city fare is 4 miles and the average taxicab realizes 19 miles per gallon in city driving, one gallon of gasoline yields an average of 19 divided by 4, or 4.75 fares (in my calculations I have rounded the number of fares downward to 4, to the benefit of the taxicab association). Four fares would entitle the taxicab owner to collect four \$0.50 surcharges, or \$2.00, for each gallon of gasoline used. The current rates include \$1.50 for fuel expense; the four surcharges per gallon total \$2.00. This means that, given the best-case scenario, when the surcharge is in effect the **taxi** owner has the potential to recover up to \$3.50 per gallon of gasoline."

Mr. Lueker asked the question, "Does the Division recommend any change in the . . . [Program] at this time?" Mr. Stearns replied "The Division recommends that the current level of surcharge when the average price of gasoline in Rhode Island exceeds \$1.50 per gallon, i.e. \$0.25 for a metered fare of less than \$10.00, and \$0.50 for a metered fare of \$10.00 or more, be retained. The Division further recommends that, for each additional two dollars per gallon the average price of gasoline increases above \$1.50 per gallon, the surcharge be increased by \$0.25 for metered fares under \$10.00, and \$0.50 for metered fares of \$10.00 or more. For instance, if the average price per gallon of gasoline at the pump in Rhode Island exceeds \$3.50, surcharges in the two categories would be increased to \$0.50 and \$1.00 per metered fare, respectively. At \$5.50 per gallon, the surcharges would be \$0.75 and \$1.50, respectively." ^[1]

The second witness to testify in this docket was Mr. Terrence Mercer. Mr. Mercer is the Associate Administrator for the Motor Carrier Section of the Division. Mr. Mercer testified that part of his duties include reviewing the rate structure and operating environment of certain regulated motor carrier industries. Mr. Mercer stated that he had occasion to construct some comparisons of current rate structures and fuel surcharges for Rhode Island taxicabs as opposed to taxis in other major areas. Mr. Mercer stated that he relied on recent information published in the USA Today newspaper listing Schaller Consulting as its source. The article is entitled "How City Taxicab Fares Compare." The study listed Honolulu, Hawaii as having the highest fare for a five (5) mile ride with five (5) minutes of waiting time with a total fare of fifteen dollars and ninety-five cents (\$15.95). The lowest fare listed in said study was New Orleans at nine dollars and eighty cents (\$9.80) for the same trip. Mr.

Mercer testified that he conducted research to determine where Rhode Island taxicab rates ranked in comparison to those areas listed in USA Today. Referring to Advocacy Section Exhibit #2, Mr. Mercer testified that “the current Rhode Island taxicab rates, which are indicated in the grey shaded box at the top of Advocacy Section Exhibit #2, indicate that the current Rhode Island **taxi** rates are two dollars and fifty cents (\$2.50) for the initial drop charge, and in **taxi** language, that means the initial one/tenth of a mile costs two dollars and fifty cents (\$2.50), and for each additional tenth of a mile thereafter, the current rate is twenty-five cents (\$0.25). There’s also a twenty-five dollar (\$25.00) an hour waiting time. What that means, if you figure in the drop charge for the first one/tenth of a mile at two dollars and fifty cents (\$2.50), and the remaining nine/tenths of that first mile at twenty-five cents (\$0.25) each, the first mile in a Rhode Island taxicab is four dollars and twenty-five cents (\$4.25). Each successive mile after that would be two dollars and fifty cents (\$2.50), twenty-five cents (\$0.25) per tenth of a mile. So, for a five-mile fare in Rhode Island, that also included five (5) minutes of waiting time, which is, again, fairly typical, would be sixteen dollars and thirty-five cents (\$16.35), and currently, the fuel surcharge of fifty cents (\$0.50) for above a ten dollar (\$10.00) fare would bring you to a total of sixteen dollars and eighty-five cents (\$16.85) for that typical ride in Rhode Island.”^[2] Mr. Mercer rounded waiting time to the nearest nickel. Mr. Mercer concluded that this rate would be higher than any of the rates reflected in the USA Today article.

Mr. Mercer also identified and authenticated Advocacy Section Exhibit #3 which is a comparative gasoline price list of major metropolitan areas in the United States. The source of the information was compiled by the American Automobile Association (Southern New England Branch) (“AAA”). Mr. Mercer indicated that Providence, Rhode Island’s average gasoline price as of July 22, 2004 was \$1.97 per gallon. Mr. Mercer explained that in determining whether the Division will authorize a gasoline price emergency surcharge, the Division refers to the average price of gasoline as determined by “AAA.” Mr. Mercer stated that “Currently, the ... [Program] requires (use of) the average gasoline prices on the “AAA” website on the first and third Wednesday’s of the month. So, this would be the number that would be listed on the “AAA” website.”^[3]

Mr. Mercer agreed with the recommendation that the fuel surcharge should be increased if the average price of gasoline reached a certain point. Mr. Mercer’s recommendation indicates that the

surcharge for the threshold amount of one dollar and fifty cents (\$1.50) per gallon should remain the same; however, Mr. Mercer recommended that when the average price of gasoline reaches two dollars and fifty cents (\$2.50) per gallon, an incremental increase to fifty cents (\$0.50) should apply for fares of ten dollars (\$10.00) or less and to one dollar (\$1.00) for fares over the amount of ten dollars (\$10.00).

Mr. Mercer stated that although he agreed with the recommendation of Mr. Stearns, he believed it would be important to take into account the actual workings and mechanics of the taxicab industry. Mr. Mercer stated that on several occasions, taxicabs transport passengers on one-way trips and do not receive a fare for its return trip to its base. Mr. Mercer stated that Mr. Stearns' testimony describing the typical number of 4-mile taxicab trips per gallon assumed that the taxicab was occupied by a paying passenger during all miles traveled. Mr. Mercer stated that based upon his experience and knowledge of the taxicab industry, it is more often the case that when a taxicab picks up a fare/passenger that the trip will include a considerable amount of time traveling to and from a destination without a passenger occupying the vehicle and without being compensated for operating time and/or mileage. The Hearing Officer tends to agree with the analysis presented by Mr. Mercer and finds his recommendation to be reasonable.

Mr. Mercer indicated that the Division requires each taxicab certificate holder making use of the surcharge to post a sign in his or her taxicab indicating that the Program is in effect. The sign must be posted in a conspicuous place in the taxicab or limited public motor vehicle as well as in the offices of the taxicab or limited public motor vehicle businesses. Mr. Mercer stated that this has been the rule since the Division ordered so in September of 2001.

On November 23, 2004, the second day of hearings in this docket, Mr. Stearns was recalled by the Advocacy Section of the Division to supplement his prior sworn testimony and to introduce an additional exhibit identified as Advocacy Section Exhibit #5. Mr. Stearns testified that he wished to supplement his previously filed pre-hearing testimony with an additional schedule identified as Schedule DRS IA. Mr. Stearns testified:

“The primary reason for incorporating this supplemental testimony was that I originally was given information from the Motor Carriers Section that the average **taxi** fare was approximately 4 miles. I didn't take into consideration the possibilities that at times the **taxi**

has no fare and the driver, in fact, may be returning to a point where he will pick up another fare or between fares. So, in order to clarify, I recalculated the schedule with the assumption that the average fare was, again, 4 miles, in addition to that for every 4 miles driven, 2 miles were driven without a fare, and calculated, or recalculated, what the fuel emergency surcharge might be in that case. While it doesn't change the current surcharge rate, in other words, the **taxi** drivers under the new assumptions are still covered up to a cost of \$3.00 per gallon, so, unless the price of gasoline exceeded \$3.00 per gallon, I would not recommend any change in the surcharge unless the **taxi** industry is able to demonstrate to the Division that in fact these numbers are still too lenient.”^[4]

Mr. Stearns continued:

“And I have also been lenient toward the **taxi** industry with some of the other figures and data in the calculations, in that assuming that each gallon of gasoline would afford four 4-mile trips, the average mile for the most popular types of automobiles used as taxis is about 19 miles per gallon city driving. I used city driving rather than highway, again, to accommodate the **taxi** industry. That being said, assuming that the average fare is 4 miles, the **taxi** drivers should realize almost 5 trips per gallon with a 19-mile per gallon automobile. In other words, it came to 4.75...I rounded it down to 4, 4 trips per gallon to err on the side of conservatism.”^[5]

Mr. Stearns indicated that he calculated the 19 miles per gallon figure by referencing the most popular vehicle models used in the taxicab industry and attached their average city mileage.

Referring Advocacy Section Exhibit #5, Mr. Stearns stated that he was offering testimony to supplement testimony previously given based upon the assumption that a full 1/3 of the time a **taxi** is being driven, there is no fare (passenger) on board, as in the case of a return trip when there might be no passenger on board.^[6]

Based upon the assumption that there are times when taxicabs are without a paying customer, Mr. Stearns altered his position that the average fare for a taxicab trip would increase from 4 miles to 6 miles. Mr. Stearns stated “Increasing the average miles – per – fare by this 50%, the average **taxi** would realize 1.36667 fares per gallon of fuel that is rounded down to 3 in my calculation further benefiting the **taxi** industry.” When asked by Mr. Lueker whether the recommendation would change given the calculated results on Schedule DRS IA (Advocacy Section Exhibit #5), Mr. Stearns responded, “If the **taxi** industry is able to demonstrate as much as 1/3 of the fuel is consumed with no fare on board, it is possible that the previous recommendation could be revised to accommodate that change.” Ultimately, Mr. Stearns indicated that the Division would then recommend that the current surcharge level be retained. That is, when the average price of gasoline in Rhode Island exceeds \$1.50

per gallon, \$.25 for a fare of \$10.00 or less and \$.50 for fares of more than \$10.00, and that, for each additional \$.50 per gallon the average price of gasoline increases above \$1.50, the surcharge would be increased by \$.25 for fares \$10.00 and under and \$.50 for fares of more than \$10.00. For instance, if the average price of gasoline at the pump exceeds \$3.00, surcharges in the two categories would be increased to fifty cents (\$.50) and one dollar (\$1.00) per fare, respectively. At four dollars and fifty cents (\$4.50) per gallon the surcharges would be seventy-five cents (\$.75) and one dollar and fifty cents (\$1.50), respectively.

On cross-examination by Paul A. Desrosiers, President of Big Daddy's **Taxi** Service, Inc., Mr. Stearns indicated that the 4-mile per fare "average" was provided to him by the Motor Carriers Section of the Division. Mr. Stearns indicated that this average 4-mile fare was extrapolated from prior dockets involving the taxicab fuel emergency surcharge matters. When pressed by Mr. Desrosiers as to the source of information from which he based the 19-mile per gallon figure Mr. Stearns replied "I got the information from the Motor Carriers Section regarding the average fare. I got the EPA's numbers from mileage in these particular vehicles...that, again, the Motor Carriers (Section) told me were the most popular models to be used for taxicabs. I used all the actual information available to me. What I have assumed is that perhaps, there is not always a fare in the taxicab. Perhaps two-thirds or one-third of the time there is no fare."^[7] Mr. Stearns stated that he regarded the figures and estimates prepared by the Environmental Protection Agency regarding mileage of certain vehicles as being reliable. Mr. Stearns stated "I'm assuming the EPA numbers for mileage are accurate."^[8]

Finally, Mr. Stearns stated that he adopted Advocacy Section Exhibit #5 entitled "Supplemental Testimony and Exhibit of David R. Stearns" as part and parcel of his sworn testimony.

The next person to testify at the November 23, 2004 hearing was Mr. Mercer. He stated that there are approximately 220 vehicles currently registered with the Division for use as taxicabs or limited public motor vehicles. Mr. Mercer calculated that anywhere from 117 to as many as 130 of these vehicles included the make and models addressed by Mr. Stearns in his testimony. These models include, Mercury Grand Marquis, Ford Crown Victoria, Dodge Intrepid, Dodge Caravan and Toyota Camry. Mr. Mercer indicated that he advised Mr. Stearns that the "average 4-mile **taxi** fare

was a pretty good benchmark for the average...”^[9] Mr. Mercer stated that he extracted information from a number of sources in determining the 4-mile average. Mr. Mercer stated that this information was derived from conversations with members of the taxicab industry over the last couple of years and from different dockets that have been adjudicated or have run their course where relevant testimony has been raised regarding the issue. Mr. Mercer stated, “we have a requirement that a 3-mile trip be listed on the side of the vehicle, denoting...a somewhat typical fare so passengers would know what a typical fare would cost.” Mr. Mercer described the mechanics of the Program. He explained that when the average price of regular gasoline exceeds \$1.50 per gallon, taxicab certificate holders are authorized to charge passengers the appropriate surcharge. Mr. Mercer stated that details regarding the Program are posted on the Division’s Web site and any certificate holder who plans to charge the surcharge is required to have on display in the vehicle a placard to notify passengers accordingly. Mr. Mercer explained, “It’s merely a sheet of paper, that we will laminate upon request, to place in the vehicle so that the **taxi** passenger . . . will understand that there is an authorized surcharge above and beyond what the meter reads.”^[10] Mr. Mercer explained that taxicab certificate holders seeking to impose the authorized surcharge must report to the Motor Carrier clerk’s office to obtain the placard. Mr. Mercer stated the placards must be renewed for each month the surcharge is authorized. Mr. Mercer indicated that not one taxicab certificate holder had requested such a placard within several months of the November 2004 hearing.

Asked whether he knew why only one taxicab certificate holder appeared for the hearing in the instant docket, Mr. Mercer replied, “The only inference I can make is that it’s not an important situation for them.”

Mr. Mercer continued, saying, “I do know that prior to the first hearing in this docket, I contacted Mr. Greg Manning, General Manager of Airport **Taxi**. He additionally serves as an official, I believe he’s the President, of the Rhode Island **Taxi** Owners Association. . . I called him to see if he or his organization were interested in becoming a party along with the Petitioners or if they had any desire to be involved in it. He indicated that he personally did not think that increasing the surcharge was warranted, but that he would run it by his members. He got back to me within a day or two and told me that he had discussed (the issue) with the **Taxi** Owners Association and none of them wished

to move forward with a request to increase the fuel surcharge.”^[11]

Mr. Desrosiers next questioned Mr. Mercer about Mr. Mercer’s testimony regarding the “waiting time” calculation for taxicabs in Rhode Island. Mr. Mercer reiterated that the current allowable “waiting time” rate is twenty-five dollars (\$25.00) per hour. Mr. Mercer further stated that Rhode Island **taxi** rates with waiting time taken into consideration are the highest in the nation relative to the rates listed in the USA Today newspaper article.^[12]

Next, a lengthy discussion ensued between Mr. Lueker and Mr. Desrosiers regarding whether information extrapolated from the taxicab annual reports would shed any light on the issue of whether the Program should be amended, and how. After much discussion, Mr. Lueker and Mr. Desrosiers agreed that Mr. Desrosiers would file a pre-filed testimony package, which would include photocopies of one year of his taxicab company’s driver logs. The Hearing Officer announced, “You can come up with the package. You are the Petitioner, and I can assume that all of these other people, taxicab operators, owners, lessees, employees, whatever they are, are now out...are not involved in this case since they have failed to participate at this hearing or otherwise contact the Division. Mr. Desrosiers is the sole Petitioner in this case, I will give you as much time as you need to prepare your package and to convince me that the . . . [Program] should be changed.” Mr. Desrosiers agreed.

At the conclusion of the November 23, 2004 hearing, the parties agreed that Mr. Desrosiers would submit a data request to the Division so that annual reports and drivers logs could be compiled and delivered to him sometime in early January 2005.

On March 22, 2005, the Division convened a third hearing regarding the Petitioner’s request.

Mr. Desrosiers stated at the outset of the hearing that he had faxed photocopies of several pages of pre-filed testimony to Mr. Mercer on March 21, 2005. At the March 22, 2005 hearing, Mr. Desrosiers produced photocopies of several receipts for gasoline used in his taxicab. The receipts are dated for various dates in December of 2004. The 6-page document depicting photocopies of the gasoline receipts was admitted as Petitioner’s Exhibit A. Mr. Desrosiers also identified Petitioner’s Exhibit B as a full-page document, which depicts mileage readings for taxicab service rendered by Big Daddy’s **Taxi** Service, Inc. from June 6, 2004 though October 31, 2004. Petitioner’s Exhibit C is a similar set of documents for taxicab service provided by Big Daddy’s **Taxi** Service, Inc. from the

period November 30, 2004 through December 31, 2004. Referring to Petitioner's Exhibit B and C, Mr. Desrosiers testified that the figures depict actual miles traveled, revenue received for each calendar day, the Program surcharge as it presently exists, and the projected surcharge and difference when considering Mr. Desrosiers' requested surcharge level. Referring to the entry dated November 11, 2004 on Exhibit C, Mr. Desrosiers argued that he felt these numbers were important to refute the opinion offered by Mr. Stearns that one-third of the time a taxicab is being operated, there would be no passengers in the taxicab and that the taxicab would be occupied two-thirds of the time. Mr. Desrosiers stated, "This dollar a mile, based on the \$2.50 a mile shows only that in actuality, in my case, only 40% of the miles are loaded miles. In other words, only 40% of the time there are passengers actually in the cab generally as opposed to his (Mr. Stearns) theoretical 65%." Mr. Desrosiers continued, "The revenue (in this example) would be raised .03 per mile to \$1.09. The projected surcharge would come out to \$9.50 added revenue which would be a difference of \$4.17 per day, the revenue would bring in." Mr. Desrosiers added, "Now I anticipated the fact that because this is just my car, that there could be an argument that my car is different than other cars."^[13]

The next document Mr. Desrosiers referred to was Petitioner's Exhibit D, entitled "Revenue Per Mile As Reported By Rhode Island **Taxi** Companies Via Annual Reports for 2004." This document indicates that the average revenue per mile for statewide **taxi** service is \$.93 per mile.

Next, Mr. Desrosiers referred to Petitioner's Exhibit E, a photocopy of a document entitled, "Fuel Surcharge Hearing Docket #04-MC-122." Mr. Desrosiers indicated that during the course of his perusal of the annual reports of the various taxicab certificate holders, he omitted the reports of Patriot **Taxi** and Corporate **Taxi** because he believed the numbers prepared and listed by these companies were inaccurate and perhaps fraudulent.

Mr. Desrosiers next presented a document marked as Petitioner's Exhibit F which is a list of odometer readings, gallons used and miles driven for his cab company from the dates of November 23, 2004 through January 1, 2005. Referring to this document, Mr. Desrosiers stated, "I saved, and put the mileage on every gas receipt I received while the cab was operating, so that it would give us an accurate mile rate on the miles per gallon on what my **taxi** runs. It listed a low of 9 miles on November 23, 2004 to a high of 17 miles per gallon on December 16, 2004. From my expertise in

driving the car, I can tell you that the difference in the figures are the lowest figures for the days that I just ran in the city, was all city work. For some reason, I never left the city limits. The 17 miles per gallon figure was days when I practically, every single one of my jobs was out of town, a couple of Logan Airport, stuff like that. So the gallon per mile rate changes dramatically depending on highway or city miles. But, the average of all of these days at the very bottom is 12.36 miles per gallon.”^[14]

Mr. Desrosiers stated that he disagreed with Mr. Stearns’ calculation as to how the average number of miles a Rhode Island taxicab is able to travel per gallon of gasoline. Mr. Desrosiers stated the Mr. Stearns did not take into consideration idling of the taxicab, whether the taxicab was parked at a stand when it was cold or hot leaving the car running, or the different weights of the vehicles and its occupants. Mr. Desrosiers also testified that Mr. Stearns failed to take into consideration the style of driving of each **taxi** driver, whether it be slow, stop-and-go, or fast driving.^[15]

Mr. Desrosiers asked the Hearing Officer to reject the testimony of Mr. Stearns because Mr. Stearns’ opinion with regard to miles per gallon and other factors leading up to his recommendation for a Program revision were based upon information he relied upon as being accurate as supplied by the Motor Carrier’s Section of the Division.

Mr. Desrosiers also refuted that the average taxicab fare averages 4 miles per trip. Mr. Desrosiers made this statement based upon his own personal experience in the taxicab business. Mr. Desrosier stated that, in his opinion, the average metered fare would be closer to 2 miles.

On cross-examination, Mr. Lueker inquired as to the actual miles driven by Mr. Desrosiers in his taxicab since it was initially placed on the road. The following dialogue took place at the hearing:

Mr. Lueker:	Q.	“So do you agree that when you put that car in service as a taxi it was about 100,800 miles?”
Mr. Desrosiers:	A.	“Yes.”
Mr. Lueker:	Q.	“And on January 1, 2005, the odometer was 132,000 miles?”
Mr. Desrosiers:	A.	“Yes, here it is 132,707.”
Mr. Lueker:	Q.	“And subject to check, the difference was about 29, 876 miles?”
Mr. Desrosiers:	A.	“Yes.”
Mr. Lueker:	Q.	“And again, subject to check, would you agree that dividing 29,876 by 2,433 . . . [trips] would give you an average of a little over 12 miles per trip?”
Mr. Desrosiers:	A.	“No.”
Mr. Lueker:	Q.	“Why not?”

- Mr. Desrosiers: A. "Because there are miles that are put on that are not official miles that are not revenue producing miles."^[16]
- Mr. Lueker: Q. "But now you'll agree though, that it would be fair for the Division to look at the total mileage where Rule G-15 says taxicabs can only be used as such and cannot be used as personal vehicles?"
- Mr. Desrosiers: A. "Well, first of all, I am not testifying that the miles in between are not business related in some way. OK, there are times that I have gone from Providence to Rainbow Taxi in Newport for an (automobile) part, or to talk to, to have the mechanic look at the car. That's not actual personal use, but it's not use that I put down on the trips."^[17]
- Mr. Lueker: Q. "I believe you testified earlier that loaded miles were—about 40% of the miles per trip were loaded miles?"
- Mr. Desrosiers: A. "That's right."
- Mr. Lueker: Q. "And just to try to follow my logic on this. If you have 29 almost 30,000 miles racked up on your odometer, on a taxicab that's used in a taxicab business and 2,433 paying trips, that would work out to an average of 12.2 racked up on the odometer per paying trip. And if you figure each trip only 40% or so is a loaded mile, where you are actually getting revenue from it that's 40% of 12.2, which would be something like 4.8 miles, loaded miles per trip. Do you follow what I am saying?"
- Mr. Desrosiers: A. "I am following the formula that you are using but the formula isn't an accurate formula."^[18]

Mr. Lueker also inquired about the make, model, age and fuel efficiency of Mr. Desrosiers' taxicab. The vehicle is identified as a 1995 Ford Crown Victoria.

Mr. Desrosiers asserted that his 9-year-old vehicle was equally as fuel efficient as the newer taxicabs on the road in Rhode Island. Additionally, Mr. Desrosiers indicated that his taxicab provided service to passengers residing in "urban and suburban areas" within certain territories in Rhode Island. Mr. Desrosiers voiced a blanket objection to Mr. Stearns' recommendation for amending the Program because he believed Mr. Stearns' conclusions were based upon theoretical numbers and unreliable data supplied to him by Mr. Mercer of the Motor Carrier Section of the Division. Mr. Desrosiers believes that Mr. Stearns' recommendation, as well as Mr. Mercer's supplied facts, should be disregarded since Mr. Desrosiers produced evidence of actual mileage, logs, readings and other documentation for his own taxicab company which he claimed to be more reliable. Mr. Desrosiers wished to discredit the Advocacy Section's numbers and calculations and alleged that the figures do not comport with the numbers and calculations derived from Mr. Desrosiers' research and presentation concerning facts of his own company. Mr. Desrosiers stated, "I believe it's very fair to

infer that my operation is an average operation. Again, I think the argument here is theoretical application as opposed to actual application.”^[19] Finally, Mr. Desrosiers’ petition requested that the Program be amended to provide for a surcharge of \$1.00 for every metered fare over \$4.00.

Mr. Lueker summarized that it has been the Advocacy Section’s position from the beginning in this docket that the existing Program is adequate. He stated that there is no reason or indication that the Program needs to be changed or modified at all. Mr. Lueker stated the reason these hearings were held was because the Division received approximately 20 petitions from various members of the **taxi** industry requesting that the current Program be modified. Mr. Lueker noted that the signatories to the individual petitions failed to show one iota of interest during any of the proceedings. Moreover, no “Petitioner” appeared at any of the hearings except for Mr. Desrosiers.

FINDINGS

After a careful review of the record in this docket, the Hearing Officer makes the following findings:

1. That the information provided to Division Rate Analyst, David R. Stearns, concerning the average metered **taxi** fare and the average mile per gallon figures supplied by the Motor Carriers Section of the Division are reasonable and reliable.
2. That the facts and evidence presented by the sole Petitioner, Paul A. Desrosiers, do not represent a thorough analysis of the taxicab industry as a whole in Rhode Island.
3. That only one Petitioner appeared to offer testimony in this docket, which causes the Division to infer that the taxicab industry as a whole is not concerned with a modification of the present Program.
4. That only a handful of the **taxi** companies licensed by the Division have even requested authorization to assess the gasoline price emergency surcharge within the last 2 years.
5. That the Division accepts and adopts in part the recommendation of Rate Analyst Stearns and Associate Administrator Mercer.

Accordingly, it is

(18028) ORDERED

That the Gasoline Price Emergency Surcharge Program – Taxicabs and Limited Public Motor Vehicles, established in Report & Order #16700 shall be amended as follows:

1. For the purposes of this Program, the average price of regular gasoline in the State of Rhode Island shall be determined by the Division by averaging the price of regular gasoline in the state as posted under “Rhode Island” at the Web site www.aaasne.com on the first and third Wednesdays of each month.
2. When the average price of regular gasoline in the state is determined to exceed one dollar and fifty cents (\$1.50) per gallon, the Division shall authorize a surcharge. The surcharge shall be twenty-five cents (\$0.25) per fare when the meter shows a fare of ten dollars (\$10.00) or less and fifty cents (\$0.50) per fare when the meter shows a fare of more than ten dollars (\$10.00). The Division further orders that for each additional one dollar (\$1.00) per gallon that the average price of gasoline exceeds the one dollar and fifty cent (\$1.50) per gallon threshold, the surcharge shall be increased by twenty-five cents (\$0.25) for metered fares ten dollars (\$10.00) or less, and by fifty cents (\$0.50) for metered fares of ten dollars (\$10.00) or more. For example, when the average price of regular gasoline in the state is determined to exceed two dollars and fifty cents (\$2.50) per gallon, the authorized surcharge shall be fifty cents (\$0.50) for metered fares ten dollars (\$10.00) or less and one dollar (\$1.00) for metered fares of more than ten dollars (\$10.00).
3. On the fourth Monday of each month preceding a month in which the Division will authorize a surcharge, the Associate Administrator of the Motor Carriers Section of the Division will issue an Administrative Order stating:
 - a. The price of regular gasoline in the state as posted under Rhode Island fuel prices on the AAA of Southern New England’s Web site on the first and third Wednesday of each month;
 - b. The average of the cost of regular gasoline based on these two data points; and,
 - c. The authorization of a surcharge amount for the following calendar month.

4. The Associate Administrator of the Motor Carriers Section of the Division will cause a notice of the surcharge amount to be posted on the Division's Web site by the fourth Monday of each month preceding a month in which the Division will authorize a surcharge, where it will remain at least until the expiration of the month to which it relates.
5. In those months when a surcharge is authorized, all taxicabs and limited public motor vehicles wishing to assess said surcharge must conspicuously post an official notice of the surcharge in every vehicle which operates during that month. The Associate Administrative of the Motor Carriers Section of the Division shall make such notices available.
6. The authorization of the surcharge will expire on the last calendar day of the month for which it is authorized.
7. The application of the surcharge is voluntary. However, if a person or entity elects to implement the surcharge it must be applied non-discriminatorily to all persons carried.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND, THIS 20TH DAY OF MAY 2005

David J. Gentile, Esq.
Hearing Officer

APPROVED:

Thomas F. Ahern
Administrator

[1] Advocacy Section Exhibit #1

[2] July 30, 2004 Transcript at Pg. 18

[3] Transcript at p. 21

[4] November 23, 2004 hearing Transcript at Pg. 9

[5] November 23, 2004 hearing Transcript at Pg. 11

- [6] See Advocacy Section Exhibit #5
- [7] November 23, 2004 hearing Transcript at Pg. 40
- [8] November 23, 2004 hearing Transcript at Pg. 41
- [9] November 23, 2005 Transcript at Pg. 62
- [10] November 23, 2004 Transcript at Pg. 65
- [11] November 23, 2004 Transcript at Pg. 69
- [12] November 23, 2004 Transcript at Pg. 81 be affirmed
- [13] March 22, 2005 Transcript at Pg. 14
- [14] March 22, 2005 Transcript at Pg. 22
- [15] March 22, 2005 Transcript at Pg. 24
- [16] March 22, 2005 Transcript at Pg. 37
- [17] March 22, 2005 Transcript at Pg. 38
- [18] March 22, 2005 Transcript at Pg. 40
- [19] March 22, 2005 Transcript at Pg. 66

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