

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

In Re: Towing Industry Emergency Fuel Surcharge – Request
 For Increase

Docket: 04 MC 123

Hearing Date: July 30, 2004

REPORT AND ORDER

On June 18, 2004, the Rhode Island Public Towing Association (“Petitioners”), by and through counsel, Albert A. DiFiore, Esq., petitioned the Administrator of the Division of Public Utilities and Carriers (“Division”) to increase the towing emergency fuel surcharge as provided for in Rhode Island General Laws §39-12-13. The Petitioners request that the Administrator increase the emergency fuel surcharge from fifty cents (\$0.50) per tow for any month when the average price of gasoline exceeds \$1.50 per gallon to \$1.50 for all tows when the price exceeds the threshold.

Following notification to the public via a displayed 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 11:00 am.

APPEARANCES:

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

EVIDENCE PRESENTED

In Division Order #16699 dated August 30, 2001, the Division established the “Gasoline Price Emergency Surcharge Program for Tow Operators.” This program

dictates that when the cost 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 transportation of motor vehicles by drive-away, tow-away method. The current surcharge is set at \$.50 for each tow performed when the average price of fuel for tow trucks exceeds \$1.50 per gallon. The surcharge applies to both regular gasoline and diesel powered tow trucks. The fuel surcharge came into effect and was implemented on September 1, 2001.

In the instant docket, the Petitioners, Rhode Island Public Towing Association, failed to appear or place any evidence on the record. However, the Advocacy Section of the Division presented two witnesses as well as certain documentary evidence. The Advocacy Section 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 emergency gasoline and diesel price fuel surcharge program was being considered by the Division. Mr. Stearns submitted pre-filed testimony, which became part of the record in this docket. Mr. Stearns stated that the Administrator is authorized to impose an emergency fuel surcharge when the average price of gasoline for any month exceeds \$1.50. This authority is granted to the Administrator by the Legislature in Rhode Island General Laws §39-12-13. The current surcharge allows tow truck operators to charge a \$.50 surcharge per tow when the threshold gasoline price is realized. When asked by counsel for the Advocacy Section of the Division if he had a recommendation as to whether the fuel charge should be increased at this time, Mr. Stearns responded,

“Yes. In regard to the emergency fuel surcharge applied to the tow industry’s rates, the calculation of a reasonable surcharge is rather straightforward. The

Motor Carrier Section of the Division has informed me that members of the tow truck industry have testified in the past that the average tow requires one gallon of fuel. Thus, it follows that a \$.50 surcharge at and above an average fuel price of \$1.50 compensates the tow truck owner up to an average price of \$2.00 per gallon. The Division recommends that the emergency fuel surcharge for trucks remain at the \$.50 per tow when the average price of fuel in Rhode Island exceeds \$1.50 per gallon. However, the Division further recommends that the surcharge be increased to \$1.00 per tow when the average price of fuel thus determined exceeds \$2.00, and that surcharge be increased by \$.50 per tow for each incremental \$.50 increase of the average price of fuel, i.e., \$1.50 surcharge per tow when the average price of gasoline exceeds \$2.50; a \$2.00 surcharge per tow when the average gasoline price exceeds \$3.00 per gallon, etc.”¹

The second witness presented by the Division was Mr. Terrence Mercer, Associate Administrator for the Motor Carrier Section. Mr. Mercer indicated that in the course of his duties he had spoken with several members of the towing industry regarding rising fuel prices and possible solutions. When asked by the Hearing Officer whether he agreed with Mr. Stearns’ recommendation, Mr. Mercer responded “I think Mr. Stearns’ recommendation is definitely appropriate.”²

FINDINGS

The Hearing Officer finds that the proposal offered by the Division and as presented through its two (2) witnesses and documentary evidence to be reasonable, fair and unrefuted.

Accordingly, it is

ORDERED (18059)

That the current gasoline price emergency surcharge available to members of the towing industry under the program implemented by the Administrator pursuant to the provisions of Rhode Island General Law §39-12-13 shall be amended to the extent that when the average price of gasoline exceeds \$2.00 the surcharge shall be increased by

¹ Advocacy Section Exh. #1 at page 3.

² Transcript at p. 15.

\$.50 per tow and in \$.50 increments on each and every occasion when the average price of gasoline is increased by \$.50.

The surcharge approved herein shall remain in effect until such time as the Division establishes new uniform base rates for Rhode Island towers. New base rates will include compensation for current fuel expense and a likely annual CPI factor adjustment provision thereby negating the need for the emergency fuel surcharge approved herein.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND THIS 8th DAY OF DECEMBER, 2004.

David J. Gentile, Esq.
Hearing Officer

APPROVED BY:

Thomas F. Ahern
Administrator