

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

**In re: Rate Relief For Light and Medium
Duty Non-Consensual Tows And
Related Matters Pursuant To
R.I.G.L. § 39-12-12**

Docket No. 18 MC 94

Hearing Dates: April 27, 2018
May 4, 2021¹

REPORT AND ORDER

BACKGROUND

As of early 2015, rates for non-consensual light and medium duty tows in the State of Rhode Island had not been adjusted since 2010 for the majority of certificated tow companies.² The Rhode Island Division of Public Utilities and

¹ The Hearing Officer kept the record of this proceeding open until 4:00 p.m., Friday, May 14, 2021. This allowed interested parties to file additional written comments with the Division by close of business at 4:00 p.m. on Friday, May 7, 2021, as well as allow sufficient time for any responses to those written comments to be received and filed by the Division.

² One towing company, Safeway Auto Sales, Inc., did seek Division approval of a new proposed tariff for conducting light and medium duty non-consensual tows in early March 2015. In approving the proposed tariff, the Administrator took the unusual step of adding the following Administrator Comments:

I would like to make it clear that only ... Safeway Auto Sales, Inc., is subject to the terms, conditions and rates contained in the Settlement Agreement However, this state has for many years now had essentially uniform tariffs for non-consensual light and medium duty tows (the last such uniform rate was adopted in 2005, with no rate adjustments since about 2009). Taking that into consideration, and taking into consideration the fact that it has been about six years since the towing industry last

Carriers (“Division”) and members of the towing industry within Rhode Island recognized that rates for non-consensual light and medium duty tows within the state needed to be re-evaluated and adjusted for the benefit of both the towing industry and the public that relies on that industry.

By early 2018, the Division, at the request of members of the towing industry, had commissioned a study of non-consensual light and medium duty tow tariff structures and terms in the State of Rhode Island. Both the Division and the members of the towing industry recognized that the study would not be concluded, and its findings considered for implementation, for at least several months.³ The Administrator, recognizing that some interim relief for towers

received any rate relief, I find that the terms, conditions and rates contained in the Settlement Agreement are fair and reasonable generally, and – as approved in this Order – *might serve as a new uniform towing and recovery rate for non-consensual light and medium duty tows*. Accordingly, should other certificated towing companies elect to file an appropriate tariff for non-consensual light and medium duty tows adopting the **identical** terms, conditions and rates contained in the Settlement Agreement approved herein, *it is likely that the Division would approve such a tariff filing without need to resort to a hearing* (just as was done in this case). Naturally, those towing companies that prefer to maintain their currently approved tariffs may continue to do so. Similarly, *any towing company that wishes to seek alternative terms, rates and/or conditions (and is prepared to justify them) is, of course, free to file an individual tariff with the Division*.

See In Re Proposed Light And Medium Duty Non-Consensual Tow Tariff – 2015 in the case of Safeway Auto Sales, Inc., Division Report and Order number 21874 dated and effective April 27, 2015, in Division Docket number 15 MC 69 (**emphasis** in original; *emphasis* supplied). A handful of other towing companies subsequently took advantage of the Administrator’s offer in the Administrator Comments and proposed new tariffs with identical terms, conditions and rates, to Safeway’s in this proceeding. Those tariffs were approved.

³ As it turned out, Phase 1 of the Study was completed in October 2018, and established a baseline questionnaire, baseline assumptions, and a baseline cost

performing non-consensual light and medium duty tows would be appropriate, commenced a period of negotiations with representatives of the towing industry with a view toward arriving at some consensus on the degree of relief that would be acceptable to all parties in the interim. The Division's Associate Administrator for Motor Carriers, working with representatives of the towing industry within Rhode Island, negotiated and agreed to the terms of an interim rate structure for non-consensual light and medium duty tows in the State of Rhode Island that could be presented to the Administrator for approval and implementation.

A public hearing was scheduled for April 27, 2018, in the Division Hearing Room located at 89 Jefferson Boulevard, Warwick, Rhode Island, for this purpose; notice of the public hearing was published in the *Providence Journal* on April 16, 2018. At the April 27, 2018, hearing the Advocacy Section of the Division and members of the Rhode Island towing industry presented a signed "Consent Agreement Regarding Rates For Non-Consensual Towing And Storage Within The State of Rhode Island And Related Matters"⁴ to a Division Hearing Officer.

During the April 27, 2018, hearing, the Parties represented to the Division that once the Consent Agreement was approved by the Administrator, other tow

calculation sheet that were all used to complete Phase 2 of the Study, a detailed analysis of the costs and benefits associated with performing non-consensual towing and storage within Rhode Island. Phase 2 of the Study was completed January 31, 2020, and filed with the Division on February 11, 2020. See Advocacy Section Exhibit 1, "Non-Consensual Towing And Storage Study, State of Rhode Island, 2018-2019, Phase 2" at Section 1.0. The COVID-19 pandemic then led to a state shut-down in Rhode Island in March 2020 which delayed further actions until early May 2021.

⁴ Marked and admitted as Parties' Joint Exhibit 1 at the April 27, 2018, hearing.

companies that were not already signatories of the Consent Agreement would be allowed to sign on to the interim tariff, upon payment of the statutory filing fee, without the necessity of putting on a separate rate case, should they desire to do so. The Parties further represented to the Division that no towing company would be *required* to sign on to the interim tariff. Any company that did not like one or more of the provisions of the interim tariff had a right to either continue operating under its current tariff or file for a new tariff on its own. If any company chose the latter course, however, it would have to go through the appropriate rate case to justify its proposed individualized tariff rates.

The Division acknowledged on the record at the April 27, 2018, hearing that it realized that not all towers are the same, and that not all terms of the proposed interim tariff – nor, indeed, of any standard tariff – would work equally well for every tower. That was precisely why the Division agreed to consider an interim measure until it was possible to fully study the costs and revenues of differently situated towers in the industry so that the Division could better evaluate the proposals of each tower as to the appropriate rates for each specific tower should any tower later seek to file its own individual proposed tariff.

After listening to the comments of the signatories to the “Consent Agreement,” as well as taking public comment on the contents of the “Consent Agreement,” the Division determined that the proposed interim rates for non-consensual light and medium duty tows in the State of Rhode Island were just and reasonable, approved those interim rates pending completion of the Division’s study of towing rates, and announced its decision in a written Order.

See In Re Rate Relief For Non-Consensual Tows And Related Matters Pursuant To R.I.G.L. § 39-12-12, Division Order number 23146 dated and effective May 2, 2018, in Division Docket number 18 MC 94. That Order contained the following directive language:

1. That the proposed interim rates for non-consensual light and medium duty tows in the State of Rhode Island are just and reasonable, and should be approved.
2. That the “Consent Agreement Regarding Rates For Non-Consensual Towing And Storage Within The State of Rhode Island And Related Matters” is hereby incorporated by reference and the terms thereof attached to this Order as Attachment 1 [to Order number 23146].
3. That good cause has been shown to allow the rates set out in Attachment 1 hereto to become effective immediately upon any certificate tower paying the necessary \$50.00 filing fee and signing on to Attachment 1 [to Order number 23146], the original of which shall be maintained by the Division’s Associate Administrator for Motor Carriers for that express purpose.
4. That no tower shall be obligated to adopt the proposed interim rates for non-consensual light and medium duty tows in the State of Rhode Island; all towers have the options of remaining on their existing tariffs or filing a separate rate case in lieu of adopting the proposed interim rates approved by this Order.
5. That the Associate Administrator for Motor Carriers shall notify all certificated towers of this Order’s approval of the proposed interim rates for non-consensual light and medium duty tows in the State of Rhode Island, and invite those certificated towers to come in to the Division, review the approved interim rates, and sign on to those approved interim rates should they elect to do so.
6. That three (3) months following the filing of the Division’s completed study of towing rates, the interim rates approved by this Order shall become null and void. Within that three (3) month period, each tower which has signed on to these interim rates shall either: (1) revert back to the tariff terms that were in effect for that tower prior to its adoption of the

interim rates, or (2) file new tariff rates consistent with those developed by the Division's study of tow rates for consideration and approval by the Administrator, or (3) file its own proposed tariff rates with the Division for consideration by the Division in a rate proceeding. The three (3) month period may be extended for good cause shown by the Administrator of the Division at the discretion of the Administrator.

7. That all parties are reminded that the Division's completed study of light and medium duty towing tariff structure and terms could result in the Division finding that various components of the existing light and medium duty towing tariffs, including the interim tariff that is the subject of this Order, are either too high or too low and should be adjusted accordingly, either higher or lower, depending on the particular circumstances of each towing operation or of the industry collectively.

Shortly after Order number 23146 was approved by the Administrator, the Associate Administrator for Motor Carriers notified all certificated towers of that Order's approval of the proposed interim rates for non-consensual light and medium duty tows in the State of Rhode Island and invited those certificated towers to come to the Division, review the approved interim rates, and sign on to those approved interim rates **should they elect to do so**.

It is ordered paragraph number 6 of Order number 23146, quoted above, that is most immediately relevant in May 2021. Paragraph 6 makes it clear that the interim rate approved on May 2, 2018, by Order number 23146 was to become null and void three (3) months following the filing of the completed study of the towing industry's costs and revenues that was first initiated in early 2018. The sunset provision established by paragraph 6 could be extended "for good cause shown by the Administrator of the Division at the discretion of the Administrator." That last qualifier turned out to be very important as the rate

study was actually filed with the Division on February 11, 2020⁵, which means the interim rates should have expired on May 11, 2020. Instead, however, the country fell into the grips of the COVID-19 novel coronavirus health care emergency (pandemic), and most government operations, including those of the Division, were significantly curtailed just one month later on about March 17, 2020. This led the Administrator of the Division to conclude that the COVID-19 pandemic constituted “good cause shown” to continue the interim rates in effect until state business could resume in a more normal fashion.

The Division now considers the official filing date of the completed rate study to be the date it was offered to the Division as a full exhibit in this proceeding, that is, May 4, 2021. Accordingly, the official sunset date for the interim rates approved by the Division in this Docket by Order number 23146 would have been August 4, 2021. However, it has taken the Hearing Officer significantly longer than expected to complete his review of this matter and prepare this order approving the proposed model tariff (as modified herein below). **Accordingly, upon the recommendation of the Hearing Officer, the Administrator of the Division has concluded that this unforeseen delay constitutes “good cause shown” to extend the interim tariff until ninety (90) days from the effective date of this Report and Order.**

⁵ See Advocacy Section Exhibit 1 filed May 4, 2021, Stone Gables Engineering Services, LLC, letter dated February 11, 2020, transmitting its report “*Non-Consensual Towing And Storage Study – State Of Rhode Island – 2018-2019 – Phase 2.*”

Consequently, by the express terms of ordered paragraph number 6 of Division Order number 23146, dated and effective May 2, 2018, each tower who signed on to the interim tariff approved by Division Order number 23146 must take one of the following three (3) actions on or before ninetieth (90th) day from the effective date of this Report and Order (unless the Administrator should, “for good cause shown”, exercise her discretion to further extend the interim tariff):

- a. Revert back to the tariff terms that were in effect for that tower prior to the adoption of the interim rates; **or**
- b. File new tariff rates consistent with those developed by the Division’s study of tow rates and approved by this Order for consideration and approval by the Administrator; **or**
- c. File its own proposed tariff rates with the Division for consideration by the Division in a statutory rate proceeding.

The purpose of the May 4, 2021, hearing was, then, to consider whether to approve the proposed new model tariff for light and medium duty tows which resulted from the industry study, either as filed, or with modifications suggested by the Advocacy Section or the industry during the hearing.⁶

⁶ This proceeding is not a “contested case” within the meaning of R.I.G.L. § 42-35-1(5) because it does not determine the legal rights, duties or privileges of any specific party (i.e., a specific certificated tower). Nor is it a rulemaking proceeding within the meaning of R.I.G.L. § 42-35-1(19) because it falls within the exceptions to the definition of “rule” set out in subsections (iv), (v) and (vi) of R.I.G.L. § 42-35-1(19). The proposed model tariff sets benchmarks against which the Division intends to evaluate whether future proposed tariff filings are “just and reasonable” and thus should be approved. A tariff filing which adopts the proposed model tariff approved in this hearing is presumptively “just and reasonable” and may therefore be approved without further proceedings. A tariff filing which seeks rates or terms significantly different than those in the adopted

TRAVEL

On April 12, 2021, the Division's Associate Administrator for Motor Carriers sent a letter to each of the state's certificated towers as follows:⁷

Enclosed please find a copy of the proposed New Tariff for non-consensual towing in Rhode Island. The first page of the document explains the travel of the matter.

The proposed tariff will be reviewed by a Division hearing officer at a public hearing scheduled for May 4, 2021 at 10:00 a.m. Currently, the Division has not determined if the hearing will take place in-person, or if it will be conducted via telephone or other electronic means (or both). The Motor Carriers hearing schedule will be updated on the Division's website at www.ripuc.ri.gov when the hearing particulars are finalized.

Inasmuch as the matter will directly affect all certificated towing companies that do non-consensual towing in the state, you are encouraged to review the enclosed document carefully before the May 4th hearing. If you have any questions regarding this matter, you may email me at terry.mercer@dpuc.ri.gov .

A duly noticed hearing on the proposed model tariff was held on May 4, 2021, pursuant to the requirements of R.I.G.L. § 39-12-12, in Hearing Room A on the first floor of the Division's offices at 89 Jefferson Boulevard, Warwick, Rhode Island 02888. The following appearances were entered:

Appearances:⁸

model tariff would **not** be summarily denied but would require a more detailed justification through a utility rate case proceeding before the Division could determine whether the requested rates or terms are "just and reasonable" under the circumstances of that particular tower's costs and benefits (i.e., its unique individual circumstances regarding its costs and revenues).

⁷ See Hearing Officer Exhibit I w/enclosure, admitted in full at hearing May 4, 2021.

⁸ Due to the COVID-19 novel coronavirus medical emergency prevailing in Rhode Island, this hearing was conducted via telephone, via televised streaming service

On behalf of the Advocacy Section:
Tiffany Parenteau, Esq., Special Assistant Attorney General

On behalf of R. I. Towing, Inc.:
Mark Charleson, Esq.

On behalf of Ajax Service Corp. d/b/a Blue Sun Super Service:
Mr. Anthony J. Victoria, President, *pro se*

On behalf of Safeway Auto Sales, Inc.:
Mr. Joseph Coelho Jr., President, *pro se*

On behalf of Exeter Auto Repair, Inc. d/b/a Exeter Auto Repair & Sales:
Mr. Andrew Slater, President, *pro se*

At the conclusion of the hearing, the Hearing Officer announced that he would accept written comments from any interested person until close of business (4:00 p.m.) on Friday, May 7, 2021; the comments were to be filed with the Division's Associate Administrator for Motor Carriers who would see that they were posted on the Division's website for review, as well as forwarding the comments to the Hearing Officer. The Division recognized that some interested persons might wish to respond to the written comments and kept the record of this proceeding open until 4:00 p.m., Friday, May 14, 2021, to allow any such responses to the May 7, 2021, comments to be filed.

APPLICABLE LAW

The Division (and/or its predecessor agencies) has been charged with regulating the rates charged by motor carriers of property since at least 1935.

on the Division's site, and in person. A copy of Hearing Officer Exhibit I with enclosure was provided to any individual who appeared in person and will be placed on the Division's website. Advocacy Section Exhibit 1 will also be placed on the Division's website, and copies were available to any individuals who appeared in person.

In the late 1990's, the Federal government adopted legislation to preempt state authority over most property carriers' tariffs with the exceptions of those engaged in providing intrastate non-consensual tows and intrastate household goods shipments.⁹ That means each tower who wishes to perform non-consensual (i.e., police-ordered, or private property ordered) tows within Rhode Island must still file its proposed tariffs with, and seek the approval of, the Administrator of the Division in accordance with the applicable laws.

Every public utility rate case starts in the same way: the public utility (in this case, a certificated tower) must file its proposed tariff with the Administrator of the Division and pay a \$50.00 filing fee. This requirement is set out in R.I.G.L. § 39-12-11, which provides, in pertinent part:

§ 39-12-11. Publication of tariffs of common carriers.

Every common carrier by motor vehicle shall print, file with the administrator, and keep open for public inspection, tariffs showing all the rates and charges for transportation, and all services in connection therewith, of property, in intrastate commerce, A filing fee of fifty dollars (\$50.00) must accompany all filings made pursuant to this section. ... The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall

⁹ See generally *The Federal Aviation Administration Authorization Act of 1994* (Public Law 103-305) and the *ICC Termination Act of 1995* (Public Law 104-88). The Federal law does allow the State to retain authority over fitness (which includes safety issues) and the licensing of motor carriers. Although Rhode Island law has never been amended to reflect the Federal law, suffice it to say that the Supremacy Clause of the *U. S. Constitution* makes the Federal law controlling in this area regardless of the existing state law. Amendments to the Federal law over the past two decades have returned some regulatory control to the state with respect to rate regulations, **but only for non-consensual tows** performed by a certificated tower. "Non-consensual" tows are those performed "without the prior consent or authorization of the owner or operator of the motor vehicle." See 49 U.S.C. § 14501(c)(2)(C) as amended effective April 6, 2016.

contain such information as the administrator, by regulation, shall prescribe. The administrator may reject any tariff filed with him or her that is not consistent with this section and with the regulations. Any tariff so rejected by the administrator shall be void and its use shall be unlawful.

(Emphasis supplied.)

Since about 1997, members of the Rhode Island Public Towing Association, Inc. (Association), have collectively approached the Division to propose new tariffs to the Division on multiple occasions.¹⁰ Those proposals became the subject of negotiations with the Advocacy Section of the Division and resulted in proposed tariff rates, terms and conditions, that were agreed to between members of the Association and the Advocacy Section of the Division, and were then filed collectively with the Administrator in the form of a “Consent Agreement.” In order to minimize the frequency with which towing tariff issues came up, the parties sometimes incorporated a “cost of living” provision that would trigger automatic increases whenever the cost-of-living index maintained

¹⁰ There have been a very few occasions where a tower filed a stand-alone tariff for his or her own company. See *In Re Proposed Light And Medium Duty Non-Consensual Tow Tariff – 2015 in the case of Safeway Auto Sales, Inc.*, Division Report and Order number 21874 dated and effective April 27, 2015, in Division Docket number 15 MC 69 (approved light and medium duty tow tariffs for non-consensual tows that the Administrator, on his own motion, approved as a “new uniform towing and recovery rate for non-consensual light and medium duty tows”) discussed in fn. 2 above. There have been some heavy-duty tow tariffs approved requiring a utility rate case. For example, *Sterry Street Towing (MC-812)* filed a Heavy Duty Non-Consensual Towing and Recovery Tariff in February 2014 and eventually received approval (of a modified version). See *In Re Sterry Street Auto Sales, Inc. d/b/a Sterry Street Towing (MC-812) Petition To Amend Heavy Duty Non-Consensual Towing And Recovery Tariff*, Division Report and Order number 22241 dated and effective December 10, 2015, in Division Docket number 14 MC 66.

by the Federal government increased by a certain amount. Once the Administrator approved the Consent Agreement, any tower in the state could “sign on” to that agreement upon payment of a (statutorily required) \$50.00 filing fee and would then be bound by that tariff going forward. See *In Re Regulation Of Towing Rates For Non-Consensual Tows*, Division Order number 15681 dated and effective August 27, 1998, in Docket number 96 MC 01; see also *In Re Cost of Living Increase for Towing Rates for Non-Consensual Tows in accordance with Report and Order #15681*, Division Order number 16143 dated and effective December 28, 1999, in Docket number 99 MC 102.

The negotiated uniform rate process was repeated in 2005 when the industry sought a more comprehensive update of the current standard tariff than could be effectuated through continuing cost-of-living increases. The new uniform tariff, again set out in a Consent Agreement, also included new cost-of-living provisions. See *In Re Consent Agreement Regarding Rates For Non-Consensual Towing And Storage*, Division Report and Order number 18328 dated and effective August 9, 2005, in Docket number 05 MC 78; see also *In Re Cost of Living Increase for Towing Rates for Non-Consensual Tows in accordance with Report & Order No. 18328*, Division Order number 19213 dated and effective February 20, 2008, in Division docket number 05 MC 78; *In Re Cost of Living Increase for Towing Rates for Non-Consensual Tows in accordance with Report & Order No. 18328*, Division Order number 19589 dated and effective March 9, 2009, in Division docket number 05 MC 78; *In Re Cost of Living Increase for Towing Rates for Non-Consensual Tows in accordance with Report & Order No.*

18328, Division Order number 19915 dated and effective February 19, 2010, in Division docket number 05 MC 78.

A subsequent effort by the Towing Association to revise the uniform tariff last approved in 2005 failed in 2009 when the Division propounded discovery seeking financial data upon which to analyze the appropriateness of the proposed tariff terms (the first step in a utility rate case); the Towing Association chose to withdraw its tariff proposal. *See In Re Proposal For New Rates For The Governing Of Light Duty And Medium Duty Irregular Recovery "2008"*, Division Order number 19631 dated and effective May 4, 2009, in Division Docket number 08 MC 09. Subsequent discussions between the Advocacy Section of the Division, the Towing Association, and individual members of the industry, with a view toward developing a new uniform light and medium-duty non-consensual tow tariff have apparently not proven fruitful other than leading to the Division's agreement to commission a study of the industry in 2018.¹¹

The basic requirement that towers must comply with is set out in R.I.G.L. § 39-12-12, which provides, in pertinent part:

§ 39-12-12. Establishment of rates and charges of common carriers – Rate discrimination – Rebates.

It shall be the duty of every common carrier of property by motor vehicle to establish, observe, and enforce just, reasonable,

¹¹ Testimony of Mr. Mercer, 05/04/21. The 2015 Safeway Auto Sales, Inc., case discussed in fn. 2 above did not seek approval of a uniform tariff. In that case, the individual tower was simply seeking new light and medium duty non-consensual tow rates for its own operation and the Administrator, on his own initiative, offered the approved tariff to the industry as a new uniform tariff. A small number of individual towers took advantage of that offer.

and reasonably compensatory rates, charges, and classification, and reasonable regulations and practices relating thereto, which shall become effective on a date fixed by the carrier, which shall be at least thirty (30) days after the filing of the tariff containing the rates, charges, and classification, unless suspended by the administrator, prior to the effective date of the tariff or classification, No change shall be made in any rate, charge, classification, or any rule, regulation, or practice affecting the rate, charge, or classification, or the value of the service thereunder specified in any tariff of a common carrier by motor vehicle, except after thirty (30) days' notice of the proposed change filed and posted in accordance with § 39-12-11. The notice shall plainly state the changes proposed to be made and the time when the change will take effect. ... The administrator, after a hearing, may establish, from time to time, such reasonable rules and regulations as he or she may deem necessary pertaining to the form of tariffs, classifications, or supplements thereto; the time and manner of filing thereof; the suspension of rates before the rates become effective; and bearing upon the validity of any filed or existing rate. No common carrier of property by motor vehicle shall charge or demand or collect or receive a greater or less compensation for transportation or any service in connection therewith ... than the rates and charges specified in the filed tariffs in effect at the time; and no carrier shall refund or remit in any manner or by any device, directly or indirectly, or through any other person, any portion of the rates or charges so specified, or extend to any person any privileges or facilities for transportation in intrastate commerce, except such as are specified in its tariffs.

(Emphasis supplied.)

The first point established by this statute is that the tower (as a common carrier of property by motor vehicle) has the duty to “establish, observe, and enforce just, reasonable, and reasonably compensatory rates, charges, and classification, and reasonable regulations and practices relating thereto”. It is not the responsibility of the Division to devise “just, reasonable, and reasonably compensatory” tariff terms – *that responsibility and duty is imposed by law on the tower*. Once the tower has done so, he must file his proposed rates with the

Administrator of the Division in accordance with R.I.G.L. § 39-12-11 at least thirty (30) days before they are to become effective.

The purpose of that thirty-day requirement relates to the second important point in the statute. The thirty-day notice requirement gives the public time to offer any objections to the tower's proposed rates and gives the Administrator sufficient time to consider whether the "rates, charges, and classification" and any "regulations and practices" in the proposed tariff related to the rates, charges, and classifications are, on their face "just, reasonable, and reasonably compensatory." If the Administrator has concerns about the justness or reasonableness of any of the rates, charges, classifications, regulations and practices set out in the proposed tariff, the Administrator may suspend the effective date of the tariff and initiate an investigation into the tower's basis for seeking any rate or imposing any regulation or practice, including referral to a formal hearing to determine whether any filed or existing rate should be allowed, disallowed, or modified as provided in R.I.G.L. § 39-12-13(a).

The third important point in R.I.G.L. § 39-12-12 is that the Administrator "after a hearing, may establish ... such reasonable rules and regulations as ... she may deem necessary pertaining to the form of tariffs, classifications, or supplements thereto; ... and bearing upon the validity of any filed or existing rate." That is largely the process the Division is engaged in with this docket – the Division is trying to develop a model tariff for light and medium duty non-

consensual tows against which the Administrator can evaluate the justness and reasonableness of tariffs proposed by the various certificated towers in this state.

As Associate Administrator Mercer noted during his testimony, there has been no comprehensive towing rate study, and no full-on towing rate case, since at least 1997 (around the time the Federal government first sought to deregulate property carriers). In the intervening years there have been at least two efforts by representatives of the Division and the towing industry to negotiate updated towing tariffs, but those efforts were not based on any comprehensive study of the costs of operating a tow company. After the most recent rounds of negotiations failed to lead to any consensus as to what a just and reasonable rate structure might be, the Division agreed that it would commission (and pay for)¹² an outside consultant to conduct a rate study of the industry with a view toward developing a model form of tariff with rates that were “just, reasonable and reasonably compensatory” and containing “reasonable rules and regulations” within the model tariff for use in implementing the proposed rates. The result would be a document – i.e., the draft “2021 Non-Consensual Tow Tariff For Light-Duty And Medium-Duty Vehicles” set out in Hearing Officer Exhibit I – that could be used by the Administrator, if approved in this

¹² In utility rate cases, it is the utility that pays for the rate case, including not only the costs associated with its own expert witnesses, but also those (reasonable) costs incurred by the Division in considering the filing, including those costs associated with any expert witnesses the Division may bring in to review the matter. *See generally* R.I.G.L. § 39-1-26(b). In this case, the Division commissioned the study because it wanted to develop a base-line for evaluating the reasonableness of this type of towing tariff.

proceeding, in carrying out her statutory duty of evaluating proposed tariffs filed by towers for their general justness and reasonableness (i.e., “bearing upon the validity of any filed or existing rate”) toward those members of the public whose vehicles were being towed without the consent of the vehicle owner or the person in control of the vehicle.

The fourth and final point set out in R.I.G.L. § 39-12-12 that has a direct bearing on this proceeding (judging by some of the public comment offered by members of the industry during the hearing on May 4, 2021) is that, once filed with, and approved by, the Division, the tariff is binding on the tower and must be strictly adhered to by the tower. In essence, no tower “shall charge or demand or collect or receive a greater or less compensation ... than the rates and charges specified in the filed tariffs in effect at the time” and further, the tower may not “refund or remit in any manner ... directly or indirectly ... any portion of the rates or charges so specified” or otherwise provide services “except such as are specified in its tariffs.” Put more simply, the tower must perform his or her services in accordance with the terms and rates set out in the tariff on file with the Division; the tower shall not charge more or less than the tariffed amount. Undercharging is as much a violation of the law as overcharging (though far less likely to be brought to the Division’s attention by the person who was towed).¹³

¹³ The statute speaks in terms of forbidding any type of rate discrimination, whether against the ratepayer or in favor of the ratepayer. While a ratepayer who benefits from rate discrimination (i.e., is charged less than the rate in the tariff) may not be likely to complain to the Division, a second ratepayer who hears of such a “break” on the cost of a tow but was not similarly gifted with a discount

The third statute relevant to this proceeding is R.I.G.L. § 39-12-13(a), which sets out the Administrator's authority to use her discretion, after a hearing held to consider the justness and reasonableness of a proposed (or currently effective) tariff provision, to allow, disallow, alter or prescribe the rates charged by towers or any practices of a tower with respect to carrying out its certificated duties as a tower. That statute provides, in relevant part:

§ 39-12-13. Alteration of common carrier rates by the administrator.

(a) The administrator, ... upon his or her own motion, after a hearing, may allow or disallow any filed or existing rates and may alter or prescribe the rates of common carriers in connection with the transportation of any or all classes of property ... within the state and any service connected therewith in accordance with the legal standards provided in this chapter. Whenever, ... on his or her own initiative, the administrator, after a hearing, shall be of the opinion that any rate or charge collected, charged, or demanded by any common carrier by motor vehicle, or any ... or practice whatsoever of the carrier affecting the rate, charge, or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, he or she shall determine and prescribe the lawful rate or charge, or the maximum and/or minimum rate or charge thereafter to be observed or the lawful classification, rule, regulation, or practice thereafter to be effective.

(Emphasis supplied.)

is likely to complain to the Division and may suggest a prohibited inequity in tariff application. The Division will investigate such complaints and, if substantiated, fine the tower for violating the statute and may require that the tower seek to recover the under collection as well. The Division likewise actively monitors and investigates compliance with the tariffs and will *sua sponte* call in a tower to review compliance and rectify any deficiencies in compliance.

In this case, it has taken longer than anticipated to publish this Report and Order establishing new tariff terms, so the Administrator has elected to further extend the Interim Tariff. Accordingly, any tower who is still operating on the Interim Tariff that was approved in this Docket in 2018 may continue to operate on that tariff for ninety (90) days beyond the effective date of this Report and Order. By the ninetieth (90th) day following the effective date of this Report and Order any towing company still on the Interim Tariff must have taken one of the three actions set out above in this paragraph.

Accordingly, it is:

(24243) ORDERED:

1. That the proposed model “Tariff Affixing Rates And Terms For Non-Consensual Towing And Related Matters” set out in Hearing Officer Exhibit I admitted in full in this docket on May 4, 2021, as specifically amended above, is hereby found to establish “just, reasonable, and reasonably compensatory rates, charges, and classification, and reasonable regulations and practices relating thereto,” with respect to non-consensual light and medium duty tows in the State of Rhode Island within the meaning of R.I.G.L. § 39-12-12 and is hereby approved as amended.

- a. **The proposed model tariff as approved with the amendments discussed above is incorporated by reference herein as Attachment A.**

This section typically comes into effect after an Administrator has exercised her discretion under R.I.G.L. § 39-12-12 to suspend a proposed tariff (or to review a provision of a current tariff that has been questioned) and directed an investigation (rate case) and held a hearing with respect to one or more of the tariff provisions. If, upon the conclusion of the hearing, the Administrator concludes that some provision of the tariff (either a rate or practice) that was the subject of a hearing is, or will be, “unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial”, the Administrator may use her discretion to “determine and prescribe the lawful rate or charge, or the maximum and/or minimum rate or charge thereafter to be observed or the lawful classification, rule, regulation, or practice thereafter to be effective.”

If the Administrator approves the proposed model¹⁴ tariff set out in Hearing Officer Exhibit I at the conclusion of this hearing, and a tower subsequently files a proposed tariff with the Division that differs substantively from one or more of the provisions in the approved model tariff, following suspension of the effectiveness of the proposed tariff and a hearing on that tariff, the Administrator could, under the authority granted by R.I.G.L. § 39-12-13(a), “determine and prescribe the lawful rate or charge, or the maximum and/or minimum rate or charge thereafter to be observed or the lawful classification, rule, regulation, or practice thereafter to be effective”, that is, the Administrator could re-write and approve those provisions of the tower’s proposed tariff to bring

¹⁴ “Model” tariff and “uniform” tariff are used interchangeably in this Report and Order.

them in line with what she considers to be “just, reasonable, and reasonably compensatory” within the meaning of R.I.G.L. § 39-12-12. The tower would then have to comply with its proposed tariff as amended by the Administrator.

The final section of law we find relevant to this proceeding found in chapter 12 of Title 39, though only to a single portion of the proposed tariff rather than to the process of evaluating the reasonableness of the proposed tariff as a whole, is R.I.G.L. § 39-12-13(b). Subsection (b) of R.I.G.L. § 39-12-13, concerning the Fuel Emergency Surcharge Program for towers, is relevant to a specific portion of the proposed model tariff set out in Hearing Officer Exhibit I, but is not relevant to a more general discussion of the laws applicable to rate-making and tariff review. This subsection provides as follows:

§ 39-12-13. Alteration of common carrier rates by the administrator.

(b) The administrator shall implement a gasoline price emergency surcharge program whereby a person licensed under this chapter to perform "driveaway-towaway operations" shall be permitted to impose and collect a surcharge, during such times and under such conditions wherein the administrator determines that the average price of gasoline in this state exceeds one dollar and fifty cents (\$1.50) per gallon. Provided, that the administrator shall have discretion as to when to permit such surcharge to be imposed, except that the administrator shall not impose the surcharge at any time when the average price of gasoline, as determined by the administrator, does not exceed the price of one dollar and fifty cents (\$1.50) per gallon.

(Emphasis supplied.)

As Associate Administrator Mercer noted during his testimony, this section refers only to the creation of a gasoline price emergency surcharge program for

towers when the price of gasoline exceeds \$1.50 per gallon – and virtually all tow trucks operating in Rhode Island run on diesel fuel rather than gasoline. Read literally, we would have to conclude that the General Assembly was concerned with only a very tiny subset of towers – those running gasoline powered tow trucks – when this legislation was enacted. The Division has never believed that was the intent of the General Assembly, so when implementing this policy, it did so by creating a fuel – not gasoline – price emergency surcharge program to ensure that all similarly situated towers in the state were protected equally by the law. The Division remains firm in its conviction that this is the proper interpretation to be placed on this statute.

Chapter 12 of Title 39 is not, however, the only chapter in Title 39 that is relevant to this matter. We must also consider several provisions of the law set out in Chapter 12.1 of Title 39, better known as “The Towing Storage Act,” as those provisions affect tariff rates regarding the towing and storage of motor vehicles related to non-consensual tows.

The Division only regulates the tariffs of non-consensual third-party tows – that is, police-ordered tows and private property tows. Those tows are governed by the aforementioned “The Towing Storage Act” first adopted by the legislature in 1994. The legislature found it important to begin that Act with a clear declaration of purpose and policy:

§ 39-12.1-1. Declaration of purpose and policy.

The legislature hereby finds the following legislation to be in the public interest for these reasons:

WHEREAS, A tow truck in the hands of an incompetent operator is a dangerous instrumentality; and

WHEREAS, The public has an inherent right to ready access to the name, location, and telephone number of certificated towers; and

WHEREAS, The operation of a tow truck on the public highway with a vehicle in tow is a dangerous instrumentality exposing others on or about the highway to loss or damage, which must be covered by adequate insurance; and

WHEREAS, The motoring public has a right, when delegating to law enforcement the selection of an operator in the towing-storage business, to expect that the operator selected and responding will be competent; and

WHEREAS, The motoring public has a right when delegating to law enforcement the selection of an operator in the towing-storage business, to expect that the charges for the services to be rendered will be reasonable and compensatory, and that the operator is physically equipped in his or her business to function properly; and

WHEREAS, The towing and storage of a vehicle without the owner's consent, as is the case in most police-instigated tows, requires certain procedures to assure the owner that rights of due process of law are not violated; and

WHEREAS, The owner or person in control of private property of real estate has a right to be free from trespass by vehicle on the private property; and to have any trespassing vehicle removed at the owner's expense; and

WHEREAS, The police powers delegated by the legislature of the state include the power of the police, even without the owner's consent, to have public ways cleared of conditions that, in the opinion of the officer, create a hazardous condition to the motoring public; to have removed abandoned, abandoned and of no value, and unattended vehicles; to have removed and/or relocated vehicles in violation of parking ordinances; and to have removed any vehicle under control of any person arrested for any criminal offense; and

WHEREAS, The process of selection of the operator of a towing-storage business for police work is unique in that law

enforcement, though having the legal duty to order the work, has no legal duty to pay costs and charges connected therewith, the same being the duty of the vehicle owner.

Section 39-12.1-1 does two things relevant to this rate proceeding. First, it establishes some basic parameters for any towing service: the tow truck operator must be competent; the tower's name, location, and telephone number must be readily accessible to members of the public; the tow truck and operator must be covered by adequate insurance; doing any non-consensual tow requires certain procedures to assure the owner that the vehicle owner's rights of due process of law are not violated; the tow operator must be physically equipped as a business to safely and effectively perform the non-consensual tow; and, the charges for the services to be rendered in any tow will be reasonable and compensatory (at least when performing any non-consensual police-ordered tow under the authority delegated by the legislature to the police under this statute). The reasonableness of any towing or storage rates sought by towers for non-consensual third-party tows must be evaluated in the light of these legislative parameters.

Second, the legislature draws a clear distinction between non-consensual tows done at the behest of the police, and those done at the request of private property (real estate) owners, a distinction that is particularly relevant given that the proposed tariff treats the two types of tow differently, something that some members of the tow industry objected to during the hearing. The legislature makes it very clear that a private property owner "has a right to be free from trespass by vehicle on the private property; and to have any trespassing vehicle

removed at the [vehicle]¹⁵ owner's expense." The legislature defines a "private trespass" as "the unattended presence of a vehicle on private property without the consent of the owner or person in control thereof." R.I.G.L. § 39-12.1-2(7). Accordingly, when a private property owner¹⁶ contacts a towing company to have a trespassing vehicle removed from that property owner's real estate, the private property owner is exercising his own personal right to request that another person's vehicle be removed from the private property owner's real estate without the prior knowledge of, and at the expense of, the vehicle owner. Put another way, the real estate owner, not the vehicle owner, is the person actually benefitting from the tow, but the vehicle owner is the one liable to pay the costs of that tow.

The situation is very different for a police-ordered tow. The statute states that: (1) "The motoring public has a right, when delegating to law enforcement the selection of an operator in the towing-storage business, to expect that the operator selected and responding will be competent;" (2) "The motoring public has a right when delegating to law enforcement the selection of an operator in

¹⁵ The statute is a bit ambiguous as to whether "the owner's expense" refers to the vehicle owner's expense or the real estate property owner's expense. The Division believes it was the legislature's intent to protect the real estate property owner's rights to be free of trespass and making the real estate property owner pay for that privilege simply further victimizes the real estate property owner. The Division therefore believes that the legislature intended the vehicle owner to bear the cost of removing the vehicle owner's trespass from the real estate owner's private property.

¹⁶ "Private property owner" would also include a renter of that property. R.I.G.L. § 39-12.1-1 refers to the "owner or person in control of private property of real estate" which clearly encompasses a lease holder as well as the actual property owner.

the towing-storage business, to expect that the charges for the services to be rendered will be reasonable and compensatory, and that the operator is physically equipped in his or her business to function properly; (3) “The towing and storage of a vehicle without the owner's consent, as is the case in most police-instigated tows, requires certain procedures to assure the owner that rights of due process of law are not violated; (4) “The police powers delegated by the legislature of the state include the power of the police, even without the owner's consent, to have public ways cleared of conditions that, in the opinion of the officer, create a hazardous condition to the motoring public; to have removed abandoned, abandoned and of no value, and unattended vehicles; to have removed and/or relocated vehicles in violation of parking ordinances; and to have removed any vehicle under control of any person arrested for any criminal offense;” and, (5) “The process of selection of the operator of a towing-storage business for police work is unique in that law enforcement, though having the legal duty to order the work, has no legal duty to pay costs and charges connected therewith, the same being the duty of the vehicle owner.” R.I.G.L. § 39-12.1-1, clauses 4, 5, 6, 8 and 9 (emphasis supplied).

This makes it very clear that when the police direct a non-consensual tow, they are acting on behalf of the motoring public, using the authority of the motoring public as delegated to the police by the legislature, to accomplish specifically delineated goals. This is clearly a very limited delegation of authority, intended to be utilized for the benefit of the motoring public and the vehicle owner (or person in control of the vehicle), in a limited number of circumstances.

Those circumstances include clearing public ways (i.e., streets, highways, and other public right of ways) of conditions that create a hazard to the motoring public, removing abandoned or unattended vehicles from public ways (not from private property, because that would be a private property tow), removing and/or relocating vehicles in violation of parking ordinances (i.e., from public ways and property, and not from private property), and removing any vehicle under control of any person arrested for any criminal offense (only vehicles on scene at the time of the arrest, not those parked far away and not under the arrestee's immediate control). The police are, in fact, only delegated very limited authority by the legislature to act as if they were the vehicle owner or person in control of the vehicle; the tow operator's actual customer is, at all times, the vehicle owner or the person in control of the vehicle at the time it was ordered towed. If a police-ordered tow is done in the enumerated circumstances, it is the vehicle owner or person in control of the vehicle at the time the tow was ordered who must pay for the tow; the police are not liable for the costs of the tow under these limited circumstances.

It is clear from the very beginning of "The Towing Storage Act" that the legislature's purpose was to establish two very different types of non-consensual tows, designed to implement two separate and distinct policies. Police-ordered tows are intended to serve a limited public purpose and are done for the benefit of the vehicle owner as well as the general motoring public; private property tows are done for the private benefit of the person that owns, or is in control of, private real estate property upon which there is a vehicle trespass.

This distinction is made more explicit by several other provisions of the Act. For example, R.I.G.L. § 39-12.1-3(a) establishes that “any member of any police department or the owner or person in control of private property” may order the removal of any abandoned or unattended vehicle, but only the police may order the removal of an abandoned vehicle of no value (after complying with procedures established elsewhere in the Act). R.I.G.L. § 39-12.1-3(b) establishes that the last registered owner and/or legal owner, or the person who left the vehicle in a position such that “the vehicle becomes abandoned, abandoned and of no value, or unattended shall be liable for all reasonable costs of recovery, towing, and storage in accordance with the certificated tower’s tariff; this section does not distinguish between the vehicle being left on private or public property.

R.I.G.L. § 39-12.1-3(c) then goes on to circumscribe the authority of the police, by limiting the police power to order removal of abandoned, abandoned and of no value, or unattended, vehicles only to those vehicles “on or near a public way.” The statute further requires that the police must tag the vehicle [R.I.G.L. § 39-12.1-3(c)(1)] before ordering it moved, advising that the vehicle will be ordered removed by the police if it is still in the same location 48 hours after it was tagged; the police may only order a vehicle “on or near a public way” to be removed immediately **if**: “it is parked illegally”; it “causes traffic congestion or hazard”; or, “when the operator is not allowed to continue to operate the vehicle *after having been detained for operating in violation of the law*” [R.I.G.L. § 39-12.1-3(c)(2) (*emphasis supplied*)].

R.I.G.L. § 39-12.1-3(d) further circumscribes the authority of the police to choose who will tow a vehicle by requiring the police to allow the person in charge of the vehicle choose the tower. This subsection states, in pertinent part that “no person in possession of a vehicle ... shall be denied the right to have any certificated tower of his or her choice attend to the removal...” According to the statute, if the police officer in charge of a scene determines that a vehicle needs to be removed to another location because it is causing traffic congestion or a hazardous condition, and if there is no other way to alleviate the traffic congestion or remove the hazardous condition other than moving the vehicle immediately, and if waiting for the tower of choice to appear on the scene would prolong the traffic congestion or hazardous condition, then the police officer in charge of the scene may direct the immediate removal of the vehicle ***just far enough away to render the situation safe.*** As soon as the hazardous condition has been eliminated, the choice of the person in possession of the vehicle “shall be employed to remove the vehicle to the place selected by the person in possession.”

Clearly, the police authority for removing vehicles from on or near a public way under R.I.G.L. § 39-12.1-3 is far more circumscribed than the authority of a property owner over a vehicle trespassing on private property under R.I.G.L. § 39-12.1-3. In the latter case, the private property owner merely needs to contact the tower of his choice to remove the trespassing vehicle immediately to the tower’s place of storage. There is no requirement for 48-hours’ notice, and no right for the vehicle owner to choose the towing company. There are few, if any,

protections afforded to the vehicle owner/possessor prior to the vehicle being towed in a private trespass tow.

There are, however, certain requirements that do apply specifically to private trespass tows, set out in R.I.G.L. § 39-12.1-12, that do act to protect the vehicle owner/possessor after a private trespass tow. That section of the Act provides as follows:

§ 39-12.1-12. Private trespass towing.

(a) The owner or person in control of any parcel of property may cause to be removed from the property vehicles trespassing upon the property without the consent of the owner or person in control of the property by retaining, in writing, a certificated tower to remove the trespassing vehicle and relocate the vehicle to its private impoundment lot; and **this procedure may be undertaken and accomplished without the need to resort to the judicial process**; provided, however, that the impoundment lot shall be within ten (10) miles of the point of removal; and **provided** further that **the lot shall be open for business to release the vehicle the same hours it is open to receive the vehicle**; and provided further that there shall be posted on the outside of the office of the lot the business hours.

(b) All charges for towing, **in accordance with the published tariff and storage** shall be borne by the last-registered and/or legal owner of the vehicle for which charges the certificated tower shall have a possessory lien as set forth elsewhere in this chapter; provided, however, that should the last-registered and/or legal owner prove through judicial process that the vehicle was not in fact trespassing on the property of the owner or person in control, the charges shall be borne by the owner or person in control of the property who ordered the towing, removal, relocation, and storage. The last-registered and/or legal owner shall, however, as a prerequisite to procedure to recover the charges from the owner or person in control of the property, pay in full all charges assessed due the certificated tower in accordance with its published tariff.

(c) A certificated tower shall remove vehicles from private property at the direction of the owner or person in control thereof **only upon**

receiving the direction in writing, which writing and notice shall be kept in the records of the certificated tower and which writing shall be a complete defense to any civil and criminal charges resulting from removal of the vehicle.

(**Emphasis** supplied.) The requirements imposed on the property owner and the certificated tower may be summarized as follows:

Property Owner Requirements [R.I.G.L. § 39-12.1-12(a)]:

1. Retain, in writing, a certificated tower to remove the trespassing vehicle and relocate the vehicle to the certificated tower's private impoundment lot.
2. Ensure that the certificated tower selected has, and will use, a private impoundment lot within ten (10) miles of the point of removal.
3. Ensure that the certificated tower selected will be open for business to release the vehicle the same hours it is open to receive the vehicle.
4. Ensure that the certificated tower selected posts on the outside of the certificated tower's office at the impoundment lot the business hours.

Certificated Tower Requirements [R.I.G.L. § 39-12.1-12(c) and (a)]:

1. Remove a vehicle from private property at the direction of the owner or person in control thereof only upon receiving the direction in writing.
2. Only tow the vehicle to the certificated tower's private impound lot within ten (10) miles of the point of removal.
3. ***The certificated tower shall be open for business to release the vehicle the same hours it is open to receive the vehicle.***
4. The certificated tower shall post on the outside of the certificated tower's office at the impoundment lot the business hours.
5. Maintain a copy of the written direction to remove a vehicle in the records of the certificated tower.
6. If the certificated tower receives the direction to remove a vehicle in writing from the private property owner, and if the certificated tower retains that written direction to remove a vehicle in the certificated tower's records of the tow, then the written request to perform that tow

shall be a complete defense to any civil and criminal charges resulting from removal of the vehicle.

7. The certificated tower shall assess, and collect, charges in accordance with its published tariff. [R.I.G.L. § 39-12.1-12(b)].

Last-Registered Or Legal Owner Of Vehicle Obligations [R.I.G.L. § 39-12.1-12(b)]:

1. All charges for towing and storage, assessed in accordance with the published tariff, shall be borne by the last-registered and/or legal owner of the vehicle for which charges the certificated tower shall have a possessory lien as set forth in R.I.G.L. § 39-12.1-6.
2. Should the last-registered and/or legal owner prove through judicial process that the vehicle was not in fact trespassing on the property of the owner or person in control, the charges shall be borne by the owner or person in control of the property who ordered the towing, removal, relocation, and storage.
3. The last-registered and/or legal owner shall, as a prerequisite to procedure to recover the charges from the owner or person in control of the property, pay in full all charges assessed by the certificated tower in accordance with its published tariff.

While the last-registered and/or legal owner has the right to pursue legal action against a private property owner that may have wrongfully ordered his vehicle towed (unlike with a police-ordered tow for which no similar right is provided), the certificated tower must be paid in full first under R.I.G.L. § 39-12.1-12(b). The certificate tower, however, must meet all of the requirements set out in R.I.G.L. § 39-12.1-12 if he or she is to be allowed to retain what he or she was paid.

The bottom line is that police-ordered and private property/private trespass tows are very different under the law. In the former, the police are using very limited authority delegated to them from the general motoring public by the legislature to effect a vehicle removal from, or near, a public way for a public

purpose (alleviate traffic congestion, hazardous conditions, or unauthorized parking on public property); the vehicle owner/person in possession of the vehicle retains significant rights in the form of notice and control over the selection of the tower and the selection of the place to which the vehicle is to be towed. In the latter, the private property owner is directing that a tow be performed on his behalf for his benefit under his authority from his private property under circumstances which shift the costs of that tow to the last-registered and/or legal owner of the vehicle; the last-registered and/or legal owner of the vehicle has no right to notice before the tow is performed, and a limited right to redress after the tow has been performed.

EVIDENCE PRESENTED

Advocacy Section

The Advocacy Section of the Division called as its witness Mr. Terrence Mercer, Associate Administrator for Motor Carriers, Division of Public Utilities and Carriers. Mr. Mercer began his testimony by identifying the Stone Gables Engineering Service, LLC (hereinafter, “Stone Gables”), report, with a cover letter dated February 11, 2020, as Advocacy Section Exhibit 1.¹⁷ He explained that the Division had engaged Stone Gables to complete a study of non-consensual towing and storage in the Rhode Island towing industry; the decision to engage

¹⁷ It was identified as “Advocacy Section Exhibit 1 *For Identification*”, but since it was subsequently admitted as a full exhibit, we will refer to it as such throughout this Report and Order.

Stone Gables was made in 2018 when the present docket was initially opened. The Division realized that there are many differently situated towers in Rhode Island performing non-consensual tows – some larger than others, some located in densely populated areas while others were in rural locations – so it asked Stone Gables to attempt to get a representative cross-section of the different types of towing entities throughout the state. The goal was to assist the Division in developing a uniform tow rate or uniform tariff for all manner of non-consensual towing after some 20 years of negotiating rates without a firm understanding of all of the true costs underlying those rates. The study, which the industry supported and urged the Division to commission, was done in two phases and cost the Division roughly \$40,000.00.¹⁸

The Division shared the Stone Gables report with the towers who sit on the Administrator’s Towing Advisory Board. This Board is an unofficial entity comprised of six or seven towers (in the past, it also had, from time-to-time, representatives from the Attorney General’s office, the state police and/or the insurance industry), Mr. Mercer as Associate Administrator, and the Administrator, that met from about 2005 through 2012, to give the towing industry and the Division a means of sharing information, discussing concerns, and resolving regulatory issues. Over time it devolved into something of a gripe session that was not terribly productive and eventually just stopped meeting. Former Administrator McCleary re-initiated the Board in 2017, in part as a

¹⁸ Testimony of Mr. Mercer, tr. at 16-18, 05/04/21.

means of better coming to grips with the need for new tariffs, and current Administrator George has promised the industry to keep the Board an on-going – though still informal – group.¹⁹

The new Board's members received a copy of the 2018 Order issued in this docket which formally directed the Division to retain a consultant for the purpose of studying the towing industry's costs and revenues with respect to non-consensual tows. When the 2018 Order was issued, it was envisioned that the study would be done rather quickly to allow a new tariff to be developed shortly thereafter. Phase 1 of the report was done in short order, identifying the basic parameters of the towers who would be chosen for a more in-depth review as being broadly representative of the various typical towers in the industry, and Phase 2 of the Stone Gables report was submitted to the Division in February 2020. By mid-March of that year, the entire state was in full pandemic mode and the Stone Gables report and the non-consensual tow tariff was pushed to the back burner to a certain extent; under the circumstances, the Division determined that the null and void date for the interim tariff set out in the 2018 Report and Order in this docket would not be triggered, and the interim tariff would be allowed to continue in effect for those towers that had signed on to it. We are now treating May 4, 2021, as the beginning of the three-month window before, or at the end of which, the interim tariff will cease to be in effect and the

¹⁹ Testimony of Mr. Mercer, tr. at 18-20, 05/04/21.

towers on that interim rate will revert to their prior tariff or sign on for a new tariff.²⁰

Mr. Mercer then testified that the Division does not know, and was never intended to know, the names of the specific towers that Stone Gable studied in its report. He does know that each tower studied was intended to be representative of a category of similar towers. For example, a large company that was tow-only versus a large company that might have ancillary businesses such as auto repair, auto sales, etc., in addition to towing. There were similar subsets for smaller tow-only companies versus smaller tow companies with ancillary businesses, and companies that were urban versus those that were rural. To a certain extent, it also came down to which towers were willing to invest the time and effort to sit down with Stone Gables and open their operations for in-depth study. Eventually, Stone Gables was able to identify representative, and willing, participants for the study and complete its detailed review of their operations.²¹

The resulting roughly 30-page report turned out to be what the Division had been hoping for according to Mr. Mercer. The Division had not commissioned the study hoping for any particular outcome with respect to tariff rates or terms but had hoped to get some substantive data that would allow it to better evaluate the appropriateness of a proposed tariff when it was presented to the Division by a tower. The report's recommendations relative to baseline rates

²⁰ Testimony of Mr. Mercer, tr. at 19-20, 05/04/21.

²¹ Testimony of Mr. Mercer, tr. at 21-22, 05/04/21.

and terms were also sufficient to allow Mr. Mercer to propose a basic model tariff.²²

The Stone Gables report, beginning on page 20, Section 5.0, thereof essentially put together simple tables that showed the current (interim) rate for any line item for a tow tariff, then set out in the next column the consultant's recommended change to that line item based on the findings set out in the report. As an example, Mr. Mercer noted that on page 20 of the report there was only one table, Table 5.1, dealing with a vehicle 8,000 lbs. GVW or less being towed back to the tower's lot as a non-consensual police-ordered tow. The first line of the table shows the current (interim tariff) rate was \$120.00 inclusive of: (1) all incidental charges, (2) first 5 miles of on-hook mileage, and the first 24 hours of storage. The recommendation for that first line was "no change recommended, as the calculated cost-plus profit is within a reasonable range of this established rate." Similarly, the second line of that table shows the current (interim tariff) rate for on-hook mileage after the first 5 miles is \$3.00 per mile, while the recommended change to that rate is that "the tower shall be authorized to charge **three dollars and fifty cents (\$3.50)**" per mile after the first 5 miles on-hook (**emphasis** in the original). The Stone Gables report went on like that line-by-line, discussing each item in the current (interim) tariff and making recommendations as to whether any line item should be changed and how. Mr. Mercer testified that when he began to work on the new tariff after receiving the

²² Testimony of Mr. Mercer, tr. at 22, 05/04/21; Advocacy Section Exhibit 1.

Stone Gables report, he adopted every single recommended change that the Stone Gables report proposed.²³

Mr. Mercer went on to testify that after he sat down with representatives of the towing industry to go over the Stone Gables report and his own draft proposed new tariff, the resultant discussions did lead to a few more changes. For example, the industry representatives argued that there had been about a five-dollar differential between the basic tow rate (for vehicles 8,000 lbs. GVW and below) towed back to the tower's lot and such vehicles towed to a location of the vehicle owner's choice, and asked that the five dollar difference be maintained (the difference had not been retained in the Stone Gables recommendations). After significant discussion, Mr. Mercer accepted the tower's position and agreed that the basic tow rate for vehicles 8,000 lbs. GVW and less going back to the tower's storage lot should be increased to \$125.00 rather than the current (and recommended by Stone Gables) rate of \$120.00.²⁴

According to Mr. Mercer, there were a few other such issues he discussed with the industry, and in virtually every such case the Division embraced the position advanced by the towing industry. An example of this would be a discussion they had regarding so-called medium duty tows involving towed vehicles with an official GVW of 8,001 lbs. up to 15,000 lbs. Many vehicles that

²³ Testimony of Mr. Mercer, tr. at 22-24, 05/04/21; Advocacy Section Exhibit 1.

²⁴ Testimony of Mr. Mercer, tr. at 24-26, 05/04/21; Advocacy Section Exhibit 1.

fall into that category frequently have been retrofitted with significant amounts of equipment, such as plows or sanders, or are flatbeds or stake bodies loaded with property (for example, a flatbed tow truck with another vehicle loaded on it), that significantly exceed a GVW of 15,000 lbs. and cannot safely be towed by a medium-duty tow truck rated for tows up to 15,000 lbs. The Division felt that the towers made a good point, so it added language to the proposed tariff that addressed this situation as follows:

Conversely, the Division acknowledges that some vehicles assigned a GVW between 8,001 and 15,000 pounds by the vehicle's manufacturer are frequently modified after purchase in a way to increase their overall weight and/or length (example: adding a snowplow and or sanding equipment), and that such modifications make it unsafe for such a vehicle to be towed by a "medium-duty-rated" tow truck. Accordingly, in the event a tower must tow such a vehicle using a heavier-rated tow truck, the tower may charge the appropriate rate listed in its Division-approved "heavy-duty" towing tariff. In order to do so, the tower must have in place a Division-approved "heavy-duty" tariff, and must create and retain documentation (i.e., photograph(s), written narrative, police report...) of the vehicle to be towed to justify the decision.

(All emphasis in original.) The Division concluded that the proposal was in accordance with safe towing practices and amended its proposed tariff language accordingly to provide for that extraordinary circumstance.²⁵

Mr. Mercer went on to offer a few other examples where the Division adopted the recommendations of the towing industry and adjusted its proposed tariff language accordingly. With respect to the statutory requirement that there be a written request from the property owner/manager for each private property

²⁵ Testimony of Mr. Mercer, tr. at 26-28, 05/04/21; Advocacy Section Exhibit 1; Hearing Officer Exhibit I, Proposed Tariff at 5.

tow that a tower does, the Division adopted the industry recommendation that it allow the request to be in the form of an email; the Division now considers that sufficient to satisfy R.I.G.L. § 39-12.1-12. The towers asked that they be allowed to include the cost of bridge tolls in both directions, not just when a vehicle was actually on-hook (this was of particular interest to Newport towers who currently provide the majority of towing services to Jamestown and have to pay bridge tolls in both directions); the Division agreed that any toll incurred by a tower from the time he leaves his lot to the time he gets back to his lot or his service area would be properly assigned as a tow charge. Finally, Mr. Mercer noted that the towers were interested in resurrecting the Fuel Emergency Surcharge authorized by R.I.G.L. § 39-12-13(b) back around 2002 as a way to adjust the basic tow charge to align with the currently volatile fuel prices without having to constantly file new tariffs; the Division agreed with this and built a fuel price adjustment mechanism into the proposed tariff for both gasoline and diesel fuel for that purpose. He discussed the Fuel Emergency Surcharge proposal with the Towing Advisory Board at their last meeting, sent them the proposed language asking for any comments and suggestions, and did not hear back from anyone with any complaints about his proposed language.²⁶

Other than with the rate changes recommended by the Stone Gables report and in his discussions with the Towing Advisory Board, Mr. Mercer's main effort in devising the proposed tariff was to better delineate the differences between

²⁶ Testimony of Mr. Mercer, tr. at 28-34, 05/04/21; Advocacy Section Exhibit 1; Hearing Officer Exhibit I, Proposed Tariff at 4, 7, 8, 9.

police-ordered tows and private property tows. He testified that it is important to understand that the General Assembly, in drafting the Towing Storage Act set out in Title 39, chapter 12.1, chose to treat police-ordered tows and private property tows as two very different things – and he felt it was important that the Division do the same in the proposed tariff. Specifically, with respect to private property tows, a handful of towers around the state have had a very different concept of the requirement that there be a written request for each private property tow as set out in the Towing Storage Act. Those few towers will go to strip mall or a shopping plaza and try to find someone at that location, employed by any shop and not necessarily by the actual owner or manager of the parking lot for the property, and asks that person to sign a blanket document giving the tower carte blanche to determine which vehicles are trespassing and simply tow those vehicles away. The most egregious example he has come across recently was a tower (no longer in business) who went to a shopping plaza on the Pawtucket/Lincoln line and asked the night clerk at the CVS to sign a letter that he wanted the tower to “police” the lot and tow any vehicle still parked in the lot after a certain time of night, say 10:00 p.m. Unfortunately, there were other businesses in that plaza that were open after that time and certainly did not want their customers towed. The parking lot itself was owned by two different businesses, neither of which was aware of what had been done. The tower was towing several cars each evening from those lots without anyone involved with owning the parking lot even being aware of the situation. Mr. Mercer believes

that this was not what the General Assembly intended when it required a written request be made for a private property trespass tow of the trespassing vehicle.²⁷

Mr. Mercer explained that in his experience, to avoid the types of abuses he had just discussed, it was important to make it crystal clear precisely what the requirements are for private property owners to enlist a tower to move a specific trespassing vehicle. If you do not, you find that towers, who stand to gain financially by performing a non-consensual private property tow, are the

²⁷ Testimony of Mr. Mercer, tr. at 34-38, 05/04/21; *see generally* R.I.G.L. § 39-12.1-12(a); Hearing Officer Exhibit I, Proposed Tariff. R.I.G.L. § 39-12.1-12(a) states, in pertinent part, that the owner of any parcel of property may have vehicles trespassing upon its property by “retaining, in writing, a certificated tower to remove the trespassing vehicle and relocate the vehicle to” the tower’s private impoundment lot. (Emphasis supplied.)

Mr. Mercer offered an additional example where an employee of a housing authority gave a tower an (unauthorized) letter that the tower was relying on several years later after the housing authority employee had moved on to a different job. The director of the authority had been unaware that the tower had been operating at all until a resident’s car, which had the appropriate sticker, was towed for being on the line between two parking spaces and the resident complained. For several years the tower had been regularly removing vehicles from that parking lot without the knowledge or consent of the property manager; indeed, the tower continued to use this original letter even after the property had been sold to a new owner who was completely unaware of the arrangement. At the recommendation of Mr. Mercer, the new property owner’s management now has one of its employees make the decision as to which cars should be towed, if any, and submits one written request per tow that clearly identifies the specific vehicle to be towed.

A third example involved a small shopping plaza at the University of Rhode Island’s main campus. Students found the plaza parking convenient to their classes and parked there for the day. The plaza owner signed an agreement with a tower to remove vehicles whose drivers walked to campus rather than into a shop. Just as with the CVS plaza, the tower had a driver patrol the plaza parking lot and tow vehicles whose drivers did not go into one of the shops. The Division received numerous complaints from drivers who claimed to have been shopping at the plaza when their vehicle was towed. Mr. Mercer eventually convinced the property owner to have its own employee, not the tower, make the decision to tow.

ones deciding which vehicles should be towed – not the private property owner as the General Assembly intended. Mr. Mercer has been engaged in overseeing motor carrier regulation for 20 years, and had studied R.I.G.L. § 39-12.1-12(a) multiple times over that time span in the performance of his duties, and all of that experience has led him to conclude that it is evident that the General Assembly wanted the private property owner to make the decision on which trespassing vehicles to tow, and when to tow them, and that it wanted each of those decisions to be documented in writing with the certificated tower maintaining a copy of that written request.²⁸

Mr. Mark Charleson, attorney for Rhode Island Towing, Inc., stated that the towers appreciated Mr. Mercer's work and efforts in developing a new tariff for non-consensual tows, but that the towers had "a few bones to pick" regarding a number of issues, starting with definitions or interpretations of some of the language in the tariff. The first such term of concern to the towers is "inclusive of all incidental charges." While acknowledging that the term may have carried over from earlier tariffs that have been in use by the towers and the Division, the towers were wondering whether there was a definitional provision regarding the precise meaning of "inclusive of all incidental charges"?²⁹

Mr. Mercer explained that the term "inclusive of all incidental charges" has been in use in the towers' tariffs since at least the 2005 tariff, and probably since

²⁸ Testimony of Mr. Mercer, tr. at 38-39, 05/04/21; *see generally* R.I.G.L. § 39-12.1-12(a).

²⁹ Statement of Mr. Charleson, tr. at 40-43, 05/04/21.

at least the 1998 tariff. When former Administrator Thomas Ahern was going through his first confirmation hearing in the late 1990's the Federal government had just acted to deregulate most aspects of the motor carrier industry with one exception being non-consensual tows, and the General Assembly asked him a number of questions about the towing industry. That led to Administrator Ahern putting together the first Towing Advisory Board, and that resulted in 1998 with the first uniform tow tariff. Prior to 1998, there was a fee of about \$45.00 for each light duty non-consensual tow, with some additional charges for things like sweeping up the roadway, disposing of a bumper, putting down Speedy-Dry to soak up spilled oil, and similar items added on top of the tow fee. The new uniform tow tariff worked out under Administrator Ahern increased the tow fee by 33 percent to a flat fee of \$60.00 per tow "inclusive of all incidental charges" which, in the past, would have included small supplemental charges for sweeping up the roadway, disposing of a bumper, putting down Speedy Dry to soak up spilled oil, etc. There was no separate section in the 1998 tariff or later tariffs that defined or spelled out what was included in the term "inclusive of all incidental charges" because the towers and the Division all shared a similar understanding.³⁰

³⁰ Testimony of Mr. Mercer, tr. at 43-44, 05/04/21; *see generally* R.I.G.L. § 39-12.1-12(a). As an illustration, let's say that prior to 1998 a light duty non-consensual tow tariff included the following charges: basic tow - \$45.00; sweeping up the roadway - \$5.00; disposing of a bumper - \$15.00; putting down speedy dry to soak up spilled oil -- \$8.00; pulling vehicle up-right - \$10.00. If a tow required all these actions, the total fee would be \$83.00; if it required nothing but the basic tow, the fee would be \$45.00; and, if it required the basic tow and sweeping up the roadway only, the fee would be \$50.00. After the 1998 tow was

In response to a question from Mr. Charleson as to whether a non-consensual tow could ever convert to a non-regulated consensual tow, Mr. Mercer responded in the negative. Mr. Mercer explained that if a tow starts out as a non-consensual tow (and this is only likely to happen when it is a police-ordered non-consensual tow, not a non-consensual private property tow), it remains a non-consensual tow until the tow is paid for and the vehicle released back to the owner. The governing statutes really suggest that the police control the situation until it no longer presents a hazard to the motoring public, and once the roadway hazard has been eliminated, then the vehicle owner may select the site to which his vehicle may be delivered and who will doing the towing at that point. The point is, the vehicle owner (or the person in control of the vehicle) is not really in control of the situation, cannot really make any decisions about the vehicle, until the police are satisfied that the vehicle no longer presents any

adopted authorizing a tow fee of \$60.00, under the same circumstances, if all these actions were required, the total fee would be \$60.00; if it required nothing but the basic tow, the fee would be \$60.00; and, if it required the basic tow and sweeping up the roadway only, the fee would still be \$60.00. If the tow required more than, say, one hour to do, the tower would be allowed to charge an additional hourly fee in 15-minute increments. There would be no more incidental charges for such things as sweeping the roadway, putting down speedy dry, etc. Most non-consensual tows were expected to be very straightforward, requiring putting the vehicle to be towed on the hook (or flatbed), and driving it away. The \$60.00 flat fee was expected to be more than compensatory in that circumstance, to make up for the relatively fewer tows that were more complicated for which no incidental charges could henceforth be collected.

type of hazard along the public roadway. Until that has been accomplished, and until that tow has been paid for, the tow must remain non-consensual.³¹

The discussion next turned to the concept of “normal business hours.” In response to questions from Mr. Charleson, Mr. Mercer confirmed that towers performing nonconsensual tows are required to be open, at a minimum, from 8:00 a.m. until 5:00 p.m., Monday through Friday, and on Saturdays from 8:00 a.m. until 12:00 noon, and are further required to have their “normal business hours” posted outside of their place of business; towers may expand their “normal business hours” beyond this minimum by posting longer hours on their placard at their place of business. The question, then, becomes what is considered an “after hours” release?³²

Mr. Mercer explained that there is a difference between police-ordered tows and private property trespass tows with respect to what constitutes an “after hours release,” and that difference is driven by the language in the Towing and

³¹ Police-ordered non-consensual tows often occur after an accident or an arrest, under circumstances where the vehicle driver, at least, is physically present. Non-consensual private property trespass tows usually involve vehicles parked where they shouldn't be, with no driver, vehicle owner, or passenger present. In the case of the private property trespass tow, the tow is normally completed long before anyone associated with the vehicle knows anything is happening. The possibility Mr. Charleson posed – whether a non-consensual tow could ever become a consensual tow – could not arise because the vehicle owner (or person in control of the vehicle) does not have any choice as to whether or not the tow is going to occur, but only some input as to where the vehicle is going to be towed – and that only if the tow bill can be satisfied immediately upon completion of the tow (the tower retains a lien on the vehicle and its plates until paid in full for the tow). Testimony of Mr. Mercer, tr. at 45-46, 05/04/21; *see generally* R.I.G.L. §§ 39-12.1-1, 39-12.1-3 through 39-12.1-5, and 39-12.1-12.

³² Testimony of Mr. Mercer, tr. at 46-47, 05/04/21.

Storage Act (Ch. 12.1 of Title 39, R.I.G.L.). The tariff specifies that towers are to maintain certain minimum hours of operation during which vehicle owners may come in to retrieve their vehicles, and that the hours of operation must be posted on-site at an appropriate location; the tower may, of course, establish and maintain extended business hours. As a general proposition, any vehicle release that is sought after the posted hours of operations may be termed an “after hours” release. The proposed tariff allows the tower to impose an “after hours” release fee for police-ordered tows, but not for private property trespass tows. The difference is driven by the statutory language that applies to private property trespass tows, which specifically states that the tower’s impoundment lot shall be open for business to release the vehicle the same hours it is open to receive the vehicle.” [See R.I.G.L. § 39-12.1-12(a).]³³

Mr. Mercer then pointed out that there is no provision in the statute for imposing an “after hours release fee” under any circumstances; this is a fee that the Division first approved nearly twenty years ago in the context of police-ordered non-consensual tows only to help the industry off-set the additional costs and inconvenience associated with performing police-ordered nonconsensual tows outside of normal business hours at short notice. If the police require a tow to be performed outside the tower’s normal posted business hours, the tower must do so; if the tower is then requested to return to its tow

³³ Testimony of Mr. Mercer, tr. at 48-49, 05/04/21.

lot after hours to release that same vehicle, it should be compensated for doing so.³⁴

Private property trespass tows, however, are different – the statute specifically requires the tower to be open for business to release the vehicle the same hours it is open to receive the vehicle – and if the tower is open for business to release a vehicle, there clearly can be no “after hours” release involved. If a tower is ready, willing, and able to respond to a private property trespass tow request at any hour of the day or night, it must by law be open to release that vehicle at any hour of the day or night. Since it is required to be open under these circumstances, it would not be appropriate to authorize it to collect an “after hours release” fee.³⁵

In response to further questioning by Mr. Charleson, Mr. Mercer agreed that the tariffs approved by the Motor Carrier Section are based on the costs that are incurred by the towers with regards to the services that the towers provide. Mr. Mercer further agreed that it was in the best interests of all concerned that certificated towers make a fair and reasonable profit for their efforts; that was, in fact, the whole idea behind the review performed by the Motor Carrier Section’s consultant in this case. In fact, Section 5.3 of the consultant’s review, on page 24 thereof, refers to the fact that an after-hours release typically results in approximately one hour of labor, vehicle mileage costs, and specifically indicates

³⁴ Testimony of Mr. Mercer, tr. at 49-50, 05/04/21.

³⁵ Testimony of Mr. Mercer, tr. at 49-50, 05/04/21.

that the after-hours release fee should be increased to \$30.00 from the current level of \$20.00.³⁶

In response to further questioning by Mr. Charleson with regards to the distinction between police-ordered and private property trespass tows concerning after-hours release fees, Mr. Mercer explained that the distinction is one made by the General Assembly, not by the Division. The statute that authorizes private trespass tows specifically establishes the requirement that the tower's impoundment lot "shall be open for business to release the vehicle the same hours that it is open to receive the vehicle." If the tower is not willing to meet that condition, the tower cannot perform private property trespass tows outside of the tower's posted hours of operation.³⁷ Mr. Mercer then went on to state that the Motor Carrier Section had offered to authorize an after-hours release fee for private property tows that were performed during the tower's posted business hours where the vehicle owner sought a release after those

³⁶ Testimony of Mr. Mercer, tr. at 50-52, 05/04/21; Advocacy Section Ex. 1 at 24.

³⁷ Testimony of Mr. Mercer, tr. at 52-53, 05/04/21; R.I.G.L. § 39-12.1-12(a). The Hearing Officer notes that the statute also establishes two other preconditions to performing private property trespass tows: (1) the impoundment lot shall be within 10 miles of the point from which the vehicle was towed; and (2) there shall be posted on the outside of the tower's office the business hours of operation and the impoundment lot's hours of operation. This latter requirement is an implicit acknowledgment in the law that the tower's formal business hours of operation may be different than the impound lot's business hours. The former may conform with the minimums established in the proposed tariff, but the latter must reflect the hours during which the tower is willing to perform tows – and, by necessary implication, releases of vehicles towed as a private property trespass tow. The statutes are silent on these points with respect to police-ordered tows.

posted hours, but the industry representatives had never responded to that offer. That situation would, of course, be consistent with the statutory language since the tow was being performed during normal working hours when releases are also routinely performed; there is no requirement that the tower remain on-site to perform releases after close of normal business hours if he is not performing any private property trespass tows outside of his posted business hours.³⁸

Mr. Mercer then went on to explain that it is not his job to only advocate for the consumer in rate cases like this. His job – the Division’s job – is to ensure that a regulated utility, such as a tower, makes a reasonable rate of return on his or her investment. He needs to evaluate the needs of the utility to ensure that the approved rates are not exorbitant but are fair to both the utility and the consumer. He also is required to ensure that the rate structure and the terms and conditions of service are consistent with the governing statutes. There is no statutory or regulatory provision for an “after-hours release fee;” that is a fee that the Division agreed to many years ago in the context of police-ordered tows as providing some reasonable level of compensation when a tower agreed to send in an employee outside of normal business hours to release a vehicle that was towed at the behest of the police. Private property trespass tows were never considered in this context because of the statute that says if you are going to perform a private property trespass tow outside of your normal business hours, you need to be ready, willing and able to release that vehicle to its owner during

³⁸ Testimony of Mr. Mercer, tr. at 53, 05/04/21.

the same times you were willing to tow it.³⁹ The consultant's report does not distinguish between nonconsensual police-ordered tows and nonconsensual private property trespass tows in the context of after-hours release fees because *there has never been an after-hours release fee authorized for nonconsensual private property trespass tows*. The whole concept behind an after-hours release fee was that the tower has to return to work (or get an employee to return to the tow lot) *outside of normal business hours*, expending fuel to do so, open the office and/or tow lot, calculate the total invoice for a police-ordered tow, get the towed vehicle to the entrance of the tow lot, collect the full fee, and then turn the car over to the owner – all of which is a matter of significant inconvenience for a tower that is not engaged in a 24 hour a day operation (which is often the case for towers doing nonconsensual police-ordered tows). On the other hand, the law requires that a tower be available to release a nonconsensual private property trespass tow during the same hours the tower is willing to perform that type of tow – which would mean 24 hours a day if the tower performs nonconsensual private property trespass tows at any time of the day or night – in other words, there would not be an “after-hours tow” because the operations is 24 hours per day. With that understanding of the situation, there was no reason for the Division's consultant to contemplate the possibility of an after-hours release for a private property trespass tow.⁴⁰

³⁹ Some towers, however, did indeed charge such after-hours release fees for private property tows – thus necessitating the instant distinction in the tariff.

⁴⁰ Testimony of Mr. Mercer, tr. at 54-56, 05/04/21.

Attorney Charleson suggested that there is nothing in the statute or in the proposed tariff that says that if you are “on-call” outside of your normal posted business hours that those “on-call” hours should also be considered normal business hours; that Mr. Mercer’s position is simply his interpretation of what the private trespass towing statute means. Mr. Mercer’s response was that, with respect to nonconsensual private trespass tows, the statute explicitly states that you must be open to release a towed vehicle during the hours when you are open to receive a towed vehicle. That is broader than the minimum posted hours that the proposed tariff requires a tower to be open for private property trespass tows. If you must be open to release a vehicle whenever you are open to receive a vehicle, then there should be no additional fee for releasing that vehicle even if it is outside of the normal posted hours. Private property trespass tows are done case-by-case, they are not handled on some type of “on call” rotation among towers like the typical police tow list. If a tower is willing to go out 24 hours a day to receive a nonconsensual private property trespass tow, then the law requires that he be available to release that vehicle back to its owner during the same period. Mr. Mercer believes that the General Assembly put that language in for a reason, and that it is incumbent on the Division to apply that requirement as it was written.⁴¹

⁴¹ Testimony of Mr. Mercer, tr. at 57-60, 05/04/21. The Hearing Officer notes that the statute, R.I.G.L. § 39-12.1-12(a), not only requires that the tower’s impoundment lot be open to release a vehicle the same hours that it is open to receive it, it also explicitly requires that “there shall be posted on the outside of the office of the lot the business hours” during which the impoundment lot will be open to receive and release. This is different than requiring that the normal

Mr. Mercer testified that there is no specific definition of an “after-hours” release, other than the statutory language of R.I.G.L. § 39-12.1-12(a), with respect to nonconsensual private property tows only, that requires that the tower’s impoundment lot be open to release a vehicle the same hours that it is open to receive the vehicle. The General Assembly did not further define what it means to require a tower to be open to release a nonconsensual private property tow during the hours when the tower was open to receive such a vehicle, nor was Mr. Mercer aware of any judicial interpretations of that language. The Division has been left to interpret that language on its own without further guidance from the General Assembly or the courts.⁴²

The questioning next turned to what constitutes adequate documentation of a specific request to perform a nonconsensual private property trespass tow. Mr. Mercer reiterated his earlier comments that an e-mail request to tow a specific vehicle (with information such as location, make, model, color, and/or

minimum business hours be posted on the office. Arguably, if the tower is only receiving private property trespass tows between the hours of, for example, 5:30 a.m. and 1:30 a.m., those hours should be posted on the tow lot, and the tower’s impoundment lot would have to be ready to release the vehicle back to its owner during those hours (which means having someone there). A vehicle owner that wanted his or her car back outside of those posted hours could be requesting an “after-hours” release, though the tower would not have to send someone in to process the release until 5:30 a.m. The tower could not, however, perform any private property trespass tows outside of the posted hours unless it kept someone on-site at the impoundment lot to release the vehicles outside those hours upon request. And if the tower does not post any hours for performing private property trespass tows, but does perform such tows upon request, we would have to conclude that the tower is providing a 24-hour service, and should be available to release accordingly, 24 hours a day.

⁴² Testimony of Mr. Mercer, tr. at 61-62, 05/04/21.

license plate number) would satisfy the requirements; there just needs to be enough information in the written request to ensure that the tower can identify and tow the correct vehicle. A text message from a cell phone could similarly be acceptable if a hardcopy of the text could be generated to attach to the tow slip with enough information to identify that the person requesting the tow was someone who had authority to do so.⁴³

In response to a question from Mr. Charleson as to whether the Motor Carrier Section had considered increasing the flat rate per tow (currently \$125.00 for both nonconsensual police-ordered tows and for nonconsensual private property trespass tows⁴⁴) for the private property trespass tows to compensate the towers for the 30 to 40 percent of such tows that are going to be required to be released outside of the hours in which the towers have a person in the office but cannot collect an after-hours release fee, Mr. Mercer stated that the Motor Carrier Section had not considered a different rate because the statute treated the two types of tow differently. There is no statutory requirement that towers release vehicles that were towed in response to a police-ordered tow during the same hours in which the tower was willing to conduct police-ordered tows. There is such a requirement for private property trespass tows – which, in effect, means that towers who are conducting private property trespass tows, and releasing those vehicles during their hours of conducting such tows, have

⁴³ Testimony of Mr. Mercer, tr. at 63-66, 05/04/21.

⁴⁴ The transcript says “\$25.00” rather than “\$125.00” but that is a typographical error since the proposed flat tow rate per tow for light duty tows is \$125.00 for both police-ordered and private property trespass tows.

extended operating hours and are not releasing any of those private property trespass tows “after-hours.”⁴⁵

The testimony turned next to the process used by the Division to keep the towing industry informed as the proposed tariff was being developed. Mr. Mercer explained that that he worked with a panel of towers, a group composed of approximately eight members of the towing industry. As the Division produced a draft of the proposed tariff, it provided copies to the group and solicited feedback. Most of the suggested amendments Mr. Mercer received from the towers he adopted and incorporated into the proposed tariff. He continued to discuss outstanding issues with the group – the last time via telephone conference – and made sure to address every outstanding issue, except the additional language that was added at the very end of the process concerning the emergency fuel surcharge. Mr. Mercer testified that there was no formal adoption of the final language of the tariff, and that there were points on which the group of towers probably disagreed with the Division, but that he did solicit input from the group of towers at every step.⁴⁶

In response to further questions from Mr. Charleson regarding the process the Division’s consultant went through in coming up with his final report and recommendations, Mr. Mercer confirmed that the recommendations were based

⁴⁵ Testimony of Mr. Mercer, tr. at 66-70, 05/04/21.

⁴⁶ Testimony of Mr. Mercer, tr. at 70-72, 05/04/21. Mr. Mercer noted that he had been very careful to confirm that there were no outstanding issues that had not been discussed with the towers, although no consensus was reached on some of the issues that were discussed.

on a hypothetical average tower. That process is similar to what the Division has been doing since 1998 – come up with a model tariff that works for the majority of towers throughout the state. Mr. Mercer acknowledged that specific items in the proposed tariff might work better for a tower in Burrillville than for a tower in Providence, for example. Mileage expenses for travel might be higher than the average for the Burrillville tower, while property taxes might be higher than the average for the Providence tower, but on average most of the towers should be able to realize an acceptable overall return on their investment using this proposed tariff. There are, of course, towers whose operating conditions and expenses are on the extreme that may not be as well served by this proposed tariff as the average tower, but those towers remain free to file their own tariff.⁴⁷

Finally, Mr. Mercer confirmed for Mr. Charleson that once the proposed tariff is approved, towers who signed on for the interim tariff a couple of years ago will have three months in which to either adopt this tariff or revert to their prior tariff; the interim tariff that was approved expires and will no longer be allowed.⁴⁸

In response to questions from the Advocacy Section's counsel, Ms. Parenteau, Mr. Mercer testified that the purpose of having a tower post its normal business hours is to satisfy a statutory requirement as well as Division rules that implement that requirement and impose minimum hours of business. The

⁴⁷ Testimony of Mr. Mercer, tr. at 72-74, 05/04/21.

⁴⁸ Testimony of Mr. Mercer, tr. at 74-76, 05/04/21.

minimum hours required are the same for both police-ordered and private property trespass tows and have been set out in approved tariffs dating back to at least 2005. Towers may, of course, adopt extended hours, but if a tower has an employee on-site and is operating beyond the posted hours, the tower may not impose an after-hours release fee if a customer shows up to ask for its car back. Mr. Mercer also noted that there is no requirement that a tower agree to tow vehicles outside its posted hours; if they do, however, it is a business decision, specifically with respect to a private property trespass tow, the tower makes for its own benefit, and if someone happens to show up while the tower is completing a tow and asks for its vehicle back, the tower is expected to release it without imposing an after-hours release fee. If the tower is open to receive vehicles into the tow lot, the tower must also be open to release vehicles from that tow lot.⁴⁹

In response to a further question from Ms. Parenteau, Mr. Mercer testified that the consultant's report did not distinguish between "after-hours" or "extended hours" or any other term that referred to tows or other work done outside the tower's posted normal business hours. Mr. Mercer explained that the consultant was looking at the costs of performing an average tow, without regard to statutory requirements or prohibitions. As far as the consultant was concerned, the costs of performing a tow were not dependent on when the tow was performed or whether it was performed during posted business hours. Mr.

⁴⁹ Testimony of Mr. Mercer, tr. at 76-80, 05/04/21.

Mercer acknowledged that there might be circumstances where a tower found itself operating outside its normal business hours – a snow emergency was one example cited – without necessarily triggering the statutory provision regarding doing releases during hours when you are receiving vehicles. Mr. Mercer would not necessarily oppose a tower seeking tariff terms that would allow the tower to collect an after-hours fee in some clearly defined circumstances, even for a private trespass tow, that would result in a variance from the proposed tariff. The key for Mr. Mercer is that the proposed rate would have to be consistent with the statutory requirements for private property trespass tows.⁵⁰

Mr. Charleson then asked Mercer for some clarification as to when an after-hours release fee could be imposed. Mr. Mercer explained that if a tower is sitting in his office doing paperwork an hour after the end of his posted normal business hours and a customer comes to retrieve his vehicle (so, technically, an “after-hours” release request) following a police-ordered tow, the tower could not add an “after-hours release fee” to the tow slip according to Subsection 4 of the proposed tariff. The purpose of the after-hours release, from the time the Division first agreed to add it (some 16 years ago) to the nonconsensual police-ordered tow tariff, was to compensate the tower (and/or the tower’s employee) for the inconvenience and added costs of having to come back to the tow yard after having left for the day for the sole purpose of releasing a vehicle after the posted normal business hours. The Division does not make it a practice of

⁵⁰ Testimony of Mr. Mercer, tr. at 81-84, 05/04/21.

asking whether the tower (or his employee) was sitting across the street in an all-night diner having a coffee when the request came in, but if that were proven to be the case, so that there was very little if any inconvenience to walking across the street to do the paperwork and release the vehicle, we would probably find that an after-hours release fee was not appropriate. By the same token, if the tower had a mechanic or custodian on site after hours, someone who was not qualified to process the paperwork for releasing a vehicle after hours, so that the tower or one of the tow truck operators was required to come in to perform the release, we would probably approve assessing an after-hours release fee. These situations usually only arise when the Division receives a complaint from the customer that requires us to review the situation. None of this is new, however; this is the way the process has been handled since at least 2005.⁵¹

In response to an additional question from Mr. Charleson regarding the release of private property trespass tows, Mr. Mercer stated that a tower who does a private property trespass tow during the tower's posted normal business hours would not be required to come back to the tow lot to release that towed vehicle outside of the posted normal business hours. Mr. Mercer then went on to state that in that specific circumstance he would not have an objection to a tower seeking to include an after-hours release fee for private property trespass

⁵¹ Testimony of Mr. Mercer, tr. at 84-88, 05/04/21.

tow for that situation in that tower's tariff. The key is that the amended language proposed would have to be consistent with the statutory language.⁵²

Industry Representatives

Andrew Slater of Exeter Auto Repair asked again whether a nonconsensual tow could ever become a consensual tow, and Mr. Mercer replied that once a tow is initiated as a nonconsensual tow it remains a nonconsensual tow until the tow slip is presented and the vehicle owner/operator pays for the tow.⁵³

Mr. Slater then noted that he disagreed with Mr. Mercer's position with respect to after-hours release fees in those cases where a customer comes in outside the normal tow operations hours to request his vehicle back, and because Mr. Slater has a mechanic or someone at the shop working outside the normal tow hours, he is expected to release the vehicle without collecting an after-hours release fee. That mechanic is now having to stay even later, and maybe is collecting over-time for being there, so releasing the vehicle is costing Mr. Slater more. He believes he should be allowed to impose the after-hours release fee to recoup those additional costs.⁵⁴

Finally, Mr. Slater opined that, with respect to private property trespass tows, there is an issue of personal accountability for the driver who parks their

⁵² Testimony of Mr. Mercer, tr. at 88-91, 05/04/21. *See generally* fn. 40, above, for a discussion of what would be needed to be consistent with the statutory language.

⁵³ Testimony of Mr. Mercer, tr. at 92-94, 05/04/21.

⁵⁴ Testimony of Mr. Slater, tr. at 94-96, 05/04/21.

vehicle on someone else's property without permission. He personally would be lucky to do two or three private property trespass tows in a year, but he knows a lot of the other towers, particularly in places like Providence, do many more than that. Unauthorized parking is an inconvenience for everyone, and he believes that the after-hours release fee should be imposed on those drivers as a means of encouraging them to be more responsible. He believes the towers should be allowed to recover that extra fee to encourage the drivers to behave more responsibly.⁵⁵

Post-Hearing Statements

Rhode Island Towing, Inc.

At the conclusion of the hearing, Mr. Charleson offered some closing remarks. He started out by asking that the Division reconsider its position regarding imposing an after-hours release fee for private property trespass tows. In his view, the additional costs to the tower of sending someone in to do a release "after-hours" is the same whether the tow was police-ordered or a private property trespass tow, and if the Division does not believe it can authorize the same \$30.00 "after-hours release fee" for private property trespass tows because of the statutory language, then it could surely increase the flat fee authorized for

⁵⁵ Testimony of Mr. Slater, tr. at 96-97, 05/04/21.

performing those tows (\$125.00 for light duty) in the proposed tariff by \$15.00 to \$20.00 (i.e., to \$144.00 to \$145.00 per tow for a light duty tow).⁵⁶

Mr. Charleson concluded his oral argument by urging the Division to allow those towers signed up for, and currently on, the interim (2018) tariff to remain on that tariff. He acknowledged that the interim tariff was issued with a sunset provision, but he believed that the Division was within its rights and within its authority, to rescind the sunset provision and allow towers who were currently on the 2018 interim tariff choose to remain on that tariff rather than either reverting back to their previous tariff, adopting the proposed tariff that is the subject of this proceeding, or filing for a new individual tariff.⁵⁷

In written comments provided to the Division by Mr. Charleson on May 7, 2021, Mr. Charleson expands on his remarks regarding an “after-hours” release fee for private property trespass tows by arguing that all charges incurred by towers related to nonconsensual tows are compensable. Therefore, if the statute

⁵⁶ Statement of Mr. Charleson, tr. at 98-100, 05/04/21. The Hearing Officer notes that Mr. Charleson’s proposal would add \$15.00 to \$20.00 to every private property trespass tow performed, not just those released “after-hours.” Since the towers concede that half or more of private property trespass tow releases occur either during normal business hours or when someone is already at the tower’s lot, and since most private property trespass tows are straightforward hook and haul operations, this additional fee would result in a significant over-recovery for these types of tows when compared to police-ordered tows. It would also appear to be contrary to the apparent legislative intent of R.I.G.L. § 39-12.1-12(a) – which is that if a tower is open to receive a private property trespass tow the tower must also be open to release a private property trespass tow (i.e., not an “after-hours” situation by law). If the tower already has someone on-scene to receive a towed vehicle, there is very little additional cost or inconvenience involved in having that on-scene employee release a vehicle at that time.

⁵⁷ Statement of Mr. Charleson, tr. at 107-108, 05/04/21.

regarding private property trespass tows requires that the towers have someone on scene 24 hours each day, the towers have a right to expect compensation for that time and should be able to cover for sending an employee outside of normal business hours to release a vehicle that had been received as a private property trespass tow. Mr. Charleson points out that there is no free lunch – all the ordinary and reasonable costs incurred by the tower need to be absorbed by the owner of the towed vehicle, and the certificate holder is entitled to make a profit besides. He argues that if the Division determines that the statute does not allow the tower to charge an additional fee for an after-hours release, then the Division needs to increase the fee for the tow to compensate the tower for his additional expenses related to coming in after-hours to do a release.⁵⁸

⁵⁸ Mark A. Charleson, Esq., email dated May 7, 2021. The Hearing Officer notes that the private property trespass tow, R.I.G.L. § 39-12.1-12(a), does not actually prohibit an “after-hours” fee, nor does it mandate that a tower keep someone on the premises 24 hours a day. It simply requires that a tower be available to release a vehicle during the same times it is available to receive a vehicle. That means, if the tower is receiving private property trespass tows 24 hours a day, it has to be available to release private property trespass tows 24 hours a day – which means there are no “after-hours” for the tower, no inconvenience in doing a release because the tower has already chosen to operate 24 hours a day anyway, and thus no justification for an “after-hours release fee.” If the tower limits its hours of operations to less than 24 hours each day, and posts those limited hours, then the tower could charge an “after-hours release fee” for coming in outside the posted hours to process a release. The model tariff does not address this issue because most towers appear to either do no private property trespass tows, or they have agreements with property managers to do them 24 hours a day upon demand. If a tower does no private property trespass tows there will be no “after-hours” releases; if it does such tows 24 hours each day, then it has made a business decision to operate 24 hours each day, can be assumed to have those costs built into its tariff, and does not need an “after-hours release fee” because it is operating 24 hours each day and thus has no “after-hours.”

Finally, Mr. Charleson's written comments take exception to the fuel surcharge provision set out in the proposed model tariff. He notes that the Division's consultant assumed the average tow consumed approximately \$9.00 of fuel, and that the average price of fuel at the time of the study was approximately \$3.00 per gallon, or an average trip consumed 3 gallons of fuel at \$3.00 per gallon. He believes that this would suggest that if the fuel price exceeds an average of \$3.50 in any given month, the surcharge should be \$1.50, not \$0.50, and if the price of fuel exceeds an average of \$4.00 per gallon the fuel surcharge for an average trip should be \$3.00 rather than the \$1.00 proposed.⁵⁹

Ajax Service Corp. d/b/a Blue Sun Super Service

Mr. Victoria, speaking on behalf of his company, offered a few closing remarks at the hearing. He stated that most of the previous tariffs for the towing industry had been the result of consent agreements entered into between members of the industry and the Division; if a towing company wanted to get the negotiated rates, they had to sign on to the consent agreement. This new document being considered is supposed to be a true tariff, and personally, he is not so sure that most towers would be able to come up with the data that the Division relied upon to develop this proposed tariff, there are just so many possible elements that can go into every tow from the cost of answering the initial phone call to the costs of doing a release after the tow (without even considering an after-hours release. What is the purpose, Mr. Victoria asked, of posting

⁵⁹ Mark A. Charleson, Esq., email dated May 7, 2021.

operating hours if you must come in to release the vehicle any time of the day? Now, he asked, is the Division saying that private property tows must be released for free? He indicated that he just does not believe the Division has the authority to put these sorts of rules into a tariff. He believes the law just says, with respect to releasing private property trespass tows, you must come in to release the vehicles, but it does not say you have to release them for free.⁶⁰

Finally, Mr. Victoria indicated that he was still confused about at what point a nonconsensual tow is finished. Mr. Mercer stated in his testimony that the tow ends when it gets paid for, but what about those cars where the tow fees are never paid? Mr. Victoria had always understood that the tow was finished when the vehicle was dropped off the hook. He hoped that point could be cleared up.⁶¹

Advocacy Section

In the Advocacy Section's closing comments, Ms. Parenteau opened by stating that the Advocacy Section supported the proposed tariff as representing the best balance of the interests of the towers and the motoring public. She pointed out that while a tower who finds that the proposed tariff does not allow for a fair and reasonable profit given its specific circumstances always has the option of applying for different tariff terms specific to its operations, the motoring public is subjected to whatever rates are set out in the tariff of the tower

⁶⁰ Statement of Mr. Victoria, tr. at 101-102, 05/04/21.

⁶¹ Statement of Mr. Victoria, tr. at 103-105, 05/04/21.

performing the non-consensual tow of the motoring public's vehicles. She went on to note that there have been many changes in the economics of towing since Federal deregulation of the industry over 20 years ago, and the proposed tariff takes into consideration those changes, the statutory requirements of the Towing Storage Act, industry experience, and the results of the Division-commissioned rate analysis focused on rate provisions for light and medium duty non-consensual tows in Rhode Island.⁶²

With respect to the industry suggestion that the phrase "inclusive of all incidental charges" was potentially confusing, Ms. Parenteau noted that the phrase had been in use in tow tariffs dating back to about 1998. She stated that the approved rate for non-consensual tows at that time was \$45.00 plus additional fees for "incidental" charges to be applied when warranted; such "incidental" fees were typically applied in accident-response tows and revolved around services such as sweeping up of glass, applying fluid-spill absorbents (e.g., Speedy-Dry), and picking up dislodged vehicle parts resulting from the accident. In 1998, the Division agreed to increase the rate for all non-consensual tows (not just for accident-scene-tows that warranted additional "incidental" charges) by 33 percent (33%), up to \$60.00 per tow – with the very clear understanding that the new rate would more than adequately compensate towers for providing those infrequent incidental services and for the first hour on the scene preparing for the tow (most tows requiring less than one hour on-

⁶² Tiffany Parenteau, Esq., email dated May 10, 2021, attachment at 1.

scene). Ms. Parenteau also noted that all subsequent approved tariffs have taken the same approach and used the same language as that adopted in 1998 – that allowing the towers to charge more for all tows than might actually be required will compensate them for the small number of accident-related tows for which they formerly were able to add “incidental” charges that would henceforth be spread across all tows as part of the basic tow fee. It is the Advocacy Section’s position that the term “inclusive of all incidental charges” has been inextricably related to towing ratemaking matters for well over 20 years and is, in fact, well understood by the industry and quite clear in its meaning.⁶³

Next, the Advocacy Section turned to a discussion of the industry-suggested increase in the private property trespass tow rate. It is the Advocacy Section’s position that private property trespass tows are generally far less involved – and therefore less costly to perform – than police-ordered tows (which sometimes involve accident scenes and always involve one or more police officers interviewing witnesses or otherwise controlling the timing of the tow). Most private property trespass tows involve vehicles that are parked and relatively easily accessible; there are no police officers or paramedics on scene to delay the tower, no irate vehicle owners seeking to avoid the tow, no scattered car parts, and no motor fluid spills to be addressed. The industry offered nothing to suggest that the proposed rate for private property trespass tows is inadequate to allow a fair profit to the tower. Even if some towers believe their costs for

⁶³ Tiffany Parenteau, Esq., email dated May 10, 2021, attachment at 1-2.

doing private property trespass tows are higher than those allowed in the proposed tariff, they are perfectly free to apply for their own specific tariff that better suits their needs (although they will have to provide some evidence to support their position, just like any other public utility seeking a rate increase would be required to do). Accordingly, the Advocacy Section's position is that the proposed rate for private property trespass tows is more than adequate and should not be increased to offset the fact that an "after-hours release fee" is not authorized for such tows; this later point is especially true given the clear language of R.I.G.L. § 39-12.1-12 requiring that they be open to release private property trespass tows the same hours they are open to perform the tows.⁶⁴

The third issue addressed by Ms. Parenteau on behalf of the Advocacy Section was the request from the towers to allow any tower currently on the interim tariff (approved in 2018) to remain on that tariff indefinitely. She pointed out that the 2018 interim rate was created and agreed to explicitly to allow towers to shift to a different rate pending the outcome of the rate study the Division was

⁶⁴ Tiffany Parenteau, Esq., email dated May 10, 2021, attachment at 2-3. The Hearing Officer notes that an "after-hours release fee" was initially approved to compensate a tow truck driver for the inconvenience of getting out of bed and driving back to the tow lot when the towing business was closed (i.e., "after-hours") for the sole purpose of releasing a police-ordered tow at the convenience of the vehicle owner. In other words, this was to make a tow truck driver more willing to go in to perform a release during a period of time he or she would not otherwise have to do so for the convenience of the person who owned the vehicle. With respect to private property trespass tows, if the tower is performing that service on demand around the clock, the tower really has no "after-hours" at all. So, if the tower is ready, willing, and able to do this type of tow, how can he claim he is inconvenienced by having to do the release during his regular hours of operation for this type of tow? The law requires the tower to perform the release.

commissioning. The Report and Order issued by the Division in this Docket in 2018 made it quite clear that at some point after the rate study was done, the towers would have to choose one of three options: (a) accept the new proposed tariff that is under consideration in this proceeding; (b) revert to the tariff the tower was on prior to the time the tower chose to shift to the interim tariff; or, (c) if the tower preferred the rates set out in the interim tariff approved in 2018 (or any other rates, for that matter), the tower would have to apply for its own specific tariff and be prepared to justify it. The Advocacy Section's position was that since simply remaining on the interim tariff was not one of the approved options, and since it was never intended as more than a temporary measure (built on nothing more than educated guesses), remaining on the interim tariff without applying for it as a new rate should not be an option.⁶⁵

Ms. Parenteau concluded her comments with a few additional observations:

(1) While the Advocacy Section would not be opposed to the Hearing Officer making an allowance for after-hours retrieval of a vehicle towed for a private property trespass during a business's posted business hours, the language of the statute clearly requires the release of a vehicle in the same hours the tower "receives" it. There is no language in the Towing Storage Act that states towers are entitled to after-hours release fees for any tow; those fees developed from negotiations at a time when the tow fee itself was much lower. Language was

⁶⁵ Tiffany Parenteau, Esq., email dated May 10, 2021, attachment at 3.

added to the proposed tariff at the suggestion of some of the towers to not require release of a vehicle after hours only if the vehicle is inoperable and must be towed out.⁶⁶

(2) The Advocacy Section does not object to the concept of allowing additional forms of communications (other than emails) as a way to document a request for a private property tow, but questions whether text messages offer an enforceable mechanism (text messages easily disappear as do screenshots) and notes that those (rare) towers who try to abuse the systems must be kept in mind in determining what should be approved. The Advocacy Section firmly believes that while a text message to communicate a private property trespass tow might be workable, the better practice by far is to ensure that there is an actual writing (i.e., printed email or written letter request) on-scene such as has been the practice. This will ensure that the tower will have the necessary and valid evidence to protect it from later claims that a specific tow was not properly requested.⁶⁷

⁶⁶ Tiffany Parenteau, Esq., email dated May 10, 2021, attachment at 3-4. The Hearing Officer notes that the statutes do not explicitly require towers to release vehicles after-hours that were brought in as a police-ordered tow, but the Division has long interpreted the statutes to require towers release police-ordered tows after hours. This proposed tariff, just like other tariffs approved by the Division for the past twenty (20) years **does** explicitly require towers release vehicles after hours – **except** in those circumstances where the towed **vehicle is inoperable** and **cannot be driven from the storage lot**. The “after-hours release fee” was approved by the Division **solely** to offset the cost to towers of coming back to the tow lot to release police-ordered tows outside of normal business hours. See Parts A.1.f and B.1.e.

⁶⁷ Tiffany Parenteau, Esq., email dated May 10, 2021, attachment at 4.

DISCUSSION AND FINDINGS

Not A “Contested Case”

This proceeding is not a “contested case” within the meaning of the Administrative Procedures Act. Under R.I.G.L. § 42-35-1(5), a “contested case” is defined as “a proceeding, including but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a specific party are required by law to be determined by an agency after an opportunity for hearing.” (Emphasis supplied.) While this proceeding is concerned with developing a model tariff for an average light and/or medium duty towing operation (and, thus, concerns ratemaking for a hypothetical average tower), it does not involve establishing the “legal rights, duties, or privileges of a specific party,” i.e., any specific certificated tower.

Nor is it a rulemaking proceeding within the meaning of R.I.G.L. § 42-35-1(19) because it falls within the exceptions to the definition of “rule” set out in subsections (iv), (v) and (vi) of R.I.G.L. § 42-35-1(19). The proposed model tariff sets benchmarks against which the Division intends to evaluate whether future proposed tariff filings are “just and reasonable” and thus should be approved. A tariff filing which adopts the proposed model tariff approved in this hearing is presumptively “just and reasonable” and may therefore be approved without further proceedings. A tariff filing which seeks rates or terms significantly different than those in the adopted model tariff would **not** be summarily denied but would require a more detailed justification through a utility rate case

proceeding before the Division could determine whether the requested rates or terms are “just and reasonable” under the circumstances of that particular tower’s costs and benefits (i.e., its unique individual circumstances regarding its costs and revenues).

No certificated tower will be required to sign on to the model tariff approved by this Report and Order, but any certificated tower who does wish to sign on will be allowed to do so without further review by the Division. Any certificated tower who desires a tariff with terms or rates different from the model tariff adopted by this Report and Order may file its own proposed tariff pursuant to R.I.G.L. § 39-12-11, and the filed tariff will be reviewed pursuant to the provisions set out in R.I.G.L. §§ 39-12-11 through 39-12-14 in light of the unique individual circumstances of that specific certificated tower. The certificated tower will be afforded an opportunity to establish that its proposed unique tariff terms and rates are just and reasonable terms and rates, given its unique individual circumstances regarding its own specific costs and revenues, pursuant to an administrative hearing, as provided by R.I.G.L. § 39-12-14; that proceeding would be a “ratemaking” or “price fixing” proceeding, involving “the legal rights, duties, or privileges of a specific party” that “are required by law to be determined by an agency”, and thus a “contested case” for the purposes of the Administrative Procedures Act.

Flat Fee Per Tow Inclusive Of All Incidental Charges

The Division notes that the sections wherein the phrase “inclusive of all incidental charges” are included are very clear, particularly when read in context. Let us walk through those provisions in the draft tariff that make use of this phrase.

A. LIGHT-DUTY – Up to 8,000 lbs. Gross Vehicle Weight

1. Police-Ordered Tows:

(a) Vehicle towed back to the company’s lot: One hundred twenty-five dollars (\$125.00) flat fee per tow inclusive of all incidental charges, the first five (5) miles of on-hook mileage, the first hour of site work, and the first 24 hours of storage when the vehicle is towed to the company’s storage lot. For each on-hook mile encountered after the first five (5) such miles contemplated in the preceding sentence from the scene of the tow to the tower’s storage lot, the tower shall be authorized to charge three dollars and fifty cents (\$3.50). If such a tow requires additional time (beyond the first hour contemplated in this section) on the scene, the tow company may assess an additional fee of one hundred (\$100.00) per additional hour, billed in 15-minute increments. Storage rates after the first 24 hours shall be calculated in accordance with Section C.

Subsection A-1(a) sets out the basic fee structure for a light duty, police-ordered tow, where the vehicle is to be towed back to the towing company’s storage lot. The basic fee for this type of tow is \$125.00, which includes: (a) the first five (5) miles of on-hook mileage; (b) the first hour of site work; (c) the first 24 hours of storage at the towing company’s storage lot; and, (d) all incidental charges. The section then goes on to authorize additional charges under only

three circumstances of these four circumstances: (a) The tower can charge \$3.50 per mile for each on-hook mile after the first five (5) such miles are completed; (b) if the tow requires additional time beyond the first hour on the scene, the tow company may assess an additional fee of \$100.00 per additional hour, billed in 15-minute increments (and this covers all activities performed during that additional time); and, (c) storage charges may be accrued for storage in excess of the first 24 hours in accordance with Section C of the tariff. There are no other charges for any type of work or activity whatsoever that may be assessed under this tariff provision. The tower is limited to charging for the actual tow, for on-hook mileage after the first five (5) miles, and for additional time required to be on-scene after the first hour on scene **and no other (i.e., incidental) charges, under Subsection A-1(a).** Anything other than these charges may only be assessed under some other specific provision of the tariff (such as Subsection A.1(c)), if any is directly applicable.

(b) Vehicle towed to a site directed by owner/driver:⁶⁸ One hundred dollars (\$100.00) flat fee per tow inclusive of all incidental charges, the first hour of site work, plus seven dollars (\$7.00) per on-hook mile from the scene of the tow when a vehicle is towed and delivered to a site other than

⁶⁸ If the vehicle owner (or the person in control of the vehicle at the time of the tow) is unable to satisfy the tow charge in full when the tower arrives at the site directed by the vehicle owner, the tower retains a lien on the vehicle and its plates and has a right to take the towed vehicle back to the tower's storage lot where it will remain until the vehicle owner is able to pay all charges. In that event, Subsection A-1(a) controls, and the tower may charge mileage in accordance with that subsection as calculated under Subsection A-1(d) regarding on-hook mileage charges (i.e., the difference between the tow truck odometer reading at the point where the towed vehicle was placed on the hook and tow truck odometer reading when the towed vehicle arrives at the tower's storage lot, first 5 miles free).

the tower's storage lot as directed by the vehicle owner (or the person in control of the vehicle at the time of the tow) in accordance with §39-12.1-3(d) (see Consumer Information Card Section D-3). If such a tow requires additional time on the scene, the tow company may assess an additional fee of one hundred dollars (\$100.00) per additional hour beyond the first hour on scene, billed in 15-minute increments.

Similarly, Subsection A-1(b) sets out the basic fee structure for a light duty, police-ordered tow, where the vehicle is to be towed to a site directed by the vehicle owner/driver (i.e., not back to the towing company's storage lot). The basic fee for this type of tow is \$100.00, which includes: (a) the first hour of site work; and, (b) all incidental charges. In addition, the tower may charge seven dollars (\$7.00) per on-hook mile from the scene of the tow to a site other than the tower's storage lot as directed by the vehicle owner (or the person in control of the vehicle at the time of the tow). In addition, if the tow requires additional time on the scene above the first hour on scene, the tow company may assess an additional fee of \$100.00 per additional hour, billed in 15-minute increments. There are no other charges for any type of work or activity whatsoever that may be assessed under this tariff provision. The tower is limited to charging for the actual tow, for actual on-hook mileage, and for additional time required to be on-scene after the first hour on scene **and no other (i.e., incidental) charges, under Subsection A-1(b).** Anything other than these charges may only be assessed under some other specific provision of the tariff, if any is directly applicable.

(c) Extra Laborer Required: When an extra laborer is required at an accident scene for recovery of a vehicle in this weight category, the tower is authorized to charge a rate of sixty-five dollars (\$65.00) per hour in addition to the charges identified in Subsection A-1(a) above.

As we alluded to earlier, Section A-1(c) is a specific tariff provision that may be applicable for a light duty, police-ordered tow, where the vehicle is to be towed back to the towing company's storage lot (i.e., Subsection A-1(a) tows only). In those cases where an extra laborer is required to assist the tow truck operator in getting a vehicle into a position from which it may be towed, the tariff allows the tower to charge an additional \$65.00 per hour, in addition to the actual tow, for on-hook mileage after the first five (5) miles, and for additional time required to be on-scene after the first hour on scene. Since this charge is expressly authorized by the tariff under specific circumstances, it is not an "incidental charge."

(e) Towing of Motorcycles: An additional charge of twenty-five dollars (\$25.00) shall apply when the tow company must tow and relocate a motorcycle in either of the services outlined in Subsections A-1(a) and A-1(b).

If the vehicle being towed⁶⁹ is a motorcycle, and if the tower is towing and relocating the motorcycle under Subsections A-1(a) or A-1(b) of the tariff, the

⁶⁹ In this case "towed" does not mean hooking a motorcycle behind a traditional wrecker and hauling it off with the motorcycle's rear wheel on the pavement. It means placing the motorcycle on the bed of a flat-bed tow truck (possibly by winching it up the inclined bed) and carrying it away. In Rhode Island, both traditional wreckers and flat-bed trucks with a winch are considered tow trucks, and when they remove a vehicle, whether by "hook and haul" or by "carry," it is considered a tow.

certificated tower may impose an additional charge of \$25.00. Since this charge is expressly authorized by the tariff under specific circumstances, it is not an “incidental charge.”

(f) After-Hours Release of Vehicles Subjected to Police-Ordered Tows:

- (i) Towers are required to release vehicles towed at the direction of a police officer to the owner or lien holder, or their designee, upon demand and upon presentation of the appropriately accrued towing charges, regardless of the type of vehicle towed (See exception in subsection (v) below).
- (ii) However, a patron who chooses to retrieve his/her vehicle (or personal belongings) outside the tower’s normal business hours may be charged an additional after-hours release fee of thirty dollars (\$30.00).

...

The tariff spells out a specific set of circumstances under which a tower may charge an “additional after-hours release fee of thirty dollars (\$30.00).” Since this charge is expressly authorized by the tariff under specific circumstances, it is not an “incidental charge.”

2. PRIVATE-PROPERTY-TRESPASS TOWS:

- (a) **Vehicle towed back to the company’s lot:** One hundred twenty-five dollars (\$125.00) flat fee per tow inclusive of all incidental charges, all on-hook mileage, the first hour of site work, and the first 24 hours of storage when the vehicle is towed to the company’s storage lot. In the event a tower is asked to tow a “trespassing” motorcycle, the tower may assess an additional twenty-five dollars (\$25.00) beyond the fee outlined in the previous sentence. Storage rates after the first 24 hours shall be calculated in accordance with Section C below.

Subsection A-2(a) sets out the basic fee structure for a light duty, private property trespass tow, where the vehicle is to be towed back to the towing company's storage lot. The basic fee for this type of tow is \$125.00, which includes: (a) all on-hook mileage; (b) the first hour of site work; (c) the first 24 hours of storage at the towing company's storage lot; and, (d) all incidental charges. Only two types of additional charges may be assessed by the certificated tower: (a) an additional charge of \$25.00 above the flat fee of \$125.00 if the vehicle being towed is a trespassing motorcycle; and, (b) storage fees after the first 24 hours as calculated under Section C of the tariff. **Anything other than these three specified charges** (\$125.00 flat fee for tow, an additional \$25.00 fee if the vehicle is being towed is a motorcycle, and storage fees for storage in excess of the first 24 hours) **may only be assessed under some other specific provision of the tariff if any is expressly applicable.**

(b) **Release of vehicle at the scene of a requested private-property-trespass tow:** In the event the vehicle owner (or person in control of the vehicle at the time in question) arrives on the scene and agrees to remove the vehicle in question from the parcel of private property, the tow company shall be authorized and required⁷⁰ to charge the vehicle owner (or person in control of the vehicle at the time in question) a flat fee of sixty dollars (\$60.00), provided, however, that the tow company has already secured the vehicle (on-hook or on the back of a flatbed) for a properly requested trespass tow.

⁷⁰ In order to ensure that this provision is not read as giving the tower the option of refusing to release the towed vehicle upon demand and payment of \$60.00, and instead completing the tow at the full rate, this provision has been amended from the originally proposed language by adding the words "and required" following the word "authorized."

This second private property trespass situation is really concerned with a tow that is begun, but not completed. If a tower responds to a request for a private property trespass tow made by the property owner (or person in charge of the property), secures (on-hook or on the back of a flatbed) the trespassing vehicle for towing, but the vehicle owner appears on-scene (before the certificated tower has removed the trespassing vehicle from the parcel of private property) and agrees to remove the vehicle at once, then the tower must release the vehicle (drop the hook or remove vehicle from flat-bed) and charge a flat fee of \$60.00. Upon receipt of the \$60.00 fee, the tower must immediately release the vehicle back to its owner (or to the person in control of the vehicle). No other charges are allowed in the tariff in this limited situation, so there can be no incidental charges of any type.

B. MEDIUM-DUTY - 8,001 lbs. to 15,000 lbs. Gross Vehicle Weight

1. Police-Ordered Tows:

(a) Vehicle towed back to the company's lot: One hundred forty-five dollars (\$145.00) flat fee per tow inclusive of all incidental charges, the first five (5) miles of on-hook mileage, the first hour of site work, and the first 24 hours of storage when the vehicle is towed to the company's storage lot. For each on-hook mile encountered after the first five (5) such miles contemplated in the preceding sentence from the scene of the tow to the tower's storage lot, the tower shall be authorized to charge three dollars and fifty cents (\$3.50). If such a tow requires additional time (beyond the first hour contemplated in this section) on the scene, the tow company may assess an additional fee of one hundred dollars (\$100.00) per additional hour, billed in 15-minute increments. Storage rates after the

first 24 hours shall be calculated in accordance with Section C.

Subsection B-1(a) sets out the basic fee structure for a medium duty, police-ordered tow, where the vehicle is to be towed back to the towing company's storage lot. The basic fee for this type of tow is \$145.00, which includes: (a) the first five (5) miles of on-hook mileage; (b) the first hour of site work; (c) the first 24 hours of storage at the towing company's storage lot; and, (d) all incidental charges. The section then goes on to authorize additional charges under only three of these four circumstances: (a) The tower can charge \$3.50 per mile for each on-hook mile after the first five (5) such miles are completed; (b) if the tow requires additional time beyond the first hour on the scene, the tow company may assess an additional fee of \$100.00 per additional hour, billed in 15-minute increments (and this covers all activities performed during that additional time); and, (c) storage charges may be accrued for storage in excess of the first 24 hours in accordance with Section C of the tariff. There are no other charges for any type of work or activity whatsoever that may be assessed under this tariff provision. The tower is limited to charging for the actual tow, for on-hook mileage after the first five (5) miles, for additional time required to be on-scene after the first hour on scene, and for storage after the first 24 hours at the tower's storage lot, **and no other (i.e., incidental) charges, under Section B-1(a).** Anything other than these charges may only be assessed under some other specific provision of the tariff (such as Subsection B.1(c)), if any is directly applicable.

(b) Vehicle towed to a site directed by owner/driver: ⁷¹

One hundred twenty dollars (\$120.00) flat fee per tow inclusive of all incidental charges, the first hour of site work, plus eight dollars (\$8.00) per on-hook mile from the scene of the tow when a vehicle is towed and delivered to a site other than the tower's storage lot as directed by the vehicle owner (or the person in control of the vehicle at the time of the tow) in accordance with §39-12.1-3(d) (see Consumer Information Card Section D-3). If such a tow requires additional time on the scene, the tow company may assess an additional fee of one hundred dollars (\$100.00) per additional hour beyond the first hour on scene, billed in 15-minute increments.

Similarly, Subsection B-1(b) sets out the basic fee structure for a medium duty, police-ordered tow, where the vehicle is to be towed to a site directed by the vehicle owner/driver (i.e., not back to the towing company's storage lot). The basic fee for this type of tow is \$120.00, which includes: (a) the first hour of site work; and, (b) all incidental charges. In addition, the tower may charge eight dollars (\$8.00) per on-hook mile from the scene of the tow to a site other than the tower's storage lot as directed by the vehicle owner (or the person in control of the vehicle at the time of the tow). Further, if the tow requires additional time on the scene beyond the first hour on scene, the tow company may assess an

⁷¹ If the vehicle owner (or the person in control of the vehicle at the time of the tow) is unable to satisfy the tow charge in full when the tower arrives at the site directed by the vehicle owner, the tower retains a lien on the vehicle and its plates and has a right to take the towed vehicle back to the tower's storage lot where it will remain until the vehicle owner is able to pay all charges. In that event, Subsection B-1(a) controls, and the tower may charge mileage in accordance with that subsection as calculated under Subsection B-1(d) regarding on-hook mileage charges (i.e., the difference between the tow truck odometer reading at the point where the towed vehicle was placed on the hook and tow truck odometer reading when the towed vehicle arrives at the tower's storage lot (first 5 miles free).

additional fee of \$100.00 per additional hour, billed in 15-minute increments. There are no other charges for any type of work or activity whatsoever that may be assessed under this tariff provision. The tower is limited to charging for the actual tow (\$120.00), for actual on-hook mileage (\$8.00 per mile), and for additional time required to be on-scene after the first hour on scene (\$100.00 per hour), **and for no other (i.e., incidental) charges, under Subsection B-1(b).** Anything other than these charges may only be assessed under some other specific provision of the tariff, if any is directly applicable.

There are three other additional charges that may be assessed in specific circumstances.

(c) Extra Laborer Required: When an extra laborer is required at an accident scene or recovery of a vehicle in this weight category, the tower is authorized to charge a rate of sixty-five dollars (\$65.00) per hour in addition to the charges identified in Subsection B-1(a) above.

Section B-1(c) is a specific tariff provision that may be applicable for a medium duty, police-ordered tow, where the vehicle is to be towed back to the towing company's storage lot (i.e., Subsection B-1(a) tows only). In those cases where an extra laborer is required to assist the tow truck operator in getting a vehicle into a position from which it may be towed, the tariff allows the tower to charge an additional \$65.00 per hour, in addition to the actual tow, for on-hook mileage after the first five (5) miles, for additional time required to be on-scene after the first hour on scene, and for storage after the first 24 hours. Since this charge is expressly authorized by the tariff under specific circumstances, it is not an "incidental charge."

(d) On-Hook Mileage charges: In instances regarding on-hook mileage charges outlined in Subsection B-1(a) and B-1(b) above, the tow slip must list both the tow truck's beginning odometer reading when the towed vehicle is secured (on-hook or on the back of a flatbed) and the ending odometer reading when the vehicle is delivered to the tower's lot (when mileage charges are authorized) or delivered to the destination directed by the vehicle owner (or person in control of the vehicle at the time of the tow).

Subsection B-1(d), On-Hook Mileage charges, is expressly authorized by the tariff under specific circumstances and is not, therefore, an "incidental charge."

(e) Towing of Motorcycles: An additional charge of twenty-five dollars (\$25.00) shall apply when the tow company must tow and relocate a motorcycle in either of the services outlined in Subsections B-1(a) and B-1(b).

There are no motorcycles that weigh 8,001 pounds or more.⁷² This section will be deleted from the approved Tariff language set out in the Attachment to this Report and Order, and subsequent sections renumbered appropriately. Therefore, there will be no charge of this nature authorized for medium duty tows under the approved Tariff language set out in the Attachment to this Report and Order.

(f) After-Hours Release of Vehicles Subjected to Police-Ordered Tows:

- (i) Towers are required to release vehicles towed at the direction of a police officer to the owner

⁷² The Division concedes that an 8,001-pound motorcycle is at least theoretically possible, but it is difficult to conceive of a reason for building such a vehicle – even assuming it is possible for a rider to safely control such a vehicle once built. We will gladly revisit this issue should such a vehicle ever be built, pass State and Federal regulatory requirements for safe operation on public highways, be insured, and obtain any state's vehicle registration.

or lien holder, or their designee, upon⁷³ demand and upon presentation of the appropriately accrued towing charges, regardless of the type of vehicle towed (See exception in subsection (v) below).

- (ii) However, a patron who chooses to retrieve his/her vehicle (or personal belongings) outside the tower's normal business hours may be charged an additional after-hours release fee of thirty dollars (\$30.00).

...

The tariff spells out a specific set of circumstances under which a tower may charge an “additional after-hours release fee of thirty dollars (\$30.00).” Since this charge is expressly authorized by the tariff under specific circumstances, it is not an “incidental charge.” This section shall also be renumbered as Part B.1.e following the deletion of the previous subsection concerning towing motorcycles.

2. PRIVATE-PROPERTY-TRESSPASS TOWS:

- (a) **Vehicle towed back to the company's lot:** One hundred forty-five dollars (\$145.00) flat fee per tow inclusive of all incidental charges, all on-hook mileage, the first hour of site work, and the first 24 hours of storage when the vehicle is towed to the company's storage lot. Storage rates after the first 24 hours shall be calculated in accordance with Section C below. In the event a tower is asked to tow a “trespassing” motorcycle, the tower may assess an additional twenty-five dollars (\$25.00) beyond the fee outlined in the previous sentence.

⁷³ In the draft tariff presented to the Hearing Officer on May 4, 2021, and marked as Hearing Officer Exhibit I, it appears that Subsection B.1(f)(i) inadvertently contains a typographical error in the form of a “return” following the word “upon”. This becomes obvious when compared to the equivalent language for light-duty tows, Subsection A.1(f)(i) in Hearing Officer Exhibit I. That error has been corrected in the quoted material and will be corrected in the approved Tariff language set out in the Attachment to this Report and Order.

Subsection B-2(a) sets out the basic fee structure for a medium duty, private property trespass tow, where the vehicle is to be towed back to the towing company's storage lot. The basic fee for this type of tow is a \$145.00 flat fee per tow, which includes: (a) all on-hook mileage; (b) the first hour of site work; (c) the first 24 hours of storage at the towing company's storage lot; and (d) all incidental charges. Only two types of additional charges may be assessed by the certificated tower: (a) an additional charge of \$25.00 above the flat fee of \$125.00 if the vehicle being towed is a trespassing motorcycle; and, (b) storage fees after the first 24 hours as calculated under Section C of the tariff. **Anything other than these three specified charges** (\$125.00 flat fee for tow, an additional \$25.00 fee if the vehicle is being towed is a motorcycle, and storage fees for storage in excess of the first 24 hours) **may only be assessed under some other specific provision of the tariff if any is expressly applicable.**

- (b) **Release of vehicle at the scene of a requested private-property-trespass tow:** In the event the vehicle owner (or person in control of the vehicle at the time in question) arrives on the scene and agrees to remove the vehicle in question from the parcel of private property, the tow company shall be authorized and required⁷⁴ to charge the vehicle owner (or person in control of the vehicle at the time in question) a flat fee of sixty dollars (\$60.00), provided, however, that the tow company has already secured the vehicle (on-hook or on the back of a flatbed) for a properly requested trespass tow.

⁷⁴ In order to ensure that this provision is not read as giving the tower the option of refusing to release the towed vehicle upon demand and payment of \$60.00, and instead completing the tow at the full rate, this provision has been amended from the originally proposed language by adding the words "and required" following the word "authorized."

This second private property trespass situation is really concerned with a tow that is begun, but not completed. If a tower responds to a request for a private property trespass tow made by the property owner (or person in charge of the property), secures (on-hook or on the back of a flatbed) the trespassing vehicle for towing, but the vehicle owner appears on-scene (before the certificated tower has removed the trespassing vehicle from the parcel of private property) and agrees to remove the vehicle at once, then the tower must release the vehicle (drop the hook or remove vehicle from flat-bed) and charge a flat fee of \$60.00. Upon receipt of the \$60.00 fee, the tower must immediately release the vehicle back to its owner (or to the person in control of the vehicle). No other charges are allowed in the tariff in this limited situation, so there can be no incidental charges of any type.

Sections C, D and E of the proposed tariff address some additional specific charges that are authorized.

C. STORAGE CHARGES⁷⁵

1. Vehicles up to 20 feet in length: Storage fees shall be calculated in the following manner with the word “day” meaning 24-hour period from the time the vehicle is delivered to the company’s lot:

(a) **Storage beyond “Day 1”:** The all-inclusive fee outlined in sections A-1(a), A-2(a), B-1(a), and B-2(a) provides for the first 24 hours of storage at no charge. Accordingly, storage fees of thirty-five dollars (\$35.00) shall accrue for each 24-hour period after the initial 24-hour period.

⁷⁵ Subsection C.2 of the draft (and approved) tariff includes “Note 1” and “Note 2.” Those Notes have not been reproduced here as they are not relevant to the discussion of “incidental charges.”

2. Vehicles More than 20 feet in length:⁷⁶ Storage fees shall be calculated in the following manner with the word “day” meaning 24-hour period from the time the vehicle is delivered to the company’s lot:

(a) **Storage beyond “Day 1”:** The all-inclusive fee outlined in sections A-1(a), A-2(a), B-1(a), and B-2(a) provides for the first 24 hours of storage at no charge. Accordingly, storage fees of forty-five dollars (\$45.00) shall accrue for each 24-hour period after the initial 24-hour period.

This Section specifies the manner of calculating storage charges authorized for different size vehicles and relates back to the specific authorizations set out in Subsections A-1(a), A-2(a), B-1(a) and B-2(a), discussed above. Accordingly, the authorized storage charges are not “incidental charges.”

D. ADDITIONAL CONDITIONS / REQUIREMENTS:

...

2. Ancillary fees associated with non-consensual tows:

(a) **Toll Charges:** Tow companies may collect all actual road and/or bridge toll charges incurred by the tow company on the way to the scene, while transporting the vehicle to its ultimate delivery site, and returning to the tow yard from any alternate delivery site chosen by the vehicle owner or personal in control of the vehicle at the time of the tow.

(b) **Consumer Convenience Fee:** Section D-1(a) above requires tow companies to accept multiple forms of payment.

⁷⁶ In the draft tariff presented to the Hearing Officer on May 4, 2021, and marked as Hearing Officer Exhibit I, the heading for Subsection C.2 was written as “Vehicles up to More than 20 feet in length.” This is clearly a typographical error, as the words “up to” are unnecessary and inconsistent with the clear intent of the Subsection. Accordingly, “up to” has been deleted from the final version of the draft tariff approved by this Order and were removed from the quoted material on this page.

Accordingly, if a tower accepts payment by credit card or debit card, the tower may pass-through the credit card processing fee to the consumer, not to exceed three percent (3%) of the total tariff charges.

...

Toll Charges and the Consumer Convenience Fee are good examples of the types of charges that often show up as “incidental charges” on invoices. In this case, however, these charges are specifically authorized by the draft tariff and may be imposed by the tower under specifically identified and defined circumstances. Consequently, they are not, in fact, “incidental charges” within the meaning of this tariff.

E. EMERGENCY FUEL SURCHARGE:

1. Rhode Island Gen. Laws §39-12-13(b) authorizes the Administrator to establish a fuel “price emergency surcharge program” to compensate towing operations for fluctuating price increases for gasoline and diesel fuel. Moreover, in adherence with R.I.G.L. §39-12-13(b), the Division issued Report & Order Number 18059 that established the mechanism for tracking average fuel prices within the state, determining fuel-cost benchmarks, and establishing authorized surcharge amounts associated with non-consensual towing rates. The mechanism required the Division to track the average price of fuel in Rhode Island on the first and third Wednesday of each month to determine if a surcharge shall be authorized for the entirety of the next month. If such a surcharge were to be authorized, the mechanism provided that for every increase of \$0.50 over the per-gallon dollar amount in the “base rate” for towing, a tow company shall be allowed to apply surcharge of \$0.50 for each non-consensual tow.
2. According to Section 2.2.2 of the Study Report delivered by Stone Gables, the fuel costs built into the rate recommendation therein were calculated assuming \$3.00 per gallon of diesel fuel. Accordingly, in adherence with the mechanism established in Report & Order Number 18059, tow companies shall be authorized collect an additional surcharge of \$0.50 for each tow conducted in a month following a month where it is determined

that the average fuel costs exceeded \$3.50; an additional \$0.50 surcharge (above the initial surcharge) shall be authorized for each 50-cent benchmark surpassed thereafter (i.e.: \$1.00 total when the average price exceeds \$4.00...).

3. The Division, for the purposes of this program, shall continue to track the price of diesel fuel in accordance with the provisions of Report & Order Number 18059. However, tow companies shall be allowed to assess any authorized fuel surcharge regardless of what fuel type is used in the company's tow trucks.

The Emergency Fuel Surcharge is another good example of the type of charge that often shows up as an "incidental charge" on invoices. In this case, however, this charge is specifically authorized by the draft tariff and may be imposed by the tower under specifically identified and defined circumstances. Consequently, the Emergency Fuel Surcharge is not, in fact, an "incidental charge" within the meaning of this tariff.

The only purpose for inserting the phrase "inclusive of all incidental charges" in this tariff is to emphasize to the towing industry that the **only** charges authorized to be imposed on a non-consensual light or medium duty vehicle tow under this tariff are those charges specifically authorized by this tariff. There are no charges for copying documents, making phone calls, allowing vehicle access for the purpose of retrieving personal possessions, shifting the towed vehicle around the tow lot, sweeping up glass at the scene of an accident, spreading Speedi-Dry to absorb fluids, or for any other purpose or action not specifically and expressly set out in the tariff. If a charge is not expressly authorized by this tariff, it must be an "incidental charge" and thereby included in the flat fee per tow charge. The Division agrees with the Advocacy Section's

comments to the effect that this phrase has been a part of towing ratemaking since at least 1998 and is, in fact, well understood by the industry.⁷⁷

After-Hours Release Fee

The topic of “after-hours release fee” is addressed in the proposed tariff in the context of police-ordered tows only. The relevant provision for light-duty tows is set out below (there is comparable language in Section B concerning medium-duty police-ordered tows):

A. LIGHT-DUTY – Up to 8,000 lbs. Gross Vehicle Weight

1. Police-Ordered Tows:

(f) After-Hours Release of Vehicles Subjected to Police-Ordered Tows:

- (i) Towers are required to release vehicles towed at the direction of a police officer to the owner or lien holder, or their designee, upon demand and upon presentation of the appropriately accrued towing charges, regardless of the type of vehicle towed (See exception in subsection (v) below).
- (ii) However, a patron who chooses to retrieve his/her vehicle (or personal belongings) outside the tower’s normal business hours may be charged an additional after-hours release fee of thirty dollars (\$30.00).
- (iii) This “after-hours release” charge applies ***only*** if the tower’s normal business hours are, for the purposes of this charge, ***at a minimum*** from 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. through 12:00 p.m. (noon) on Saturday. The after-hours release fee may properly be assessed for vehicle retrieval at any

⁷⁷ While this section only discussed the “Emergency Fuel Surcharge” in the context of the meaning of the term “incidental charge,” we will discuss the “Emergency Fuel Surcharge” again in the context of whether the terms of the Emergency Fuel Surcharge itself as originally proposed should be revised. We conclude that they should.

time on Sundays and all legal holidays; provided, however, that any delay in the retrieval of the vehicle that necessitated the “after-hours” nature of the release was not caused by the tow company.

- (iv) This charge is intended to compensate the tower for the expense of requiring an employee of the tower to return to the storage facility after normal business hours to release a vehicle. Accordingly, **if this tower has employees on site for extended hours, it shall not impose this charge, nor shall it impose this charge if it has an employee already at the tow yard when the customer first appears to request the release of a vehicle.**
- (v) *Exception – If a vehicle owner or lienholder (or designee) wishes after-hours to retrieve an **inoperable** vehicle that **cannot be driven from the storage lot**, the tower may decline to release the vehicle until it reopens in accordance with its normal business hours; in that instance, the tower shall not charge any after-hours fees, nor shall it apply any additional storage fees associated with the delay.*

(All emphasis is in the original.)

Clearly, as Mr. Mercer noted in his testimony, in order to have an “after-hours release fee” you must first define what the “hours” are to be. In this case, the tariff specifies that each tower must establish its “normal” business hours – i.e., the hours during which it is normally open to conduct business and during which it will always have personnel on-site to conduct tows, and receive and release towed vehicles – and those hours must, at a minimum, be “from 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. through 12:00 p.m. (noon) on Saturday. The after-hours release fee may properly be assessed for vehicle retrieval at any time on Sundays and all legal holidays; provided, however, that any delay in the retrieval of the vehicle that necessitated the ‘after-

hours' nature of the release was not caused by the tow company." The normal business hours are to be posted outside the tower's place of business.⁷⁸

If a vehicle owner (or the person in control of the vehicle, such as a lessee or authorized driver) seeks to recover a vehicle that was towed as a result of a nonconsensual police-ordered tow outside of the tower's normal (i.e., posted) business hours, the tower could agree to return to the impound lot to process and release the vehicle "after-hours." Such a release would be termed an "after-hours release" and the proposed tariff would authorize imposition of a \$30.00 "after-hours release fee" in the appropriate circumstances.

As Mr. Mercer noted in his testimony (without contradiction by the towers present), there is no provision in the statute for imposing an "after-hours release fee" under any circumstances. This fee was first approved by the Division nearly 20 years ago, in the context of nonconsensual police-ordered tows only, in order to help the industry off-set some of the additional costs and inconvenience associated with performing such tows at all hours at short notice and having to then come back in to the office after-hours to release the vehicle back to its owner.⁷⁹ The whole concept behind an "after-hours release fee" was that the tower (or one of its employees) has to go back in to work outside of normal business hours, expending fuel to do so, open the office and/or tow lot, calculate

⁷⁸ Testimony of Mr. Mercer, tr. at 46-47, 05/04/21; *see also* R.I.G.L. § 39-12.1-12(a) (requires towers to post outside its office its business hours during which it will conduct private property trespass tows).

⁷⁹ Testimony of Mr. Mercer, tr. at 48-49, 05/04/21.

the total invoice for the police-ordered tow, get the towed vehicle to the entrance of the tow lot, collect the full fee, and then turn the vehicle over to the owner – all of which can be a matter of significant inconvenience and cost for a tower (or its employee) not engaged in a 24-hour-a-day operation.⁸⁰

After nearly 20 years of implementing an “after-hours release fee” for nonconsensual police-ordered tows, there appears to be a good understanding on the part of both the Division’s Motor Carrier Section and the towers it regulates as to how – and under what circumstances – that particular fee is implemented. The real issue for the towers seems to be why a similar fee has not been approved for nonconsensual private property trespass tows. The explanation rests on the very different nature of the two types of nonconsensual tows, not least of which is the way they are treated in the law.

The legislature saw fit to spell out the limits of police authority in the context of ordering nonconsensual tows, and made it very clear that the police authority was delegated authority on behalf of the motoring public by the General Assembly to make decisions normally reserved to the person in control of the vehicle – that is, the police were acting on behalf of the motoring public in

⁸⁰ Testimony of Mr. Mercer, tr. at 54-56, 05/04/21. The Division notes that this could entail a tow truck operator (perhaps an employee who is on-call) driving his personal vehicle from his home to the tow lot and back again, in all weather, at any time of night, a matter of some personal expense and significant inconvenience. The “after-hours release fee” would go a long way to making it worthwhile for the tow truck operator to come back in to process the release, and serves as a considerable benefit to a vehicle owner/operator who needs his vehicle to get to work, for example, long before the tower is due to open for business.

situations where the public interest required that a vehicle be towed and the vehicle's owner was not in a position to make that happen (not present, ill or otherwise incapacitated, or under arrest):

§ 39-12.1-1. Declaration of purpose and policy.

The legislature hereby finds the following legislation to be in the public interest for these reasons:

WHEREAS, The motoring public has a right, when delegating to law enforcement the selection of an operator in the towing-storage business, to expect that the operator selected and responding will be competent; and

WHEREAS, The motoring public has a right when delegating to law enforcement the selection of an operator in the towing-storage business, to expect that the charges for the services to be rendered will be reasonable and compensatory, and that the operator is physically equipped in his or her business to function properly; and

WHEREAS, The towing and storage of a vehicle without the owner's consent, as is the case in most police-instigated tows, requires certain procedures to assure the owner that rights of due process of law are not violated; and

WHEREAS, The police powers delegated by the legislature of the state include the power of the police, even without the owner's consent, to have public ways cleared of conditions that, in the opinion of the officer, create a hazardous condition to the motoring public; to have removed abandoned, abandoned and of no value, and unattended vehicles; to have removed and/or relocated vehicles in violation of parking ordinances; and to have removed any vehicle under control of any person arrested for any criminal offense; and

WHEREAS, The process of selection of the operator of a towing-storage business for police work is unique in that law enforcement, though having the legal duty to order the work, has no legal duty to pay costs and charges connected therewith, the same being the duty of the vehicle owner.

(Emphasis supplied; **emphasis** in original.) The delegation to the police of the power to select a tower and direct the destination to which a vehicle shall be towed is very limited in nature, and does not persist beyond the point at which the vehicle no longer creates a hazardous condition on the highway or causes traffic congestion:

§ 39-12.1-3. Removal of abandoned, abandoned and of no value, and unattended vehicles.

(c) Any member of a police department observing a vehicle on or near a public way that appears to be abandoned, abandoned and of no value, or unattended shall tag the vehicle by affixing securely to the vehicle a colored form or by using an easily observable sticker....

(d) No person in possession of a vehicle that, in the opinion of the police officer in charge of the scene, needs to be removed to another location, shall be denied the right to have any certificated tower of his or her choice attend to the removal; provided, however, that allowing the choice of certificated tower does not cause a continuation of traffic congestion or of a hazardous condition on the highway that the police officer is able to eliminate by other means. **When the hazardous condition has been eliminated, the person's choice shall be employed to remove the vehicle to the place selected by the person in possession.**

(Emphasis **supplied**; **emphasis** in original.) In most cases, the person in possession of the vehicle is aware that a tow is occurring (the person is present), will be notified by the police that a tow has occurred (perhaps by an investigator seeking to notify the owner of record of an accident or arrest, or perhaps, in the case of an abandoned or unattended vehicle, through a tag placed on the car in advance of a tow).

The nature of a police-ordered tow is also very different. They often involve an accident and/or a criminal arrest and can happen any time of the day or night. By their very nature they are unpredictable and inconvenient for all concerned. They are generally infrequent, meaning that once the tower drops the vehicle off at its impound lot “after-hours” there is very little need for the tower to remain around; like everyone else, they would like to go home, spend time with the family, and get some sleep. In most cases, if the operator of the towed vehicle was injured or arrested, there would be very little expectation that anyone will need to have the towed vehicle released until normal business hours the following day – and the tower is not required to come back in after-hours to release the vehicle if it is inoperable and cannot be driven from the storage lot. Should the tower be required to make a second after-hours trip to the impound lot to release a vehicle, it is fair to compensate the tower for that additional trip.

Compare this with a private property trespass tow. The person in possession of the vehicle (the owner or operator) is virtually never going to be present when the tow occurs – if he or she were, they would drive away rather than be towed (or at least have the vehicle released at the scene and on-hook for a \$60.00 release fee). There will be no tag placed on the vehicle 48 hours in advance of the tow (that requirement applies only when the police are ordering the tow from public property or the streets), and no one will be trying to contact the registered owner to let them know their property has been towed. There is no requirement that there be a sign warning against parking or advising someone whose car is missing which company might have towed it. The vehicle

typically is not parked or abandoned on private property due to an arrest or an accident; it is parked there while the owner/operator is off taking care of business or engaging in a social activity with the intention of returning and driving away within a few minutes or a few hours. The owner/operator is going to be at a loss, and probably stranded and in need of transportation to get home. This is no doubt why the General Assembly saw fit to impose four prerequisites on any tower performing private property trespass moves:

1. The tower's impoundment lot must be within ten (10) miles of the point of removal.
2. The tower's impoundment lot must be open for business to release the vehicle the same hours it is open to receive the vehicle.
3. There shall be posted on the outside of the office of the tower's impoundment lot the business hours during which private property trespass tows will be performed (**and, therefore, the hours during which the vehicles must be released upon request**).

R.I.G.L. § 39-12.1-12(a).

4. The tower performing a private property trespass tow shall only do so **after** receiving the direction to do so **in writing from the owner or person in control of the property**. That written direction to perform the tow must be kept in the records of the tower, associated with the tow slip for that tow, and if that is done the written direction to perform the private property trespass tow is a complete defense to any civil and criminal charges resulting from removal of the vehicle.

R.I.G.L. § 39-12.1-12(c). There is no similar requirement for a written request from the police to perform the tow.

In most cases, private property trespass tows involve removing vehicles from parking lots or driveways belonging to commercial buildings or private

residences; the vehicles were left by drivers intending to return (relatively) shortly to drive away once again. These types of tows are far easier to do than ones involving accidents or breakdowns on the public highway (where even the tower is being chivvied by the police to finish quickly). Many towers have clients with parking lots that want unauthorized vehicles removed in a timely fashion, and some towers have contracts to furnish these services on a regular basis. These tows are far less unpredictable than police-ordered tows, and far more likely to involve multiple tows at predictable times (for example, when there is a large public event nearby you can predict that people are going to try to score free parking in business' parking lots after-hours). Unlike with many police-ordered tows, these vehicle owners/operators have no idea that their vehicle is being towed, much less by whom. In many cases, these owners/operators need their vehicles immediately, either to get home or to get to work; unlike with many police-ordered tows, the vehicles in these cases are fully operable and can be driven safely. The General Assembly appears to have been cognizant of these factors, and therefore directed towers to be prepared to release any private property trespass tow during the same hours that the tow itself was performed (and which would have to be done during the operating hours the tower has posted).

Mr. Mercer indicated on the record that he had no objection to a tower proposing an after-hours release fee for private property trespass tows – and neither does the Division **so long as the tower complies with all four of the prerequisites set out in R.I.G.L. § 39-12.1-12(a) and (c) and enumerated**

above. That means that the tower must post at its office/impound lot the times during which it performs private property trespass tows (which may be different than the minimum normal business hours set out in the proposed tariff for after-hours releases of police-ordered tows).

For example, if a tower posts that it will do private property trespass tows between the hours of 8:00 a.m. and 2:30 a.m. every day, and a customer comes in requesting release of his or her vehicle at 8:00 a.m. (or at 3:30 p.m., or at 2:30 p.m.), the tower must be prepared to release any vehicle received during its posted hours without imposing an after-hours release fee. If the customer requests release of its vehicle at any time between 2:30 a.m. and 8:00 a.m. (assuming no one is at the tow lot already), the tower could impose an after-hours release fee. The key, though, is that the tower can only perform private property trespass tows during its posted hours. **If the tower were to be found to be doing private property trespass tows outside the hours posted for such tows, the Division would assume that the tower was in fact operating a 24-hour private property towing service and would therefore disapprove any after-hours release fees for private property trespass tows.**

The Division is not going to amend the proposed tariff to include language for an “after-hours release fee” for private property trespass tows. We are not sure how many, if any towers, would want to post – and abide by – hours for performing private property trespass tows. The Division is not, however, opposed to any tower proposing such language as an amendment to the proposed model

tariff for its own operation. Remember, the proposed tariff is a model tariff that the Division will allow any tower to sign on to, should that tower believe it adequately serves the tower's business needs. However, no tower will be required to adopt the proposed model tariff as its own, and every tower – just like any other regulated utility seeking a new tariff – is free to propose its own tariff for consideration by the Division.

After-Hours Release Fees To Punish Vehicle Owners

One of the towers who testified in this proceeding suggested that the Division should authorized collection of after-hours release fees from vehicle owners as a means of discouraging those vehicle owners from further trespasses with their vehicles. In essence, the tower suggested the Division should allow towers to collect this fee routinely in the case of private property trespass tows as a sort of civil penalty that would be imposed on vehicle owners for the benefit of towers. We disagree.

While there is something to be said for making private trespass towing a civil offense with civil penalties associated with it (in addition to the existing right of the private property owner who was trespassed on to seek civil damages from the vehicle owner), that can only be done through adoption of municipal ordinances or state law. Even if such an ordinance or law were adopted, collection of the associated civil penalties would be the purview of the appropriate government authority – which towers clearly are not. The idea that towers, particularly when performing police-ordered tows, are somehow thereby transmogrified into police officials with law enforcement powers has had some

currency among a sub-set of towers for years, and ignores the fact that the police themselves, when ordering a tow under the Towing and Storage Act, are really doing so under a limited authority delegated to them from the motoring public by the General Assembly **to act in the public interest to correct a specifically defined problem that cannot be addressed by the vehicle owner** (because the vehicle owner – or person in control of the vehicle – is not present, is ill or otherwise incapacitated, or is under arrest).

Both the towers and the police are circumscribed by, and bound by, the language in the Towing Storage Act – which is silent as to after-hours release fees for police-ordered tows and requires that towers performing private property trespass tows be open to release the vehicles during the same hours they are open to receive them – and if towers are willing to perform private property trespass tows 24-hours a day, they must be open to release them 24-hours a day as well. Put another way, towers performing private property trespass tows 24-hours a day cannot, by law, collect an after-hours release fee for those tows because they have no “after-hours” operations. There can be no legal basis for imposing an after-hours release fee under these circumstances.

However, as we noted above, if a tower specifically posts limited hours during which he will perform private property tows (i.e., there are hours of the day during which the tower does not, ever, perform private property trespass tows), then the tower is only required by law to be available to release those vehicles during the posted hours. If a vehicle owner asks to have his or her vehicle released outside the posted hours of operation, and the tower agrees to

send someone in to do the release (i.e., there is no one already on-site to do the release), then the tower could reasonably propose an after-hours release fee for private property trespass tows. Under those circumstances, the fee is not a “punishment” or “disincentive” to encourage the vehicle owner to park legally in the future, it is reasonable compensation for the tower for the inconvenience of releasing a vehicle outside of normal business hours.

Extend The Existing Interim Tariff Indefinitely

Mr. Charleson’s recommendation that the Division allow those towers signed up for, and currently on, the interim (2018) tariff to remain on that tariff indefinitely must be rejected. That tariff was intended to do no more than afford towers some short-term relief while the Division conducted a rate analysis of the industry to serve as a basis for a more well-founded light and medium duty non-consensual tow tariff. It has been at least 20 years since any attempt was made to review actual data regarding the costs of operating a towing operation, and all the negotiated tariffs that have been approved – including the interim tariff in 2018 – were based on little more than a best-guess estimate of what would be appropriate. This sole purpose of this proceeding was to move away from that approach and attempt to get some baseline data that would allow the Division and the towing industry to get a better idea of what would be just and reasonable rates allowing the towers a fair and reasonable return. Allowing the interim tariff to continue in effect would merely perpetuate the problem we are trying to address.

Emergency Fuel Surcharge

Mr. Charleson's observations about the Emergency Fuel Surcharge provision in the proposed model tariff are well-taken. The proposed model tariff provides as follows:

E. EMERGENCY FUEL SURCHARGE:

1. Rhode Island Gen. Laws §39-12-13(b) authorizes the Administrator to establish fuel "price emergency surcharge program" to compensate towing operations for fluctuating price increases for gasoline and diesel fuel. Moreover, in adherence with R.I.G.L. §39-12-13(b), the Division issued Report & Order Number 18059⁸¹ that established the mechanism for tracking average fuel prices within the state, determining fuel-cost benchmarks, and establishing authorized surcharge amounts associated with non-consensual towing rates. The mechanism required the Division to track the average price of fuel in Rhode Island on the first and third Wednesday of each month to determine if a surcharge shall be authorized for the entirety of the next month. If such a surcharge were to be authorized, the mechanism provided that for every increase of \$0.50 over the per-gallon dollar amount in the "base rate" for towing, a tow company shall be allowed to apply surcharge of \$0.50 for each non-consensual tow.
2. According to Section 2.2.2 of the Study Report delivered by Stone Gables, the fuel costs built into the rate recommendation therein were calculated assuming \$3.00

⁸¹ *In Re Towing Industry Emergency Fuel Surcharge – Request For Increase*, Division Report and Order number 18059 dated and effective December 8, 2004, in Division Docket number 04 MC 123. At that time R.I.G.L. § 39-12-13(b) provided for a **maximum \$0.50 surcharge per towing job**, as follows: "The administrator shall implement a gasoline price emergency surcharge program whereby a person licensed under this chapter to perform 'drive away-tow away operations' shall be permitted to impose and collect a surcharge, **not to exceed fifty cents (\$.50) per towing job**, during periods when it is determined that the average price of gasoline in this state exceeds one dollar and fifty cents (\$1.50) per gallon." (*Emphasis* supplied.)

per gallon of diesel fuel. Accordingly, in adherence with the mechanism established in Report & Order Number 18059, tow companies shall be authorized collect an additional surcharge of \$0.50 for each tow conducted in a month following a month where it is determined that the average fuel costs exceeded \$3.50; an additional \$0.50 surcharge (above the initial surcharge) shall be authorized for each 50-cent benchmark surpassed thereafter (i.e.: \$1.00 total when the average price exceeds \$4.00...).

3. The Division, for the purposes of this program, shall continue to track the price of diesel fuel in accordance with the provisions of Report & Order Number 18059. However, tow companies shall be allowed to assess any authorized fuel surcharge regardless of what fuel type is used in the company's tow trucks.

The General Assembly amended R.I.G.L. § 39-12-13(b) in 2003 to remove the phrase "not to exceed fifty cents (\$.50) per towing job" from the statute, and add language giving the administrator the discretion as to when to implement the surcharge, and how much the surcharge should be, so that the statute now reads as follows:⁸²

§ 39-12-13. Alteration of common carrier rates by the administrator.

(b) The administrator shall implement a gasoline price emergency surcharge program whereby a person licensed under this chapter to perform "driveaway-towaway operations" shall be permitted to impose and collect a surcharge, during such times and under such conditions wherein the administrator determines that the average price of gasoline in this state exceeds one dollar and fifty cents (\$1.50) per gallon. Provided, that the administrator shall have discretion as to when to permit such surcharge to be imposed, except that the administrator shall not impose the surcharge at any time when the average price of gasoline, as determined by the

⁸² See P.L. 2003, ch. 412, § 2.

administrator, does not exceed the price of one dollar and fifty cents (\$1.50) per gallon.

An Emergency Fuel Surcharge was first formally approved by the Division in *In Re Gasoline Price Emergency Surcharge Program for Drive Away – Tow Away Operations*, Division Report and Order number 16699 dated and effective August 30, 2001, in Division Docket number 01 MC 70.⁸³ In approving the Gasoline Price Emergency Surcharge Program for towers, the Division decided to extend that authority to tow trucks using diesel fuel as well as gasoline, since the General Assembly apparently had overlooked the fact that virtually all tow trucks have diesel engines, and failing to include diesel trucks would have the effect of negating the clear intent of the General Assembly to help towers struggling to deal with rapid fuel increases around the turn of the century.

The first request for a surcharge adjustment following the General Assembly's 2003 amendment removing the \$0.50 per tow surcharge cap came in 2004 when the Rhode Island Public Towing Association petitioned the Division to increase the emergency fuel surcharge from \$0.50 per tow for any month when

⁸³ A fuel surcharge was approved on an interim basis in *In Re Members of Rhode Island Public Towing Association Seeking A Fuel Surcharge Of \$1.50 Per Tow*, Division Report and Order number 16680 dated and effective July 27, 2001, in Division Docket number 01 MC 57. While the towers had requested a fuel surcharge of \$1.50 per tow, the Division, in its Report and Order, noted that while the towers' petition had been pending before the Division the General Assembly had amended R.I.G.L. § 39-12-13(b) to require the Division to develop and implement a "gasoline price emergency surcharge program" for towers on or before September 1, 2001; the General Assembly also limited the surcharge to no more than (though it could be less than) \$0.50 per tow. Accordingly, Division temporarily authorized a \$0.50 surcharge per tow to each towing invoice until the Division could develop and implement a comprehensive "gasoline price emergency surcharge program," which it did in 01 MC 70 on August 30, 2001.

the average price of gasoline exceeded \$1.50 per gallon to a surcharge of \$1.50 per gallon for all tows when the average price of gasoline exceeded the \$1.50 a gallon threshold for the month. *See In Re Towing Industry Emergency Fuel Surcharge – Request For Increase*, Division Report and Order number 18059 dated and effective December 8, 2004. The Division's rate analyst in that case proposed a different fuel surcharge calculation as follows:

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 \$0.50 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 recommend that the emergency fuel surcharge for trucks remain at the \$0.50 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 \$0.50 per tow for each incremental \$0.50 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.

Report and Order number 18059 at 2-3. The Report and Order concluded by directing:

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 \$0.50 per tow and in \$0.50 increments on each and every occasion when the average price of gasoline is increased by \$0.50.

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

expenses and a likely annual CPI factor adjustment provision thereby negating the need for the emergency fuel surcharge approved herein.

See Division Report and Order number 18059 at 3-4.

The important point to be drawn from Division Report and Order number 18059 is that the surcharge approved therein was intended to fully compensate the tower for fuel consumption based on an average tow consuming one (1) gallon of fuel. That is, when the average price of a single gallon of fuel (all that was required for the average tow performed in 2004 according to the record of that proceeding) exceeded \$1.50, the towers were authorized to collect a per-tow surcharge of \$0.50 up to a per gallon fuel cost of \$2.00. When the price of fuel exceeded \$2.00 per gallon, the towers were authorized to collect a per-tow surcharge of \$1.00. If a tow was of less than average duration, the tower would come out somewhat ahead on his fuel expenses, if a tow was of greater than average duration, the tower would lose a bit on his fuel expenses, but on average, the tower was expected to be able to break even on his fuel expenses. (Of course, the surcharge also contemplated that subsequent tow tariff cases would incorporate an increased average fuel cost in the base rates, so that there would be no need for an emergency fuel price surcharge unless the average post-approval fuel costs exceeded the average fuel cost at the time the tariff was filed by a certain amount -- \$0.50 per gallon under the plan approved in 2004.)

Two things have changed since the Division's fuel price emergency surcharge was approved in 2004. The first thing is that, as of the time the proposed model tariff was developed, the average price of fuel had increased to

\$3.00 per gallon. That means that there will be no surcharge authorized until the average price of fuel in a month exceeds \$3.50 per gallon. The surcharge would again start at \$0.50 per gallon and increase in \$0.50 increments for every \$0.50 that the average price of fuel in a month goes up (and, if the price of fuel drops, the surcharge will drop as well in the same increments).

The second thing that has changed (as Mr. Charleson noted in his post-hearing letter) is that the average tow, based on the record in this case, has now been determined to consume three (3) gallons rather than one (1) gallon of fuel as was the case in 2004.⁸⁴ Assuming the new data concerning the fuel consumed in an average tow is correct, a total \$0.50 per tow surcharge increment that was adequate for a tow consuming on average one (1) gallon of fuel is no longer adequate to off-set rising fuel costs for a tow that consumes on average three (3) gallons of fuel. Instead, we should amend the proposed tariff to provide for \$1.50 per tow surcharge increment, calculated at the rate of \$0.50 per gallon consumed for an average tow where the average tow consumes about three (3) gallons of fuel.⁸⁵ Thus, for every \$0.50 per gallon the price of fuel increases above \$3.00

⁸⁴ Based on an average per gallon fuel cost of \$3.00, and an average fuel expense for the average tow of \$9.00, suggesting that the average tow now consumes three (3) gallons of fuel. The Hearing Officer may consider that to be an improbable jump in fuel consumption per average trip, but he is bound by the record available to him in this proceeding. Perhaps there are fewer towers performing these types of tows than there were in 2004, and they are having to travel further afield to do their tows than was the case 17 years ago. Perhaps the average tow truck is 17 years older than it was in 2004, and much less efficient. As New England Patriots head coach Bill Belichick might put it, with respect to the evidence showing an increase in average tow fuel consumption, "it is what it is."

⁸⁵ Section 2.2.2 of the *Stone Gables* (Advocacy Section Exhibit 1) report indicates that the study used \$3.00 per gallon as the base price of fuel for the cost study.

per gallon, the fuel surcharge increment will be \$1.50 per tow. (If the price of fuel increases to \$3.50 per gallon for the month, the fuel surcharge per tow would be \$1.50. Similarly, if the price of fuel increases to \$4.00 per gallon for the month, the fuel surcharge per tow would be \$3.00. For every \$0.50 per gallon the price of fuel increases above \$3.00, the fuel surcharge will increase another \$1.50.)

Section E of the proposed model tariff must be amended to address that inequity. The language as proposed is as follows:

E. EMERGENCY FUEL SURCHARGE:

1. Rhode Island Gen. Laws §39-12-13(b) authorizes the Administrator to implement a gasoline price emergency surcharge program whereby a person licensed under The Towing Storage Act to perform "driveaway-towaway operations" shall be permitted to impose and collect a surcharge, during such times and under such conditions wherein the Administrator determines that the average price of gasoline in this state exceeds one dollar and fifty cents (\$1.50) per gallon. Provided, that the Administrator shall have discretion as to when to permit such surcharge to be imposed, except that the administrator shall not impose the surcharge at any time when the average price of gasoline, as determined by the administrator, does not exceed the price of one dollar and fifty cents (\$1.50) per gallon.
2. According to Section 2.2.2 of the Study Report delivered by Stone Gables, the fuel costs built into the rate recommendation therein were calculated assuming \$3.00 per gallon of diesel fuel. Further, Table 3-2 of the Study Report delivered by Stone Gables, assumed an average fuel

Table 3-2 of the report indicates that the average fuel consumption per tow in dollars was \$8.28. At \$3.00 per gallon, this would result in an average tow consuming of 2.76 gallons of fuel for the study, which for convenience we are rounding up to an average fuel consumption per trip of three (3) gallons.

consumption per tow, calculated at \$3.00 per gallon, of about three (3) miles. Accordingly, tow companies utilizing this tariff shall be authorized to collect an additional surcharge of \$1.50 (calculated at a per gallon surcharge of \$0.50 per gallon for an average tow consuming three (3) gallons) for each tow conducted in a month following a month where it is determined that the average fuel costs exceeded \$3.50; an additional \$1.50 surcharge (above the initial surcharge) shall be authorized for each 50-cent per gallon benchmark surpassed thereafter (i.e.: \$3.00 total when the average price exceeds \$4.00, \$4.50 total when the average price exceeds \$4.50 per gallon, and so on...).

3. The Division, for the purposes of this program, shall continue to track the price of diesel fuel in accordance with the provisions of Report & Order Number 18059. However, tow companies shall be allowed to assess any authorized fuel surcharge regardless of what fuel type is used in the company's tow trucks. The Division shall post the average monthly price of diesel fuel it has calculated, and the amount of emergency fuel surcharge authorized to be collected under this tariff for the month, on its website.

With respect to Mr. Victoria's closing remarks, the Hearing Officer notes that Mr. Victoria's characterizations are incorrect in a number of aspects. First of all, the "settlement agreements" he refers to were all made in the context of tariff applications brought by a number of members of his industry and were negotiated by those industry members and the Advocacy Section of the Division as a means of giving the towers some rate relief without having to put on a traditional rate case at the towers' own expense (and, as Mr. Mercer noted in his testimony, rate cases are expensive). The ultimate outcome of those settlement agreements was a tariff that the Division had agreed was just and reasonable and that any tower was then allowed to sign on to. The instant proceeding is also a rate case, this one brought by the Advocacy Section of the Division rather than by any one tower or group of towers, as a means of trying to obtain some

real data on industry costs to serve as a reasonable foundation for medium and light duty tow tariffs going forward. Unlike a traditional rate case, though, the major portion of the expense was paid by the regulator (the Division) rather than the regulated (the towers), although input – and data – were sought from the towers and the resulting proposed tariff based on that input and data – just as would be done in a regular rate case. The end result in both situations is the same: a tariff that has been determined to be just and reasonable and that towers may choose to sign on to if they like without having to put on an individual rate case. The difference in this case is that the proposed tariff at issue here is based (in large part, though not completely) on an actual cost analysis with underlying data, just like a traditional rate case.

Second, Mr. Victoria's belief that the proposed tariff requires towers to come in at all hours of the day or night to release a vehicle that was brought in as part of a police-ordered tow is not entirely correct. Under the proposed tariff, the tower would not have to come back in "after hours" if the vehicle is inoperable and cannot be driven from the storage lot. Under the latter circumstance, the tower is perfectly free to tell the vehicle owner to come back during the tower's normal business hours as posted on the towing business in accordance with the proposed tariff. If the vehicle owner/operator tells the tower that the vehicle owner/operator cannot pay the tow bill at that time (i.e., after hours), the tower does not come in (though if the vehicle owner/operator is seeking to retrieve personal belongings – medicine, groceries, tools, etc. – the tower would have to come in; the tower does not have a lien interest in personal belongings and

cannot refuse to release them to the vehicle owner/operator). The tariff does allow the tower to impose an after-hours release fee for vehicles towed at the direction of the police. The after-hours release fee, then, has two requirements: normal business hours of operation must be posted, and the vehicle must have been the subject of a police-ordered tow. This does not represent a change from past practices for at least the past 15 years of so.

Third, with respect to Mr. Victoria's claim that the Division is requiring towers to come in to release private property trespass tows outside of normal business hours "for free," Mr. Victoria is again mistaken. Mr. Victoria was equating the lack of an authorized after-hours release fee to releasing the vehicle "for free." That line of reasoning is faulty for two reasons. The first reason is that an "after-hours" release fee for a police-ordered tow is not a fee to release the vehicle – the owner is entitled to his or her vehicle upon paying for the tow including any mileage fee, storage fee or fuel surcharge (if authorized). There is not, and never has been, a separate fee to release the vehicle. The after-hours release fee for police-ordered tows was authorized to compensate the tow truck operator for the inconvenience of coming outside of normal operating hours, when the operator would not otherwise be there, to release a vehicle outside of the tower's normal operating hours.

The second reason Mr. Victoria is wrong is that after-hours fees have never been authorized for private property trespass tows because unlike police-ordered tows which have a public policy basis (enhancing public highway safety), private property trespass tows are done as part of a voluntary agreement between

the tower and the private party and are typically done upon request 24-hours a day, as part of the basic business model of the tower. If a tower intends to do a type of tow 24-hours a day, he is always open – that is, there can be no “after-hours” period for that type of operation. That is not a Division policy, it is what the Towing Storage Act requires. With respect to private property trespass tows, R.I.G.L. § 39-12.1-12(a) mandates that if a tower is open to receive a vehicle to the tow lot as a result of a private property trespass tow the tower must also be open to release a private property trespass (i.e., there is never an “after-hours” release situation by law) during those same hours. Unlike a police-ordered tow (which is in furtherance of public policy and enhances public safety on the highways), the tower is free to turn down a private property trespass tow that is requested outside of posted normal business hours. Private property trespass tows, by definition, are private matters and do not have a public interest component. The legislature has determined that if a tower is going to tow vehicles from private property outside of normal business hours, that tower must be prepared to release the vehicle back to its owner outside of normal business hours. The only conclusion we can draw is that the legislature believed that if a tower was willing to come back in to work to perform a private property trespass tow at all hours, it should also be willing to come back in to work at all hours of the day or night to conclude the transaction by releasing the towed vehicle to its owner. (Of course, if a tower only does private property trespass tows only during its normal posted business hours, the law does not require the tower to come back in outside of those normal posted business hours to release a private

property tow. There would be no need for an after-hours release fee for a private property trespass tow because there would be no need to do an after-hours release. And that, to answer Mr. Victoria's question, is why towers are required to post their normal business hours – so everyone, including the tower, knows when the tower will be open to release vehicles that have been towed.) When a tower releases a public property trespass tow in accordance with the tariff, he is not being required to release if “for free,” he is releasing it in exchange for receiving all of the lawfully authorized charges for performing that tow – and an “after-hours” release is not now, and never has been, one of those authorized charges.

Finally, in response to Mr. Victoria's final comment regarding whether a tow is completed when the vehicle is dropped off the hook or when the tow fees are paid, the answer is that both are correct. Mr. Mercer's comment that a non-consensual tow was completed when the towing fees are paid was made in the context of question concerning whether a non-consensual tow can be converted to a consensual tow at some point (and, of course, consensual tow fees are negotiated between tower and vehicle owner; they are not regulated by Division-approved tariffs). If a vehicle is towed without the consent of the vehicle owner (or the person in charge of the vehicle), whether it is a police-ordered tow or a private property trespass tow, it is a non-consensual tow and the tower has a possessory lien on the vehicle and its registration plates, so long as the tower retains possession, in an amount in accordance with the tower's published tariff. R.I.G.L. § 39-12.1-6. When the vehicle owner shows up at the tow lot to retrieve

his vehicle, the tower has a right to hold on to the vehicle until he is paid in full in accordance with his tariff. If the vehicle owner then asks the tower to tow his vehicle to a repair shop, after having paid the initial tow bill, that second tow is a consensual tow and the price may be negotiated. So in that sense, the original non-consensual tow could not end and the consensual tow begin until the non-consensual tow bill had been paid. As a practical matter, any tow – consensual or non-consensual – begins when the tower attaches his hook to the vehicle being towed and ends when the vehicle being towed is released from the hook. But a tow that starts out as non-consensual remains non-consensual until the tow bill is paid; the next tow can be consensual.

Mr. Victoria is right, of course, that some vehicles are abandoned by their owners at the tow lot. The Towing and Storage Act addresses that situation by establishing a procedure by which the tower can enforce his possessory lien and seek to recover his costs by auctioning off the vehicle. In that situation, too, the non-consensual tow is concluded by auctioning the vehicle and completing the enforcement of the lien.⁸⁶

The Division concurs, generally, with the closing comments of the Advocacy Section. With respect to its observation that it would not be opposed to the Division making an allowance for imposing an after-hours release fee on those private property trespass tows that occurred during the towers posted normal business hours where the vehicle owner wished to pick the vehicle up outside of the posted hours, the Division must decline to do so in this proposed

⁸⁶ See comments of Hearing Officer, tr. at 104-105, 05/04/21.

tariff. There may well be situations where this would be an acceptable policy in the case of specific towers who only performed private property tows during its posted normal business hours, but we believe it would be both unenforceable and potentially subject to abuse to adopt this as a general practice. The Division would entertain such a proposal on a case-by-case basis where the specific tower indicates that it will only be performing private property trespass tows during limited specified hours and would not perform **any** such tows outside the limited specified hours.

The Division does not believe it should approve the use of text messages as an appropriate means of documenting requests for private property trespass tows. Emails, which are readily printed out and can be attached to the tow slips would be preferred for documenting electronic requests for such tows. Phone requests can be written down and countersigned by the requesting party on-scene as another means of appropriately documenting and verifying such requests. The Division would consider some alternative means in the future, but the key is that they must be readily reduced to a documentary form to attach to the tow slips.

CONCLUSION

This proceeding is not a “contested case” within the meaning of R.I.G.L. § 42-35-1(5) because it does not determine the legal rights, duties, or privileges of any specific party (i.e., a specific certificated tower). Nor is it a rulemaking proceeding within the meaning of R.I.G.L. § 42-35-1(19) because it falls within the exceptions to the definition of “rule” set out in subsections (iv), (v) and (vi) of

R.I.G.L. § 42-35-1(19). The proposed model tariff sets benchmarks against which the Division intends to evaluate whether future proposed tariff filings of this type are “just and reasonable” and thus should be approved. A tariff filing which adopts the proposed model tariff approved in this hearing is presumptively “just and reasonable” and may therefore be approved without further proceedings. A tariff filing which seeks rates or terms significantly different than those in the adopted model tariff would **not** be summarily denied but **might** (depending on the type and degree to which its proposed rates and terms vary from the model tariff) require a more detailed justification through a utility rate case proceeding before the Division could determine whether the requested rates or terms are “just and reasonable” under the circumstances of that particular tower’s costs and benefits (i.e., its unique individual circumstances regarding its costs and revenues).

The proposed model “Tariff Affixing Rates And Terms For Non-Consensual Towing And Related Matters” set out in Hearing Officer Exhibit I admitted in full in this docket on May 4, 2021, as specifically amended above, is hereby found to establish “just, reasonable, and reasonably compensatory rates, charges, and classification, and reasonable regulations and practices relating thereto,” with respect to non-consensual light and medium duty tows in the State of Rhode Island within the meaning of R.I.G.L. § 39-12-12. **The proposed model tariff as approved with the amendments discussed above is incorporated by reference herein as Attachment A.** A redline version identifying the

amendments and deletions made to the proposed model tariff as discussed above in this Report and Order is incorporated by reference herein as Attachment B.

The rates contained in the proposed model tariff as approved with the amendments discussed above shall be available to all certificated towing companies who elect to file an appropriate tariff adopting the approved rates and provisions contained in the “Tariff Affixing Rates And Terms For Non-Consensual Towing And Related Matters” as amended and set out in Attachment A to this Report and Order. Any towing company that wishes to seek alternative rates is free to file an individual tariff with the Division.

By the express terms of ordered paragraph number 6 of Division Order number 23146, dated and effective May 2, 2018, each tower who signed on to the interim tariff approved by Division Order number 23146 was required to take one of the following three (3) actions on or before August 4, 2021 (three months from date on which the Advocacy Section filed its rate study, May 4, 2021) unless the Administrator should, “for good cause shown”, exercise her discretion to further extend the Interim Tariff:

1. Revert back to the tariff terms that were in effect for that tower prior to the adoption of the interim rates; **or**
2. File new tariff rates consistent with those developed by the Division’s study of tow rates and approved by this Order for consideration and approval by the Administrator; **or**
3. File its own proposed tariff rates with the Division for consideration by the Division in a statutory rate proceeding.

In this case, it has taken longer than anticipated to publish this Report and Order establishing new tariff terms, so the Administrator has elected to further extend the Interim Tariff. Accordingly, any tower who is still operating on the Interim Tariff that was approved in this Docket in 2018 may continue to operate on that tariff for ninety (90) days beyond the effective date of this Report and Order. By the ninetieth (90th) day following the effective date of this Report and Order any towing company still on the Interim Tariff must have taken one of the three actions set out above in this paragraph.

Accordingly, it is:

(24243) ORDERED:


1. That the proposed model “Tariff Affixing Rates And Terms For Non-Consensual Towing And Related Matters” set out in Hearing Officer Exhibit I admitted in full in this docket on May 4, 2021, as specifically amended above, is hereby found to establish “just, reasonable, and reasonably compensatory rates, charges, and classification, and reasonable regulations and practices relating thereto,” with respect to non-consensual light and medium duty tows in the State of Rhode Island within the meaning of R.I.G.L. § 39-12-12 and is hereby approved as amended.


- a. **The proposed model tariff as approved with the amendments discussed above is incorporated by reference herein as Attachment A.**

- b. A redline version identifying the amendments and deletions made to the proposed model tariff as discussed above in this Report and Order is incorporated by reference herein as Attachment B.
2. That the rates contained in the proposed model tariff as approved with the amendments discussed above shall be available to all certificated towing companies who elect to file an appropriate tariff adopting the approved rates and provisions contained in the “Tariff Affixing Rates And Terms For Non-Consensual Towing And Related Matters” as amended and set out in Attachment A to this Report and Order. Any towing company that wishes to seek alternative rates is free to file an individual tariff with the Division.
3. That the Administrator has determined that there has been good cause shown to extend the interim tariff under the express terms of ordered paragraph number 6 of Division Order number 23146, dated and effective May 2, 2018, for ninety (90) days from the effective date of this Report and Order for each tower who signed on to the interim tariff approved by Division Order number 23146 and for whom that interim tariff may still be in effect as of the date of this Report and Order. By the ninetieth (90th) day following the effective date of this Report and Order any towing company still on the Interim Tariff must take one of the three actions set out below:
 - a. Revert back to the tariff terms that were in effect for that tower prior to the tower’s adoption of the interim rates; **or**

- b. File new tariff rates consistent with those developed by the Division’s study of tow rates and approved by this Order for consideration and approval by the Administrator; **or**
 - c. File its own proposed tariff rates with the Division for consideration by the Division in a statutory rate proceeding.
4. That the Associate Administrator for Motor Carriers shall notify all certificated towers of this Order’s approval of the proposed model “Tariff Affixing Rates And Terms For Non-Consensual Towing And Related Matters” (as amended by this Order) for light and medium duty tows in the State of Rhode Island, and invite those certificated towers to come in to the Division, review the approved amended model rates, and sign on to those approved amended model rates should they elect to do so.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND, OCTOBER 25, 2021.


William K. Lueker, Esq.
Deputy Chief of Legal Services
Hearing Officer

APPROVED: 
Linda D. George, Esq.
Administrator



STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES & CARRIERS
89 Jefferson Boulevard
Warwick, Rhode Island 02888
(401) 941-4500

FAX: (401) 941-9161
TDD: (401) 941-4500

NOTICE OF AVAILABILITY OF JUDICIAL REVIEW (PROVIDED PURSUANT TO R.I.G.L. § 42-35-12)

Please be advised that if you are aggrieved by this final decision (report and order) of the Rhode Island Division of Public Utilities and Carriers (“Division”) you may seek judicial review of the Division’s final decision by filing an appeal with the Rhode Island Superior Court. You have thirty (30) days from the mailing date (or hand delivery date) of the Division’s final decision to file your appeal. The procedures for filing the appeal are set forth in Rhode Island General Laws, Section 42-35-15.

Proceedings for review may be instituted by filing a complaint in the Superior Court of Providence or Kent Counties. Copies of the complaint must be served upon the Division and all other parties of record in your case. You must serve copies of the complaint within ten (10) days after your complaint is filed with the Superior Court.

Please be advised that the filing of a complaint (appeal) with the Superior Court does not itself stay enforcement of the Division’s final decision. You may however, seek a stay from the Division and/or from the Court.

The judicial review shall be conducted by the Superior Court without a jury and shall be confined to the record. The Court, upon request, shall hear oral argument and receive written briefs.

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

In re: Rate Relief For Light and Medium)
Duty Non-Consensual Tows And)
Related Matters Pursuant To)
R.I.G.L. § 39-12-12)

Docket No. 18 MC 94

ATTACHMENT A

TO

DIVISION REPORT AND ORDER NUMBER 24243
APPROVED RATES FOR NON-CONSENSUAL TOWING AND STORAGE
WITHIN THE STATE OF RHODE ISLAND
AND RELATED MATTERS
AS AMENDED BY THE REPORT AND ORDER

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

IN RE: TARIFF AFFIXING RATES AND TERMS)	
FOR NON-CONSENSUAL TOWING)	Docket No. 18 MC 94
AND OTHER RELATED MATTERS)	
)	

TRAVEL:

On May 2, 2018, the Division of Public Utilities and Carriers (“Division”) issued Report and Order number 23146 in Docket 18 MC 94, which adopted a settlement agreement (“Settlement Agreement”) between the Division and all certificated towing companies and approved an *interim* set of rates, terms and conditions for intrastate non-consensual towing of small-sized and medium-sized vehicles (“Interim Tariff”). The temporary nature of rates contained in the Interim Tariff was approved to allow a transportation consultant, Stone Gables Engineering, LLC (“Stone Gables”) engaged by the Division to complete a study of the state’s towing industry and to produce a report for the Division.

According to Report and Order 23146, the Interim Tariff was to be in effect only until three (3) months after the delivery of the Towing Study by Stone Gables to the Division¹. The signatories to the Settlement Agreement agreed that the parties would attempt to draft a suitable new tariff (“New Tariff”) based on the recommendations of Stone Gables within three (3) months from the delivery of the Tow Study, and, moreover, that each certificated towing operation in the state would adopt the New Tariff or revert to the tariff it had on file before the Interim Tariff was approved.

Shortly after the delivery of the Tow Study, and before the parties could engage in meaningful discussion about the study itself and the development of the New Tariff, the State of Rhode Island was forced to address the global COVID-19 pandemic, and the Administrator of the Division exercised the discretion afforded in Report and Order 23146 to extend the Interim Tariff “for good cause” (*see footnote No. 1*).

The parties have now developed a satisfactory New Tariff that both the Division and members of the towing industry agree is reasonable.

¹ Order No. 23146: “That three (3) months following the filing of the Division’s completed study of towing rates, the interim rates approved by this Order shall become null and void. Within that three (3) month period, each tower which has signed on to these interim rates shall either: (1) revert back to the tariff terms that were in effect for that tower prior to its adoption of the interim rates, or (2) file new tariff rates consistent with those developed by the Division’s study of tow rates for consideration and approval by the Administrator, or (3) file its own proposed tariff rates with the Division for consideration by the Division in a rate proceeding. The three (3) month period may be extended for good cause shown by the Administrator of the Division at the discretion of the Administrator.”

2021 NON-CONSENSUAL TOW TARIFF FOR LIGHT-DUTY and MEDIUM-DUTY VEHICLES

This document sets rates for non-consensual tows of light-duty (8,000 lbs. and less gross vehicle weight) and medium-duty (8,001 lbs. – 15,000 lbs. gross vehicle weight) vehicles, incidental charges, and storage in connection with those tows conducted by any towing company licensed by the Division of Public Utilities and Carriers (“Division”) that chooses to adopt this tariff, in accordance with Rhode Island General Laws §§39-12-11 through 39-12-14.

The approved rates for non-consensual towing services in the State of Rhode Island for all light-duty and medium-duty vehicles performed by this tower are as follows:

A. LIGHT-DUTY – Up to 8,000 lbs. Gross Vehicle Weight

1. Police-Ordered Tows:

- (a) Vehicle towed back to the company’s lot:** One hundred twenty-five dollars (\$125.00) flat fee per tow inclusive of all incidental charges, the first five (5) miles of on-hook mileage, the first hour of site work, and the first 24 hours of storage when the vehicle is towed to the company’s storage lot. For each on-hook mile encountered after the first five (5) such miles contemplated in the preceding sentence from the scene of the tow to the tower’s storage lot, the tower shall be authorized to charge three dollars and fifty cents (\$3.50). If such a tow requires additional time (beyond the first hour contemplated in this section) on the scene, the tow company may assess an additional fee of one hundred (\$100.00) per additional hour, billed in 15-minute increments. Storage rates after the first 24 hours shall be calculated in accordance with Section C.
- (b) Vehicle towed to a site directed by owner/driver:** One hundred dollars (\$100.00) flat fee per tow inclusive of all incidental charges, the first hour of site work, plus seven dollars (\$7.00) per on-hook mile from the scene of the tow when a vehicle is towed and delivered to a site other than the tower’s storage lot as directed by the vehicle owner (or the person in control of the vehicle at the time of the tow) in accordance with §39-12.1-3(d) (see Consumer Information Card Section D-3). If such a tow requires additional time on the scene, the tow company may assess an additional fee of one hundred dollars (\$100.00) per additional hour beyond the first hour on scene, billed in 15-minute increments.
- (c) Extra Laborer Required:** When an extra laborer is required at an accident scene for recovery of a vehicle in this weight category, the tower is authorized to charge a rate of sixty-five dollars (\$65.00) per hour in addition to the charges identified in Subsection A-1(a) above.

(d) **On-Hook Mileage charges:** In instances regarding on-hook mileage charges outlined in Subsection A-1(a) and A-1(b) above, the tow slip must list both the tow truck's beginning odometer reading when the towed vehicle is secured (on-hook or on the back of a flatbed) and the ending odometer reading when the vehicle is delivered to the tower's lot (when mileage charges are authorized) or delivered to the destination directed by the vehicle owner (or person in control of the vehicle at the time of the tow).

(e) **Towing of Motorcycles:** An additional charge of twenty-five dollars (\$25.00) shall apply when the tow company must tow and relocate a motorcycle in either of the services outlined in Subsections A-1(a) and A-1(b).

(f) **After-Hours Release of Vehicles Subjected to Police-Ordered Tows:**

(i) Towers are required to release vehicles towed at the direction of a police officer to the owner or lien holder, or their designee, upon demand and upon presentation of the appropriately accrued towing charges, regardless of the type of vehicle towed (See exception in subsection (v) below).

(ii) However, a patron who chooses to retrieve his/her vehicle (or personal belongings) outside the tower's normal business hours may be charged an additional after-hours release fee of thirty dollars (\$30.00).

(iii) This "after-hours release" charge applies ***only*** if the tower's normal business hours are, for the purposes of this charge, ***at a minimum*** from 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. through 12:00 p.m. (noon) on Saturday. The after-hours release fee may properly be assessed for vehicle retrieval at any time on Sundays and all legal holidays; provided, however, that any delay in the retrieval of the vehicle that necessitated the "after-hours" nature of the release was not caused by the tow company.

(iv) This charge is intended to compensate the tower for the expense of requiring an employee of the tower to return to the storage facility after normal business hours to release a vehicle. Accordingly, ***if this tower has employees on site for extended hours, it shall not impose this charge, nor shall it impose this charge if it has an employee already at the tow yard when the customer first appears to request the release of a vehicle.***

(v) *Exception – If a vehicle owner or lienholder (or designee) wishes after-hours to retrieve an ***inoperable*** vehicle that ***cannot be driven from the storage lot***, the tower may decline to release the vehicle until it reopens in accordance with its normal business hours; in that instance, the tower shall not charge any after-hours fees, nor shall it apply any additional storage fees associated with the delay.*

2. PRIVATE-PROPERTY-TRESSPASS TOWS:

- (a) **Vehicle towed back to the company's lot:** One hundred twenty-five dollars (\$125.00) flat fee per tow inclusive of all incidental charges, all on-hook mileage, the first hour of site work, and the first 24 hours of storage when the vehicle is towed to the company's storage lot. In the event a tower is asked to tow a "trespassing" motorcycle, the tower may assess an additional twenty-five dollars (\$25.00) beyond the fee outlined in the previous sentence. Storage rates after the first 24 hours shall be calculated in accordance with Section C below.
- (b) **Release of vehicle at the scene of a requested private-property-trespass tow:** In the event the vehicle owner (or person in control of the vehicle at the time in question) arrives on the scene and agrees to remove the vehicle in question from the parcel of private property, the tow company shall be authorized and required to charge the vehicle owner (or person in control of the vehicle at the time in question) a flat fee of sixty dollars (\$60.00), provided, however, that the tow company has already secured the vehicle (on-hook or on the back of a flatbed) for a properly requested trespass tow.
- (c) **Adherence to R.I.G.L. §39-12.1-12:** The Rhode Island General Assembly established a clear distinction between police-ordered non-consensual tows and private-property-trespass non-consensual tows. Specifically, R.I.G.L. §39-12.1-12(a) provides that when an owner (or person in control of) a parcel of private property wishes to have a "trespassing" vehicle removed from the parcel of property, that property owner (or person in control of the parcel) shall retain "in writing, a certificated tower to remove *the trespassing vehicle* (*emphasis added*) and relocate *the vehicle* (*emphasis added*) to its private impoundment lot. Clearly, through the use of the word "the," the legislature intended for the written request to remove a "trespassing" vehicle to be ascribed to a specific vehicle identified by the requesting party. Moreover, R.I.G.L. §39-12.1-12 further states that towers who conduct private-property-trespass tows must ensure that the storage lot "shall be open for business to release the vehicle the same hours it is open to receive the vehicle." Accordingly, the following requirements shall apply to private-property-trespass tows:
- (i) The request from a property owner (or person in control of a parcel of property) must be made in writing and must identify the specific vehicle (make, model, plate number...) to be towed. Such written request may be made on the scene or be transmitted electronically through an email message from the property owner to the tow company.
- (ii) After-Hours Release fees as identified in Subsection A-1(f) above shall not apply for Private-Property-Trespass tows.

B. MEDIUM-DUTY – 8,001 lbs. to 15,000 lbs. Gross Vehicle Weight

NOTE: Tariff rates are built on the assumption that the tower uses vehicles and equipment that are appropriate for the tow and/or recovery being performed – that is, vehicles and equipment that can perform the tow safely. Using light-duty tow trucks or equipment for a medium-duty tow presents public safety issues and, accordingly, shall not be sanctioned by the Division. Therefore, no tower may charge (no matter the rate) for a medium-duty tow unless that tower uses a tow truck rated for towing at least the Gross Vehicle Rate of the vehicle actually being towed.

Conversely, the Division acknowledges that some vehicles assigned a GVW between 8,001 and 15,000 pounds by the vehicle’s manufacturer are frequently modified after purchase in a way to increase their overall weight and/or length (example: adding a snowplow and/or sanding equipment), and that such modifications make it unsafe for such a vehicle to be towed by a “medium-duty-rated” tow truck. Accordingly, in the event a tower must tow such a vehicle using a heavier-rated tow truck, the tower may charge the appropriate rate listed in its Division-approved “heavy-duty” towing tariff. In order to do so, the tower must have in place a Division-approved “heavy-duty” tariff and must create and retain documentation (i.e.: photograph(s), written narrative, police report...) of the vehicle to be towed to justify the decision.

1. Police-Ordered Tows:

- (a) Vehicle towed back to the company’s lot:** One hundred forty-five dollars (\$145.00) flat fee per tow inclusive of all incidental charges, the first five (5) miles of on-hook mileage, the first hour of site work, and the first 24 hours of storage when the vehicle is towed to the company’s storage lot. For each on-hook mile encountered after the first five (5) such miles contemplated in the preceding sentence from the scene of the tow to the tower’s storage lot, the tower shall be authorized to charge three dollars and fifty cents (\$3.50). If such a tow requires additional time (beyond the first hour contemplated in this section) on the scene, the tow company may assess an additional fee of one hundred dollars (\$100.00) per additional hour, billed in 15-minute increments. Storage rates after the first 24 hours shall be calculated in accordance with Section C.
- (b) Vehicle towed to a site directed by owner/driver:** One hundred twenty dollars (\$120.00) flat fee per tow inclusive of all incidental charges, the first hour of site work, plus eight dollars (\$8.00) per on-hook mile from the scene of the tow when a vehicle is towed and delivered to a site other than the tower’s storage lot as directed by the vehicle owner (or the person in control of the vehicle at the time of the tow) in accordance with §39-12.1-3(d) (see Consumer Information Card Section D-3). If such a tow requires additional time on the scene, the tow company may assess an additional fee of one hundred dollars (\$100.00) per additional hour beyond the first hour on scene, billed in 15-minute increments.
- (c) Extra Laborer Required:** When an extra laborer is required at an accident scene or recovery of a vehicle in this weight category, the tower is authorized to charge a rate of sixty-five dollars (\$65.00) per hour in addition to the charges identified in Subsection B-1(a) above.

(d) **On-Hook Mileage charges:** In instances regarding on-hook mileage charges outlined in Subsection B-1(a) and B-1(b) above, the tow slip must list both the tow truck's beginning odometer reading when the towed vehicle is secured (on-hook or on the back of a flatbed) and the ending odometer reading when the vehicle is delivered to the tower's lot (when mileage charges are authorized) or delivered to the destination directed by the vehicle owner (or person in control of the vehicle at the time of the tow).

(e) **After-Hours Release of Vehicles Subjected to Police-Ordered Tows:**

- (i) Towers are required to release vehicles towed at the direction of a police officer to the owner or lien holder, or their designee, upon demand and upon presentation of the appropriately accrued towing charges, regardless of the type of vehicle towed (See exception in subsection (v) below).
- (ii) However, a patron who chooses to retrieve his/her vehicle (or personal belongings) outside the tower's normal business hours may be charged an additional after-hours release fee of thirty dollars (\$30.00).
- (iii) This "after-hours release" charge applies ***only*** if the tower's normal business hours are, for the purposes of this charge, ***at a minimum*** from 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. through 12:00 p.m. (noon) on Saturday. The after-hours release fee may properly be assessed for vehicle retrieval at any time on Sundays and all legal holidays; provided, however, that any delay in the retrieval of the vehicle that necessitated the "after-hours" nature of the release was not caused by the tow company.
- (iv) This charge is intended to compensate the tower for the expense of requiring an employee of the tower to return to the storage facility after normal business hours to release a vehicle. Accordingly, ***if this tower has employees on site for extended hours, it shall not impose this charge, nor shall it impose this charge if it has an employee already at the tow yard when the customer first appears to request the release of a vehicle.***
- (v) *Exception – If a vehicle owner or lien holder (or designee) wishes after-hours to retrieve an **inoperable** vehicle that **cannot be driven from the storage lot**, the tower may decline to release the vehicle until it reopens in accordance with its normal business hours; in that instance, the tower shall not charge any after-hours fees, nor shall it apply any additional storage fees associated with the delay.*

2. PRIVATE-PROPERTY-TRESSPASS TOWS:

- (a) **Vehicle towed back to the company's lot:** One hundred forty-five dollars (\$145.00) flat fee per tow inclusive of all incidental charges, all on-hook mileage, the first hour of site work, and the first 24 hours of storage when the vehicle is towed to the company's storage lot. Storage rates after the first 24 hours shall be calculated in accordance with Section C below. In the event a tower is asked to tow a "trespassing" motorcycle, the tower may assess an additional twenty-five dollars (\$25.00) beyond the fee outlined in the previous sentence.
- (b) **Release of vehicle at the scene of a requested private-property-trespass tow:** In the event the vehicle owner (or person in control of the vehicle at the time in question) arrives on the scene and agrees to remove the vehicle in question from the parcel of private property, the tow company shall be authorized and required to charge the vehicle owner (or person in control of the vehicle at the time in question) a flat fee of sixty dollars (\$60.00), provided, however, that the tow company has already secured the vehicle (on-hook or on the back of a flatbed) for a properly requested trespass tow.
- (c) **Adherence to R.I.G.L. §39-12.1-12:** The Rhode Island General Assembly established a clear distinction between police-ordered non-consensual tows and private-property-trespass non-consensual tows. Specifically, R.I.G.L. §39-12.1-12(a) provides that when an owner (or person in control of) a parcel of private property wishes to have a "trespassing" vehicle removed from the parcel of property, that property owner (or person in control of the parcel) shall retain "in writing, a certificated tower to remove the trespassing vehicle (*emphasis added*) and relocate the vehicle (*emphasis added*) to its private impoundment lot. Clearly, through the use of the word "the" the legislature intended for the written request to remove a "trespassing" vehicle to be ascribed to a specific vehicle identified by the requesting party. Moreover, R.I.G.L. §39-12.1-12 further states that towers who conduct private-property-trespass tows must ensure that the storage lot "shall be open for business to release the vehicle the same hours it is open to receive the vehicle."

Accordingly, the following requirements shall apply to private-property-trespass tows:

- (i) The request from a property owner (or person in control of a parcel of property) must be made in writing and must identify the specific vehicle (make, model, plate number...) to be towed. Such written request may be made on the scene or be transmitted electronically through an email message from the property owner to the tow company.
- (ii) After-Hours Release fees as identified in Subsection A-1(f) above shall not apply for Private-Property-Trespass tows.

C. STORAGE CHARGES

1. **Vehicles up to 20 feet in length:** Storage fees shall be calculated in the following manner with the word “day” meaning 24-hour period from the time the vehicle is delivered to the company’s lot:
 - (a) **Storage beyond “Day 1”:** The all-inclusive fee outlined in sections A-1(a), A-2(a), B-1(a), and B-2(a) provides for the first 24 hours of storage at no charge. Accordingly, storage fees of thirty-five dollars (\$35.00) shall accrue for each 24-hour period after the initial 24-hour period.

2. **Vehicles More than 20 feet in length:** Storage fees shall be calculated in the following manner with the word “day” meaning 24-hour period from the time the vehicle is delivered to the company’s lot:
 - (a) **Storage beyond “Day 1”:** The all-inclusive fee outlined in sections A-1(a), A-2(a), B-1(a), and B-2(a) provides for the first 24 hours of storage at no charge. Accordingly, storage fees of forty-five dollars (\$45.00) shall accrue for each 24-hour period after the initial 24-hour period.

NOTE 1: Storage fees will not accrue after the seventh (7th) calendar day with respect to the owner of a vehicle unless the tower has notified the vehicle owner as required by State law and the Division’s regulations. Storage fees will not accrue after the fourteenth (14th) calendar day with respect to the lienholder of a vehicle unless the tower has notified the lienholder as required by State law and the Division’s regulations.

NOTE 2: Storage charges may only be imposed if the tower has appropriate storage facilities. *Thus, a tower may not charge storage fees in any manner or for any amount for any vehicle unless that vehicle is secured in a locked, adequately fenced and adequately lighted lot, or inside a locked building. The Division reserves the right to determine the “adequacy” of both fencing and lighting relative to this provision.*

D. **ADDITIONAL CONDITIONS / REQUIREMENTS:**

1. **Acceptable Forms of Payment for Towing Services:**

- (a) The tower shall accept cash as payment for towing and storage services as well as at least one other form of payment, such as credit cards/debit cards, or personal check. *For this purpose, the Division considers Money Orders, Travelers Checks and Certified Bank Checks to be the equivalent of “cash” and, thus, does not consider acceptance of Money Orders, Travelers Checks and Certified Bank Checks to satisfy the requirement for accepting a “second” form of payment in addition to “cash.” Moreover, if the tower chooses to accept credit cards/debit cards as a form of payment, the tower shall ensure that a vehicle owner is able to complete such a transaction regardless of the ultimate delivery site of the vehicle.*

2. Ancillary fees associated with non-consensual tows:

- (a) **Toll Charges:** Tow companies may collect all actual road and/or bridge toll charges incurred by the tow company on the way to the scene, while transporting the vehicle to its ultimate delivery site, and returning to the tow yard from any alternate delivery site chosen by the vehicle owner or personal in control of the vehicle at the time of the tow.
- (b) **Consumer Convenience Fee:** Section D-1(a) above requires tow companies to accept multiple forms of payment. Accordingly, if a tower accepts payment by credit card or debit card, the tower may pass-through the credit card processing fee to the consumer, not to exceed three percent (3%) of the total tariff charges.

3. Consumer Information Card:

- (a) The tower shall present to the driver (or, in the alternative, an adult passenger if the driver is unavailable) of a vehicle about to be towed by order of the police (not required for private-property-trespass tows) an informational card explaining the rights of the vehicle owner/driver relative to his/her selection of a site to where the vehicle may be towed, and an explanation of the mileage charges and storage rate calculation method. (Provided, however, that the tower shall not be required to provide such a card to a driver who is not safely and readily able to accept same [i.e.: injured or in police custody], and no adult passenger is on the scene to accept delivery of such card and make a selection on the driver's behalf.) The Division shall produce a prototype for such a card and the tower shall have said cards reproduced unchanged (in sufficient quantities) at its own expense. Such cards must be updated whenever there is an approved change to a tower's tow and/or storage rates. *Note: The tower may print its business name, address, telephone number and MC number atop such cards for identifying purposes.*

E. EMERGENCY FUEL SURCHARGE:

- 1. Rhode Island Gen. Laws §39-12-13(b) authorizes the Administrator to implement a gasoline price emergency surcharge program whereby a person licensed under The Towing Storage Act to perform "driveaway-towaway operations" shall be permitted to impose and collect a surcharge, during such times and under such conditions wherein the Administrator determines that the average price of gasoline in this state exceeds one dollar and fifty cents (\$1.50) per gallon. Provided, that the Administrator shall have discretion as to when to permit such surcharge to be imposed, except that the administrator shall not impose the surcharge at any time when the average price of gasoline, as determined by the administrator, does not exceed the price of one dollar and fifty cents (\$1.50) per gallon.
- 2. According to Section 2.2.2 of the Study Report delivered by Stone Gables, the fuel costs built into the rate recommendation therein were calculated assuming \$3.00 per gallon of diesel fuel. Further, Table 3-2 of the Study Report delivered by Stone Gables, assumed an average fuel consumption per tow, calculated at \$3.00 per gallon, of about three (3) miles. Accordingly, tow companies utilizing this tariff shall be authorized to collect an additional surcharge of \$1.50 (calculated at a per gallon surcharge of \$0.50 per gallon for an average tow consuming three (3) gallons) for each tow conducted in a month following a month where it is determined that the average

fuel costs exceeded \$3.50; an additional \$1.50 surcharge (above the initial surcharge) shall be authorized for each 50-cent per gallon benchmark surpassed thereafter (i.e.: \$3.00 total when the average price exceeds \$4.00, \$4.50 total when the average price exceeds \$4.50 per gallon, and so on...).

3. The Division, for the purposes of this program, shall continue to track the price of diesel fuel in accordance with the provisions of Report & Order Number 18059. However, tow companies shall be allowed to assess any authorized fuel surcharge regardless of what fuel type is used in the company's tow trucks. The Division shall post the average monthly price of diesel fuel it has calculated, and the amount of emergency fuel surcharge authorized to be collected under this tariff for the month, on its website.

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

In re: Rate Relief For Light and Medium)
Duty Non-Consensual Tows And)
Related Matters Pursuant To)
R.I.G.L. § 39-12-12)

Docket No. 18 MC 94

ATTACHMENT B

TO

DIVISION REPORT AND ORDER NUMBER 24243
PROPOSED RATES FOR NON-CONSENSUAL TOWING AND STORAGE
WITHIN THE STATE OF RHODE ISLAND
AND RELATED MATTERS
SHOWING AMENDMENTS TO ORIGINAL LANGUAGE

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

IN RE: TARIFF AFFIXING RATES AND TERMS)
FOR NON-CONSENSUAL TOWING) Docket No. 18 MC 94
AND OTHER RELATED MATTERS)
_____)

TRAVEL:

On May 2, 2018, the Division of Public Utilities and Carriers (“Division”) issued Report and Order number 23146 in Docket 18 MC 94, which adopted a settlement agreement (“Settlement Agreement”) between the Division and all certificated towing companies and approved an *interim* set of rates, terms and conditions for intrastate non-consensual towing of small-sized and medium-sized vehicles (“Interim Tariff”). The temporary nature of rates contained in the Interim Tariff was approved to allow a transportation consultant, Stone Gables Engineering, LLC (“Stone Gables”) engaged by the Division to complete a study of the state’s towing industry and to produce a report for the Division.

According to Report and Order 23146, the Interim Tariff was to be in effect only until three (3) months after the delivery of the Towing Study by Stone Gables to the Division¹. The signatories to the Settlement Agreement agreed that the parties would attempt to draft a suitable new tariff (“New Tariff”) based on the recommendations of Stone Gables within three (3) months from the delivery of the Tow Study, and, moreover, that each certificated towing operation in the state would adopt the New Tariff or revert to the tariff it had on file before the Interim Tariff was approved.

Shortly after the delivery of the Tow Study, and before the parties could engage in meaningful discussion about the study itself and the development of the New Tariff, the State of Rhode Island was forced to address the global COVID-19 pandemic, and the Administrator of the Division exercised the discretion afforded in Report and Order 23146 to extend the Interim Tariff “for good cause” (*see footnote No. 1*).

The parties have now developed a satisfactory New Tariff that both the Division and members of the towing industry agree is reasonable.

¹ Order No. 23146: “That three (3) months following the filing of the Division’s completed study of towing rates, the interim rates approved by this Order shall become null and void. Within that three (3) month period, each tower which has signed on to these interim rates shall either: (1) revert back to the tariff terms that were in effect for that tower prior to its adoption of the interim rates, or (2) file new tariff rates consistent with those developed by the Division’s study of tow rates for consideration and approval by the Administrator, or (3) file its own proposed tariff rates with the Division for consideration by the Division in a rate proceeding. The three (3) month period may be extended for good cause shown by the Administrator of the Division at the discretion of the Administrator.”

**2021 NON-CONSENSUAL TOW TARIFF
FOR LIGHT-DUTY and MEDIUM-DUTY VEHICLES**

This document sets rates for non-consensual tows of light-duty (8,000 lbs. and less gross vehicle weight) and medium-duty (8,001 lbs. – 15,000 lbs. gross vehicle weight) vehicles, incidental charges, and storage in connection with those tows conducted by any towing company licensed by the Division of Public Utilities and Carriers (“Division”) that chooses to adopt this tariff, in accordance with Rhode Island General Laws §§39-12-11 through 39-12-14.

The approved rates for non-consensual towing services in the State of Rhode Island for all light-duty and medium-duty vehicles performed by this tower are as follows:

A. LIGHT-DUTY – Up to 8,000 lbs. Gross Vehicle Weight

1. Police-Ordered Tows:

- (a) **Vehicle towed back to the company’s lot:** One hundred twenty-five dollars (\$125.00) flat fee per tow inclusive of all incidental charges, the first five (5) miles of on-hook mileage, the first hour of site work, and the first 24 hours of storage when the vehicle is towed to the company’s storage lot. For each on-hook mile encountered after the first five (5) such miles contemplated in the preceding sentence from the scene of the tow to the tower’s storage lot, the tower shall be authorized to charge three dollars and fifty cents (\$3.50). If such a tow requires additional time (beyond the first hour contemplated in this section) on the scene, the tow company may assess an additional fee of one hundred (\$100.00) per additional hour, billed in 15-minute increments. Storage rates after the first 24 hours shall be calculated in accordance with Section C.
- (b) **Vehicle towed to a site directed by owner/driver:** One hundred dollars (\$100.00) flat fee per tow inclusive of all incidental charges, the first hour of site work, plus seven dollars (\$7.00) per on-hook mile from the scene of the tow when a vehicle is towed and delivered to a site other than the tower’s storage lot as directed by the vehicle owner (or the person in control of the vehicle at the time of the tow) in accordance with §39-12.1-3(d) (see Consumer Information Card Section D-3). If such a tow requires additional time on the scene, the tow company may assess an additional fee of one hundred dollars (\$100.00) per additional hour beyond the first hour on scene, billed in 15-minute increments.
- (c) **Extra Laborer Required:** When an extra laborer is required at an accident scene for recovery of a vehicle in this weight category, the tower is authorized to charge a rate of sixty-five dollars (\$65.00) per hour in addition to the charges identified in Subsection A-1(a) above.

- (d) **On-Hook Mileage charges:** In instances regarding on-hook mileage charges outlined in Subsection A-1(a) and A-1(b) above, the tow slip must list both the tow truck's beginning odometer reading when the towed vehicle is secured (on-hook or on the back of a flatbed) and the ending odometer reading when the vehicle is delivered to the tower's lot (when mileage charges are authorized) or delivered to the destination directed by the vehicle owner (or person in control of the vehicle at the time of the tow).
- (e) **Towing of Motorcycles:** An additional charge of twenty-five dollars (\$25.00) shall apply when the tow company must tow and relocate a motorcycle in either of the services outlined in Subsections A-1(a) and A-1(b).
- (f) **After-Hours Release of Vehicles Subjected to Police-Ordered Tows:**
- (i) Towers are required to release vehicles towed at the direction of a police officer to the owner or lien holder, or their designee, upon demand and upon presentation of the appropriately accrued towing charges, regardless of the type of vehicle towed (See exception in subsection (v) below).
 - (ii) However, a patron who chooses to retrieve his/her vehicle (or personal belongings) outside the tower's normal business hours may be charged an additional after-hours release fee of thirty dollars (\$30.00).
 - (iii) This "after-hours release" charge applies *only* if the tower's normal business hours are, for the purposes of this charge, at a minimum from 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. through 12:00 p.m. (noon) on Saturday. The after-hours release fee may properly be assessed for vehicle retrieval at any time on Sundays and all legal holidays; provided, however, that any delay in the retrieval of the vehicle that necessitated the "after-hours" nature of the release was not caused by the tow company.
 - (iv) This charge is intended to compensate the tower for the expense of requiring an employee of the tower to return to the storage facility after normal business hours to release a vehicle. Accordingly, *if this tower has employees on site for extended hours, it shall not impose this charge, nor shall it impose this charge if it has an employee already at the tow yard when the customer first appears to request the release of a vehicle.*
 - (v) *Exception – If a vehicle owner or lienholder (or designee) wishes after-hours to retrieve an inoperable vehicle that cannot be driven from the storage lot, the tower may decline to release the vehicle until it reopens in accordance with its normal business hours; in that instance, the tower shall not charge any after-hours fees, nor shall it apply any additional storage fees associated with the delay.*

2. PRIVATE-PROPERTY-TRESSPASS TOWS:

- (a) **Vehicle towed back to the company's lot:** One hundred twenty-five dollars (\$125.00) flat fee per tow inclusive of all incidental charges, all on-hook mileage, the first hour of site work, and the first 24 hours of storage when the vehicle is towed to the company's storage lot. In the event a tower is asked to tow a "trespassing" motorcycle, the tower may assess an additional twenty-five dollars (\$25.00) beyond the fee outlined in the previous sentence. Storage rates after the first 24 hours shall be calculated in accordance with Section C below.
- (b) **Release of vehicle at the scene of a requested private-property-trespass tow:** In the event the vehicle owner (or person in control of the vehicle at the time in question) arrives on the scene and agrees to remove the vehicle in question from the parcel of private property, the tow company shall be authorized and required to charge the vehicle owner (or person in control of the vehicle at the time in question) a flat fee of sixty dollars (\$60.00), provided, however, that the tow company has already secured the vehicle (on-hook or on the back of a flatbed) for a properly requested trespass tow.
- (c) **Adherence to R.I.G.L. §39-12.1-12:** The Rhode Island General Assembly established a clear distinction between police-ordered non-consensual tows and private-property-trespass non-consensual tows. Specifically, R.I.G.L. §39-12.1-12(a) provides that when an owner (or person in control of) a parcel of private property wishes to have a "trespassing" vehicle removed from the parcel of property, that property owner (or person in control of the parcel) shall retain "in writing, a certificated tower to remove the trespassing vehicle (emphasis added) and relocate the vehicle (emphasis added) to its private impoundment lot. Clearly, through the use of the word "the," the legislature intended for the written request to remove a "trespassing" vehicle to be ascribed to a specific vehicle identified by the requesting party. Moreover, R.I.G.L. §39-12.1-12 further states that towers who conduct private-property-trespass tows must ensure that the storage lot "shall be open for business to release the vehicle the same hours it is open to receive the vehicle."
Accordingly, the following requirements shall apply to private-property-trespass tows:
- (i) The request from a property owner (or person in control of a parcel of property) must be made in writing and must identify the specific vehicle (make, model, plate number...) to be towed. Such written request may be made on the scene or be transmitted electronically through an email message from the property owner to the tow company.
 - (ii) After-Hours Release fees as identified in Subsection A-1(f) above shall not apply for Private-Property-Trespass tows.

B. MEDIUM-DUTY – 8,001 lbs. to 15,000 lbs. Gross Vehicle Weight

NOTE: Tariff rates are built on the assumption that the tower uses vehicles and equipment that are appropriate for the tow and/or recovery being performed – that is, vehicles and equipment that can perform the tow safely. Using light-duty tow trucks or equipment for a medium-duty tow presents public safety issues and, accordingly, shall not be sanctioned by the Division. Therefore, no tower may charge (no matter the rate) for a medium-duty tow unless that tower uses a tow truck rated for towing at least the Gross Vehicle Rate of the vehicle actually being towed.

Conversely, the Division acknowledges that some vehicles assigned a GVW between 8,001 and 15,000 pounds by the vehicle’s manufacturer are frequently modified after purchase in a way to increase their overall weight and/or length (example: adding a snowplow and/or sanding equipment), and that such modifications make it unsafe for such a vehicle to be towed by a “medium-duty-rated” tow truck. Accordingly, in the event a tower must tow such a vehicle using a heavier-rated tow truck, the tower may charge the appropriate rate listed in its Division-approved “heavy-duty” towing tariff. In order to do so, the tower must have in place a Division-approved “heavy-duty” tariff, and must create and retain documentation (i.e.: photograph(s), written narrative, police report...) of the vehicle to be towed to justify the decision.

1. Police-Ordered Tows:

- (a) **Vehicle towed back to the company’s lot:** One hundred forty-five dollars (\$145.00) flat fee per tow inclusive of all incidental charges, the first five (5) miles of on-hook mileage, the first hour of site work, and the first 24 hours of storage when the vehicle is towed to the company’s storage lot. For each on-hook mile encountered after the first five (5) such miles contemplated in the preceding sentence from the scene of the tow to the tower’s storage lot, the tower shall be authorized to charge three dollars and fifty cents (\$3.50). If such a tow requires additional time (beyond the first hour contemplated in this section) on the scene, the tow company may assess an additional fee of one hundred dollars (\$100.00) per additional hour, billed in 15-minute increments. Storage rates after the first 24 hours shall be calculated in accordance with Section C.
- (b) **Vehicle towed to a site directed by owner/driver:** One hundred twenty dollars (\$120.00) flat fee per tow inclusive of all incidental charges, the first hour of site work, plus eight dollars (\$8.00) per on-hook mile from the scene of the tow when a vehicle is towed and delivered to a site other than the tower’s storage lot as directed by the vehicle owner (or the person in control of the vehicle at the time of the tow) in accordance with §39-12.1-3(d) (see Consumer Information Card Section D-3). If such a tow requires additional time on the scene, the tow company may assess an additional fee of one hundred dollars (\$100.00) per additional hour beyond the first hour on scene, billed in 15-minute increments.
- (c) **Extra Laborer Required:** When an extra laborer is required at an accident scene or recovery of a vehicle in this weight category, the tower is authorized to charge a rate of sixty-five dollars (\$65.00) per hour in addition to the charges identified in Subsection B-1(a) above.

(d) **On-Hook Mileage charges:** In instances regarding on-hook mileage charges outlined in Subsection B-1(a) and B-1(b) above, the tow slip must list both the tow truck's beginning odometer reading when the towed vehicle is secured (on-hook or on the back of a flatbed) and the ending odometer reading when the vehicle is delivered to the tower's lot (when mileage charges are authorized) or delivered to the destination directed by the vehicle owner (or person in control of the vehicle at the time of the tow).

~~(e) **Towing of Motorcycles:** An additional charge of twenty five dollars (\$25.00) shall apply when the tow company must tow and relocate a motorcycle in either of the services outlined in Subsections B-1(a) and B-1(b).~~

~~(f)~~(e) **After-Hours Release of Vehicles Subjected to Police-Ordered Tows:**

(i) Towers are required to release vehicles towed at the direction of a police officer to the owner or lien holder, or their designee, upon ~~(ii)~~ demand and upon presentation of the appropriately accrued towing charges, regardless of the type of vehicle towed (See exception in subsection (v) below).

~~(iii)~~(ii) However, a patron who chooses to retrieve his/her vehicle (or personal belongings) outside the tower's normal business hours may be charged an additional after-hours release fee of thirty dollars (\$30.00).

~~(iv)~~(iii) This "after-hours release" charge applies *only* if the tower's normal business hours are, for the purposes of this charge, *at a minimum* from 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. through 12:00 p.m. (noon) on Saturday. The after-hours release fee may properly be assessed for vehicle retrieval at any time on Sundays and all legal holidays; provided, however, that any delay in the retrieval of the vehicle that necessitated the "after-hours" nature of the release was not caused by the tow company.

~~(v)~~(iv) This charge is intended to compensate the tower for the expense of requiring an employee of the tower to return to the storage facility after normal business hours to release a vehicle. Accordingly, *if this tower has employees on site for extended hours, it shall not impose this charge, nor shall it impose this charge if it has an employee already at the tow yard when the customer first appears to request the release of a vehicle.*

~~(vi)~~(v) *Exception – If a vehicle owner or lienholder (or designee) wishes after-hours to retrieve an inoperable vehicle that cannot be driven from the storage lot, the tower may decline to release the vehicle until it reopens in accordance with its normal business hours; in that instance, the tower shall not charge any after-hours fees, nor shall it apply any additional storage fees associated with the delay.*

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2. PRIVATE-PROPERTY-TRESSPASS TOWS:

- (a) **Vehicle towed back to the company's lot:** One hundred forty-five dollars (\$145.00) flat fee per tow inclusive of all incidental charges, all on-hook mileage, the first hour of site work, and the first 24 hours of storage when the vehicle is towed to the company's storage lot. Storage rates after the first 24 hours shall be calculated in accordance with Section C below. In the event a tower is asked to tow a "trespassing" motorcycle, the tower may assess an additional twenty-five dollars (\$25.00) beyond the fee outlined in the previous sentence.
- (b) **Release of vehicle at the scene of a requested private-property-trespass tow:** In the event the vehicle owner (or person in control of the vehicle at the time in question) arrives on the scene and agrees to remove the vehicle in question from the parcel of private property, the tow company shall be authorized **and required** to charge the vehicle owner (or person in control of the vehicle at the time in question) a flat fee of sixty dollars (\$60.00), provided, however, that the tow company has already secured the vehicle (on-hook or on the back of a flatbed) for a properly requested trespass tow.
- (c) **Adherence to R.I.G.L. §39-12.1-12:** The Rhode Island General Assembly established a clear distinction between police-ordered non-consensual tows and private-property-trespass non-consensual tows. Specifically, R.I.G.L. §39-12.1-12(a) provides that when an owner (or person in control of) a parcel of private property wishes to have a "trespassing" vehicle removed from the parcel of property, that property owner (or person in control of the parcel) shall retain "in writing, a certificated tower to remove ***the trespassing vehicle (emphasis added)*** and relocate ***the vehicle (emphasis added)*** to its private impoundment lot. Clearly, through the use of the word "the" the legislature intended for the written request to remove a "trespassing" vehicle to be ascribed to a specific vehicle identified by the requesting party. Moreover, R.I.G.L. §39-12.1-12 further states that towers who conduct private-property-trespass tows must ensure that the storage lot "shall be open for business to release the vehicle the same hours it is open to receive the vehicle."
Accordingly, the following requirements shall apply to private-property-trespass tows:
- (i) The request from a property owner (or person in control of a parcel of property) must be made in writing and must identify the specific vehicle (make, model, plate number...) to be towed. Such written request may be made on the scene or be transmitted electronically through an email message from the property owner to the tow company.
 - (ii) After-Hours Release fees as identified in Subsection A-1(f) above shall not apply for Private-Property-Trespass tows.

C. STORAGE CHARGES

1. **Vehicles up to 20 feet in length:** Storage fees shall be calculated in the following manner with the word “day” meaning 24-hour period from the time the vehicle is delivered to the ~~to~~ company’s lot:
 - (a) **Storage beyond “Day 1”:** The all-inclusive fee outlined in sections A-1(a), A-2(a), B-1(a), and B-2(a) provides for the first 24 hours of storage at no charge. Accordingly, storage fees of thirty-five dollars (\$35.00) shall accrue for each 24-hour period after the initial 24-hour period.

2. **Vehicles ~~up to~~ More than 20 feet in length:** Storage fees shall be calculated in the following manner with the word “day” meaning 24-hour period from the time the vehicle is delivered to the company’s lot:
 - (a) **Storage beyond “Day 1”:** The all-inclusive fee outlined in sections A-1(a), A-2(a), B-1(a), and B-2(a) provides for the first 24 hours of storage at no charge. Accordingly, storage fees of forty-five dollars (\$45.00) shall accrue for each 24-hour period after the initial 24-hour period.

NOTE 1: Storage fees will not accrue after the seventh (7th) calendar day with respect to the owner of a vehicle unless the tower has notified the vehicle owner as required by State law and the Division’s regulations. Storage fees will not accrue after the fourteenth (14th) calendar day with respect to the lienholder of a vehicle unless the tower has notified the lienholder as required by State law and the Division’s regulations.

NOTE 2: Storage charges may only be imposed if the tower has appropriate storage facilities. *Thus, a tower may not charge storage fees in any manner or for any amount for any vehicle unless that vehicle is secured in a locked, adequately fenced and adequately lighted lot, or inside a locked building. The Division reserves the right to determine the “adequacy” of both fencing and lighting relative to this provision.*

D. ADDITIONAL CONDITIONS / REQUIREMENTS:

~~D.~~

1. **Acceptable Forms of Payment for Towing Services:**
 - (a) The tower shall accept cash as payment for towing and storage services as well as at least one other form of payment, such as credit cards/debit cards, or personal check. *For this purpose, the Division considers Money Orders, Travelers Checks and Certified Bank Checks to be the equivalent of “cash” and, thus, does not consider acceptance of Money Orders, Travelers Checks and Certified Bank Checks to satisfy the requirement for accepting a “second” form of payment in addition to “cash.” Moreover, if the tower chooses to accept credit cards/debit cards as a form of payment, the tower shall ensure that a vehicle owner is able to complete such a transaction regardless of the ultimate delivery site of the vehicle.*

2. **Ancillary fees associated with non-consensual tows:**
 - (a) **Toll Charges:** Tow companies may collect all actual road and/or bridge toll charges incurred by the tow company on the way to the scene, while transporting the vehicle to its ultimate delivery site, and returning to the tow yard from any alternate delivery site chosen by the vehicle owner or personal in control of the vehicle at the time of the tow.

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(b) **Consumer Convenience Fee:** Section D-1(a) above requires tow companies to accept multiple forms of payment. Accordingly, if a tower accepts payment by credit card or debit card, the tower may pass-through the credit card processing fee to the consumer, not to exceed three percent (3%) of the total tariff charges.

3. Consumer Information Card:

(a) The tower shall present to the driver (or, in the alternative, an adult passenger if the driver is unavailable) of a vehicle about to be towed by order of the police (not required for private-property-trespass tows) an informational card explaining the rights of the vehicle owner/driver relative to his/her selection of a site to where the vehicle may be towed, and an explanation of the mileage charges and storage rate calculation method. (Provided, however, that the tower shall not be required to provide such a card to a driver who is not safely and readily able to accept same [i.e.: injured or in police custody], and no adult passenger is on the scene to accept delivery of such card and make a selection on the driver's behalf.) The Division shall produce a prototype for such a card and the tower shall have said cards reproduced unchanged (in sufficient quantities) at its own expense. Such cards must be updated whenever there is an approved change to a tower's tow and/or storage rates. *Note: The tower may print its business name, address, telephone number and MC number atop such cards for identifying purposes.*

E. EMERGENCY FUEL SURCHARGE:

1. Rhode Island Gen. Laws §39-12-13(b) authorizes the Administrator to implement a gasoline price emergency surcharge program whereby a person licensed under The Towing Storage Act to perform "driveaway-towaway operations" shall be permitted to impose and collect a surcharge, during such times and under such conditions wherein the Administrator determines that the average price of gasoline in this state exceeds one dollar and fifty cents (\$1.50) per gallon. Provided, that the Administrator shall have discretion as to when to permit such surcharge to be imposed, except that the administrator shall not impose the surcharge at any time when the average price of gasoline, as determined by the administrator, does not exceed the price of one dollar and fifty cents (\$1.50) per gallon.

2. According to Section 2.2.2 of the Study Report delivered by Stone Gables, the fuel costs built into the rate recommendation therein were calculated assuming \$3.00 per gallon of diesel fuel. Further, Table 3-2 of the Study Report delivered by Stone Gables, assumed an average fuel consumption per tow, calculated at \$3.00 per gallon, of about three (3) miles. Accordingly, tow companies utilizing this tariff shall be authorized to collect an additional surcharge of \$1.50 (calculated at a per gallon surcharge of \$0.50 per gallon for an average tow consuming three (3) gallons) for each tow conducted in a month following a month where it is determined that the average fuel costs exceeded \$3.50; an additional \$1.50 surcharge (above the initial surcharge) shall be authorized for each 50-cent per gallon benchmark surpassed thereafter (i.e.: \$3.00 total when the average price exceeds \$4.00, \$4.50 total when the average price exceeds \$4.50 per gallon, and so on...).

3. The Division, for the purposes of this program, shall continue to track the price of diesel fuel in accordance with the provisions of Report & Order Number 18059.

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However, tow companies shall be allowed to assess any authorized fuel surcharge regardless of what fuel type is used in the company's tow trucks. The Division shall post the average monthly price of diesel fuel it has calculated, and the amount of emergency fuel surcharge authorized to be collected under this tariff for the month, on its website.

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- ~~1. Rhode Island Gen. Laws §39-12-13(b) authorizes the Administrator to establish fuel "price emergency surcharge program" to compensate towing operations for fluctuating price increases for gasoline and diesel fuel. Moreover, in adherence with R.I.G.L. §39-12-13(b), the Division issued Report & Order Number 18059 that established the mechanism for tracking average fuel prices within the state, determining fuel cost benchmarks, and establishing authorized surcharge amounts associated with non-consensual towing rates. The mechanism required the Division to track the average price of fuel in Rhode Island on the first and third Wednesday of each month to determine if a surcharge shall be authorized for the entirety of the next month. If such a surcharge were to be authorized, the mechanism provided that for every increase of \$0.50 over the per gallon dollar amount in the "base rate" for towing, a tow company shall be allowed to apply surcharge of \$0.50 for each non-consensual tow.~~
- ~~2. According to Section 2.2.2 of the Study Report delivered by Stone Gables, the fuel costs built into the rate recommendation therein were calculated assuming \$3.00 per gallon of diesel fuel. Accordingly, in adherence with the mechanism established in Report & Order Number 18059, tow companies shall be authorized collect an additional surcharge of \$0.50 for each tow conducted in a month following a month where it is determined that the average fuel costs exceeded \$3.50; an additional \$0.50 surcharge (above the initial surcharge) shall be authorized for each 50-cent benchmark surpassed thereafter (i.e.: \$1.00 total when the average price exceeds \$4.00...).~~
- ~~3.4. The Division, for the purposes of this program, shall continue to track the price of diesel fuel in accordance with the provisions of Report & Order Number 18059. However, tow companies shall be allowed to assess any authorized fuel surcharge regardless of what fuel type is used in the company's tow trucks.~~