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Document: Order 21874 - Safeway Auto Sales, Inc.: Proposed Light and Medium Duty Non-Consensual Tow Tariff - 2015

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

**In Re: Proposed Light And Medium
Duty Non-Consensual Tow
Tariff – 2015**

Safeway Auto Sales, Inc.
61 Gooding Avenue
Bristol, Rhode Island 02809

Docket No. 15 MC 69

ORDER

WHEREAS: On March 18, 2015, Safeway Auto Sales, Inc. (“Petitioner”) filed with the Division of Public Utilities and Carriers (“Division”) pursuant to R.I.G.L. § 39-12-11 a new proposed tariff for conducting light and medium duty non-consensual tows.

WHEREAS: On March 19, 2015, the Division issued Order number 21857 pursuant to R.I.G.L. § 39-12-12 suspending the effective date of the proposed tariff pending the Division’s review of the proposed tariff’s terms.

WHEREAS: During the course of its review, the Division determined that the Petitioner had not experienced a rate increase for the types of tow in question in more than five (5) years.

WHEREAS: During the period between March 19, 2015, and April 16, 2015, the Advocacy Section of the Division conducted a thorough review of the proposed

rates, discussed those proposals with the Petitioner, and reached an agreement between the Advocacy Section and the Petitioner as to tariff rates for non-consensual light and medium duty tows that represented just and reasonable rates within the meaning of R.I.G.L. § 39-12-14.

WHEREAS: The agreement between the Advocacy Section and the Petitioner was reduced to writing as the “2015 Settlement Agreement Regarding Rates For Non-Consensual Towing And Storage Within The State Of Rhode Island And Related Matters” (“Settlement Agreement”). This Settlement Agreement is attached hereto as Appendix 1 to this Order.

WHEREAS: The Division finds that the terms set out in the Settlement Agreement are just and reasonable within the meaning of R.I.G.L. § 39-12-14, and hereby approves those terms, as set out in the Settlement Agreement (Appendix 1 hereto), in full.

WHEREAS: R.I.G.L § 39-12-12 requires that the agreed upon tariff be posted in accordance with R.I.G.L. § 39-12-11 for at least thirty (30) days prior to becoming effective.

WHEREAS: Notice of the proposed new tariff was filed with the Division on March 18, 2015, far more than thirty (30) days prior to the effective date of this Order, and none of the approved tariff terms appear to have been increased since the original filing date, the new tariff may be put into effect immediately.

Accordingly, it is

(21874) ORDERED

1. That the Division finds that the terms set out in the Settlement Agreement are just and reasonable within the meaning of R.I.G.L. § 39-12-14, and hereby approves those terms, as set out in the Settlement Agreement (Appendix 1 hereto), in full.
2. That the approved tariff may be put into effect immediately.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND, ON APRIL 27, 2015.

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

Administrator Comments:

I would like to make it clear that only the Petitioner in this case, Safeway Auto Sales, Inc., is subject to the terms, conditions and rates contained in the Settlement Agreement (Appendix 1 hereto). 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 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.

APPROVED:

 Thomas F. Ahern
 Administrator

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.

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89 JEFFERSON BOULEVARD
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In Re: Proposed Light And Medium)
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Docket No. 15 MC 69

APPENDIX 1
TO DIVISION ORDER NUMBER 21874

**2015 SETTLEMENT AGREEMENT REGARDING RATES
FOR NON-CONSENSUAL TOWING AND STORAGE
WITHIN THE STATE OF RHODE ISLAND
AND RELATED MATTERS**

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

IN RE:	REGULATION OF TOWING RATES)	
	FOR NON-CONSENSUAL TOWS AND)	Docket No. 15 MC 69
	RELATED MATTERS – 2015)	

**2015 SETTLEMENT AGREEMENT REGARDING RATES
FOR NON-CONSENSUAL TOWING AND STORAGE
WITHIN THE STATE OF RHODE ISLAND
AND RELATED MATTERS**

This agreement is entered into by and between the Division of Public Utilities and Carriers (hereinafter “Division”) and Safeway Auto Sales, Inc. (“Safeway”). It is the intent of this agreement to resolve all issues for a period of two (2) years from the effective date hereof.

1. The Division is the public body of the State of Rhode Island charged with regulating tow-away motor vehicle operations pursuant to R.I. Gen. Laws §§ 39-12-1 *et seq.* and 39-12.1-1 *et seq.*
2. This agreement is intended to set the 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 Safeway. The rates and provisions set forth herein shall be binding upon the signatories for two (2) years from the date this agreement is adopted. During that period Safeway agrees that it will not file any additional or amended tariff pursuant to R.I. Gen. Laws §§ 39-12-11 through 39-12-14 that

are in variance with these rates. *Note: The parties agree to commence negotiations/discussions about a successor agreement at least six (6) months prior to the expiration of this agreement.*

3. Safeway agrees and accepts these rates, terms and conditions.
4. The rates for non-consensual towing services in the State of Rhode Island for all light-duty and medium-duty non-consensual tows performed by Safeway are as follows:
 - A. **Vehicles 8,000 lbs Gross Vehicle Weight and Under subject to Non-Consensual Police-Ordered Tows and Non-Consensual Private Property Tows:**

- i. **Vehicle towed back to tow company's lot:** One hundred, fifteen dollars (\$115.00) flat fee per tow inclusive of all incidental charges, the first hour of site work, and the first 24 hours of storage when a vehicle is towed to the tow company's storage lot. Storage rates after the first 24 hours shall be calculated in accordance with Section 4-F below;

- a. **Release of vehicle at the scene of a requested private property trespass tow:** In the event that 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 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 tow.

- ii. **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 four dollars (\$4.00) per 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 person in control of the vehicle at the time of the tow);

iii. **Mileage charges:** In instances outlined in Subsection A (ii) above, the tow slip must list both the tow truck's odometer reading when the towed vehicle is secured (on-hook or on the back of a flatbed) and the odometer reading when the vehicle is delivered to the destination directed by the vehicle owner (or person in control of the vehicle at the time of the tow).

iv. **Towing of Motorcycles:** An additional charge of twenty dollars (\$20.00) shall apply when the tow company must tow and relocate a motorcycle in either of the services outlined in Subsections 4-A(i) and 4-A(ii).

B. Vehicles 8,001 lbs. Through 15,000 lbs. Gross Vehicle Weight subject to Non-Consensual Police-Ordered Tows and Non-Consensual Private Property Tows:

i. **Vehicle towed back to tow company's lot:** One hundred, thirty-five dollars (\$135.00) flat fee per tow inclusive of all incidental charges and the first 24 hours of storage when a vehicle is towed to the tow company's storage lot, provided, however, that the tow is effectuated within one hour of arriving on the scene. If such a tow requires

additional time on the scene, the tow company may assess an additional fee of one hundred, twenty dollars (\$120.00) per additional hour, billed in fifteen (15) minute increments. Storage rates after the first 24 hours shall be calculated in accordance with Section 4-F below;

- ii. **Vehicle towed to a site directed by owner/driver:** One hundred, twenty dollars (\$120.00) flat fee per tow inclusive of all incidental charges, plus four dollars (\$4.00) per mile from the scene of the tow to the site selected by the vehicle owner (or person in control of the vehicle), provided, however, that the tow is effectuated within one hour of arriving on the scene. If such a tow requires additional time on the scene, the tow company may assess an additional fee of one hundred, twenty dollars (\$120.00) per additional hour, billed in fifteen (15) minute increments. Storage rates after the first 24 hours shall be calculated in accordance with Section 4-F below;

- iii. **Extra Man:** When an extra man is **required** at an accident scene or recovery of a vehicle in this weight category, the tower is authorized to charge a rate of \$55.00 per hour during normal business hours and \$65.00 per hour outside normal business hours. *Note: For the purpose of this extra-man charge, "normal business hours" shall be as described in Section 4-D(iii) of this Agreement.*

- iv. **Mileage Charges:** In instances outlined in Subsection B (iii) above, the tow slip **must** list both the tow truck's odometer reading when the vehicle is secured (on-hook or on the back of a flatbed) and the odometer reading when the vehicle is delivered as directed by the vehicle

owner (or person in control of the vehicle at the time of the tow).

- v. ***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 DPUC. Therefore, no tower may charge 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.***

C. **Waiting/Recovery Time:**

- i. When a vehicle must be removed from a predicament off the roadway (i.e. atop a snow bank, on a highway median, stuck in mud, stuck in a wooded area, etc.) because, in the opinion of a police officer at the scene, the vehicle's present location creates a hazardous condition to the motoring public along a public way, but does not require the vehicle to be towed from the scene, a rate of sixty dollars (\$60.00) for the first hour of service shall be authorized. A charge of one hundred dollars (\$100.00) per hour (billed in 15-minute increments) shall be authorized for each additional hour on scene.

D. **After-Hours Release Charge for Vehicles Subjected to Police-Ordered Tows:**

- i. Towers are required to release vehicles 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.

- ii. However, a patron who chooses to retrieve his/her vehicle outside of the tower's normal business hours may be charged an additional after-hours release fee of twenty dollars (\$20.00).
- iii. This "after-hours release" charge applies only if the tower's normal business hours are, for the purpose 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 p.m. on Saturday. The after-hours release fee may properly be assessed for vehicle retrieval at any time on Sundays and all legal holidays.
- 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 Safeway has employees on site for extended hours, it may not impose this charge, nor may 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.*

E. Ancillary fees associated with non-consensual tows:

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- i. **TOLL CHARGES:** Safeway may collect the actual road and/or bridge toll charges incurred by the tow company only when the vehicle is in tow and being transported to the tower's lot or a destination selected by the vehicle owner or person in control of said vehicle at the time of the tow. *Note: tower may not collect toll charges incurred on the way to the scene of the tow or for those incurred after the vehicle has been delivered to the tower's lot or a site selected by the vehicle owner.*

F. **Storage Charges:**

- i. **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 tow company's storage lot:
 - a. **First seven (7) days in storage:** The all-inclusive tow fee outlined in Section 4-A(i) and 4-B(i) provides for the first 24 hours of storage at no charge. Accordingly, storage fees of twenty-five dollars (\$25.00) shall accrue for each 24-hour period from Day 2 through Day 7, starting with the 25th hour of storage.
 - b. **Storage beyond seven days:** Each successive 24-hour period following the seventh (7th) day (or on the 169th hour), shall result in charge of thirty dollars (\$30.00) per 24-hour period.
- ii. **Vehicles More Than 20 Feet Long:** 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 tow company's storage lot:

- a.* **First seven (7) days in storage:** The all-inclusive tow fee outlined in Section 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 from Day 2 through Day 7, starting with the 25th hour of storage.
- b.* **Storage beyond seven days:** Each successive 24-hour period following the seventh (7th) day (or on the 169th hour), shall result in charge of forty dollars (\$40.00) per 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 lien holder of a vehicle unless the tower has notified the lien holder 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: *Safeway 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.*

- G.* **Acceptable Forms of Payment for Towing Services:** Safeway shall accept cash as payment for towing services as well as at least one other form of payment, such as credit cards/debit cards, or personal checks. *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 payment transaction regardless of the ultimate delivery site of the vehicle.*

- H. Consumer Informational Card:** Safeway shall present to the driver (or, in the alternative, an adult passenger) of a vehicle about to be towed by order of the police 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 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 expense. *Note: The tower may print its business name, address, telephone number and MC number atop such card for identifying purposes.*

5. This agreement shall be effective as of the date of the Division Report and Order formally approving and adopting this settlement agreement. Moreover, the parties agree that in the event of any "exogenous" event (such as a change in federal/state law or Division regulation) that results in the imposition of additional charges on towers performing non-consensual tows, the signatory towers shall not be precluded from seeking to negotiate with the Division a reasonable increase in rates to the extent necessary to recover for the exogenous event.

6. **Miscellaneous Terms and Conditions**

- a. "Person in Control," as used in this tariff, shall mean the person who was operating the vehicle immediately prior to the police-ordered non-consensual tow.
- b. **Police impounds and related towing** - On December 6, 2010, the Division issued a Declaratory Ruling wherein it held: "that the vehicle owner cannot be held responsible for the 'involuntary' storage fees resulting from police department 'holds' imposed on vehicles resulting from non-consensual police department instigated tows." In this ruling, the Division also held "that certificated towers may not hold these vehicles against the wishes of their owners, and must release these vehicles to their owners upon demand and after all appropriate fees have been paid." On the definition of "appropriate" fees, the Division provided the following interpretation: "[a]ppropriate" fees, in cases of non-consensual police department instigated tows, shall constitute the charge for the tow service required to

“remove” the vehicle from the public roadway, an after-hours release fee (when applicable), and all storage time linked to retrieval delays directly caused by the vehicle owner (or lienholder).” (See Order No. 20200).

Predicated on this ruling, towers may not charge the vehicle owner for any storage time associated with a police-ordered impound of the vehicle. Based on the same regulatory rationale, the tower is similarly prohibited from charging the vehicle owner for any towing services directed by a police department that results in the vehicle being transported to a location other than the tower’s storage lot (unless, that alternative location is specifically selected by the vehicle’s owner or operator, pursuant to applicable Rhode Island law), or for any other police department requested services not specifically authorized under this tariff.

Dated: 4/16/15

STATE OF RHODE ISLAND, DIVISION
OF PUBLIC UTILITIES AND CARRIERS

By their Attorneys

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Dated: 4/13/15

SAFeway AUTO SALES, INC.
61 GOODING AVENUE
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/s/ Joseph Coelho, JR.

Joseph Coelho, *JR*
Corporation President

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