

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

Docket No.: 01 MC 70

In Re: Gasoline Price Emergency Surcharge Program for
Drive Away – Tow Away Operations

REPORT AND ORDER

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

“...implement a 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.”

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

Following notification to the public via a display advertisement which appeared in the Providence Journal on August 3, 2001, the Division conducted a public hearing on this matter on August 22, 2001.

APPEARANCES:

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

FINDINGS

The Advocacy Section stated that it had developed a proposed program and entered this proposal, entitled “Proposed Gasoline Price Emergency Surcharge Program – Towing Industry,” after its authentication by Mr. William Maloney, Associate Administrator for the Motor Carriers Section of the Division, into evidence as Advocacy Section Exhibit 1. The proposal states:

“There will be a \$.50 fuel surcharge assessed in addition to the normal tariff for each towing service provided when the Division determines the average price of fuel for tow trucks exceeds \$1.50 per gallon. This surcharge applies to both regular gasoline and diesel powered tow trucks. Each month the Division shall

determine whether the surcharge is to be implemented for the following month dependent upon the average cost of fuel as determined by the Division. The surcharge will only be imposed when the average cost of regular gasoline or diesel fuel in the State of Rhode Island exceeds \$1.50 per gallon. The surcharge may only be imposed on tows when the average price of the type of fuel used by that particular tow truck exceeds \$1.50 per gallon as determined by the Division.”

Mr. Maloney was asked why the Advocacy Section’s proposal implicated both regular gasoline and diesel fuel, while the law enacted only contemplated the Division’s consideration of gasoline. He responded that “...the legislation referred to simply gasoline, but we knew the towing industry used diesel fuel as well as regular gasoline, so for that reason, to be fair across the board, we have made that applicable to both.” (Tr. p. 5)

When asked how the average price of fuel (regular gasoline or diesel) in Rhode Island would be determined, Mr. Maloney stated that this would be accomplished by averaging the cost of fuel on the first and third Wednesday of each month. (Tr. pp. 20-22) If the average of the cost of gasoline or diesel on these two days exceeded one dollar and fifty (\$1.50) cents, a surcharge would be authorized for the following calendar month. Mr. Maloney suggested that the Division could access such data specific to Rhode Island from the American Automobile Association of Southern New England, either by telephone or by accessing its web-site at www.aaasne.com.

In relation to disseminating the authorization of a surcharge, Mr. Maloney testified that the Division planned to notify the towing industry of the initial implementation of the program by a direct mailing. He further stated that the authorization of a surcharge could be announced to the industry via a posting on the Division’s web-site and/or via a recorded message accessible through the Division’s main telephone number. (Tr. pp. 6-7)

To notify the public, Mr. Maloney proposed the posting of a sign stating that a surcharge is in effect in a conspicuous place in the tow truck, as well as in the offices of the tow truck operators. The Advocacy Section of the Division offered into evidence, as Advocacy Section’s Exhibit 2, a notice proposed by the Division to convey this information. (Tr. p. 17)

Pursuant to questioning regarding the possibility that some tow operators might improperly assess a surcharge when it was not authorized, Mr. Maloney stated that he would favor sanctions such as suspension, probation or a significant fine for any violation. (Tr. pp. 10-11)

Accordingly, it is

(16699) ORDERED:

That the “Regular Gasoline and Diesel Fuel Price Emergency Surcharge Program – Towing Industry” detailed below will be implemented on September 1, 2001.

“Fuel Price Emergency Surcharge Program – Towing Industry”

1. The average cost of regular gasoline in Rhode Island will be determined by the Division by averaging the Rhode Island prices posted at www.aaasne.com on the first and third Wednesday of each month.
2. When the average cost of regular gasoline in Rhode Island exceeds one dollar and fifty (\$1.50) cents per gallon, the Division will authorize a surcharge. The surcharge will be fifty (\$0.50) cents per towing job.
3. The average cost of diesel fuel in Rhode Island will be determined by the Division by averaging the Rhode Island prices posted at www.aaasne.com on the first and third Wednesday of each month.
4. When the average cost of diesel fuel in Rhode Island exceeds one dollar and fifty (\$1.50) cents per gallon, the Division will authorize a surcharge. The surcharge will be fifty (\$0.50) cents per towing job.
5. On the fourth Monday of each month preceding a month in which the Division will authorize a surcharge, the Associate Administrator of the Motor Carrier’s Section of the Division will issue an Administrative Order stating:
 - a) The cost of regular gasoline in Rhode Island as posted on www.aaasne.com on the first and third Wednesday of each month;
 - b) The average of the cost of regular gasoline in Rhode Island, based on these two data points; and,
 - c) The cost of diesel fuel in Rhode Island as posted on www.aaasne.com on the first and third Wednesday of each month;
 - d) The average of the cost of diesel fuel in Rhode Island, based on these two data points; and,
 - e) The authorization of a surcharge for regular gasoline and/or diesel fuel powered tow trucks for the following calendar month.
6. The Associate Administrator of the Motor Carrier’s Section of the Division will cause this administrative order to be posted on the Division’s web-site by the fourth Monday of each month preceding a month in which the Division will issue a surcharge, where it will remain at least until the expiration of the month to which it relates.
7. The Associate Administrator of the Motor Carrier’s Section of the Division will cause a message to be recorded, indicating the authorization of a surcharge for regular gasoline fueled tow trucks and diesel fueled tow trucks, which will be accessible by telephone by the fourth Monday of each month preceding a month in which the Division will issue a surcharge, where it will remain at least until the expiration of the month to which it relates.
8. In those months when a surcharge is authorized, all tow trucks which operate during that month must contain a conspicuously placed notice of the fuel surcharge, which specifically identifies the type of fuel the truck uses. The Associate Administrator of the Motor Carrier’s Section of the Division will make sample notices available.

9. The authorization of the surcharge will expire on the last day of the calendar month for which it is authorized.
10. The application of the surcharge is voluntary. However, if a person or entity elects to implement the surcharge it must be applied non-discriminatorily.

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

Patricia F. McVicker, Esq.
Hearing Officer

APPROVED:

Thomas F. Ahern
Administrator