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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: Petition for Declaratory Judgment
 from Daniel P. Moriarty

Docket No. **02-MC 193**

ORDER

Whereas, On December 11, 2002 the Rhode Island Division of Public Utilities and Carriers (“Division”) received a petition filing from Mr. Daniel P. Moriarty (“the Petitioner”), 312 Connell Highway, Newport, Rhode Island 02840, seeking a “*Declaratory Judgment regarding the interpretation of Rhode Island General Laws... §39-12.1-3(d), Rhode Island Division of Public Utilities and Carriers..., Motor Carrier Rules and Regulations, Rule #3 and #4, and P.U.C. [sic] Approved Tow Rates [Tariff]*”.^[1]

Whereas, The Division conducted a duly noticed public hearing on Mr. Moriarty’s petition on February 11, 2003. After the submission of briefs and reply briefs from the parties of record, the Division issued a ruling on Mr. Moriarty’s petition on May 14, 2003.^[2]

Whereas, On May 23, 2003, the Petitioner filed a “*Motion For Relief From Order*” and a “*Motion For Reconsideration*”, remedies available under Rules 31(b) and 31(d), respectively, of the Division’s Rules of Practice and Procedure.

Regarding the Rule 31(b) motion, the Petitioner asserts that the Division must vacate its previous ruling in this docket based upon the Petitioner’s belief

that “...*ex parte* communications existed between the Division...and Intervenors in this matter without notice to the Petitioner”.

Regarding the Rule 31(d) motion, the Petitioner argues that the Division should “*reconsider or clarify [its] position that its at the police officer’s discretion to allow the motorist to choose the tower of their choice based on safety issues*”. The Petitioner similarly argues that the Division should “*reconsider or clarify [its] definition and examples of consensual and nonconsensual tows*”.

Whereas, The AAA of Southern New England (“AAA”), an Intervenor of record in this docket, filed an objection to the Petitioner’s motions on June 2, 2003.

Whereas, The Division has considered the Petitioner’s motions and finds that no additional action is required in this docket. The Petitioner’s claim of inappropriate ex parte communications was offered recklessly, without any reference to a specific violation(s) or a specific individual(s). Further, as the prohibition against ex parte communications applies only to the Administrator and the under-signed hearing officer in this matter^[3], the Division will not entertain such a motion without an expressed and related factual basis.

The Petitioner’s request for reconsideration and/or clarification is also without merit. In its previous ruling in this docket, the Division made it abundantly clear that it finds that existing law (both State and federal) permits motorists to select their own towers if and when a police officer at the scene determines that safety concerns do not warrant a compulsory “nonconsensual” tow. The Division must defer to the judgment of the police officer at the scene on the issue of “safety” and will not usurp that most crucial specialized function.

The Petitioner’s query into the need for the police officer to ascertain whether the motorist is actually a AAA member and whether the member’s contract with AAA covers the particular tow is immaterial. If the police officer concludes that the circumstances at the scene do not pose a safety concern, and consequently do not justify a compulsory nonconsensual tow, the motorist (or a courteous police officer

at the motorist's behest) may legally summon any certificated tower, or motor club using its own equipment, to effectuate the tow.^[4] The Division does not regulate the rates for such "consensual" tows.

Accordingly, it is

(17473) ORDERED:

That the Petitioner's May 23, 2003 "*Motion For Relief From Order*" and "*Motion For Reconsideration*" are hereby denied.

Dated and Effective at Warwick, Rhode Island on June 2, 2003.

John Spirito, Jr., Esq.
Hearing Officer

Thomas F. Ahern
Administrator

^[1] Petitioner's Exhibit 1, p. 1.

^[2] See Order No. 17450.

^[3] See R.I.G.L. §42-35-13 and Rule 3(e) of the Division's Rules of Practice and Procedure.

^[4] See Order No. 17450.