

Order **23169** - RI Towing, Inc.: Request for Declaratory Ruling

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

**In Re: Rhode Island Towing, Inc. (MC-553)
312 Connell Highway
Newport, Rhode Island 02840**

**Request for Declaratory Ruling
Pursuant To R.I.G.L. § 42-35-8**

Docket No.: 17 MC 149

ORDER

WHEREAS: On June 28, 2017, Rhode Island Towing, Inc. (“Rhode Island Towing” or “Petitioner”), 312 Connell Highway, Newport, Rhode Island 02840, filed with the Division of Public Utilities and Carriers a proposed tariff for charges to be assessed for non-consensual towing services conducted under its Certificate of Operating Authority number MC-553. Specifically, the proposed tariff charges for “light duty” vehicles (under 8,000 pounds GVW) and “medium duty” vehicles (under 15,000 pounds GVW). The tariff filing was assigned to Division Docket number 17 MC 99.

WHEREAS: The tariff filing did not provide a proposed effective date for the rates sought. Inasmuch as no tariff rate can become effective less than thirty (30) days from the file date, according to R.I.G.L. § 39-12-12, the Division assigned July 28, 2017, as the earliest possible effective date.

WHEREAS: On July 10, 2017, the Division, having found that the public interest required a thorough and complete investigation of the proposed rates and provisions of said tariff, issued Division Order number 22839 in Division Docket number 17 MC 99, pursuant to the provisions of R.I.G.L. § 39-12-12, suspending the proposed tariff filing to afford the Division an opportunity to investigate the reasonableness of the instant tariff rates and provisions.

WHEREAS: On December 20, 2017, Rhode Island Towing filed a Petition for Declaratory Ruling^[1] with the Division in Division Docket number 17 MC 99 seeking clarification on the requirements for Supplemental Tariffs pursuant to Rule 4(d) of the Division's *Rules and Regulations Governing the Transportation Provided by Motor Carriers of Property*. The Petition for Declaratory Ruling was assigned to Division Docket number 17 MC 149 in view of the fact that such a ruling would have applicability beyond Rhode Island Towing's initial tariff filing.

WHEREAS: On April 20, 2018, Rhode Island Towing and the Advocacy Section of the Division filed a "Consent Order and Briefing Schedule" identifying two specific questions to be addressed by the Division under the Petition for a Declaratory Ruling and establishing a briefing schedule.

WHEREAS: On April 27, 2018, the Advocacy Section of the Division and Rhode Island Towing, Inc. (MC-553), a signed "Consent Agreement Regarding Rates For Non-Consensual Towing And Storage Within The

State of Rhode Island And Related Matters”[\[2\]](#) to a Division Hearing Officer in Division Docket number 18 MC 94. The Consent Agreement addressed non-consensual towing services for “light duty” vehicles (under 8,000 pounds GVW) and “medium duty” vehicles (under 15,000 pounds GVW) on an interim basis pending a more thorough Division study of those rates industry-wide within Rhode Island.

WHEREAS: 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, and should be approved pending completion of the Division’s study of towing rates. It issued Division Order number 23146, dated and effective May 2, 2018, in Docket number 18 MC 94 approving those interim rates.

WHEREAS: On May 4, 2018, two days following issuance of Division Order number 23146 in Division Docket number 18 MC 94, Rhode Island Towing filed a Stipulation in Division Docket number 17 MC 149[\[3\]](#), entered into between itself and the Advocacy Section of the Division, in which Rhode Island Towing and the Advocacy Section of the Division stipulated and consented to Rhode Island Towing, Inc., being “allowed to withdraw its Petition for a Declaratory [Ruling under Division Docket number 17 MC 149] without prejudice.”

WHEREAS: The Division finds this term of the “Stipulation” to be reasonable and in the interest of the Parties. Accordingly, Rhode Island Towing, Inc.’s, request to withdraw its “Petition for a Declaratory [Ruling]” filed in Division Docket Number 17 MC 149 without prejudice is approved.

Accordingly, it is:

(23169) ORDERED:

1. That Rhode Island Towing, Inc.'s, request to withdraw its "Petition for a Declaratory [Ruling]" filed in Division Docket Number 17 MC 149 without prejudice is approved.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND, MAY 11, 2018.

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

APPROVED:

Kevin Lynch
Deputy Administrator[\[4\]](#)

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.

[1] It was actually termed a “Petition for Declaratory Judgment.” Under R.I.G.L. § 42-35-7, declaratory judgments are issued by the Superior Court. Agencies such as the Division can only issue declaratory rulings as set out in R.I.G.L. § 42-35-8. For that reason, this Order refers to Rhode Island Towing’s petition as being for a declaratory ruling, not declaratory judgment.

[2] Marked and admitted as Parties Joint Exhibit 1.

[3] It was actually filed under Division Docket number 17 MC 99, which pertains to its original tariff filing. Since the Petition for Declaratory Ruling was assigned Division Docket number 17 MC 149, that is how we shall refer to it in this Order.

[4] Normally, Administrator McCleary would approve and sign Orders such as this; he was, however, unavailable to sign this Order. In his absence, and pursuant to the authority granted by R.I.G.L. §§ 42-20-3 and 42-20-5, Deputy Administrator Lynch has been designated and authorized by Administrator McCleary to sign Orders such as this issued by the Division of Public Utilities and Carriers.

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