

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF PUBLIC UTILITIES

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Petition of: )

Statewide Towing Association, Inc. )

for Amendment of 22O CMR 272.00, *et seq.* )

) D.P.U. 13-124  
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)

AFFIDAVIT OF PETER J. D'AGOSTINO  
IN SUPPORT OF STATEWIDE TOWING ASSOCIATION INC.'S  
MOTION TO AMEND ITS PETITION FOR AMENDMENT OF 22O CMR 272.00,  
RATES FOR THE TOWING OF MOTOR VEHICLES

I, Peter J. D'Agostino, on oath, do depose and say:

1. I am a Partner at Lynch Associates, 12 Post Office Square, 6<sup>th</sup> Floor, Boston Massachusetts. Lynch Associates provides management services for various trade associations, including Statewide Towing Association, Inc. ("STA"). I have prepared this Affidavit in support of STA's Motion to Amend its Petition for Amendment of 22O CMR 272.00.

2. I submitted a Statement in 2013 in support of STA's original Petition for Amendment of 22O CMR 272.00 (Exhibit C to the original Petition), wherein I made a statistical analysis in support of STA's Petition based on the data that was available at that time, based on financial conditions at that time, and based on rates specifically sought by STA. It was my Statement upon which STA's Petition requested specific rate changes. My background qualifications are set forth in detail in that Statement.

3. Since the original filing of STA's Petition, financial conditions within the involuntary towing industry have changed; the data that was originally analyzed was from 2011, was self-reported by members of the towing industry, and may have become stale; and STA has

reassessed its position as to what it would willingly accept for payment for involuntary tows, as the rates for such are set in the subject regulation.

4. Some particular factors which have been considered by me and by STA in seeking to amend STA's original Petition are:

(a) The data utilized was from 2011, and it is now 2016, five years later. Further, as the data was self-reported by members of the towing industry; there was wide variance in the data collected; the data utilized did not represent all of the data ordinarily and customarily utilized in the rate setting process used by the DPU; the data was culled from Financial Statements filed by individual members of the industry with the DPU, and there was wide variance in what portions of the Financial Statement form each respondent filled in, as well as how they filled it in.

(b) One of the elements that STA looked at in requesting the rates in its original Petition was the then current cost of diesel fuel, an embedded element in the tow rate. At the time of STA's original filing, the average cost of diesel fuel in New England, as reported by the Energy Information Administration of the U.S. Department of Energy, was \$3.978. That figure has now come down to \$2.502 as of October 31, 2016. (See Exhibit A, attached hereto.). This, in and of itself, has changed the cost to tow companies of all individual involuntary tows. Additionally, vehicles today utilize fuel more efficiently than vehicles available when tow rates were last set by changes to the subject regulation in 2004.

(c) One of the elements that members of the towing industry look at in determining how much they need to charge to make a profit is how much they can charge for storage of involuntarily towed vehicles, a rate that is set by statute. (See Mass. Gen. Laws c. 159B, §6B.). In looking at how much to now seek, STA has reassessed its position, based on the fact that the storage rate allowed for involuntary tows in 2004, when the tow rate regulation was last amended

as to individual rates, was \$20.00 per day, but that the governing statute was amended in 2010, raising the rate to the currently allowed \$35.00 per day.

5. In addition to considering the above factors, I have looked at changes in the Consumer Price Index for All Urban Consumers, as published by the United States Bureau of Labor Statistics, and believe that this may be a legitimate basis for establishing a fair rate for involuntary tows, as set in 220 CMR 272.00. Looking at the changes from 2004 (when rates were last set in the regulation), through 2014 (the year subsequent to STA's current Petition filing), there is a rate change of approximately 20%, more particularly a combined change from the base year of a factor of 1.199. I have applied this rate to the base tow rate of the current regulation, and have determined that a current base tow rate of approximately \$108.00 would result from an increase based on the change in CPI. (See Exhibit B, attached hereto).

6. I believe that utilizing an across the board increase of 20% to all of the rates specified in the subject regulation would result in a fair and acceptable change to the regulation. In particular, the following changes would occur, all as set forth in the Revised Exhibit B to the STA's Petition, as being submitted with STA's Motion to Amend:

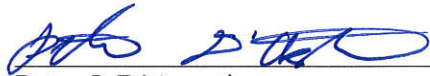
(a) For passenger vehicles, motorcycles, motor bikes, and motor scooters, the base rate for a tow of not more than five miles would be increased from \$90.00 to \$108.00; the rate for additional miles would be increased from \$3.00 to \$3.60 per mile; and the rate for additional required man hours would be increased from \$32.00 to \$38.40 per man hour.

(b) The base rate for commercial tows of not more than five miles would be increased from \$90.00 to \$108.00; and the rate for additional miles would be increased from \$4.25 to \$5.40 per mile.

(c) The base rate utilized for determining the allowance of a fuel surcharge would be changed from \$1.7606 per gallon to \$2.11272 per gallon<sup>1</sup>, with the consequential Fuel Multiplication Factor being changed from \$4.91 to \$5.892, based on an assumed level percentage of the cost of fuel as an embedded factor in the given tow rate.

(d) The applicable Note 1 charges would be similarly increased, from \$35.00 to \$42.00, from \$90.00 to \$108.00, and again from \$35.00 to \$42.00.

Signed under the pains and penalties of perjury this 8th day of November, 2016

  
Peter J. D'Agostino

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<sup>1</sup> While the actual cost of fuel as of October 31, 2016, is different from this number, the costs are relatively close, and it is suggested that this number should be utilized to be consistent with the CPI adjustments throughout the regulation. On any given day, the actual cost of diesel fuel could be less than the base number being suggested, and was, in fact, lower earlier this year.



U.S. Energy Information  
Administration

## PETROLEUM & OTHER LIQUIDS

OVERVIEW

DATA

ANALYSIS &amp; PROJECTIONS

### Weekly Retail Gasoline and Diesel Prices

(Dollars per Gallon, Including Taxes)

Area: New England (PADD 1A)

Period: Weekly

Show Data By:		Graph Clear							View History
<input checked="" type="radio"/> Product	<input type="radio"/> Area		09/26/16	10/03/16	10/10/16	10/17/16	10/24/16	10/31/16	
<b>Gasoline - All Grades</b>		<input type="checkbox"/>	2.298	2.324	2.349	2.349	2.353	2.353	1993-2016
All Grades - Conventional Areas		<input type="checkbox"/>	2.317	2.343	2.372	2.377	2.374	2.384	1994-2016
All Grades - Reformulated Areas		<input type="checkbox"/>	2.293	2.320	2.343	2.342	2.347	2.345	1994-2016
Regular		<input type="checkbox"/>	2.193	2.225	2.249	2.247	2.248	2.248	1993-2016
Conventional Areas		<input type="checkbox"/>	2.218	2.247	2.276	2.280	2.277	2.290	1993-2016
Reformulated Areas		<input type="checkbox"/>	2.186	2.219	2.242	2.238	2.241	2.237	1994-2016
Midgrade		<input type="checkbox"/>	2.446	2.452	2.479	2.485	2.495	2.495	1994-2016
Conventional Areas		<input type="checkbox"/>	2.463	2.479	2.510	2.527	2.517	2.521	1994-2016
Reformulated Areas		<input type="checkbox"/>	2.441	2.446	2.471	2.475	2.490	2.489	1994-2016
Premium		<input type="checkbox"/>	2.654	2.665	2.691	2.699	2.707	2.710	1994-2016
Conventional Areas		<input type="checkbox"/>	2.662	2.677	2.706	2.708	2.708	2.711	1994-2016
Reformulated Areas		<input type="checkbox"/>	2.652	2.663	2.688	2.697	2.707	2.710	1994-2016
<b>Diesel (On-Highway) - All Types</b>		<input type="checkbox"/>	2.398	2.414	2.453	2.477	2.485	2.502	1997-2016
Ultra Low Sulfur (15 ppm and Under)		<input type="checkbox"/>	2.398	2.414	2.453	2.477	2.485	2.502	2007-2016

Click on the source key icon to learn how to download series into Excel, or to embed a chart or map on your website.

- = No Data Reported; -- = Not Applicable; NA = Not Available; W = Withheld to avoid disclosure of individual company data.

**Notes:** Conventional area is any area that does not require the sale of reformulated gasoline. All types of finished motor gasoline may be sold in this area. RFG area is an ozone nonattainment area designated by the Environmental Protection Agency which requires the use of reformulated gasoline. Publication of Low Sulfur On-Highway Diesel (LSD) prices at the U.S. level was discontinued on December 8, 2008 due to a diminishing number of stations selling LSD as a result of EPA diesel fuel regulations. EIA continued to collect LSD prices from retail outlets and included them in the Diesel Average All Types price until July 26, 2010, when no more outlets reported LSD sales. Beginning July 26, 2010 publication of Ultra Low Sulfur Diesel (ULSD) price became fully represented by the Diesel Average All Types price. As of December 1, 2010 (September 1, 2006 in California), any on-highway diesel fuel sold is ULSD as mandated by EPA on-highway diesel fuel regulations. EIA did not collect weekly retail motor gasoline data between December 10, 1990 and January 14, 1991. Monthly and annual averages are simple averages of the weekly data contained therein. For months and years with incomplete weekly data series, the monthly and/or annual averages are not available. See Definitions, Sources, and Notes link above for more information on this table.

Release Date: 10/31/2016

Next Release Date: 11/7/2016

Exhibit A

## Consumer Price Index - All Urban Consumers

### Original Data Value

<http://data.bls.gov/pdq/SurveyOutputServlet>

Series Id: CUUSA103SA0

Not Seasonally Adjusted

Area: Boston-Brockton-Nashua, MA-NH-ME-CT

Item: All items

Base Period: 1982-84=100

Years: 2004 to 2014

Year	Annual Index	Change Year Over Year	
2004	209.5		\$90.00
2005	216.4	0.032935561	
2006	223.1	0.030961183	
2007	227.409	0.019314209	
2008	235.370	0.03500741	
2009	233.778	-0.006763819	
2010	237.446	0.015690099	
2011	243.881	0.027100899	
2012	247.733	0.015794588	
2013	251.139	0.013748673	
2014	255.184	0.016106618	
\$90 x 1.1999 =		1.199895421	\$107.99

Exhibit B