



**AUTOMOBILE INSURERS BUREAU
OF MASSACHUSETTS**
SINCE 1925

By Hand

December 13, 2016

Mark D. Marini, Secretary
Department of Public Utilities
One South Station, 5th Floor
Boston, MA 02110

Re: Petition of Statewide Towing Association, Inc., for
Amendment of 220 CMR 272.00
D.P.U. 13-124

Dear Mr. Marini:

Enclosed please find for filing in the above-referenced matter the Petition of the
Automobile Insurers Bureau of Massachusetts for Leave to Intervene.

Thank you for your attention to this matter.

Sincerely,

E. Michael Sloman

cc: James A Castleman
David J. Gold
Kevin Penders
Marc Tassone

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

Petition of:
Statewide Towing Association, Inc.
for Amendment of 220 CMR 272.00

D.P.U. 13-124

PETITION OF THE AUTOMOBILE INSURERS BUREAU OF
MASSACHUSETTS FOR LEAVE TO INTERVENE

The Statewide Towing Association Inc. (STA) has petitioned the Department of Public Utilities (Department) to increase the maximum rates and charges for involuntary police and other public authority ordered towing, as established by the Department in accordance with G. L. c. 159B, § 6B, and codified at 220 CMR 272.00, and applicable to trespass towing in accordance with G. L. c. 266, § 120D. The Automobile Insurers Bureau of Massachusetts (AIB) hereby petitions, in accordance with 220 CMR 1.03(1), for leave to intervene in the Department's administrative proceedings (DPU 13-124) for the evaluation of STA's requested amendment of the rates and rules for involuntary towing.

The Interests of the AIB

1. The AIB, located at 101 Arch Street, Boston, Massachusetts 02110, is an unincorporated voluntary association of all insurance companies writing motor vehicle insurance in Massachusetts. The AIB is licensed as a rating organization under G. L. c. 175A, § 8, and represents the insurers in rate and rule proceedings of the Division of

Insurance (Division) under G. L. c. 175, § 113B, c. 175A, § 6, and c. 175E, § 6, and other administrative and judicial proceedings. Automobile Insurers Bureau of Mass. v. Commissioner of Ins., 415 Mass. 455, 456 (1993). The AIB prepares for the Division's approval under G. L. c. 175, §§ 22A, 113A, and 192, the policy, rules, rates, forms, endorsements, and advisory filings for use in private passenger automobile insurance, 211 CMR 91.04, and commercial automobile insurance, 211 CMR 79.09.

2. The auto insurers collectively pay about \$35 million annually for the costs of involuntary towing arising from automobile accidents insured under the property damage liability, collision, and comprehensive coverages of the Massachusetts insurance policies. An increase in towing charges will also increase auto insurance claim payments and the additional costs will be passed to 4 million Massachusetts insureds through higher insurance premiums.

3. In light of the size of the requested towing rate increase and the significant effect on claim payments and insurance premiums, the AIB members have a substantial interest in the outcome of the Department's ratemaking proceeding. The AIB has technical expertise and experience in data analysis and financial evaluation which will be helpful in the Department's consideration of STA's proposal. The AIB participated in a prior Department proceeding on involuntary towing rates (DPU 97-37).

The STA's Position

4. The STA's methodology and data analysis fail to substantiate the need for any significant increase in the involuntary towing rate. The STA's initial petition requested a 50% rate increase based on information from the 2011 financial reports of 198 carriers authorized by the Department to conduct involuntary towing, which STA

used to demonstrate a rate deficiency by comparing the revenue and expense per tow for the selected carriers. The STA calculated the revenue component as the sum of the average involuntary tow and storage revenue for each carrier (reported revenue ÷ reported tows) and then averaged the per-carrier results to produce an average per-tow revenue of \$251.44. Because the reported expenses are not allocated by the type of tow or segregated from other carrier business activities, the STA calculated the expense component by first computing the involuntary tow and storage revenue of each carrier as a percentage of its revenues from all sources, then applying that factor to the total expenses of the carrier to establish the average per-tow expense of each carrier, and finally averaging the per-carrier results to produce an average per-tow expense of \$284.42. With these calculations, the STA showed a revenue deficiency of \$32.98 per-tow. The STA concluded its analysis by assuming that the need for additional involuntary towing revenue cannot be met from storage rate increases or other towing-related sources and, therefore, a 50% increase was required for the rates specified in 220 CMR 272.00.

5. The STA recently amended its petition to request a 20% increase in the towing rates and charges, based on the 10-year change in the New England Consumer Price Index for All Urban Consumers (CPI) published by the Bureau of Labor Statistics. The stated reasons for the change in STA's position include the observation that the 2011 towing data are self-reported, widely variable, and likely stale. The STA also noted that the cost of fuel, which is an embedded element of the towing rate, has reduced considerably. The STA now relies exclusively on the CPI change to justify a 20% increase in the towing rates and charges established in 220 CMR 272.00.

The AIB's Position

6. The STA initial analysis is flawed in several material respects and substantially overstates a revenue deficiency attributable to the current involuntary towing rate:

(a) Average-of-Averages Methodology. The STA's calculation of the per-tow average revenue and average expense is erroneous because it relies on the average of the per-carrier averages, rather than a simple overall average per involuntary tow. The STA's methodology overstates both revenues and expenses and produces an inflated rate deficiency. For the revenue component of the analysis, STA first computed the average of each carrier's combined towing and storage revenue and then calculated the average of the per-carrier results to demonstrate average revenue of \$251.44 per tow. That result stands in marked contrast to the simple per-tow average revenue of \$177.91 (total involuntary towing and storage revenue [\$16,569,192] ÷ total involuntary tows [93,131]). For the expense component, STA calculated the average of the average of each carrier's tow and storage expense as \$284.42 per tow, although the simple average of expense per tow is \$183.39 (total expense calculated by STA [\$17,079,420] ÷ total tows [93,131]). With the average-of-averages methodology, the STA creates a revenue deficiency of \$32.98, as the difference between its per-tow average revenue and expense, but the difference using the simple overall average revenue and expenses is only \$5.48 (\$177.91 - \$183.39).

(b) Combined Towing and Storage Revenue. The STA methodology also errs in combining storage revenue with towing revenue to compute the per-tow average for revenue and expense. The Department's role under § 6B is to establish the involuntary

towing rate only, and not the storage charge for such tows, which is independently fixed by the statute for non-commercial vehicles, and unregulated for commercial vehicles. Neither the revenue nor the expense of a carrier's involuntary storage operations have any bearing on the towing rate mandated by § 6B and, therefore, cannot be incorporated in the determination of its adequacy. Although storage charges may well influence a carrier's participation in involuntary towing, as STA suggests, storage income cannot lawfully affect the towing rate itself.

The STA's use of storage financial data to evaluate the towing rate ignores the fact that the statutory charge is assessed by carriers in addition to the towing rate. That is, the basic charge for a simple involuntary tow is the Department-established rate (\$90.00) plus the statutory storage rate (\$35.00) for a total charge of \$125.00. By combining storage revenue with towing revenue to suggest an adequate towing rate, the STA double counts the compensation for storage -- an increase in the towing rate and the statutory charge itself. Because storage charges are outside the Department's authority and operate independently of the towing rate, storage revenues and expenses cannot be used to establish the adequacy of the towing rate.

The combined towing and storage revenue also overstates the difference between per-tow revenue and expense and produces an excessive rate deficiency. With the exclusion of storage revenue, the simple overall average tow revenue is \$110.63 (total involuntary tow revenue [\$10,302,670] ÷ total tows [93,131]), rather than the combined tow and storage average revenue of \$177.91 indicated by STA (\$16,569,192 ÷ 93,131). Even using the STA's average-of-averages methodology, the average tow-only revenue is \$127.29, instead of the combined average of \$251.44. For

the expense component, a direct calculation of the simple average expense per tow is not readily available for comparison with the average per-tow revenue of \$110.63. However, if the tow-only revenue is 62.2% of the combined towing and storage revenue ($\$52,033 \div \$83,682$) as STA calculates, the application of that factor to STA's combined total expense of \$17,079,421 ($\$86,259.70 \times 198$) produces an estimated total tow-only expense of \$10,623,400 and average per-tow expense of \$114.07 ($\$10,623,400 \div 93,131$). As such, the assumed rate deficiency is merely \$3.44 ($\$110.63 - \114.63).

(c) Calculation of Expenses. The STA's expense calculation rests on the assumption that the per-tow expense operates in the same proportion to the total expenses of each carrier as the per-tow revenue is to the total revenue of the carrier. The factual basis for that approach is not provided by STA and is not supported by the data which demonstrate a wide variability and inflate the per-tow expense. STA's calculated per-tow expense per carrier ranges from \$2.82 to \$4,467.19. The average-of-averages methodology produces a per-tow average of \$284.42, which is far greater than the simple average of either \$183.39, based STA's allocation of expense, or \$114.07, derived in paragraph 5(b) above. The error of the STA's approach is due, in part, to the revenue and expense information reported to the Department which includes financial data from carrier business operations other than towing. That information is unmeasured and immaterial to the economics of involuntary towing and cannot legitimately affect the determination of the adequacy of the Department's rate. The use of the same ratio for expenses as for revenues presupposes an equivalent treatment of the non-towing revenue and expense by each carrier which is not reasonable or evident in the data.

(d) Charges for Other Services. The Department's allowance for carriers to charge separately for other services that might be provided in involuntary towing is not necessary or compatible with common ratemaking methodology. The regulation establishes charges for extra mileage, additional labor, equipment, and fuel. The Department also authorizes carriers to impose other fees for ancillary towing services such as account administration, gate attendance, yard work, site clean-up, absorbent materials, vehicle repositioning, maintenance, and the like. However, the revenue and expenses associated with such additional services are already incorporated in each carrier's financial data and constitute an integral part of the established towing rate. A carrier's imposition of separate charges for the same services which form the towing rate constitutes duplicative compensation which is not warranted by the statute or common sense. The Department had recognized that self-evident proposition in its June 1, 2007 bulletin notifying carriers that various ancillary or additional charges were not permitted under 220 CMR 272.00. That directive, however, was erroneously rescinded by Department counsel in 2013, enabling a carrier to charge additional fees as it deems appropriate. But just as a sandwich shop cannot responsibly set a price based on its ingredients and then also charge for the bread, the towing carriers are not entitled to impose additional fees for the same services included in the rate established by the Department based on all revenues and expenses of involuntary towing.

(e) Subsidization. The STA suggests that the insufficiency of the current towing rate may be attributable, in part, to revenue shortfalls in other elements of the carriers' business enterprises which justify an increase. That approach, however, is contrary to the well-established principles of ratemaking that regulated rates must stand

alone, without cross-subsidization of unregulated services. Just as storage revenues and expenses cannot be used to establish the involuntary towing rate, the financial impact of unregulated business operations affiliated with a carrier's involuntary towing cannot dictate the adequacy of the regulated rate. The statutorily mandated towing rate is not intended to subsidize unregulated towing or other enterprises of a carrier; and the economic efficiencies of any other business operations have no bearing on the towing rate.


7. The STA's modified request for a 20% rate increase appears to acknowledge the limited utility of the initial data analyses, but it too fails to provide adequate justification for any rate increase. Although the CPI represents a simple and convenient method to calculate a rate increase, it does not establish the existence of the rate inadequacy which requires the Department's correction. The financial information reported to the Department and used by the STA, despite its flaws, indicates a rate deficiency of only \$3.44, or less than 4%, not 20% as STA suggests. A more thorough analysis of that data or a cost-of-service study may produce a better understanding of the adequacy of the current rate and the true size of any increase required. Equally important, the across-the-board 20% increase fails to correct the Department's allowance for additional charges for ancillary towing services incorporated in the established rate, as outlined in paragraph 5(d) above. The CPI multiplier merely reinforces the existing analytical errors and duplicative charges for involuntary towing services.

8. Kim A. Barber, Vice President and Chief Actuary of the AIB, will provide additional data analysis in support of the AIB's position in this matter, as directed by the Department in the course of the administrative proceedings.

Conclusion

For the foregoing reasons, the AIB requests the Department's leave to intervene in the consideration of STA's pending request for increases in the involuntary towing rates established by 220 CMR 272.00.

Automobile Insurers Bureau
By its attorney,



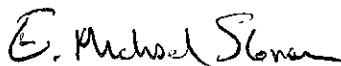
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Dated: December 13, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record and the persons appearing in this proceeding by electronic mail and by first-class mail, postage prepaid, to James A. Castleman, Paster, Rice & Castleman, 24 Adams Street, Quincy, MA 02169.



E. Michael Sloman

Dated: December 13, 2016