



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 15-185-A

March 8, 2016

Investigation by the Department of Public Utilities, on its own motion, instituting a rulemaking pursuant to G.L. c. 30A, § 2, 220 C.M.R. § 2.00 et seq., and Executive Order 562 to amend or rescind 220 C.M.R. §§ 150.00, 250.00, and 271.00.

ORDER ADOPTING FINAL REGULATIONS

I. INTRODUCTION

Pursuant to Executive Order 562, the Governor's Office directed each Executive Agency, including the Department of Public Utilities ("Department"), to undertake a review of its regulations.¹ The Governor's Office directed agencies to rescind, revise, or simplify their regulations in accordance with the requirements of Executive Order 562, and to retain or modify only those regulations that are mandated by law or essential to the health, safety, environment, or welfare of the Commonwealth's residents. Executive Order 562, §§ 2, 3. With this Order, the Department adopts the final regulations contained in 220 C.M.R. § 250.00 and rescinds 220 C.M.R. §§ 150.00 and 271.00.²

II. PROCEDURAL HISTORY

On December 30, 2015, pursuant to G.L. c. 30A, § 2, 220 C.M.R. § 2.00, and Executive Order 562, the Department issued proposed regulations 220 C.M.R. §§ 150.00, 250.00, and 271.00. Order Instituting Rulemaking, D.P.U. 15-185 (December 30, 2015). The proposed amendments were intended to eliminate duplicative regulations, update statutory references, rescind unnecessary regulations, and reduce the barriers to electronic filing.

On January 15, 2016, pursuant to the requirements of G.L. c. 30A, the Department published a notice of the proposed rulemaking in The Boston Globe and the Boston Herald, and in the Massachusetts Register. The Department sought initial written comments on the

¹ See Office of the Governor, Commonwealth of Massachusetts, Executive Order No. 562 (March 31, 2015).

² Attached is a clean copy of the amended regulation, 220 C.M.R. § 150.00, and the rescinded regulations, 22 C.M.R. §§ 250.00 and 271.00.

amendments to 220 C.M.R. §§ 150.00, 250.00, and 271.00, with a submission deadline of February 8, 2016. The Statewide Towing Association, Inc. submitted timely comments on February 8, 2016.³ Pursuant to notice duly issued, the Department held a public hearing at its offices on February 11, 2016, at which no members of the public provided comment.

III. COMMENTS

The Statewide Towing Association, Inc. (“STA”) is a statewide trade association, having a membership of approximately 300 towing companies (STA Comments at 1). STA requests that the Department amend 220 C.M.R. § 250.00 to include a requirement that the Department issue a decision within twelve months of a written request for an adjustment of the maximum charge for police ordered and involuntary tows (STA Comments at 1-2).

Specifically, STA proposes the following language be included in 220 C.M.R. § 250.00:

The Department, through the Transportation Oversight Division, shall issue a decision on any written request for adjustment of the maximum charges under [220 C.M.R. §] 272.00 et. seq. within 12 months.

In support of its proposed amendment, STA notes that a significant majority of its members perform involuntary towing services governed by Department regulations (STA Comments at 1). STA argues that, in contrast to the deadline for the Department to determine whether to approve rate adjustment requests by gas and electric companies, the towing industry has no deadline for the Department to respond to its applications to adjust the maximum charges that are established by the Department pursuant to G.L. c. 159B, § 6B and set forth in

³ While the Department provided for the submission of reply comments, none were submitted.

220 C.M.R. § 272.00 (STA Comments at 1-2). STA points to its petition of August 5, 2013, noting that while the Department and STA have met periodically to address the petition, it remains unresolved (STA Comments at 2).

STA asserts that delays in resolving rate applications adversely affect the towing industry, comprised largely of small, family-owned businesses (STA Comments at 2). STA argues that while business operating costs have risen in Massachusetts, the rate for involuntary tows often remains stagnant (STA Comments at 2). Further, STA notes time delays in completing rate adjustments render the calculations underlying rate adjustment requests stale, as the costs of providing service change (STA Comments at 2).

Finally, STA states that its proposed amendment would not have any cost impact on the Commonwealth because the Department is already charged with setting the maximum allowable charges pursuant to G.L. c. 159B (STA Comments at 2). Nor, STA contends, will its proposed amendment affect whether towing rates go up or down, but rather, will merely provide a time period within which a thorough review of a rate adjustment request must be made (STA Comments at 2).

IV. ADOPTION OF FINAL REGULATIONS

As a threshold matter, the Department finds rescission of 220 C.M.R. § 150.00 appropriate. 220 C.M.R. § 150.00 established requirements for railroad track maintenance and inspection. However, since 220 C.M.R. § 150.00 was updated in 1993, the Federal Railroad Administration, an agency within the United States Department of Transportation, promulgated regulations for the safety of the Nation's railway system and established

comprehensive safety standards for all operating railroads. See 49 U.S.C. §§ 20101 through 21311; 49 C.F.R. Part 213: Track Safety Standards. Because the federal regulations preempt it, 220 C.M.R. § 150.00 is no longer necessary.

Next, the sole purpose of 220 C.M.R. § 271.00: Administration of M.G.L. c. 159B, is to define the functions and authority of the director and assistant director of the Transportation Oversight Division. The details for practice before the Transportation Oversight Division are set forth in 220 C.M.R. § 250.00: Transportation Oversight Division Practice, which outline the Transportation Oversight Division's hearing process, including who may serve as a hearing officer, the Transportation Oversight Division's filing and scheduling procedures, and the appellate process for applicants aggrieved by a decision of the Transportation Oversight Division. The Department determines that moving the core functions and authority of the Transportation Oversight Division from 220 C.M.R. § 271.00 to 220 C.M.R. § 250.00, and rescinding 220 C.M.R. § 271.00, is logical and consistent with the directives of Executive Order 562 to rescind, revise, and simplify our regulations. It also provides for greater ease of administration by the Department and less confusion by regulated entities.

In addition to incorporating language defining the functions of the Transportation Oversight Division previously set forth in 220 C.M.R. § 271.00, the amendments to 220 C.M.R. § 250.00 clarify the role of the presiding officer and remove barriers to electronic filing. These amendments are consistent with the directives of Executive Order 562. Further, with the many advances in technology now available, a strict requirement for paper filings no longer makes sense. We note that the Department, as a whole, is moving toward permitting

electronic filing, and therefore find it consistent to encourage that practice in these regulations as well. See, Electronic Filing Rulemaking, D.P.U. 15-183 (December 30, 2015) and Electronic Filing Guidelines Notice of Inquiry, D.P.U. 15-184 (December 30, 2015).

Lastly, we turn to STA's request to include a twelve-month time limit for the Department to issue a decision on a written request for an adjustment of the maximum charge for police ordered and involuntary tows established in 220 C.M.R. § 272.00. After review and consideration, we decline to adopt STA's proposal for the following reasons.

First, the Department is mandated by M.G.L. c. 159B, § 6B, to establish the maximum rates and charges for "the towing away of motor vehicles, when such towing is ordered by the police or other public authority," also referred to as involuntary tows. The Department meets this statutory obligation by setting the maximum rates and charges for involuntary tows in 220 C.M.R. § 272.00. Because the Department establishes the maximum rates for involuntary towing through the rulemaking process that is governed by G.L. c. 30A, §§ 2-6, and 220 C.M.R. § 2.00 et seq., we find no basis to impose a deadline that applies solely to the resolution of petitions to amend 220 C.M.R. § 272.00.

Second, in D.P.U. 20148, the Department stated:

We consider our ratemaking function under G.L. c. 159B, § 6C to involve the establishment of rates having general application, and consequently, our action is legislative and not judicial in nature. Therefore, we propose that the charges set forth in this Order be issued as a regulation pursuant to G.L. c. 30A, § 2.⁴

Police-Ordered Towing, D.P.U. 20148, at 10 (1980).

⁴ In 1989, G.L. c. 159B, § 6C, relating to maximum charges for towing motor vehicles was repealed, and replaced by G.L. c. 159B, § 6B. See St. 1989, c. 267, §§ 3-4.

It is clear that the Department's decision to set the maximum charges for involuntary tows through the rulemaking process governed by G.L. c. 30A, §§ 2-6, and 220 C.M.R. § 2.00 was deliberate. 220 C.M.R. § 272.00 meets a specific and discrete need in that it focuses solely on involuntary tows, and setting rates through regulation is a straightforward process. We decline to alter the manner in which maximum rates for involuntary towing are currently established or reviewed.

Third, STA is correct that a strict time frame exists for the Department to issue decisions for gas and electric company rate adjustment requests. This time frame, however, is mandated by statute. See G.L. c.164, § 94 (allowing the Department to suspend proposed rates, prices or charges, for no longer than ten months). Here, neither G.L. c. 159B, § 6B, nor G.L. c. 30A, §§ 2-6, mandates a strict deadline.

Finally, we are cognizant that delay in resolving rate adjustment applications may have negative consequences for the towing industry. We note, however, that 220 C.M.R. § 272.00 only applies to maximum rates for involuntary tows ordered by the police or other public authority pursuant to G.L. c. 159B, § 6B, or for trespass pursuant to G.L. c. 266, § 120D. Rates for voluntary towing are established by individual towing companies without Department oversight. Nevertheless, the Department, as STA noted, has met periodically with STA since its August 2013 petition, and will continue to work cooperatively with the towing industry, where able, to resolve rate adjustment requests for involuntary tows. Moreover, we are reluctant to accommodate STA's proposal to modify the rulemaking process for one regulation,

through the amendment of another regulation. The legislature is the appropriate governmental entity to seek redress.⁵

By this Order, we adopt as final regulations, 220 C.M.R. § 250.00, Transportation Oversight Division Practice, as revised herein, and rescind 220 C.M.R. § 150.00 and 220 C.M.R. § 271.00. The Department has filed standard Regulation Filing Forms, revised regulations 220 C.M.R. § 250.00, and rescinded regulations 220 C.M.R. § 150.00 and 220 C.M.R. § 271.00 with the Office of the Secretary of the Commonwealth, State Publications and Regulations Division. These revised and rescinded regulations supersede the proposed regulations and go into effect upon publication in the Massachusetts Register. See 950 C.M.R. § 20.00.

⁵ Indeed, there is a bill currently pending before the legislature that, if enacted, would provide the towing industry the precise relief it seeks here. See House Bill No. 2918, An Act Relative to the Timely Determination of Towing Rates, filed January 15, 2015.

V. ORDER

Accordingly, after notice, comment, hearing, and due consideration, it is

ORDERED: That the regulations, entitled “Transportation Oversight Division Practice,” attached hereto and designated as 220 C.M.R. § 250.00 et seq., are hereby ADOPTED; and it is

FURTHER ORDERED: That the regulations, entitled “Railroad Safety Regulations,” attached hereto and formerly designated as 220 C.M.R. § 150.00 et seq. are hereby RESCINDED; and it is

FURTHER ORDERED: That the regulations, entitled “Administration of M.G.L. c. 159B,” attached hereto and formerly designated as 220 C.M.R. § 271.00 et seq., are hereby RESCINDED.

By Order of the Department,

/s/
Angela M. O’Connor, Chairman

/s/
Jollette A. Westbrook, Commissioner

/s/
Robert E. Hayden, Commissioner