

PUBLIC UTILITIES COMMISSION OF OHIO

In Re:

Review of the Rules in Ohio ADM
Code Transportation Chapters

Case No.

22-692-TR-ORD

HEARING

DATE: Wednesday, May 31, 2023

TIME: 11:01 a.m.

BEFORE: Isabel Marcelletti, Esquire

Jacky Werman St. John, Esquire

LOCATION: Public Utilities Commission of Ohio

180 E. Broad Street, Fl. 11

Columbus, OH 43215

REPORTED BY: Nic Joseph Saul, Notary Public

JOB NO.: 5945956

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A P P E A R A N C E S
ON BEHALF OF OHIO TOWING AND RECOVERY LEGISLATIVE
COMMITTEE:

BRIAN A. COULTER, ESQUIRE
Brouse, McDowell, LLP
6550 Seville Dr., Suite B
Canfield, OH 44406
bcoulter@brouse.com

ALSO PRESENT:

Brandon Harris, Capital Towing
Joe Coram, Canton Towing

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E X H I B I T S		
NO.	DESCRIPTION	ID/EVD
	(None marked.)	

P R O C E E D I N G S

THE REPORTER: Good morning. My name is Nic Joseph Saul; I am the reporter assigned by Veritext to take the record of this proceeding. We are now on the record at 11:01 a.m.

This is a hearing taking in the matter of Public Utilities Commission of Ohio. Case number 22-692-TR-ORD on May 31, 2023, at 180 East Broad Street, 11th Floor, Columbus, Ohio 43215.

I'm a notary authorized to take acknowledgments and administer oaths in Ohio.

Go ahead.

MS. MARCELLETTI: Thank you. Again, good morning, everyone. My name is Issy [ph] Marcelletti and with me is Jacky St. John. We are the attorney examiners assigned to hear this case. Just to reiterate, the Commission issued a finding an order in this case docket, number 22-692-TR-ORD, which adopted amendments to Ohio Admin. Code, Chapter 4901:2-2 and those will be for Chapters 22, 23 and 24. We are holding this hearing today pursuant to Ohio Revised Code 119.03.

This hearing is not a question and answer for the proposed rules, but rather a chance for the Commission to consider any last comments prior to

1 our final adoption of these rules. Today, we shall
2 take your testimony and written comments will also be
3 accepted, however those will be required to be filed
4 no later than close of business hours today. After
5 hearing, the Commission will consider the written
6 comments and any testimony provided right now before
7 we present the rules to the Joint Committee on Agency
8 Rule Review for the final file.

9 I will also note we do take note that
10 there is at least one written comment that was
11 docketed this morning. I will reiterate again; our
12 hearing is being transcribed by a court reporter. If
13 you plan to testify, just please speak clearly so that
14 she can reflect your comments on the record. Also, if
15 you have any written comments, it would be helpful if
16 you provide a copy to her after you testify.

17 And with that, I'm opening up the floor
18 to our witnesses. Mr. Coulter, if you would --

19 MR. COULTER: Sure.

20 MS. MARCELLETTI: Please come up here.
21 Thank you. And I will swear you in. Please raise
22 your right hand.

23 //

24 //

25 //

1 WHEREUPON,

2 BRIAN COULTER,

3 called as a witness and having been first duly sworn
4 to tell the truth, the whole truth, and nothing but
5 the truth, was examined and testified as follows:

6 MS. MARCELLETTI: Perfect. Thank you.
7 If you can please state your first and last name and
8 your address and then I will leave it off to you?

9 THE WITNESS: Certainly. My first name
10 is Brian, B-R-I-A-N. Last name is Coulter,
11 C-O-U-L-T-E-R. My address is 6550 Seville,
12 S-E-V-I-L-L-E Drive in Canfield, Ohio 44406.

13 I want to thank you very much for the
14 opportunity to speak today. I'm actually an attorney,
15 licensed to practice in Ohio and I've been retained by
16 an entity called the Ohio Towing and Recovery
17 Legislative Committee. Now, that Committee consists
18 of members from two separate Ohio trade associations.
19 The first is the Association of Professional Towing,
20 Ohio. The second is the Towing and Recovery
21 Association of Ohio. And these two associations have
22 really been at the forefront in Ohio in terms of being
23 representatives of the industry since the first
24 predatory towing bill passed back in, I believe, was
25 2015. I'm sorry, March of 2014, I think is when the

1 Senate Bill 274 came out.

2 And so these folks have always sought
3 to be a liaison to the rule makers and lawmakers in
4 the State of Ohio and frankly, they've always
5 understood the policy objectives at both the PUCO and
6 the General Assembly, namely keeping those bad actors
7 responsible and preventing predatory towing and price
8 gouging in the context of private property impound
9 tows. And so certainly today I -- not in our written
10 comment submitted yesterday, nor in our oral comments
11 today, will you hear any criticisms of those maximums.
12 We certainly understand why they're there and we fully
13 support holding bad actors accountable.

14 What you will hear is comments on sort
15 of the other side of that coin, if you will, the
16 Commission's second objective, which is obviously
17 designed to protect consumers. Its goals are to set
18 rates at figures that are appealing to private
19 industry and incentivize private companies to offer
20 the essential public utilities contemplated in
21 Sections 4513.60 and 61, the Ohio Revised Code. And
22 I've worked with these clients long enough to know
23 that that's a pretty thankless job. As far as
24 thankless jobs go, it's probably the most thankless.
25 It's a unique context and as far as public utilities

1 go as well.

2 There's not many where, you know, me
3 Brian, can sign my neighbor up to pay a bill because
4 he or she parked on my property, or you can imagine
5 any number of contexts. And so generally these folks
6 show up, they're -- they're furious. They -- they're
7 angry. They make physical threats. They -- they're
8 intimidating. And so it's just I bring that up only
9 to note that these rates are important for more than
10 just protecting consumers. It's to ensure that the
11 good men and women who run these companies are willing
12 to show up every day and do this hard, thankless work.
13 And so our comments that we submitted yesterday, and
14 my comments today just are roughly similar, but we
15 have really four overarching requests -- requested
16 adjustments to the proposed amendments.

17 The first is, at a bare minimum the
18 proposed rates need to be increased. My understanding
19 of the proposed amendments, they're purely grammatical
20 changes and if ever there were a time to adjust rates
21 based upon world events over the last five years from
22 2018 to 2023, it's been an extraordinary five years.
23 And so our -- our request is that just as a
24 preliminary matter, at a bare minimum, a CPI-based
25 adjustment to the mandatory towing and storage fees in

1 Section 4901:2-24-23 are warranted.

2 And so what we did as far as our
3 written rules, we just simply plugged the 2018 towing
4 and storage rates for the two different weight classes
5 into a CPI calculator provided by the Bureau of Labor
6 Statistics. And just by doing that, the -- for the
7 10,000 pound and below weight class, \$129 towing fee
8 converts to \$155.30 and the daily storage fee of \$17
9 converts to \$20.47. Now, this was based off of data
10 through April 30th. Presumably tomorrow there's going
11 to be more recent inflation data to adjust through May
12 of 2023. And then for the weight class, greater than
13 10,001 pounds, \$216 rate set in 2018 converts to
14 \$260.04, and the \$29 daily storage fee converts to
15 \$34.91. And so our -- our request is that at a bare
16 minimum, the Commission consider those just bottom
17 level adjustments to account for the increase in the
18 price of consumer goods.

19 The second request and comment that we
20 have is building off that is we ask the Commission to
21 consider what the CPI is and what a CPI-based
22 adjustment does. It's certainly helpful in the sense
23 that it compensates for the general increase in the
24 price of consumer goods, right, that the straps, the
25 nuts, the bolts, the tools, but it certainly does not

1 cover industry-specific, unique price increases that
2 have greatly exceeded the rate of inflation. And so
3 we're cognizant of what CPI contemplates and what it
4 does not contemplate. In a few specific areas that
5 we've seen in the last five years, again, as a result
6 of you -- you pick between the, you know, the global
7 COVID-19 pandemic, the war in Ukraine, and the
8 microchip shortage affecting the production of motor
9 vehicles, a national labor shortage. A few of the
10 most hard -- hardest hit areas have really affected
11 the transportation industry and as a consequence, the
12 towing and recovery industry.

13 And so you've seen vehicles going at
14 tens of thousands of dollars above the MSRP, right?
15 So a CPI-based adjustment would consider an increase
16 in MSRPs. It would not consider vehicles going tens
17 of thousands of dollars over that simply because
18 there's an enormous shortage in the supply of
19 microchips. Similarly, you have enormous increases in
20 the cost of insurance, enormous increases in the cost
21 of tires. I believe those increases were somewhere
22 along the lines of 40 percent and 70 percent,
23 respectively, over the last five years, our data
24 suggests and all -- all of the figures I'm throwing
25 out were filed yesterday in a report that was attached

1 to our written comments and so, tied into the
2 insurance cost.

3 Another important issue that we urge
4 the Commission to consider is the growing adoption of
5 new technologies, and specifically the rapid adoption
6 of electric vehicles and the effect that has on
7 private towing and recovery companies. I think we've
8 all seen the stories, right, of the Teslas
9 spontaneously combusting or while right now it may
10 seem unlikely that a vehicle as -- as valuable as a
11 Tesla would be abandoned on personal property. The
12 issue with, you know -- and we're -- we're grateful
13 for the five-year rule renewal and assessment.

14 That's going to be less and less of a
15 silly proposition with every year that these vehicles
16 become more and more popular. And so when the Ohio
17 Towing and Recovery Company is asked by a property
18 owner to remove an electric vehicle that is just
19 simply more prone to -- to fires and then store it on
20 their own property, there's certainly an increased
21 risk there. And underwriters and insurance companies
22 are certainly aware of that risk and are passing those
23 costs on. And so I bring that up only as an example
24 of many -- of certain costs that a CPI adjustment just
25 does not cover. And so we proposed in our written

1 comments yesterday our requested rates and those -- we
2 believe those rates build in these above inflation,
3 above CPI expenses.

4 The third comment and request that we
5 have submitted to the Commission is a fundamental
6 change to the rate structure. So Ohio, as I'm sure
7 the Commission and everyone in this room is aware,
8 there is currently a two-tier rate structure based
9 upon the gross vehicle weight rating of the vehicle.
10 Several states -- Texas is one, Missouri is another
11 and I believe in West Virginia, as a third, have
12 adopted a three-tier structure, simply because they
13 acknowledge that what Ohio grouped together as the
14 large class, anything above 10,001 pounds, is --
15 really ought to be subdivided into two. There's
16 vehicles between 10,000 pounds and roughly -- some
17 jurisdictions will say 25,000, some will say 26,000.
18 That contemplate things like your -- a box truck,
19 right?

20 Someone's moving in a Ryder truck or a
21 Penske truck, it breaks down or it's on its -- for
22 whatever reason, left on private property, that's sort
23 of that middle territory. And frankly, they're not
24 that common. What's more common is your tractor
25 trailer, something that breaks down in a -- in a lot

1 of a Walmart. A lot of the -- a lot of truck drivers,
2 you'll -- you'll see that and commercial landowners
3 having these vehicles there, they don't want them here
4 or they -- they can't be moved; for whatever reason
5 they're towed. That's -- there's an enormous
6 difference in the manpower, tools, equipment,
7 expertise needed to do those two different jobs.

8 And so what we have proposed is a
9 three-tier structure. The first being your sort of
10 maintaining the current lower class as it is today.
11 That's your standard consumer vehicles from 0 to
12 10,000 pounds to your sort of middle weight class,
13 from 10,000 to 26,000 pounds to accommodate your
14 typical box truck, mid-size large equipment, and then
15 your sort of heavy-duty tractor trailers, above 26,000
16 pounds. And those three classes and our proposed and
17 requested rates for each of those weight classes is in
18 our written comments submitted yesterday.

19 And our final comment and request for
20 the Commission is a practical one and one that we hope
21 the Commission can accommodate, but it's to protect
22 the industry from another five-year period like the
23 one we just experienced. Hopefully we don't ever
24 experience the last five years again. But certainly
25 what the industry has faced over the last five years

1 is rapidly diminishing profits based upon fixed rates,
2 significantly growing costs, and an inability to seek
3 redress and increased until the rules are reviewed
4 after the five-year period is -- is up. And so what
5 we've seen in other jurisdictions, some of which have
6 a five-year rule review and some that -- that don't,
7 is a -- a more regular approach to adjusting these
8 rates.

9 And so we have requested a automatic,
10 yearly CPI-based adjustment to the extent it's
11 possible. Obviously, I -- I would trust the
12 Commission to phrase that because you are obviously
13 the experts but something in the lines of, you know, a
14 historical average of inflation applied on the yearly
15 anniversary of the effective date of the rules. I
16 think -- we think would certainly allow towers to stay
17 ahead of costs and not face diminishing profits for an
18 extended period of time. Would hopefully alleviate
19 the need for highly involved comments every five years
20 and mitigate our need to -- to return to Commission
21 and hopefully in turn make your jobs easier. And it
22 would certainly -- a yearly based adjustment would
23 enable the Commission to provide guidance informally
24 through its website or what any other means to the
25 public. So that way they have the benefit of knowing

1 what the rates are and verified -- excuse me --
2 verifying it on a yearly basis.

3 And so that -- that's just generally
4 my -- my comments. Again, all are provided in greater
5 detail in my written submission yesterday. I will
6 note for the record, I have with me two members. Both
7 are leaders of their own companies and also members of
8 the respective trade associations that comprise the
9 Committee. I have with me Brandon Harris of Capital
10 Towing, there to your right and then Joe Coram of
11 Canton Towing, obviously from Canton. So to the
12 extent that you or anyone else in this room has
13 technical questions regarding, for instance, you know,
14 the tools, equipment, manpower required to tow a
15 tractor-trailer versus a box truck, I'll certainly
16 leave it to the professionals to answer those
17 questions. I'll let the cobblers make their shoes
18 there, but that's the extent of my comments. Unless
19 you have questions of me.

20 MS. MARCELLETTI: Any clarifying
21 questions.

22 MS. ST. JOHN: I do have one question.

23 MS. MARCELLETTI: Sure.

24 MS. ST. JOHN: So going back to your
25 first recommendation, basically adjusting the maximum

1 charges based on CPI --

2 THE WITNESS: Mm-hmm.

3 MS. ST. JOHN: -- over what time period
4 were you looking at? Is that the time period from
5 which these fees were initially established or the
6 time period from which they were most recently
7 reviewed and approved by the Commission?

8 THE WITNESS: So the latter. So what I
9 did is I used a simple CPI calculator from the Bureau
10 of Labor Statistics that allows you to input the sort
11 of start date and end date. And what I did is I chose
12 June of 2018 as the start date. So the last time the
13 Commission set the rates. And then I think I just
14 hit -- it was current through the day that I did it.
15 So I think if you were going in tomorrow, the numbers
16 would be a little different, presumably a little
17 higher, simply because they would include -- I only
18 had the April data. So in early June the Commission
19 will have May data. That's effectively how I
20 calculated that.

21 MS. ST. JOHN: Okay. All right. Thank
22 you.

23 THE WITNESS: You're welcome. Thank
24 you for your time.

25 MS. MARCELLETTI: At this time, are

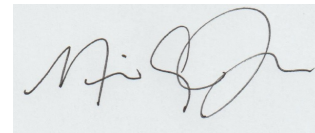
1 there any others who wish to testify? Well, then it
2 looks like everyone who wanted to testify has gone. I
3 think those who have traveled here to provide their
4 comments and docketing for taking a trip out here. I
5 want to reiterate that anyone who wishes to submit
6 further written comments will have an opportunity to
7 do so until the end of business day today. Thank you
8 for all those in attendance and the Commission will
9 take your comments into account prior to our final
10 filing. Have a good day and we will be adjourned.

11 THE REPORTER: Okay. We're going to go
12 off the record at 11:19 a.m.

13 (Whereupon, at 11:19 a.m., the
14 proceeding was concluded.)

CERTIFICATE OF DEPOSITION OFFICER

I, NIC JOSEPH SAUL, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

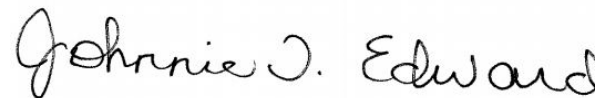


NIC JOSEPH SAUL

Notary Public in and for the
State of Ohio

CERTIFICATE OF TRANSCRIBER

I, JOHNNIE T. EDWARDS, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



JOHNNIE T. EDWARDS

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