

**MEMORANDUM**

TO: Scott Farkas, Chief Attorney Examiner – Transportation Section
Public Utilities Commission of Ohio

FROM: Todd Colquitt, Business Advocate
Common Sense Initiative Office

DATE: July 25, 2016

RE: **CSI Review – PUCO Adoption of Rules Concerning the Towing of Motor Vehicles (PUCO Case No. 15-463-TR-ORD)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (O.R.C. or Revised Code) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in O.R.C. 107.54.

Analysis

This rule package proposed by the Public Utilities Commission of Ohio (PUCO) consists of the adoption of seven (7) rules comprising newly established Ohio Administrative Code (OAC) chapter 4901:2-22 which, among other things, lays out requirements regarding safety standards, and after-hour retrieval fees related to the towing of motor vehicles. As these are newly established requirements, all seven of the rules are new.

The proposed rules implement directives charged to the PUCO in recently-enacted Senate Bill 274, which, among other things, amended sections 4513.60 and 4921.25 of the Revised Code. These statutory changes require the PUCO to:

- Establish the acceptable scope of public safety regulations applicable to a for-hire motor carrier engaged in the towing of motor vehicles that a county or township may adopt;

- Establish safety standards for the type of equipment necessary to safely remove and tow vehicles based on the type of vehicle being removed or towed;
- Establish standards for the removal of a vehicle from a private tow-away zone by a for-hire motor carrier engaged in the towing of motor vehicles; and,
- Establish an after-hours retrieval fee for the recovery of a vehicle during any time a storage facility is not required to be open.

To fulfill its statutory obligations, the PUCO initiated a rulemaking on the above-referenced case through an Entry dated March 25, 2015. As part of the rulemaking, the PUCO convened a workshop on May 5, 2015 inviting interested stakeholders to provide suggestions for the PUCO staff to consider as it began the process of creating the new rules. The PUCO also sought public comment on the rule package and its Business Impact Analysis (“BIA”) by issuing an Entry dated October 14, 2015 seeking comments and reply comments to be filed by October 30, 2015 and November 13, 2015, respectively. A Finding and Order was issued by the PUCO on June 29, 2016.

The May 5, 2015 workshop was well-attended, with representatives from the Towing and Recovery Association of Ohio, Quick Clear Professionals of Ohio (QCPO, a professional association that has since merged with a separate professional association to form the Association of Professional Towing – Ohio), and eight individual towing firms participating. Additionally, representatives from insurance, law enforcement, trucking, and consumer motor vehicle owners also attended and participated in a wide-ranging stakeholder workshop. For the formal comment period, one comment was received. No comments were made regarding the accompanying BIA.

In response to the stakeholder comments at both the workshop and the formal comment period, the PUCO adopted a number of suggested changes in its Finding and Order, while rejecting a few. Among the suggested changes rejected by the PUCO was that of limiting recertification of towing equipment by allowing only the original manufacturer of equipment to recertify. In rejecting this suggestion, the PUCO stated doing so could add unnecessary expense and be impractical or impossible, e.g., if the manufacturer was no longer in business. Additionally, the PUCO declined suggestions to expand the acceptable scope of public safety regulations that a county or township may adopt to include matters not specifically related to public safety, citing a lack of statutory authority to do so.

Among stakeholder-suggested changes adopted by the PUCO was one acknowledging the difference between recovery and towing by providing the latitude to recover vehicles from positions that are dangerous or obstructive using unconventional towing methods, if necessary, that are otherwise prohibited for routine towing. Stakeholders also suggested eliminating the proposed mandatory use of a specific towing tool, pointing out that the device was not applicable for all towing situations. The PUCO agreed, acknowledging that its rule as originally proposed

could unnecessarily increase the complexity of a towing operation while decreasing the level of safety. The PUCO also adopted a suggested change for the rule establishing the maximum after-hours fee that may be charged an individual for retrieving their vehicle during after-business hours. As originally proposed in the rules, the fee was limited to \$75. At the workshop and in the formal comment, stakeholders noted that after-hours retrieval could entail having to cover employee overtime for the travel time to and from the storage facility, processing the associated paperwork, and physically releasing the vehicle. Also, for safety concerns many towing firms require two employees be present when vehicles are retrieved after normal business hours. Citing an average pay rate of \$20 per hour, the towing industry recommended that a more appropriate cap was \$150 in order to compensate the after-hours costs related to wait times, insurance costs, workers' compensation expenses, and employee wage expenses. Upon reflection, the PUCO agreed and modified the proposed rule accordingly.

The purpose of a CSI recommendation memo is not to catalogue in detail each rule in all its subparts, but rather to weigh the rule package on the whole in whether stakeholders were included and their input considered, whether the appropriate balance has been struck, and whether the agency has adequately articulated the necessity for the adverse business impact.

After reviewing the various documents contained in the docket for PUCO Case No. 15-463-TR-ORD, including the March 25, 2015 Entry, the transcript of the early stakeholder outreach meeting on May 5, 2015, the proposed rules and BIA accompanying the Entry dated October 14, 2015, and the stakeholder comment filed in the formal comment period, the CSI Office has determined that the rule package as a whole satisfactorily meets the standards espoused by the CSI Office and the purpose of the rule package justifies the adverse impacts identified in the BIA.

Recommendations

For the reasons described above, the CSI Office has no recommendations regarding this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Public Utilities Commission of Ohio should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Angela Hawkins, Legal Director – PUCO
Mark Hamlin, Lt. Governor's Office