

# HANNA LAW OFFICE

HOMER W. HANNA, JR.  
(1926-1993)

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SAMUEL F. HANNA, Managing Attorney  
WV State Bar Number: 1580

MARGARET J. WILLIAMS,  
PARALEGAL

October 1, 2021

Connie Graley, Executive Secretary  
West Virginia Public Service Commission  
Post Office Box 812  
Charleston, West Virginia 25323

01:04 PM OCT 01 2021 EXEC SEC DIV

**VIA EMAIL**


Re: **CASE NO. 20-0796-MC-GI**  
**General Investigation relating to statewide  
wrecker rates and rates for ancillary equipment**

Dear Ms. Graley:

This firm represents West Virginia Towing And Recovery Association in the above styled matter. As such, attached for filing please find **PETITION OF INTERVENOR, WEST VIRGINIA TOWING AND RECOVERY ASSOCIATION FOR RECONSIDERATION AND/OR REOPENING.**

Should you have any questions please feel free to contact me.

Sincerely,



Samuel F. Hanna

SFH/mjw

Enclosure

cc: West Virginia Towing and Recovery Association  
Linda Bouvette, Esquire  
Daryl A. Nicely  
Dustin Boggs  
Deborah A. Broughton

**PUBLIC SERVICE COMMISSION OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 20-0796-MC-GI**

**General Investigation relating to statewide  
wrecker rates and rates for ancillary equipment**

**PETITION OF INTERVENOR, WEST VIRGINIA TOWING AND  
RECOVERY ASSOCIATION FOR RECONSIDERATION AND/OR REOPENING**

Now comes the West Virginia Towing and Recovery Association (WVTRA), by counsel, Samuel F. Hanna, and pursuant to Rule 19.3 of the Rules of Practice and Procedure (150CSR1) petitions for reconsideration, and/or pursuant to Rule 19.5 requests reopening, of this case and as the basis for said Petition states as follows:

As set forth in the Commission Order of September 24, 2021 (Commission Order), which approved the Joint Stipulation And Settlement Agreement with modifications, direct and rebuttal testimony was submitted to the Commission for filing purposes only on March 22, 2021. This filing included the direct and rebuttal testimony of Chris Reed and direct testimony of Joseph Pifer on behalf of the WVTRA, the direct and rebuttal testimony of Jennifer Warner on behalf of Staff, and the direct and rebuttal testimony of Michael Matousek, of the Owner-Operator Independent Drivers Association (OOIDA). Again, these documents were merely filed at the Commission and were not admitted as evidence in this case at this point in time.

Also as set forth in the aforementioned Commission Order, "On May 13, 2021 Staff and WVTRA (collectively, Stipulating Parties) filed a Proposed Joint Settlement Agreement (Joint Stipulation) that included a stipulated tariff. On that same day, OOIDA filed a Notice To Withdraw stating that it would not participate in any further proceedings." (Commission Order, pg. 2). As set forth in the attached notice, (Exhibit A), counsel for OOIDA, on May 13, 2021,

stated that OOIDA was “withdrawing from this case and will not participate in any further proceedings.” (emphasis added). As such, OOIDA was no longer a party to this proceeding.

By email sent on May 7, 2021, a copy of which is attached hereto as Exhibit B, Natalie N. Terry, Law Clerk to the Commission, stated that “To limit interactions with the court reporter, all exhibits to be entered into evidence as a part of the evidentiary hearing should be provided to me electronically prior to the hearing. The Commission will ensure that the Court Reporter has a copy of the exhibits to mark and be used as a part of the official hearing record. **No later than Thursday, May 13, 2021, counsel for each party must electronically provide me with (1) a list of attendees ( e.g. legal team, witnesses), and (2) any direct or cross exhibits parties intend to introduce as evidence at the hearing. Please remember to respond to all when you provide the information to me.**” In using the word “must”, Ms. Terry made clear that in order for exhibits to be considered at the evidentiary hearing, they “must” be electronically provided to her no later than May 13, 2021,

As mandated by the aforementioned email, the undersigned counsel, on behalf of the WVTRA, on May 13, 2021, filed by email, attached hereto as Exhibit C, its list of attendees and exhibits.

Also, on May 13, 2021, Victoria Wilson, on behalf of Staff, by email filed the exhibits that Staff intended to use at the hearing. (Exhibit D). Please note that this email was not sent to counsel for OOIDA since OOIDA had withdrawn from this case.

At this point, the only parties which submitted exhibits to be introduced at the hearing were WVTRA and Staff. OOIDA did not submit any exhibits because, as previously stated, it had withdrawn from the case.

As further set forth in the Commission Order of September 24, 2021, “The Commission held the evidentiary hearing on May 18, 2021. The Stipulating Parties were present and represented by

counsel. The Commission admitted each parties pre-filed testimony and the Joint Stipulation into the record.” (Commission Order, pg. 3). Again, please note that OOIDA was not a party to this proceeding and did not appear at the hearing.

At the evidentiary hearing, Chairman Charlotte Lane stated, “Counsel will not approach the bench or court reporter to hand out documents during the hearing, and the court reporter will be provided a copy of exhibits for the transcript that were provided by counsel prior to this hearing.” (emphasis added). (Tr. pgs. 5, 6). Further, Chairman Lane stated, “The parties submitted pre-filed Direct and Rebuttal Testimony recommending changes to the current tariff rates. A joint stipulation and proposed tariff was filed in this case by Commission Staff and WVTRA. No other parties participated in the joint stipulation. The parties to the joint stipulation are requesting that the Commission adopt the joint stipulation and proposed tariff as the final resolution of this case. On May 13, 2021, OOIDA withdrew from this case and notified the Commission that it would not participate in any further proceedings.” (Tr. pgs. 7, 8). Therefore, OOIDA was not a party to the proceeding. At the evidentiary hearing, Chairman Lane further stated, “Without objection, all testimony has been marked and will be admitted in the customary manner using the initials of the witnesses, and D for direct and R for rebuttal.” (Tr. pg. 9). Chairman Lane did not ask for, nor did she provide an opportunity to object to the admission of OOIDA testimony. The natural conclusion was that only properly filed direct and rebuttal testimony of the parties to the proceeding would be admitted into evidence. The only testimony that should have been allowed into the record was the direct and rebuttal testimony of both WVTRA and Staff. As previously stated, OOIDA withdrew from the case, was not a party, did not provide direct or rebuttal testimony per the Court’s mandate, and did not appear at the evidentiary hearing. However, in the Commission Order of September 24, 2021, the Commission took into account the pre-filed direct testimony and rebuttal testimony of OOIDA all to the prejudice of Staff and WVTRA. (Commission Order, pgs. 4, 5, 6). This resulted

in the Joint Stipulation And Settlement Agreement being improperly modified. (See Conclusions of Law 2-6).

Furthermore, at the evidentiary hearing, the only parties that testified were Chris Reed and Joseph Pifer on behalf of WVTRA. Staff was not allowed to present its Staff Witness, Jennifer Warner, to discuss why Staff entered into the Joint Stipulation And Settlement Agreement and the reason for the change in position of Staff set forth in the pre-filed direct testimony and rebuttal testimony of Ms. Warner. The Commission only referenced Ms. Warner's pre-filed direct testimony. (Commission Order, pgs. 3, 4). Not only was Staff not allowed to present any evidence as to why it thought the Joint Stipulation And Settlement Agreement was fair and reasonable, but as previously noted, no one appeared on behalf of OOIDA to be cross-examined. It should be noted that in the Joint Stipulation And Settlement Agreement it was stated, "This Joint Stipulation And Settlement Agreement is subject to the Commission's acceptance and approval. It will be ineffective until and unless approved by the Commission in all of its material terms and without modification. If the Commission does not grant that approval, then the Stipulating Parties reserve the right to fully advocate their positions, unlimited by the terms of this Joint Stipulation And Settlement Agreement." Based upon the improper consideration of OOIDA's direct and rebuttal testimony and WVTRA not being afforded the right to cross examine OOIDA, the WVTRA was denied the right to fully advocate its position and was denied due process.

Finally, the consideration by the Commission of the rebuttal and direct testimony of OOIDA violates the following Rules of Practice and Procedure of this Commission:

12.3.1. Parties shall enter their appearances at the beginning of the hearing by giving their names and addresses on writing to the reporter who will include them in the record of the hearing. The Commission may also require appearances to be stated orally, so that the identities and interests of all parties present will be known to those at the hearing. Any further notice, pleading, or order in the matter which is required

to be served upon parties to the proceeding, may be served upon the attorney or representative of a party so represented and the service shall be effective as service upon the party.

12.3.2. At hearing, all parties shall be entitled to enter appearances, introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding consistent with any Commission order issued in a particular case which otherwise limits participation.

#### 12.5. Termination of party status.

Notwithstanding any other provision of these rules pertaining to party status, and unless specifically authorized by the Commission for good cause shown, a person may lose party status if such person has failed to enter an appearance at any hearing in the manner as prescribed in Rule 12.3. The party status of any person failing to enter an appearance may terminate at the close of the period for taking of appearances unless otherwise ordered.

#### 12.7. Representation of parties and practice before Commission.

Except as provided in Rule 4, representation or appearance of parties in all formal proceedings pending before the Commission shall be only by attorneys at law admitted to practice before the Courts of this State, before the Courts of last resort of other states, or before the Supreme Court of the United States; provided that attorneys appearing before the Commission who are not licensed to practice in West Virginia shall have sought and obtained permission to practice before the Commission in compliance with Rule 8.0 of the Rules for Admission to the Practice of Law of the State of West Virginia; provided however, that an individual may appear for and represent himself, or a partner may represent his partnership, upon permission granted in the discretion of the Commission.

#### 13.2 Testimony under oath.

All testimony to be considered by the Commission in formal hearings, except matters administratively noticed or entered by stipulation, shall be by sworn or affirmed testimony.

#### 13.3 Prepared testimony.

Prepared testimony may be identified, marked and received as an exhibit. Admissibility shall be subject to the rules governing oral testimony. The party submitting prepared testimony shall supply copies to all parties of record.

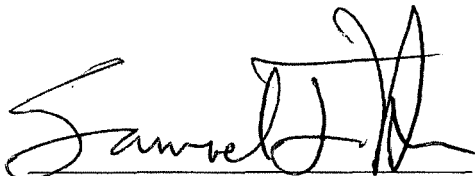
As such, as previously stated, the Commission erred in considering the direct and rebuttal testimony from OOIDA which had withdrawn from this proceeding, was not a party to this

proceeding, had not filed pre-filed direct or rebuttal testimony per the Commission's mandate, all to the prejudice of WVTRA. In addition, Staff was not allowed to explain the reasons for changing its' position previously set forth in the direct and rebuttal testimony of Jennifer Warner to one of support of the Proposed Stipulation And Settlement Agreement all to the detriment of WVTRA.

It should not be the policy of this Commission to consider evidence not properly submitted by an entity that is not a party to the proceeding. The Commission should have adopted the Joint Stipulation And Settlement Agreement in its entirety. Therefore, WVTRA is requesting that this Commission reconsider its Commission Order of September 24, 2021, that the Commission exclude the direct and rebuttal testimony of OOIDA, reopen this matter and issue a further order adopting the Joint Stipulation And Settlement Agreement in its entirety or remand this for a further evidentiary hearing.

Respectfully submitted;

WEST VIRGINIA TOWING AND RECOVERY  
ASSOCIATION  
By Counsel

A handwritten signature in black ink, appearing to read 'Samuel F. Hanna', with a stylized flourish at the end.

Samuel F. Hanna, Esquire (#1580)  
Post Office Box 2311  
Charleston, West Virginia 25328-2311  
(304) 342-2137

# SHUMAN McCUSKEY SLICER PLLC

ATTORNEYS AT LAW

116 South Stewart Street, 1st Floor  
Winchester, VA 22601  
Telephone: 540.486.4195  
Facsimile: 540.486.4912

1411 Virginia Street East, Suite 200  
Charleston, WV 25301  
Telephone: 304.345.1400  
Facsimile: 304.343.1826

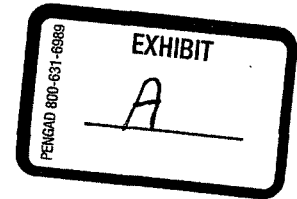
1445 Stewartstown Road, Suite 200  
Morgantown, WV 26505  
Telephone: 304.291.2702  
Facsimile: 304.291.2840

WWW.SHUMANLAW.COM

Christopher D. Negley  
[cnegley@shumanlaw.com](mailto:cnegley@shumanlaw.com)

May 13, 2021

Connie Graley, Executive Secretary  
Legal Division  
Public Service Commission of West Virginia  
201 Brooks Street  
Charleston, West Virginia 25301



**Re: Case No.: 20-0796-MC-G1  
GENERAL INVESTIGATION RELATING TO  
STATEWIDE WRECKER RATES AND RATES  
FOR ANCILLARY EQUIPMENT**

Dear Ms. Graley:

Please find enclosed a Notice pertaining to the above-referenced action for filing in this case.

Thank you for your attention to this matter. Please contact me should you have any questions.

Sincerely,

Christopher D. Negley

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**In Re: CASE NO.: 20-0796-MC-G1**

**GENERAL INVESTIGATION RELATING TO  
STATEWIDE WRECKER RATES AND RATES  
FOR ANCILLARY EQUIPMENT**

**NOTICE**

Please take Notice that the Owner-Operator Independent Driver's Association (OOIDA), an Intervenor in the above-referenced case, is withdrawing from this case and will not participate in any further proceedings.

**OWNER-OPERATOR  
INDEPENDENT DRIVERS ASS'N  
By Counsel**



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Christopher D. Negley, Esq. (State Bar I.D. No. 6086)  
**SHUMAN MCCUSKEY SLICER, PLLC**  
1411 Virginia Street, East, Suite 200  
Post Office Box 3953  
Charleston, WV 25339-3953  
(304) 345-1400

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**In Re: CASE NO.: 20-0796-MC-G1**

**GENERAL INVESTIGATION RELATING TO  
STATEWIDE WRECKER RATES AND RATES  
FOR ANCILLARY EQUIPMENT**

**CERTIFICATE OF SERVICE**

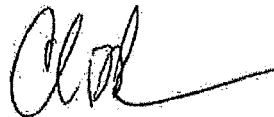
I, Christopher D. Negley, counsel for the Owner-Operator Independent Drivers Association hereby certify that on 13<sup>th</sup> day of May, 2021, the foregoing *Notice* was served upon the following persons via email to the Public Service Commission as set forth in General Order 262.3 and by U.S. Mail, postage prepaid:

**NICELY'S TOWING**  
c/o Daryl Nicely, Owner  
413 3<sup>rd</sup> Avenue  
Huntington, West Virginia 25701

Samuel F. Hanna, Esquire  
**WEST VIRGINIA TOWING & RECOVERY ASSOCIATION**  
Post Office Box 2311  
Charleston, West Virginia 25328-2311

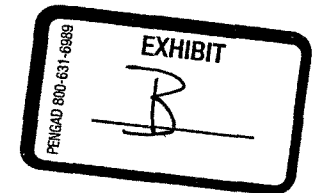
Linda Bouvette, Esquire  
Victoria Wilson, Esquire  
**PUBLIC SERVICE COMMISSION OF WEST VIRGINIA**  
Post Office Box 812  
Charleston, West Virginia 25323

**ENTERPRISE RENT A CAR**  
c/o Dustin Boggs  
Post Office Box 453  
MacArthur, West Virginia 25873



\_\_\_\_\_  
Christopher D. Negley, Esq. (WVSB #6086)

On Fri, May 7, 2021 at 2:46 PM Terry, Natalie <NTerry@psc.state.wv.us> wrote:



Good afternoon, Counsel,

I have conferred with the Commission regarding the upcoming May 18-19, 2021, evidentiary hearing for Case No. 20-0796-MC-GI, General Investigation into statewide wrecker rates and rates for ancillary equipment.

The number of new COVID cases is dropping, and the number of vaccinated individuals is increasing. At this time, the Commission intends to conduct the evidentiary hearing in person, requiring masks and social distancing. We will assign seats in the hearing room and limit attendance to the parties. Members of the public will not be permitted in the hearing room, but my view the hearing via the Commission's live-stream webcast link <http://www.psc.state.wv.us/webcast/default.htm>.

To limit interactions with the court reporter, all exhibits to be entered into evidence as a part of the evidentiary hearing should be provided to me electronically prior to the hearing. The Commission will ensure that the Court Reporter has a copy of the exhibits to mark and be used as a part of the official hearing record.

**No later than Thursday, May 13, 2021, counsel for each party must electronically provide me with (1) a list of attendees (e.g. legal team, witnesses) and (2) any direct or cross exhibits parties intend to introduce as evidence at the hearing.**

Please remember to respond to all when you provide the above information to me.

Thank you.

Natalie N. Terry

Law Clerk

Office of the General Counsel


Public Service Commission of W.Va.

304-340-0413 (Phone)

304-340-0840 (Fax)

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**5 attachments**

 **Direct Testimony of Chris Reed.pdf**  
95K

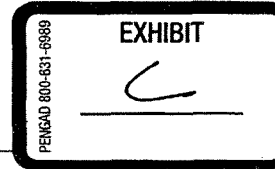
 **Direct Testimony Joe Pifer.pdf**  
62K

 **Rebuttal Testimony to OOIDA.pdf**  
90K

 **Rebuttal Testimony to Staff.pdf**  
82K

 **MX-5050V\_20210513\_112658.pdf**  
790K

Hanna Law  
Office Mail



Sam Hanna <shanna@hannalawwv.com>

**Re: PSC Procedure for May 18-19, 2021, Hearing in Gen. Investigation relating to wrecker rates & ancillary equipment rates**

1 message

Sam Hanna <shanna@hannalawwv.com>

Thu, May 13, 2021 at 12:04 PM

To: "Terry, Natalie" <NTerry@psc.state.wv.us>

Cc: "tiffyna83@gmail.com" <tiffyna83@gmail.com>, "group68tow@gmail.com" <group68tow@gmail.com>, "cogans@zoominternet.net" <cogans@zoominternet.net>, "cnegley@shumanlaw.com" <cnegley@shumanlaw.com>, "Bouvette, Linda" <LBouvette@psc.state.wv.us>, "Wilson, Cindy" <CWilson@psc.state.wv.us>, "Brown, Pamela" <pbrown@psc.state.wv.us>

Natalie,

The following is a list of attendees and exhibits on behalf of West Virginia Towing and Recovery Association for the hearing scheduled for May 18 and May 19, 2021:

Attendees:

Sam Hanna, Esq.  
Chris Reed  
Joseph Pifer

Exhibits (which are attached hereto):

PRE-FILED DIRECT TESTIMONY OF CHRIS REED, PRESIDENT OF INTERVENOR WEST VIRGINIA TOWING AND RECOVERY ASSOCIATION

PRE-FILED DIRECT TESTIMONY OF JOSEPH PIFER

REBUTTAL TESTIMONY OF CHRIS REED, PRESIDENT OF INTERVENOR WEST VIRGINIA TOWING AND RECOVERY ASSOCIATION TO PRE-FILED DIRECT TESTIMONY OF

MICHAEL MATOUSEK MANAGER OF GOVERNMENTAL AFFAIRS OWNER-OPERATOR

INDEPENDENT DRIVERS ASSOCIATION

REBUTTAL TESTIMONY OF CHRIS REED, PRESIDENT OF INTERVENOR WEST VIRGINIA TOWING AND RECOVERY ASSOCIATION TO PRE-FILED DIRECT TESTIMONY OF

JENNIFER WARNER, UTILITIES ANALYST

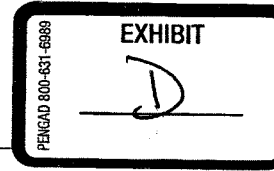
JOINT STIPULATION AND SETTLEMENT AGREEMENT between Staff and the West Virginia Towing and Recovery Association.

Samuel F. Hanna, Esquire  
HANNA LAW OFFICE  
3508 Noyes Avenue  
P. O. Box 2311 Charleston, WV 25328  
(304) 342-2137  
(304) 342-2130

9/30/21, 6:30 AM

Hanna Law Office Mail - 20-0796-MC-GI - Wrecker Rate GI- Staff Exhibits for Hearing

Hanna Law  
Office Mail



Sam Hanna <shanna@hannalawww.com>

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**20-0796-MC-GI - Wrecker Rate GI- Staff Exhibits for Hearing**

1 message

**Wilson, Victoria** <VWilson@psc.state.wv.us>

Thu, May 13, 2021 at 11:53 AM

To: "Terry, Natalie" <NTerry@psc.state.wv.us>, "tiffyna@gmail.com" <tiffyna@gmail.com>, Sam Hanna <shanna@hannalawww.com>, "group68tow@gmail.com" <group68tow@gmail.com>, "cogans@zoominternet.net" <cogans@zoominternet.net>

Cc: "Bouvette, Linda" <LBouvette@psc.state.wv.us>

All –

Attached please find the Exhibits that will be used by Staff at the hearing next week. Let me know if you have any questions.

Thanks,

Victoria

***Victoria L. Wilson***

Staff Attorney, Legal Division

Public Service Commission of WV

201 Brooks Street

P.O. Box 812

Charleston, West Virginia 25323

Phone: 304-340-0409

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**3 attachments**

 **Utilities Testimony Jennifer Warner.pdf**  
972K

9/30/21, 6:30 AM

Hanna Law Office Mail - 20-0796-MC-GI - Wrecker Rate GI- Staff Exhibits for Hearing

 **Utilities Rebuttal Testimony -Jennifer pdf.pdf**  
659K

 **Joint Stipulation and Tariff.pdf**  
679K

**VERIFICATION**

**STATE OF WEST VIRGINIA,**

**COUNTY OF KANAWHA, to-wit:**

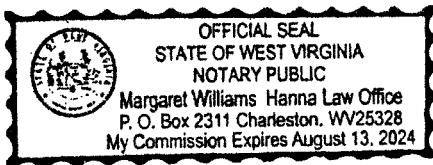
I, **Chris Reed**, President of West Virginia Towing and Recovery Association, having been first duly sworn, depose and say that the facts contained in the foregoing **PETITION OF INTERVENOR, WEST VIRGINIA TOWING AND RECOVERY ASSOCIATION FOR RECONSIDERATION AND/OR REOPENING** are true, except insofar as they are therein stated to be upon information and belief, I believe them to be true.



**CHRIS REED**

Taken, subscribed and sworn to be before me this 30<sup>th</sup> day of September, 2021.

My commission expires: August 13, 2024.

  
**NOTARY PUBLIC**

**PUBLIC SERVICE COMMISSION OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 20-0796-MC-GI**

**General Investigation relating to statewide  
wrecker rates and rates for ancillary equipment**

**CERTIFICATE OF SERVICE**


I, SAMUEL F. HANNA, counsel for West Virginia Towing & Recovery Association, do hereby certify that service of the foregoing **PETITION OF INTERVENOR, WEST VIRGINIA TOWING AND RECOVERY ASSOCIATION FOR RECONSIDERATION AND/OR REOPENING** has been made upon the following party on this the 1st day of October, 2021, via email as follows:

Linda Bouvette, Esquire  
[Lbouvette@psc.state.wv.us](mailto:Lbouvette@psc.state.wv.us)

Daryl A. Nicely  
dba: Nicely's Towing  
603 Township Road 1378  
Chesapeake, OH 45619  
Email Address: [tiffyna83@gmail.com](mailto:tiffyna83@gmail.com)

Dustin Boggs  
Enterprise Rent A Car  
PO Box 453  
MacArthur, WV 25873  
Email Address: [group68tow@gmail.com](mailto:group68tow@gmail.com)

Deborah A. Broughton  
COGANS WRECKER SERVICE INC  
General Manager  
1548 Monroe Avenue  
Huntington, WV 25704  
Email Address: [cogans@zoominternet.net](mailto:cogans@zoominternet.net)

  
Samuel F. Hanna