STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Dazzo's Auto Repair Inc. An Illinois Corporation	:	RTV-A-47
Petition for Relocation Towing and Storage Rate Increase	:	

ORDER

By the Commission:

PROCEDURAL HISTORY

On January 22, 2008, Dazzo's Auto Repair, Inc. ("Dazzo's" or "Petitioner") filed a Petition with the Illinois Commerce Commission ("Commission") for tow and storage rate increases pursuant to the provisions of Chapter 625 ILCS 5/18a-200(6) of the Illinois Commercial Relocation of Trespassing Vehicles Law ("Law").

The Petition sought an increase in the towing rate from $125 to $170 and an increase in the daily storage rate charged after the first twenty-four hours from $25 to $40. On July 7, 2008, Dazzo's filed a First Amended Petition seeking to increase the towing rate to $190 and the storage rate to $45 per day.

Pursuant to notice given in accordance with the Law and rules and regulations of the Commission, hearings were held before the Chief Administrative Law Judge (CALJ) at the Commission's offices in Springfield and Chicago by audio-visual conference. Hearings were held on June 18, 2008 and August 4, 2008. There were no Intervenors to the proceeding. At the conclusion of the August 4, 2008 hearing, the record was marked "Heard and Taken."

On April 3, 2009, the CALJ re-opened the matter for hearings to consider the impact of changes in fuel costs since the last hearing on August 4, 2008. Additional hearings were held on July 9, 2009, August 13, 2009 and September 11, 2009. Petitioner submitted a Post Hearing Brief on October 13, 2009. Commission Staff submitted a Post Hearing Brief on December 2, 2009. The record was again marked "Heard and Taken" on December 15, 2009.

ILLINOIS COMMERCIAL RELOCATION OF TRESPASSING VEHICLES LAW

Section 18a-200(6) of the Illinois Commercial Relocation of Trespassing Vehicles Law (625 ILCS 5/18a-200(6) provides "[t]he Commission shall:"

> Set reasonable rates for the commercial towing or removal of trespassing vehicles from private property. The rates shall not exceed the mean average of the five (5) highest rates for police tows within the territory to which this Chapter applies that are performed under Sections 4-201 and 4-214 of this Code and that are of record at hearing, provided that the Commission shall not re-calculate the maximum specified herein if the order containing the previous calculation was entered within one calendar year of the date on which the new order is entered.

Section 18a-200(6) also provides that the Commission shall:

> Set reasonable rates for the storage, for periods in excess of 24 hours, of the vehicles in connection with the towing or removal; however, no relocator shall impose charges for storage for the first 24 hours after towing or removal.

Hereinafter, in this Order, all references to relocator tows will be to those of 10,000 pounds and under unless otherwise specified, and all references to storage rates will be those applicable after the first 24 hours of storage, unless otherwise specified. Reference to the "industry" shall mean all relocators licensed by the Commission.

PETITIONER'S EVIDENCE

As set forth above, the Commission has the authority to set reasonable rates for commercial relocation towing and storage. The rates set by the Commission *shall not exceed* "the mean average of the five highest rates for police tows" in the territory served by the Petitioner relocation towing companies. 625 ILCS 5/18a-200(6). The current established maximum police towing rate is $196 and $45 for storage after 24 hours as found by the Commission in RTV-A-42/43 Consolidated.

Petitioner explained that the Amended Petition requested higher rates than stated in its original Petition because of increases in fuel price and the belief that other licensed relocators had recently filed Petitions requesting higher rates. Petitioner asserts that it would not be making a profit even if granted rates of $170 per tow and $40 per storage, and might still be losing money with rates of $190 per tow and $45 per day storage.

A. Revenues

Petitioner presented the testimony of Lisa Dawn Nezrick. Ms. Nezrick keeps Dazzo's business records and is responsible for all matters pertaining to the Commission. Dazzo's 2008 Annual Report reports a loss of $47,338 for the year. Combined relocator towing and storage revenue was $169,985. Associated expenses were $217,223. There were 1,340 relocator tows and 158 vehicles stored in 2008.

Petitioner's projected expenses for 2009 indicate that had rates of $170 and $40 been charged all year, additional towing and storage revenue would have been $47,552, a 28% increase over the $169,985 actual 2008 revenue. Petitioner's projected expenses also show that had rates of $190 and $45 been charged all year, additional towing and storage revenue would have been $74,090, an increase of 43.5% over the actual 2008 revenue.

B. Expenses

Petitioner presented a breakdown of its 2008 relocation expenses and the projected increases in expenses for 2009. Ms. Nezrick's projected an increase of, 9.5% for fuel, 20.7% for employees' pay, 72.6% for legal fees, and 180% for signs. The projected increase for insurance is 17.6%. The 2008 baseline total insurance expense was reduced by $2,400 by removing the workman's compensation premium and changing the allocation for relocation towing operations from 66 2/3% to 50%. The total projected increase in expenses was 12.1%.

Dazzo's also operates an auto repair business and does some towing other than relocation tows under 10,000 pounds. Some expenses are clearly related entirely to relocation towing and other expenses are clearly related entirely to the other operations. The expenses that are not clearly all one or the other must be apportioned between relocation towing and the other operations to determine the profit or loss from the relocation towing services.

On cross-examination Ms. Nezrick testified about the allocation of expenses to relocation towing. Ms. Nezrick allocated half of the rent for the storage area, parking lot and building to relocation towing because that business required a night shift employee at the building which means more use of the space and utilities, and also because approximately three-quarters of the storage yard is needed for relocation towing. The garage is open only one-half of the day. She allocated half of the insurance costs to relocation towing because the two trucks used primarily for relocation towing are constantly on the road. Approximately half of all tows in 2008 were relocation tows under 10,000 pounds, and approximately half were safety tows or other tows. Dazzo's agreed that the Commission's insurance requirements were the same for both relocation towing and safety towing.

The list of 2008 itemized expenses include "truck lease flat" and "#35 lease". These refer to trucks that are not used primarily for relocation tows under 10,000 pounds. Ms. Nezrick estimated that approximately one-third of the tows by those trucks were relocation tows under 10,000 pounds. An $18,000 expense is listed for "#35 lease."

More than two-thirds of the fuel expense is allocated to relocation towing because the two relocation tow trucks are constantly patrolling approximately 100 lots. The phone and utility expenses for relocation are one-third of the total expense for those items. Expenses listed for cell phones, insurance, uniforms, fuel, and clerical

attributable to relocation are two-thirds of the total expense for those items. All other listed expenses are 100% attributable to the relocation towing operation. Some expenses are those associated solely with the two trucks used primarily for relocation towing.

C. Operating Ratio

Dazzo's presented its operating ratio for 2008 and the projected ratios for 2009. An operating ratio less than 100 reflects revenues exceeding expenses, and an operating ratio of more than 100 reflects that expenses exceed revenues, or that the company is operating at a loss. The operating ratio is calculated by dividing expenses by revenues. The revenues and expenses stated in the 2008 Annual Report produce a ratio of 127.7. Using rates of $170 per tow and $40 for storage, the projected combined operating ratio for 2009 is 99.3. The towing ratio is 97.52 and the storage ratio is 239.75. Using rates of $190 per tow and $45 for storage, the projected combined ratio is 88.2. The towing ratio is 86.6 and the storage ratio is 198.9.

Dazzo's requested that the Commission take administrative notice of the range of operating ratios the Commission has considered appropriate in prior rate proceedings. However, neither the CALJ nor the Staff was aware that the Commission has ever said what it considered an appropriate operating ratio. Petitioner contends that any ratio 90 or above is a "workable target", although testimony had been presented in other cases that the ratio should be lower than 90. Dazzo's supported its position by citing news releases from railroads and other materials defining operating ratios and expressing satisfaction with 2005 operating ratios from 73.7% to 90%.

Substantial consideration was given as to whether an expert was required to define operating ratios and attest to their calculations. Dazzo's asserted that no expert testimony was required on operating ratios. Staff agreed that expert testimony was not required as the operating ratio was merely obtained by dividing expense by revenue.

STAFF'S POSITION

Initially Staff stated that it objected to the requested increase to $190 and $45 because it questioned some of the expense allocations. Staff made specific reference the $18,000 expense allocation for "#35 lease" as objectionable. Petitioner subsequently amended its itemized expenses to exclude the $18,000 as a relocation towing expense. After certain allocations were revised and new projections were submitted based upon the revised allocations, Staff stated it believed there was enough evidence in the record to support the requested increase.

PROPOSED ORDER

Staff and Petitioner filed notices waiving their rights to a Proposed Order.

COMMISSION ANALYSIS AND CONCLUSION

Dazzo's Auto Repair, Inc. requests authorization to charge $190 per relocation tow and $45 for storage per day. The requested rates of $190 and $45 do not exceed the presently established maximum allowable rates of $196 and $45. The present maximum allowable rates were calculated in RTV-A-42/43. The Commission Order in RTV-A-42/43 entered July 11, 2007 found the mean average and, thus, the maximum allowable rates, to be $196 for towing and $45 for storage after the first 24 hours. By Commission Order entered on October 15, 2008 in RTV-A-45, the Commission reaffirmed the $196 and $45 maximum rates and granted an industry-wide towing rate increase to $170 and storage rate increase to $40.

The Petitioner presented evidence that its expenses substantially exceeded its revenues in 2008 both for its relocation towing operation as well as its storage operation. In 2008, Petitioner was still charging $125 per tow and $25 per storage day until the Commission entered its October 15, 2008 Order authorizing $170 per tow and $40 per storage day. Projections presented show that if tows and storage for the full year had been charged at $170 per tow and $40 per storage day there would still have been substantial losses for the storage operation and a $5,000 towing operation profit on an investment of $214,000 in expenses. Projections show continued substantial storage operation loss even at a rate of $45 per storage day, and a $22,000 towing operation profit after expenses of $214,000.

In summary, Petitioner has shown actual economic hardship and the potential for continued economic hardship if the rate increase is not granted. Petitioner has demonstrated a need for an increase in the rates for both towing and storage, and the requested rates are within the maximums allowed. Rates of $190 per tow and $45 per storage day are reasonable. For these reasons, the Commission approves the requested increase.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, after reviewing the entire record and being advised in the premises, is of the opinion and finds that:

1. the Commission has jurisdiction of the subject matter and the Parties;

2. the recitals of fact set forth in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact;

3. the mean average of the five highest rates for police tows within the territory to which the Law applies has been previously found by the Commission, in RTV-A-42/43 Consolidated, to be $196;

4. the record evidence in this proceeding establishes that the rate of $170 per tow is not sufficient to allow Petitioner to operate at a reasonable profit or to avoid a loss; it is fair and reasonable to increase the towing fee paid by those who trespass on private property to $190;

5. the Petitioner's request comports with Chapter 625 ILCS 5/18a-200(6) in that the increased tow rates are not greater than the previously calculated mean average of the five highest police tow rates in the applicable territory, as stated in Finding 3 above;

6. the mean average of the five highest rates for storage in connection with police tows within the territory to which the Law applies has been previously found by the Commission, in RTV-A-42/43 Consolidated, to be $45;

7. the evidence presented in this case establishes that the rate of $40 per day after the first 24 hours of storage is not sufficient to meet Petitioner's expenses incurred in storage of the vehicles; it is fair and reasonable that the storage charges be increased from $40 to $45; and

8. the rate increase granted herein shall apply only to Petitioner who is licensed by the Commission and operating within the jurisdiction of this Illinois Commerce Commission.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that pursuant to Chapter 625 ILCS 5/18a-200(6) of the Illinois Commercial Relocation of Trespassing Vehicles Law, upon entry of this Order, the reasonable rate for the removal of trespassing vehicles from private property by Dazzo's Auto Repair Inc. be increased from $170 per tow to $190 per tow.

IT IS FURTHER ORDERED that storage fees for relocated vehicles by Dazzo's Auto Repair Inc. be increased from $40 per day after the first 24 hours to $45 per day after the first 24 hours.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18a-103 of the Illinois Commercial Relocation of Trespassing Vehicles Law, this is a final Order subject to the Administrative Review Law.

By Order of the Commission this 2nd day of December, 2010.

[redacted]

MANUEL FLORES
ACTING CHAIRMAN