STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Protective Parking Service Corporation An Illinois Corporation d/b/a Lincoln Towing Service	:	RTV-A-51
Petition for Relocation Towing and Storage Rate Increase	:	

ORDER

By the Commission:

PROCEDURAL HISTORY

On September 15, 2008, Protective Parking Service Corporation d/b/a Lincoln Towing Service ("Petitioner") filed a Petition with the Illinois Commerce Commission ("Commission") for a tow rate increase pursuant to the provisions of Chapter 625 ILCS 5/18a-200(6) of the Illinois Commercial Relocation of Trespassing Vehicles Law ("Law"). Petitioner seeks an increase in relocation towing rates for vehicles weighing 10,000 pounds or less ("light duty") from $170 to $196 per tow and an increase in storage rates from $40 to $45 per day after the first 24 hours.

Pursuant to notice given in accordance with the Law and rules and regulations of the Commission, and after a number of continuances requested by Petitioner, the matter came on for evidentiary hearings before a duly authorized Administrative Law Judge ("ALJ") of the Commission at the Commission's office in Chicago, Illinois on September 3, 2009, January 13, 2010. Petitioner appeared by counsel and presented the testimony of Chris Dennis, President of Petitioner, Dawn Hughes, co-owner of DVH Secretarial Service, and Robert Munyon, manager of Petitioner. Wil Nagel and Jennifer Anderson appeared on behalf of Commission Staff. There were no Intervenors in the proceeding. At the conclusion of the January 13, 2010 hearing, the record was marked "Heard and Taken."

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.

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. 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.

A. Revenues

Dawn Hughes testified that she is a shareholder and officer of DVH Secretarial Services ("DVH"). DVH does day-to-day accounting, prepares financial statements and balance sheets for an individual company's accounting firm. Hughes is not a Certified Public Accountant, but she has been doing accounting work for 17 years. DVH was retained by Petitioner to prepare the exhibits that were presented in this case.

Hughes reviewed the Petitioner's historical relocation towing revenues from its 2008 Annual Report filed with the Commission. Hughes testified that Petitioner's 2008 total relocation operating revenues, including towing and storage, for vehicles weighing 10,000 pounds and under was $3,084,429. Using the reported revenues, Hughes calculated 2009 projected revenues at the requested rates of $196 per tow and $45 per day for storage to arrive at $3,555,131.

B. Expenses

Hughes also reviewed Petitioner's expenses as reported in its 2008 Annual Report. Petitioner's total relocation operating expenses, including towing and storage, for light duty vehicles was $3,128,992. Hughes calculated 2009 projected operating expenses for towing and storage of all vehicles by using data provided by Petitioner for the first six months of the year, and then doubling that amount. The projected expense for towing and storage of all vehicles for 2009 is $3,427,000.

Chris Dennis, Petitioner's President, testified that if the Commission grants an increase in towing and storage rates for light duty vehicles, Petitioner would increase drivers' pay by $10 per tow for all vehicles, both light and heavy duty. Based on the

number of tows in 2008 for all vehicles, an increase in drivers' pay would result in an additional $188,970 to Petitioner's expenses. The projected 2009 expense for towing all vehicles ($3,427,000) plus the increase in the drivers' pay ($188,970) result in a total of $3,615,970 as the overall 2009 projected operating expenses.

Hughes testified that she used the 2009 overall projected expenses as a base to determine the 2009 projected expense for towing and storage of vehicles 10,000 pounds and under. The 2009 projected expense for towing light duty vehicles is $3,126,925 and the projected expense for storage is $447,909.

Robert Munyon testified that he is employed by Petitioner as the day-to-day manager. He has worked for Petitioner for 24 years. He stated that the relocation towing business is seasonal and that revenues in the first half of the year are typically lower than those for the second half of the year. Although revenues are lower in the first half of the year, expenses remain about the same throughout the year. To the extent business is slower the first half of the year, drivers' commissions would go down while other fixed expenses would remain the same. According to Munyon, Petitioner is aware that by projecting the 2009 expenses based on the first half of the year, the projected revenues for the entire year might be understated in favor of a rate increase.

Munyon believes Petitioner performed fewer tows in 2009 than it did in 2008, which would result in a decrease in revenues from 2008. Nonetheless, expenses like fuel would remain the same because drivers are still patrolling lots for trespassing vehicles.

Munyon further testified that Petitioner's insurance, salaries and utility bills are fixed expenses that would not fluctuate much over the course of a year. When asked on cross-examination by Staff about specific increases in expenses, Munyon could not provide exact figures. Munyon also did not know the exact number of employees in 2008, but estimated that Petitioner had 25 employees in 2008, 2009 and 2010.

Munyon described a number of actions Petitioner has taken to reduce expenses, such as maintaining vehicles better so they use less fuel, becoming more energy efficient in the office by lowering temperatures in the winter and increasing the temperature in the summer, changing insurance providers, and installing energy efficient lighting. Petitioner has considered reducing the number of employees, but has tried to avoid lay offs.

C. Operating Ratio

Hughes testified that Petitioner's operating ratio is calculated by dividing the operating expense by the operating revenues of a given year. A company is breaking even if its operating ratio is 100. An operating ratio over 100 means a company is operating at a loss, while a ratio less than 100 means a company is making a profit. The Petitioner's 2008 operating ratio was 99.

If the Commission were to grant the rate increase, Petitioner's operating ratio for towing vehicles 10,000 pounds and under would be 89 based on the 2009 projected data, which includes the increase in revenue and the drivers' pay increase in expenses.

The Petitioner's operating ratio for storage of vehicles 10,000 pounds and under based on 2009 projected data is 1,224. Petitioner's operating ratio, based on 2009 projected data, for towing and storage combined is 100.6. Petitioner asserts that even with the requested rate increase, it would not be making a significant profit on the towing and storing of vehicles 10,000 pounds and under.

STAFF'S POSITION

Staff actively participated in the hearings held herein, cross-examining all witnesses, and verifying the accuracy of the information and data contained in Petitioner's testimony and Exhibits. Staff agreed that the formula used by Petitioner to determine its operating ratio is the standard formula used in the industry.

On Cross-Examination, Staff pointed out that even if the Commission were to grant a rate increase, Petitioner would not be operating its relocation towing and storage of vehicles 10,000 pounds and under profitably.

COMMISSION ANALYSIS AND CONCLUSION

The Law prohibits the relocation towing rates from exceeding the mean average of the five highest police tow rates. Petitioner requests a rate equal to the mean average of $196 per tow and mean average of $45 storage per day as previously calculated in RTV-A-42/43 and as affirmed in RTV-A-45.

The evidence indicates that, at the current towing and storage rates, Petitioner earned a one percent profit on an investment of $3,128,992 in expenses in 2008. Even if the requested rate increase is granted, Petitioner will operate at a loss of nearly one percent.

In summary, the requested increase falls within the parameters of the Law. Additionally, Petitioner has shown actual economic hardship and the potential for continued economic hardship if the rate increase is not granted. 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 $196;

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 Protective Parking Services Corporation d/b/a Lincoln Towing Service be increased from $170 per tow to $196 per tow.

IT IS FURTHER ORDERED that storage fees for relocated vehicles by Protective Parking Services Corporation d/b/a Lincoln Towing Service 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