STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Community Towing, Inc.,	:	RTV-A-52
Naperville Towing Service, Inc.,	:	
North Shore Towing, Inc.,	:	
Phillips Towing Service, Inc.,	:	
Ray's Towing & Service, Inc.,	:	
Rendered Services, Inc.,	:	
Rokaitis Industries, Inc.,	:	
S&S Towing, Inc., and	:	
SMJ Towing, Inc.	:	
	:	
Petition for Relocation Towing and Storage Rate Increase	:	

ORDER

By the Commission:

PROCEDURAL HISTORY

On September 15, 2008, Naperville Towing Service, Inc., North Shore Towing, Inc., Phillips Towing Service, Inc., Rendered Services, Inc., Rokaitis Industries, Inc., S&S Towing, Inc., and SMJ Towing, Inc. 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"). On or about October 7, 2008, Ray's Towing & Service, Inc. filed a Motion to Participate as Party Petitioner. On or about March 17, 2009, Community Towing, Inc. also filed a Motion to Participate as Party Petitioner (Collectively "Petitioners"). A duly appointed Administrative Law Judge ("ALJ") of the Commission granted the Motions of Ray's Towing & Service, Inc. and Community Towing, Inc. Area Towing, Inc., Midnight Services, Inc. and Northwest Recovery, Inc. were originally Petitioners under this docket but their Petitions were subsequently withdrawn. The existing and remaining nine Petitioners seek an increase in relocation towing rates 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 Petitioners, the Petitions came on for hearings before the duly authorized Chief Administrative Law Judge ("CALJ") of the Commission at the Commission's offices in Springfield and Chicago, Illinois via video-conference on November 18, 2008, March 18, 2009, July 24, 2009, and September 2, 2009. Petitioners appeared by counsel and presented the testimony of Douglas Trew, Transportation Consultant expert witness, David Mumbower, President of S&S Towing, Inc., James Damion, General Manager of Rendered Services, Inc. and William Howard, President of Naperville Towing, Inc. There were no Intervenors in the proceeding. At the conclusion of the September 2, 2009 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.

PETITIONERS' 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. Petitioners are requesting that the Commission increase the commercial relocation towing rate for automobiles by a total of $26, from $170 to $196, which is within the currently established maximum rate ceiling and further, is in line with increases historically granted by the Commission. Petitioners' request for the $45 storage rate is also below that allowed under the Law.

A. Expert Witness

Douglas Trew is a Transportation Consultant retained by Petitioners as an expert witness in this matter. He received a Bachelor's degree in Accounting and a Masters of Business Administration degree from the University of Illinois. He was previously employed by the Illinois Commerce Commission where his duties included auditing relocation towers and testifying in relocation towing rate-making cases. After leaving the Commission, Trew has testified as an expert witness on behalf of towing companies in at least five other rate cases.

He testified that Commission practice has been that if the Petitioners in a rate case collectively performed 85% of all relocator tows by relocators licensed by the Commission, then any increase granted to those Petitioners would be granted to all licensed relocators. Trew determined from the 2007 Annual Report data that the present Petitioners collectively performed 46.45% of the total number of relocation tows of vehicles weighing less than 10,000 pounds. Accordingly, Petitioners ask for the increase only on behalf of themselves.

Trew reviewed the financial records of each Petitioner named and involved at issue in this case. He also met with the owners and management of each Petitioner regarding the operations, revenues, and expenses of each company. He also reviewed the Annual Reports and Amended Annual Reports each of the Petitioners filed with the Commission, as they are required to do under the Law.

Trew testified as to specific expense line items that have substantially increased for members of the towing industry over the past several years. Even with multiple increases in towing and storage rates, the relocation towing industry and especially Petitioners, have failed to keep pace with dramatic increases in expenses. The number of relocation vehicles towed and stored has substantially decreased, indicating a drastic reduction in revenue units. Over the last four reporting years, Petitioners had a collective total operating ratio of 119.14% in 2005, 122.97% in 2006, 118.1% in 2007, and 123.33% in 2008, while the relocation towing industry has also shown a negative operating ratio of 106.57% in 2005, 109.1% in 2006, 111.74% in 2007, and 119.05% in 2008. An operating ratio of less than 100 signifies operating at a profit while an operating ratio of more than that signifies operating at a loss. Petitioners continue to operate at an $18 loss for every dollar they bring in as revenue.

Relying on the Amended Annual Reports of Rokaitis Industries, Inc. filed with the Commission for 2005, 2006 and 2007, Trew noted that while the original Annual Reports indicated Rokaitis was operating at a profit, their amended profit and loss statements showed they were operating at a loss. He found that this was because Rokaitis had not allocated a percentage of its general costs to its relocation operations in its original Annual Report. Trew suggested that if one-third of a towing company's tows are relocation tows of vehicles under 10,000 pounds, then one-third of all overhead should be allocated as a cost of such relocation towing.

The Commission's Annual Report form does not prescribe a method of allocation of general overhead expenses. Therefore, relocator tow companies each use the method that they believe is correct. Some allocate expenses as Trew did and some do not. Of the present Petitioners, Phillips Towing is the only tower whose business is entirely relocation towing. All others do non-relocator tows in addition to relocation towing. Therefore, Phillips would necessarily allocate all overhead to relocation towing, and the others should allocate their overhead proportionately between relocator tows and other income producing activity.

Trew testified that there has been a decrease in the number of tows both for the industry as a whole as well as for the present Petitioners collectively. He noted that the total number of relocator tows less than 10,000 pounds industry-wide was 108,765 in 2005, 105,819 in 2006, and 97,794 in 2007. There has been a reduction of approximately 10% to 11% in the number of relocation tows under 10,000 pounds from 2005 to 2007, based on the Commission's Annual Report. Trew characterized this as a substantial decrease. Trew noted that many of the vacant lots in Chicago have been put into use, which may account for some of the reduction in tows. He also suggested the economy might make people more aware of the costs and consequences of improper parking and act to avoid such costs.

While the total number of tows for the all licensed relocators was down, the number of tows for Petitioners collectively increased from 36,292 in 2005 to 38,537 in 2006 and then a slight decline to 38,374 in 2007. Trew attributed Petitioners' collective increase to Rokaitis picking up business from Brian & Michael Towing, which had been making about 10,000 or 11,000 tows per year, but had its license revoked by the Commission by an Order entered October 10, 2008 in 130-RTV-R Sub 4.

Trew also testified regarding a decrease in the volume of vehicles subject to storage charges. The number of towed vehicles which remained in the custody of the relocation tower more than 24 hours, and were therefore charged for storage, decreased approximately 30% for the industry as a whole and for Petitioners collectively. For the industry, the numbers were 22,669 in 2005, 18,991 in 2006, and 15,530 in 2007. For Petitioners collectively, the numbers were 8,218 in 2005, 7,129 in 2006, and 5,765 in 2007.

He further testified that Petitioners' collective revenue was $4,870,000 in 2005, $5,284,000 in 2006, $5,729,000 in 2007, and $6,782,199 in 2008. Trew stated that part of the increased revenue in 2007 was reasonably attributable to the rate increase granted in RTV-42/43 Consolidated, which went into effect in July 2007. Of the present Petitioners, Phillips, Rendered, Rokaitis, S & S and SMJ received an increase in 2007. Trew believes the revenue increase in 2008 was also due to the rate increase granted by the Commission.

However, Trew concluded Petitioners' revenues still did not meet expenses as overhead had increased also. The average tow expense per relocation tow was $172.38 in 2005 when the average revenue per tow was $144.69, the average expense was $181.74 in 2006 when average revenue was $147.79, and average expense was $192.46 in 2007 when average revenue was $162.96. In 2008, revenue was $164.90 per tow when the expense per tow was $203.37, $38 more than revenue. Trew attributed this 2008 expense per tow in part to a "high spike" in fuel costs, although fuel prices did go down in the latter part of 2008.

Although the price of gasoline and diesel fuel has fallen, Petitioners who were operating at a negative operating ratio were caught in a dramatic rise in fuel expense when the 2007-2008 fuel price increases occurred and have not been able to recoup

the expense. Several of the Petitioners in this rate case were Petitioners in RTV-A-42/43. At the end of that matter, the price of gasoline rose 37%. These companies were already operating at negative operating ratios and the increase in fuel cost negated any increases in rates. Even with the decline in gasoline prices at the end of 2008 through February 2009, the weighted average price per gallon of gasoline paid by the Petitioners in RTV-A-42 since July 2007 showed a 78% increase in fuel prices since January 2005.

Petitioners' operating ratios and all licensed relocation towing companies' operating ratios for the years 2005, 2006, and 2007 have consistently shown a substantial loss over the last several years. Additionally, Petitioners' Exhibit 11 shows the full year 2008 data with a deficit operating ratio of 123.33%. Without an influx in net operating profits, these companies must subsidize their relocation towing operations with non-relocation towing operations or influx of cash from loans by owners or financial firms. Petitioners' net income loss illustrated by operating ratios exceeds the relocation towing industries' net income loss, further illustrating the necessity for rate relief. A rate increase of $26 per tow will increase Petitioners' operating ratio to 114.77 and will improve their operating ratios by approximately 5%. Trew stated that even with the requested rate increase, Petitioners would not be close to the recommended operating ratio of 85%. In Trew's opinion, the rate increase requested by Petitioners is necessary, fair and reasonable, and clearly within the parameters of the Illinois Commercial Relocation of Trespassing Vehicles Law.

Regarding storage rates, Trew was of the opinion that the rate should be increased from $40 to $45. He projected that a $5 increase would net Petitioners collectively $40,000 more per year.

B. Representative Petitioner Towing Company Testimony.

As support for the Petition, and in corroboration of Mr. Trew's testimony, Petitioners offered testimony from three (3) of the Petitioners: S&S Towing, Inc., Rendered Services, Inc., and Naperville Towing Service, Inc.

1. S & S Towing, Inc.

David G. Mumbower, President of S&S Towing, Inc. in Melrose Park, Cook County, testified he had been in business as S&S Towing, Inc. for 30 years. Approximately 77% of his business is private trespass towing. He described the trend of his relocation towing business as sliding downwards over the past several years. He verified that in 2005 S&S had 6,885 tows, which decreased to 6,766 in 2006 and decreased again, approximately 20%, down to 5,416 in 2007. Mumbower further stated that he and his partner have contributed money to the company to keep it going. He believes the reduction in tows was a result of a decreased volume of cars coming into the area. Also contributing to loss of revenue is the dwindling supply of junk cars. He believes they are using more fuel because the drivers are spending more time patrolling

and travelling more miles looking for illegally parked cars. He testified that a $26 increase would be helpful to his company.

2. Rendered Services, Inc.

James Damion is affiliated with Rendered Services, Inc. He testified that Rendered operates across the entire City of Chicago. Damion agreed there has been a consistent drop in the number of tows in the Chicago area. This has been caused by general gasoline price increases, greater number of licensed carriers competing for business, possibly fewer trespassing vehicles, and the consequences of extreme violence in some areas of the City. Rendered has always had to pay its drivers more money because it is difficult for them to find drivers willing to work under violent circumstances. The $26 rate increase would assist in minimizing losses. Rendered owns a substantial amount of trucks but cannot staff them due to increasing insurance rates. Damion echoed the testimony of Mumbower of S&S Towing, Inc. as to the decrease in available junk cars.

3. Naperville Towing Service, Inc.

William Howard, President of Naperville Towing Service, Inc., testified that his company operates in an unincorporated area of Naperville and typically operates within a 15-mile radius. Naperville has been in business for 30 years, and does tows for the general public, and commercial towing for car dealerships, independent garages, fleet companies, and police departments. Howard has seen an increasing number of towing companies that he does not recognize. He believes that people are paying more attention to the costs of improper parking and are being more careful about where they park. Naperville runs eight tow trucks on diesel fuel and one on gasoline. He stated that diesel fuel is consistently priced higher than gasoline. Insurance costs about $100,000 per year for each truck. Howard stated that the $26 rate increase would help allay the increasing costs of fuel and insurance.

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 Petitioners' testimony and Exhibits.

On Cross-Examination, Staff pointed out that Community Towing, Inc. had a $673 average cost per tow in 2005, while others averaged approximately $150 per tow and the average of all Petitioners was stated to be $149.91. Trew attributed the $673 average tow expense to the costs of Community growing their operation and the fact that they performed only 22 tows as a relatively new relocator in 2005.

Staff inquired why the 2007 cost per tow for Petitioners averaged $192 when the industry average was $175. Trew stated that of approximately 64 licensed relocators, the nine Petitioners perform 46% of all tows, suggesting that the larger operations had a

greater average expense. Staff also noted that Petitioners' Exhibits represent that the difference between the average expenses per tow for Petitioners and industry is greater than the difference between their average revenue per tow. Trew again replied that the Petitioners have greater average expenses than the industry as a whole because Petitioners have larger facilities, multiple storage places, and are open 24 hours a day. He noted that there are economies of scale, but also different operations have different expenses, and weighted averages differ accordingly.

Staff presented a report of gas prices by zip code prepared by the State of Illinois to point out that fuel costs may vary depending on area of operation. Trew agreed the fuel expense of each relocator could vary due to differences in fuel costs in different areas of operation, although they do not necessarily buy their fuel from the closest supplier.

Staff also noted that Petitioner North Shore Towing, Inc., had an operating ratio of 78.59% according to its 2007 Annual Report Data. Trew agreed that North Shore Towing, Inc. had a good operating ratio.

APPLICATION OF RATE RELIEF INCREASE REQUESTED

A relocation towing rate increase shall only apply to the named Petitioners, unless those Petitioners comprise and show data from at least 85% of the relocation towing industry. Data compiled herein represents less than 47% of the industry. Therefore, this rate increase shall only apply to the nine named Petitioners.

COMMISSION ANALYSIS AND CONCLUSION

This case involves Petitions filed by nine relocators for an increase in tow rates from $170 to $196, and an increase in the storage rate from $40 to $45 per day for each day following the first 24 hours after the tow.

The Law prohibits the relocation towing rates from exceeding the mean average of the five highest police tow rates. Petitioners request 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 the costs to perform relocation tows are increasing; that collectively, Petitioners' expenses exceed their revenues; and their operating ratios, collectively, are well below recommended industry standards.

In summary, the requested increases fall within the parameters of the Law. Additionally, Petitioners have 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.

PROPOSED ORDER

A Proposed Order granting the Petition was filed and served upon all Parties and Staff on October 4, 2010. Staff and Petitioners filed notices waiving their rights to file a Brief on Exceptions.

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 Petitioners 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 Petitioners' 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 Petitioners' 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 record evidence presented in this case establishes that Petitioners' relocation towing activity constitutes less than 47% of the entire relocation towing industry; therefore, the rate increases granted herein shall apply only to the nine Petitioners who are 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 the nine licensed relocators named herein as Petitioners be increased from $170 per tow to $196 per tow.

IT IS FURTHER ORDERED that storage fees for relocated vehicles by the nine licensed relocators named herein as Petitioners 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