STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Area Towing, Inc., E&R Towing and Garage, Inc., and NRI, LLC	:	RTV-A-53
Petition for Relocation Towing & Storage Rate Increase	:	

ORDER

By the Commission:

PROCEDURAL HISTORY

On November 13, 2009, NRI, LLC ("NRI") 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 January 13, 2011, Area Towing, Inc. ("Area") and E&R Towing and Garage ("E&R") filed a Motion to Participate as Petitioners. A duly appointed Administrative Law Judge ("ALJ") of the Commission granted the Motion of E&R and Area. The 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 twenty-four (24) hours a vehicle is towed. The Petition for towing and storage rate increases is uncontested.

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 Petition came on for evidentiary hearing before the duly authorized Chief Administrative Law Judge ("CALJ") of the Commission at the Commission's offices in Springfield and Chicago, Illinois on March 1, 2012. Petitioners appeared by counsel and presented the testimony of Douglas Trew, Transportation Consultant expert witness on March 1, 2012. There were no intervenors and no objectors to the Petition. At the conclusion of the March 1, 2012 hearing, the record was marked "Heard and Taken."

APPLICABLE 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 allowed under the Law.

A. Expert Witness Opinion

(a) Background and History of Rate Increases.

Douglas Trew is a Transportation Consultant retained by Petitioners as an expert witness in this matter. He received a Bachelor's in Accounting and an MBA degree from the University of Illinois. While employed at the Illinois Commerce Commission as Director of Research and Analysis, Transportation Division, he gained a great deal of experience in towing rate cases. Trew testified on behalf of Commission Staff in Case No. RTV-A-36, supporting a towing rate increase from $105 to $125, and an increase in storage rates from $15 to $25. [Commission Order entered April 24, 2002.] After leaving the Commission, Trew testified as an expert witness on behalf of six (6) towing companies in Case No. RTV-A-37, which involved a request for an increase in towing rates from $125 to $150, and an increase in storage rates from $25 to $37. As this latter case involved towing companies representing less than 85% of the relocation towing industry, the rate and storage increases granted there applied only to the actual six (6) named petitioning tow companies. [Commission Order entered August 18, 2004.] Trew testified as an expert witness on behalf of two (2) different towing companies in Case No. RTV-A-39 and RTV-A-40 (Consolidated), supporting an increase in towing and storage rates for those two Petitioners from $125 to $150, and from $25 to $27, respectively. [Commission Order entered June 7, 2006.] Finally, Trew testified as a consulting witness on behalf of three (3) relocation towing companies not a

party to the earlier rate increase cases in Case Nos. RTV-A-42 & 43 (Consolidated), seeking the identical increase in towing/storage rates to $170/$40. [Commission Order entered July 11, 2007.] As indicated, in all five of the aforementioned matters, the Commission granted the Petitions seeking the higher towing and storage rates, based upon substantial evidence warranting the increases.

(b) Evidence of Mean Average of Five Highest Police Towing Rates.

As set forth above, the Commission has the authority to set reasonable rates for commercial relocation towing and storage rates. 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 twenty-four (24) hours. Petitioners are requesting that the Commission increase the commercial relocation towing rate for automobiles by a total of $26, which is within the currently established maximum rate ceiling and further, is in line with increases historically granted by the Commission. The requested rates of $196 for towing and $45 for storage are allowable under the Law

(c) Evidence of Increased Costs to Support the Rate Increase.

Trew reviewed the financial records of each Petitioner named and involved 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 decreased, indicating a reduction in revenue units. Over the last three reporting years, Petitioners had a collective total operating ratio of 130.93% in 2008[1], 105.38% in 2009, 104.49% in 2010, while the relocation towing industry has also shown a negative operating ratio of 102.77% in 2009. 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 a loss for every dollar they bring in as revenue.

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

[1] NRI, LLC was not licensed until March, 2009, and thus it did not file an Annual Report in 2008.

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 2008, 2009, and 2010 have consistently shown a substantial loss over the last several years. Additionally, Petitioners' Exhibit 4 shows the full year 2010 data with a deficit operating ratio of 104.49%. 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. These companies' relocation towing operations either must be subsidized by their non-regulated towing operations, or other business or they must be subsidized by infusions of capital either from their owners' pockets or from borrowing. A rate increase of $26 per tow will improve Petitioners' operating ratio from a projected 114.94% to 104.49% and thus will improve their operating ratios by approximately 10%. 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.

B. 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, justifying the increase. Data compiled herein represents less than 10% of the industry (and still less than 85% of all relocators' tows when adding those companies previously receiving rate increases); therefore this rate increase shall only apply to the three named Petitioners, with the remaining towing companies limited to charging lower rates until such time as they file Petitions seeking rate relief.

C. Representative Petitioner Towing Company Testimony.

As support for the Petitions, and consultant Trew's testimony herein, Petitioners offered corroborative testimony from two (2) of the Petitioner relocation towing companies: E & R Towing and Garage, Inc. and NRI, LLC.

1. E&R Towing and Garage, Inc.

Michael Kroeger testified that he is Sales Monitor Manager at E&R and he supervises the relocation operations of the company. He testified that it is more expensive to run a relocation business than it is to run commercial towing operations because of the additional costs of labor, licensing, and posting and maintaining signs.

While only one percent of E&R's operations are relocation towing, that aspect of its business has not been profitable.

2. NRI, LLC

Warren Crum testified that he is one of the owners of NRI. NRI received its relocation license from the Commission in March 2009. Since that time, its expenses have outpaced its revenues. Crum stated that NRI is patrolling lots more to tow fewer cars. Patrolling lots increases expenses such as fuel and wear and tear on the tow trucks. In many instances, NRI does not recoup expenses incurred by posting and maintaining signs at all of its contracted lots. Crum testified that NRI currently is not making a profit.

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. Staff voiced no objections to granting the relief requested by Petitioners.

PROPOSED ORDER

A Proposed Order granting the Petition was filed and served upon all Parties and Staff on July 2, 2012. On July 12, 2012, Staff filed a Brief on Exceptions indicating a scrivener's error that has been corrected in this Order.

COMMISSION ANALYSIS AND CONCLUSION

This case concerns Petitions filed by three 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 twenty-four (24) hours after the tow.

The Law prohibits the relocation towing rates from exceeding the mean average of the five highest police tow rates. At the time of the hearings herein, the mean average towing rate for the five highest police tow rates was $196. The mean average storage rate for the five highest police tows was $45. Granting Petitioners' request would not contravene the Law.

Information acquired from Petitioners indicates that the costs to perform relocation tows are increasing. Moreover, data from 2008, 2009, and 2010 (actual and projected) indicate that the Petitioners' expenses are outpacing their revenues. Finally, the Petitioners' operating ratios 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, should the rate increase not be 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 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 10% of the entire relocation towing industry; therefore, the rate increases granted herein shall apply only to the three (3) 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 three (3) licensed relocators named herein as Petitioners be increased from $170 per tow to $196 per tow.

IT IS FURTHER ORDERED that it is fair and reasonable that storage fees for relocated vehicles by the three (3) licensed relocators named herein as Petitioners be increased from $40 per day after the first twenty-four (24) hours to $45 per day after the first twenty-four (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 15th day of August 2012.

[redacted]

DOUGLAS P. SCOTT
CHAIRMAN

JUDGE

SECTION CHIEF

ORDERS SUPERVISOR