STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Rendered Services, Inc., SMJ Towing, Inc., North Shore Towing, Inc., Joie Enterprises, LLC d/b/a Green Machine Towing, Inc., and Rokaitis Industries, Inc., Petitioners. Petition for a Relocation Towing Rate Increase	:	RTV-A-54

ORDER

By the Commission:

PROCEDURAL HISTORY

On or about June 5, 2012, Phillips Towing Service, Inc. ("Phillips") Rendered Services, Inc. ("Rendered"), SMJ Towing, Inc. ("SMJ"), North Shore Towing, Inc. ("North Shore"), Joie Enterprises, LLC d/b/a Green Machine Towing ("Green Machine") and Rokaitis Industries, Inc. ("Rokaitis") filed a Petition with the Illinois Commerce Commission ("Commission") for a towing 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 July 19, 2013, Phillips' Motion to Withdraw from the case was granted. The Petitioners seek an increase in the maximum relocation towing rates they are allowed to charge from $196 to $216 per tow.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, and after a number of continuances requested by Petitioners, the Petition came on for the final 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 August 21, 2013. There were a number of preliminary conferences and hearings preceding the final evidentiary hearing which addressed various issues pertaining to Staff Data Requests, which were ultimately all resolved. Petitioners appeared by counsel and presented the testimony of Douglas Trew, Transportation Consultant and expert witness, on August 21, 2013. Petitioners also provided the testimony of officials from North Shore Towing, Inc., Rendered Services, Inc., and Green Machine Towing, Inc. There were no Intervenors and no objectors to the Petition. Staff presented no evidence or witnesses in objection to the proposed increase. Subsequent to the close of the August 21, 2013 hearing, Petitioners requested that the record be marked "Heard and Taken."

ILLINOIS COMMERCIAL TRANSPORTATION LAW APPLICABLE

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.

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 maximum police towing rate, established in 2007 by the Commission in RTV-A 42 and RTV-A-43 Consolidated, is $196.00. Petitioners presented evidence showing that the current mean average of the five highest police towing rates was $238.20, or $42 more than the mean average set in 2007. However, Petitioners are requesting that the Commission adjust the maximum police towing rate and increase the commercial relocation towing rate that Petitioners may charge for automobiles by a total of $20, from $196 to $216, which is within the new maximum rate ceiling established by the evidence adduced at the hearing. Moreover, the requested increase of approximately 10 percent is not excessive and is in line with increases historically granted by the Commission.

A. Expert Witness Opinion

(a) Background and History of Rate Increases.

Douglas W. Trew ("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 ("Commission") as Director of Research and Analysis, Transportation Division, he gained a great deal of experience in towing rate cases. While at the Commission, Trew participated in relocation towing rate increase cases. In Docket No. RTV-A-36, Trew testified on behalf of Commission Staff, 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 served as an expert witness on behalf of six towing companies in Docket 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 named petitioning tow companies. [Commission Order entered August 18, 2004.]

In Docket Nos. RTV-A-39 and RTV-A-40 (Consolidated), Trew testified as an expert witness on behalf of two different towing companies, 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.] Trew also testified as a consulting witness on behalf of three relocation towing companies not a party to the earlier rate increase cases in Docket Nos. RTV-A-42 & 43 (Consolidated), seeking the identical increase in towing/storage rates to $170/$40. [Commission Order entered July 11, 2007.]

Trew also testified as a consulting witness on behalf of nine relocation towing companies in Docket No. RTV-A-52, supporting an increase in towing and storage rates for the nine Petitioners from $170 to $196 and from $40 to $45, respectively. [Commission Order entered December 2, 2010.] Most recently, Trew testified as a consulting witness on behalf of three relocation towing companies in Docket No. RTV-A-53, supporting an increase in towing and storage rates for the three Petitioners from $170 to $196 and from $40 to $45, respectively. [Commission Order entered August 15, 2012.]

As indicated, in all 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 recognized methodology for relocators to adjust their prices to keep up with rising costs is via the established ratemaking procedures before this Commission. 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 police tow rate is what someone would pay to get their vehicle released from a police impound. The tow rate could include (and often does) any added fees allowed by the municipality. The police towing rate is thus the minimum fee it would cost to redeem one's vehicle after a police tow, even if the rate includes other added charges, such as storage or an administrative fee. The issue of what a particular police jurisdiction charges as a minimum tow fee has been addressed several times as relocators endeavor to ascertain whether the average of the five highest rates for police tows requires upward adjustment. The evidence introduced per the testimony of Trew establishes that the methodology used to determine the maximum police tow rate in the jurisdictions covering the relocation law supports raising this ceiling to $238.20.

Trew contacted various communities to ascertain their police towing rate. Trew received responses from a majority of the communities. The highest police towing rate was $245. The communities with the five highest police towing rates were University Police at University of Illinois ($196 Towing Charge + $45 storage fee commencing upon receipt of vehicle = $241), Village of Brookfield ($165 accident towing fee + $30 administration fee + $10 fuel surcharge + $40 storage = $245), Village of Countryside ($150 accident towing fee + $30 administrative fee + $10 fuel surcharge + $40 storage = $230), Village of LaGrange ($165 accident towing fee + $30 administrative fee + $10 fuel surcharge + $40 storage = $245) and Village of Hinsdale ($150 accident towing fee + $30 administrative fee = $10 fuel surcharge + $40 storage = $230). Trew added these five highest rates together to develop their average, which is $238.20. The police towing rate could include storage, fuel surcharge and/or administrative fees, and all those charges combined equal the municipalities' "police towing rate." The "police towing rate" is not just the cost of the towing, but also includes other authorized, mandatory charges added to the actual towing rate that someone must pay in order to redeem the vehicle. Thus, the police towing rates for these five communities are the minimum rate it would cost someone to redeem their vehicle.

Trew's methodology of calculating the "mean average of the five highest towing rates for police tows" was consistent with the determination methodology that Trew employed in prior, similar Commission rate cases. For instance, in prior cases, Trew considered other charges, such as storage charges, to be part of the minimum police towing rate in circumstances where one must mandatorily pay for storage upon impound, or an administrative fee upon the occurrence of the tow even if no actual storage is incurred. Petitioners are requesting that the Commission increase the commercial relocation towing rate for automobiles by a total of $20 per tow, which is within the maximum rate ceiling established at the hearing and further, is in line with increases historically granted by the Commission. The requested rate of $216 is below the maximum rates which would be 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 which 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 increases in expenses. The number of relocation vehicles towed and stored has substantially decreased, indicating a reduction in revenue units. Over the last three reporting years, Petitioners had a

collective total operating ratio ranging from 105.42% in 2009 to 103.10% in 2012[1], while the relocation towing industry has shown an operating ratio of 99.25% in 2011. 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. Petitioners continue to operate at a loss for every dollar they bring in as revenue.

Petitioners who were operating at a negative operating ratio were caught in a dramatic rise in fuel expense when the 2009-2010 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-52. By the conclusion of that matter, the average price of gasoline rose from $1.321 in January 2009 to $2.710 in December 2012 for an increase of 105.13%. The average price of diesel fuel rose from $1.616 to $3.166 or an increase of 95.92% during the same period. These companies were already operating at negative operating ratios and the increase in fuel cost negated any increases in rates.

Petitioners' operating ratios and all licensed relocation towing companies' operating ratios for the years 2009, 2010 and 2011 have consistently shown a substantial loss over the last several years. Additionally, Petitioners' Exhibit C shows the total company operating ratios for the year 2009 through 2012 as 98.04%, 97.75%, 100.63% and 98.38% with a deficit operating ratio for relocation towing of 105.42%, 104.29%, 108.24% and 103.10% respectively for the same period. 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 simply cannot exist and they must subsidize by either their non-regulated towing operations or by infusion of capital either from their own pocket or from borrowing. A rate increase of $20 per tow will improve Petitioners' relocation operating ratio from 103.10% in 2012 to slightly less than 100% in 2014 if relocation towing expenses remain stable and the number of relocation tows remain constant. Any increases in relocation towing expenses or decreases in the number of total relocation tows made during the year, will have a detrimental impact on the Petitioners' operating ratio and in all probability put the Petitioners in negative operating ratios. The need for an increase in relocation towing rates is dramatic and needed immediately. Trew stated that even with the requested rate increase, Petitioners would not be close to the recommended operating ratio of 85%. Stated another way, the recommended return would be each company earning $100 for every $85 spent on operations. 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.

[1] Joie Enterprises, LLC d/b/a Green Machine Towing, Inc. did not receive its relocator license until 2010.

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 40% 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 five 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, Petitioners offered corroborative testimony from three of the Petitioner relocation towing companies: Joie Enterprises, LLC d/b/a Green Machine Towing, Inc., Rendered Services, Inc., and North Shore Towing, Inc.

1. Joie Enterprises, LLC d/b/a Green Machine Towing, Inc.

Green Machine Towing, Inc. is a relatively new entrant into the relocation towing business, with the company only receiving its relocator license in 2010. According to Gary Tarr, Manager, this company has struggled, resulting in Mr. Tarr not even being able to take a salary or paycheck from the operation since obtaining a license. He is working twelve hours per day, six days a week. He personally handled many of the start-up activities to get the business off the ground. He has seen his insurance and other expenses increase and the company's most current operating ratio is 103.10%. Due to these circumstances, a rate increase is sorely needed to help his company survive.

2. Rendered Services, Inc.

James Damion, General Manager, testified that his company, which does almost 100% relocation towing, has seen its revenue go up, but the revenue increases have not been able to keep up with the pace of increased expenses. Fuel and insurance costs have been particularly problematic for his company, and finding skilled drivers to employ is particularly difficult, as the company has extensive operations in inner city Chicago. These circumstances require him to work six days a week, as it is a management-attentive business. The company is requesting rate relief, as it maintains nineteen tow trucks and has fifty-eight employees. Other increased costs have included worker's compensation insurance costs. The company has attempted to implement cost-cutting measures and despite that, has an unfavorable operating ratio due to rising expenses.

3. North Shore Towing, Inc.

Robert Cole, President of North Shore Towing, Inc. testified it is difficult to get drivers to perform relocation towing work, which is dangerous, arduous and labor-intensive. His company has seen increased costs especially with equipment prices, fuel

costs increases, and other operational expenses. Mr. Cole also indicated that the industry is highly competitive, requiring him to service accounts by driving fruitless miles that do not result in any revenue. Finally, the company has instituted cost-saving measures by shopping around for all of the items that the company uses in its operations to keep costs down.

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 was supplied with copies of all of Petitioners' business tax returns, and no questions were raised concerning the information set forth in those documents. Additionally, Staff propounded extensive Data Requests which were responded to by Petitioners and Mr. Trew; after several meetings, conferences and rulings involving the Chief Administrative Law Judge, Petitioners' responses were later updated and supplemented at Staff's request. Staff introduced through Administrative Notice, Commission records of previous ratemaking cases.

PROPOSED ORDER

A Proposed Order was served on the parties on February 18, 2014. On March 7, 2014, Staff filed Exceptions to the Proposed Order. On April 28, 2014, Staff filed a Sur Reply to Petitioners' Response to Brief on Exceptions. On March 31, 2014, after requesting and receiving an extension of time to file a response, Petitioners filed their Reply to Brief on Exceptions. On May 2, 2014, Petitioners filed a Response to Staff's Sur Reply to Brief on Exceptions.

STAFF'S BRIEF ON EXCEPTIONS AND SUR REPLY

In their Brief on Exceptions, Staff takes issue with the methodology by which Petitioners ascertain the mean average of the five highest police towing rates. Specifically, Staff asserts that the mean average of the five highest police towing rates is to be calculated using only the five highest towing fees for abandoned or "non-accident" vehicles without adding in additional charges such as storage, fuel surcharge, or administrative fees. Staff contends this has been the Commission's position dating back to RTV-A-36, and is consistent with the available records of the Commission's actions in Dockets RTV-A-37, RTV-A-39/RTV-A-40, RTV-A-42/RTV-A-43, and RTV-A-53.

Staff argues that by applying the methodology which uses only the five highest police towing fees for abandoned or "non-accident" vehicles without any additional charges, the resulting mean average of the five highest police tows is $162.20 – a rate lower than the current rate ceiling ($196) already established and approved by the Commission in RTV-A-42/RTV-A-43.

PETITIONERS' RESPONSE AND RESPONSE TO STAFF'S SUR REPLY

Petitioners argue that they offered uncontroverted testimony at the hearing showing that the "rate for police tows" under the Illinois Commercial Relocation of Trespassing Vehicles Law means the actual charge that someone must pay to retrieve their vehicle from a tow instigated by local law enforcement.

Petitioners argue that the methodology used by its expert witness, Mr. Trew, is the same methodology used in previous relocation towing rate cases. In previous cases, however, there may not have been testimony and documents introduced to bear that out with specific detail. The absence of such detail in previous cases does not impair Trew's credibility or Petitioner's evidence. Trew testified, without contradiction by other witnesses, that the "rate for police tows" is a composite of towing and other mandatorily-imposed charges, and that such rate is the minimum amount that the vehicle owner must pay to retrieve his vehicle.

Petitioners further argue that since Section 18a-200(6) references Sections 4-201 (625 ILCS 5/4-201) and 4-214 (625 ILCS 5/4-214) when defining the rates for police tows, the term must be interpreted consistently within all three Sections of the law. Pursuant to Section 4-214(a)(2), the vehicle owner is responsible for "all towing, storage, and processing charges and collection costs pursuant to Section 4-203, subsections (a) and (c)." Sections 4-203(a) and (e) allow law enforcement to authorize a towing service to remove an abandoned vehicle. Thus, the rate for police tows as contemplated in Section 18a-200(6) must be interpreted consistently with Section 4-214 to include all towing, storage and processing charges and collection costs.

COMMISSION ANALYSIS AND CONCLUSION

This case concerns Petitions filed by five relocators for an increase in tow rates from $196 to $216.

The Law prohibits the relocation towing rates from exceeding the mean average of the five highest police tow rates. The current rate ceiling is $196, which was established and approved by the Commission in RTV-A-42/RTV-A-43. Staff argues that the mean average of the five highest police tow rates should be reduced to $162.20 because additional charges required to be paid by a local law enforcement agency in order to retrieve a vehicle should not be included in the police tow rate. Petitioners counter that the rate for police tows is a composite of the towing fee and other mandatorily-imposed charges and that the mean average of the five highest police tow rates is $238.20.

The last time the Commission raised the ceiling for relocation towing rates was in docket numbers RTV-A-42/RTV-A-43 consolidated. Petitioners' expert witness, Douglas Trew, testified in that case as well as in the instant case. He testified that his methodology to determine a police tow rate in this case is identical to the methodology he used in the previous case.

By Order entered on July 11, 2007 in RTV-A-42/RTV-A-43, the Commission held that the evidence established that the mean average of the five highest police tows was $196. The evidence presented in that case of the five highest towing rates included the towing rate of $195 charged by the Brookfield Police Department as of 2006 [Petitioners' Exhibit 3]. Although testimony did not address whether the rate of $195 was a composite of the accident towing rate and other mandatorily-imposed charges nor did Staff raise the issue, a comparison of the 2006 towing rate of $195 and the 2012 towing rate of $245, reasonably lead to the conclusion that the 2006 rate of $195 was a composite rate of the towing fee and other mandatorily-imposed charges. Specifically, the rate charged by the Brookfield Police Department in 2012 consists of a $165 accident towing fee plus $30 administration fee plus $10 fuel surcharge plus $40 storage for a total of $245. If the 2006 towing rate of $195 was for accident towing alone, then the Brookfield Police Department has reduced its accident towing fee by $30 since 2006. Such a reduction over a six-year period is extremely unlikely in an industry driven by the cost of fuel. Thus, it is reasonable to conclude that the 2006 rate charged by the Brookfield Police Department was a composite of the towing rate and other mandatorily-imposed charges. This conclusion is supported by the testimony of Petitioners' expert witness.

The Commission therefore finds that the rate for police tows means the actual charge that someone must pay to retrieve their vehicle from a tow instigated by local law enforcement. The rate for police tows is the minimum amount required to retrieve a vehicle from a local law enforcement agency and may include administrative fees and surcharges in addition to the towing fee.

Accordingly, at the time of the hearings herein, the mean average towing rate for the five highest police tow rates was established as $238.20, consistent with the methodology used in prior cases. Granting Petitioners' request to increase the rate to $216 would not contravene the Law. No increase is requested in the present storage rate applicable to Petitioners.

Information acquired from Petitioners indicates that the costs to perform relocation tows are increasing. Moreover, data from 2009, 2010, 2011 and 2012 (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 increase falls 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 record evidence in this proceeding establishes that the mean average of the five highest rates for police tows within the territory to which the Law applies is $238.20;

4. the record evidence in this proceeding establishes that the rate of $196 per tow is not sufficient to allow the holders of relocation towing licenses 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 $216;

5. no increase in the relocation storage rate for automobiles of $45 is herein requested by Petitioners;

6. the Petitioners' request comports with Chapter 625 ILCS 5/18a-200(6) in that the most recent rate increase as to them was approved by this Commission was more than one year ago, in December 2010;

7. the record evidence presented in this case establishes that Petitioners' relocation towing activity constitutes less than 40% of the entire relocation towing industry; therefore, the rate increases granted herein shall apply only to the five 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 five licensed relocators named herein as Petitioners be increased from $196 per tow to $216 per tow.

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 11th day of June 2014.

[redacted]

DOUGLAS P. SCOTT
CHAIRMAN