**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

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| Area Towing, Inc.,<br>E & R Towing and Garage, Inc.,<br>and Red's Body Shop, Inc.,<br>Petitioners. | : | RTV-A 55 |
| Petition for a Relocation Towing Rate Increase | : | |

## ORDER

By the Commission:

## PROCEDURAL HISTORY

On November 18, 2013, Area Towing, Inc. ("Area"), E&R Towing and Garage, Inc. ("E&R") and Red's Body Shop, Inc. ("Red's") 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"). 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 May 10, 2016. 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 May 10, 2016. Petitioners also provided the testimony of officials from E&R and Red's. There were no Intervenors and no objectors to the Petition. Staff presented no evidence or witnesses in objection to the proposed increase. At the conclusion of the May 10, 2016 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.

## STATUTORY CEILING

The current maximum rate for light duty relocation towing is $238.20 as set by Commission Order entered June 11, 2014 in docket RTV-A-54. The current maximum rate for storage of light duty vehicles after the first 24 hours is $45 per day as set by Commission Order entered July 11, 2007 in consolidated docket RTV-A-42 / RTV-A-43.

## PETITIONERS' EVIDENCE

Petitioner Red's seeks an increase from $170.00 to $216.00 for each light duty relocation tow. Petitioners Area and E&R seek an increase from $196.00 to $216.00 per day for relocation towing of light duty vehicles. None of the Petitioners is requesting an increase of the relocation storage rate. Petitioners' requested increased rates for towing are within the current maximum authorized rates.

Petitioners presented the testimony of Douglas W. Trew ("Trew"), 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 experience in towing rate cases.

Most recently, Trew testified as an expert witness in RTV-A-54 on behalf of five relocation towing companies, supporting an increase in towing rates for the five Petitioners from $170/$196 to $216. No increase in the storage rate set at $45 was sought. [Commission Order entered June 11, 2014.]

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 including 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 operating ratios ranging from 107.27 to 337.87 in 2014; while the relocation towing industry has shown an operating ratio of 98.70% in 2014 (Group Ex. J). 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.

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 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 2011, 2012, 2013 and 2014 have consistently shown a substantial loss over the last several years. Additionally, data collected from each Petitioner's Annual ICC Report from 2011 to 2014 shows the relocation operating ratios as follows:

Area Towing, Inc.
(2011) - 145.60%, (2012) - 148.28%, (2013) - 578.03%, (2014) - 337.87%.
(Area Ex. C)

E&R Towing and Garage, Inc.
(2011) - 113.34%, (2012) - 111.00%, (2013) - 106.70%, (2014) - 107.27%.
(E & R Ex. C)

Red's Body Shop, Inc.
(2011) - 80.17%, (2012) - 104.73%, (2013) - 96.50%, (2014) - 123.97%.
(Red's Ex. C)

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. These companies must subsidize by either their non-regulated towing operations or by infusion of capital either from their own pocket or from borrowing. 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 ratios. 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.

Petitioners also offered corroborative testimony from representatives from E&R Towing and Garage, Inc. and Red's Body Shop, Inc.

Paul R. West, Assistant General Manager for E&R testified that his company has seen its revenue go up, but the revenue increases have not been able to keep up with the pace of increased expenses. Mr. West stated that finding competent drivers, staff and dispatchers is particularly difficult due to the fact that 90% of E&R's business is done at night, on the weekends, and in areas that are dangerous at times. As a result, nightshift drivers desire more pay. Mr. West also testified that 30%-40% of relocated vehicles are scrapped as junk and the cost of scrap metal has decreased significantly recently. Mr. West testified that E&R will shop around for less expensive insurance plans and that maintenance costs on vehicles has skyrocketed. The requested rate increase would help E&R supplement the drivers and their benefit packages.

Jean Claude d'Oliveria, General Manager for Red's, testified that it is difficult to get drivers to perform relocation towing work, which is dangerous and labor-intensive. Red's has seen increased costs especially with insurance, taxes, and other operational expenses. They have reduced management salaries to pay drivers and staff. Equipment cost is also a concern, causing Red's to keep and maintain vehicles a lot longer. Mr. d'Oliveria also indicated that the industry is highly competitive, requiring him to service accounts by driving fruitless miles that do not result in any revenue.

## 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.

## 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 conferences and rulings involving the Chief Administrative Law Judge, Petitioners' responses were later updated and supplemented at Staff's request. Staff presented no evidence nor offered any witness testimony in objection to the proposed increase.

## COMMISSION ANALYSIS AND CONCLUSION

This case concerns Petitions filed by three relocators for an increase in tow rates

from $170 (Red's)/$196 to $216.

The Law prohibits the relocation towing rates from exceeding the mean average of the five highest police tow rates. The mean average towing rate for the five highest police tow rates was established in RTV-A-54 as $238.20. Granting Petitioners' request 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 2011 through 2014 indicate that the Petitioners' expenses are outpacing their revenues. Finally, the Petitioners' operating ratios are below recommended industry standards.

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 rates of $170 and $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 June, 2014;

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 three 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 licensed relocators named herein as Petitioners be increased from $170/$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 26th day of October 2016.

[redacted]

BRIEN SHEAHAN
CHAIRMAN

JUDGE

SECTION CHIEF

ORDERS SUPERVISOR