STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Protective Parking Service Corporation d/b/a Lincoln Towing Service Petitioner.	:	RTV-A-56
Petition for a Relocation Towing Rate Increase	:	

ORDER

By the Commission:

PROCEDURAL HISTORY

On January 22, 2014, Protective Parking Service Corporation d/b/a Lincoln Towing Service ("Petitioner") filed a Petition with the Illinois Commerce Commission ("Commission") for a Relocation Towing Rate increase pursuant to the provisions of Section 200(6) of the Illinois Commercial Relocation of Trespassing Vehicles Law ("ICRTVL"). 625 ILCS 5/18a-200(6). Petitioner seeks an increase in the maximum relocation towing rate it is allowed to charge from $196.00 to $216.00 per tow for light duty relocation tows.

Pursuant to notice given in accordance with the Law and the Relocation Towing rules and regulations of the Commission, 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 Chicago, Illinois on July 11, 2014 and again on August 11, 2014. There were a number of preliminary conferences preceding the evidentiary hearings. Petitioner appeared by counsel at the preliminary conferences and evidentiary hearings. The Staff of the Illinois Commerce Commission ("Staff") was represented by the Office of Transportation Counsel. Petitioner presented the testimony of Petitioner's Manager, Robert Munyon, on July 11, 2014. Petitioner presented the testimony of Robert Munyon and Petitioner's President, Chris Dennis, on August 11, 2014. Petitioner offered its Exhibits 1B thru 5B, which were admitted into evidence. Staff served a number of Staff Data Requests for information needed to test the accuracy of Petitioner's Exhibits. At the evidentiary hearings, Staff offered its Exhibits A, B, and H, which were admitted into evidence. In addition, stipulations were entered into between Staff and Petitioner which were entered into the record, including the admission by stipulation of Staff Exhibits G and I. At the conclusion of the evidentiary hearing on August 11, 2014, the record was marked "Heard and Taken."

APPLICABLE LAW

Section 18a-200(6) of the ICRTVL, 625 ILCS 5/18a-200(6), provides in part:

"[t]he Commission shall:[s]et reasonable rates for the commercial towing or removal of trespassing vehicles from private property. The rates shall not exceed the mean average of the 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 [625 ILCS 5/4-201 and 625 ILCS 5/4-214] 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 Commission calculated the statutory ceiling based on the mean average of the five (5) highest rates for police tows within the territory to which this Chapter applies in RTV-A-54 (Order entered June 11, 2014). The statutory ceiling set in RTV-A-54 is $238.20 per tow.

PETITIONER'S EVIDENCE

As set forth above, the Commission has the authority to set reasonable rates for commercial relocation towing, subject to the foregoing statutory ceiling. Petitioner is requesting that the Commission adjust the Relocation Towing Rate that Petitioner may charge for automobiles by a total of $20.00, from $196.00 to $216.00. The proposed Relocation Towing Rate is less than the current statutory ceiling established by the Commission in RTV-A-54.

Petitioner's witnesses testified that the financial records of the Petitioner are kept in the ordinary course of its business and that data from such business records are provided to Petitioner's accountant for preparation of Petitioner's federal income tax returns and Petitioner's Annual Reports for Relocation Towers.

Robert Munyon testified that the operating ratio of a towing company is calculated by dividing operating expenses by operating revenues. If operating expenses and operating revenues are equal, the operating ratio will be 100. If operating expenses exceed operating revenues, the operating ratio will be over 100 and the company will be operating at a loss. The company will have to implement further cost cutting in order to remain in business. If operating expenses are less than operating revenues, the operating ratio will be less than 100 and the company will have something left over after payment of operating expenses for profit and payment of non-operating expenses.

Chris Dennis testified that he prepared Petitioner's Exhibits 1B, 2B, 3B, 4B, and 5B, which were admitted into evidence. Petitioner's Annual Report for Relocation Towers for 2013, which was admitted as Petitioner's Exhibit 1B, shows that for the year

2013, Petitioner had operating revenues of $2,532,451.00 and operating expenses of $2,412,761.00. Applying the methodology testified to by Robert Munyon, the Petitioner's operating ratio for 2013 was 95.3, as reflected on Petitioner's Exhibit 2B.

Petitioner's Exhibit 3B shows that, if the proposed rate increase was granted, raising the amount charged for a light duty relocation tow from $196.00 to $216.00, the projected increase in Petitioner's operating revenues would be $247,949.00. That would increase Petitioner's total operating revenues to $2,780,400.00. Petitioner's Exhibit 4B shows projected increases in operating expenses totaling $399,558.05 if the proposed rate increase is granted: $71,471.30 for drivers and helpers wages, including increased payroll tax burden; $185,961.75 for independent contractor compensation; $120,000.00 in rental expense on the Petitioner's Clark Street business location; and $22,125 in signage expense. That would increase Petitioner's total operating expenses to $2,812,319.05. Applying the methodology testified to by Robert Munyon, Petitioner's Exhibit 5B shows that, with the projected increases in Petitioner's operating expenses and operating revenues, its operating ratio would be 101.14 if the rate increase is granted.

Robert Munyon testified that Petitioner has implemented various measures to reduce its cost of operation and will continue to seek cost reductions. Even with the proposed rate increase, with an operating Ratio of 101.14, Petitioner will have to implement further cost reductions in order to remain in business.

STAFF'S EVIDENCE AND POSITION

Staff actively participated in the hearings held herein, verifying the accuracy of the information and data contained in Petitioner's testimony and Exhibits prior to and during the evidentiary hearings, cross-examining Petitioner's witnesses at the evidentiary hearings, and offering Staff Exhibits and Stipulations. Staff propounded extensive Data Requests which were answered by Petitioner. Petitioner's Answers to Staff Data Requests were repeatedly amended to address questions and concerns raised by Staff.

At the July 11, 2014 evidentiary hearing, Staff offered into evidence Staff Exhibit H, which was admitted. Staff Exhibit H consists of the Petitioner's Second Amended Answers to Staff's Data Request. Staff cross-examined Petitioner's witness Robert Munyon as to Staff Exhibit H in order to identify the sources of the specific expense and revenue information contained therein. Due to inaccuracies uncovered in Petitioner's Second Amended Answers to Staff's Data Request under cross-examination, as well as the need for additional foundational testimony by Petitioner concerning its exhibits, the Evidentiary hearing was continued to August 11, 2014 to allow Petitioner the opportunity to amend its exhibits and further amend its Answers to Staff's Data Requests.

At the August 11, 2014 evidentiary hearing, Staff offered Staff Exhibits A and B, which were admitted into evidence. Staff Exhibits A and B were the Relocator Annual Reports filed by the Petitioner for years 2011 and 2012, respectively. Additionally, Staff

and the Petitioner stipulated to the admission of Staff Exhibit G and I into evidence. Staff Exhibit G was a printout from the Illinois Secretary of State website showing that Banc Properties, LLC, the affiliated entity from which Petitioner leases its primary storage lot, was involuntarily dissolved for failure to file an Annual Report with the Secretary of State. Chris Dennis testified that this omission would be corrected. Staff Exhibit G further shows that Banc Properties, LLC is a manager-managed LLC, and identifies Chris Dennis as its manager. Staff Exhibit I was a copy of the Petitioner's Fourth Amended Answers to Staff Data Requests.

In addition, Staff proposed the following Stipulations, which were agreed to by Petitioner and entered into evidence: (1) Petitioner provided to Staff Fourth Amended Answers to Staff Data Requests, amending Petitioner's previous Answers to Request Nos. 3, 18, 19, 22 and 23, and those amended Answers were answered by Chris Dennis; (2) With respect to Petitioner's Fourth Amended Answers to Staff's Data Request No. 3, in 2011, Petitioner's total operating expenses were $2,855,504.00 and its total operating revenues were $2,965,057.00, for an operating ratio of 96.3; in 2012, Petitioner's total operating expenses were $2,610,803.00 and its total operating revenues were $2,702,803.00, for an operating ratio of 96.6; and in 2013, Petitioner's total operating expenses were $2,412,761.00 and its total operating revenues were $2,532,451.00, for an operating ratio of 95.3; (3) Petitioner's total operating expenses decreased from 2011 through 2013 and its operating ratio improved by 1.04%.

At the conclusion of the evidentiary hearings, Staff stated that it did not object to the proposed increase.

PROPOSED ORDER

Staff requested a Proposed Order, which was issued by the CALJ on September 30, 2014. On October 7, 2014, Staff filed a Notice of No Objection to the Proposed Order.

COMMISSION ANALYSIS AND CONCLUSIONS

Information acquired from Petitioner indicates that Petitioner's operating ratios are well below recommended industry standards, despite ongoing efforts by Petitioner to reduce its costs of operation. In summary, the requested increase is reasonable and falls within the parameters of the Law. For these reasons, the Commission approves the requested increase.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, after reviewing the entire record and being advised of 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 rate of $196.00 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 Relocation Towing Rate paid by those who trespass on private property to $216.00 per light duty relocation tow; and

4. The Petitioner's request comports with Chapter 625 ILCS 5/18a-200(6) in that: 1) the most recent rate increase as to the Petitioner was approved by this Commission in December 2009; and 2) the increased rate of $216.00 does not exceed the mean average of the 5 highest rates for police tows within the territory, which was established as $238.20 in RTV-A-54.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that pursuant to Section 200(6) of the ICRTVL, 625 ILCS 5/18a-200(6), upon entry of this Order, the reasonable rate for the removal of trespassing vehicles from private property by the Petitioner herein be increased from $196.00 per light duty relocation tow to $216.00 per light duty relocation tow.

IT IS FURTHER ORDERED in accordance with Section 103 of the ICRTVL, 625 ILCS 5/18a-103, that this is a final Order subject to the Administrative Review Law.

By Order of the Commission this 8th day of July 2015.

[redacted]

BRIEN SHEAHAN
CHAIRMAN

JUDGE

SECTION CHIEF

ORDERS SUPERVISOR