STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

NRI, LLC d/b/a Northwest Recovery, Petitioner, Petition for Relocation Towing & Storage Rate Increases under 625 ILCS 5/18a-200(6).	Docket No. RTV-A-59 228 RTV-R 156747 MC

ORDER

By the Commission:

On April 9, 2018, NRI, LLC d/b/a Northwest Recovery ("Petitioner") filed a Petition with the Illinois Commerce Commission ("Commission") for a relocation towing rate increase and a storage 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 has held a Commercial Vehicle Relocator's License since March 19, 2009, issued by the Commission in Docket No. 228 RTV-R Sub 0.

PROCEDURAL HISTORY

Pursuant to notice given in accordance with the ICRTVL and regulations of the Commission, this matter proceeded to an evidentiary hearing before a duly authorized Administrative Law Judge ("ALJ") of the Commission at the Commission's Chicago office on November 4, 2019. Attorneys Mr. Thomas Glasgow and Mr. Matthew Hachigian appeared on behalf of Petitioner. The Staff of the Commission ("Staff") was represented by Mr. Martin Burzawa of the Office of Transportation Counsel.

At the evidentiary hearing, Petitioner presented the testimony of Petitioner's managing members, Warren Crum and Nathan Gottschalk. Petitioner offered its Exhibits 1, 3, 4, and 5, which were admitted into evidence. Tr. Pg. 110. ALJ Azeema Akram marked the record "Heard and Taken" at the conclusion of the November 4, 2019 hearing.

A Proposed Order was served on the parties on March 6, 2020 pursuant to 83 Ill. Adm. Code 200.820(b). Both Staff and Petitioner filed documents stating that they would not be filing Briefs on Exceptions.

APPLICABLE LAW

Section 18a-200(6) of the ICRTVL provides:

> The Commission shall:
> . . .
> (6) 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 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.

625 ILCS 5/18a-200(6). Section 18a-200(6) also provides that the Commission shall "[s]et 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." *Id.* Thus, the Commission has the authority to set reasonable towing and storage rates for commercial relocation towing subject to the established statutory ceiling(s).

CURRENT MAXIMUM RATES

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, in accordance with Section 18a-200(6). 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.

Petitioner's requested increased rate for towing is within the current maximum authorized rates; its requested storage rate exceeds the current maximum authorized rates. In its Petition, Petitioner seeks an increase from $196.00 to $230.00 for each light duty relocation tow, and an increase from $45.00 to $50.00 per day for storage of light duty vehicles. Petition Pgs. 3 – 4.

Because Petitioner already charges the maximum relocation storage rate, the sole issue at the evidentiary hearing was whether Petitioner meets its burden of establishing that its requested rate increase rate for light duty relocation towing comports with Section 18a-200(6) of the ICRTVL. Tr. Pg. 106.

PETITIONER'S EVIDENCE

Petitioner is requesting that the Commission increase the relocation towing rate that Petitioner may charge for light duty vehicles from $196.00 to $230.00. Petition Pg 3. Petitioner's proposed relocation storage rate increase exceeds the current statutory ceiling established by the Commission in consolidated RTV-A-42 / RTV-A-43.

Petitioner presented the testimony of its managing members, Nathan Gottschalk and Warren Crum, each of whom has a 50% ownership interest in Petitioner. Mr. Gottschalk oversees the company's accounts payable and receivable. Tr. Pg. 9. His wife, Amanda Gottschalk, manages Petitioner's property, generates the business records and does much of the accounts payable and receivable as well as general accounting. Tr. Pg. 39, 89.

Mr. Crum testified that the financial records of the Petitioner are kept in the ordinary course of its business. Tr. Pg. 39. He reviews Petitioner's books and records and is familiar with the operating expenses, profits, and losses of the company. Tr. Pgs. 82; 89-90. He also testified that Mrs. Gottschalk provides the documents and data from such business records to Petitioner's accountant. Tr. Pg. 89.

A. Revenues

Mr. Gottschalk testified that over 90% of Petitioner's gross revenue comes from relocation towing and storage. Tr. Pg. 49. The other 10% comes from relocation of vehicles from private property for paving, which is not regulated by the Commission. Tr. Pg. 70. However, Petitioner does not do police tows. Tr. Pg. 33.

Petitioner introduced its Annual Reports, filed with the Commission in compliance with 92 Ill. Adm. Code 1710.100, for the years 2016, 2017, and 2018. Petitioner's Ex. 3, 4, and 5:

- The Annual Report for 2016 states the company's net relocation operating revenues as $1,429.957.11. The net relocation operating revenue includes towing revenues, less refunds, plus revenue from the sale of unclaimed vehicles as scrap and includes storage operating revenues of $61,706.77.
- The Annual Report for 2017 states the company's net relocation operating revenues as $1,429.957.11. The net relocation operating revenue includes towing revenues, less refunds, plus revenue from the sale of unclaimed vehicles as scrap and includes storage operating revenues of $100,474.51.
- The Annual Report for 2018 states the company's net relocation operating revenues as $2,349,120.63. The net relocation operating revenue includes towing revenues, less refunds, plus revenue from the sale of unclaimed vehicles as scrap and includes storage operating revenues of $213,890.00.

Petitioner introduced its Profit & Loss Statement for fiscal years 2015 – 2018, which was prepared by Mrs. Gottschalk. Tr. Pg. 89; Petitioner's Ex. 1. It breaks down Petitioner's categories of revenue in more detail, and includes leased labor not reflected in Petitioner's annual reports. Mr. Crum explained that Petitioner leases labor to Northwest Repossession, LLC d/b/a Northwest Transport (158163 MC), a repossession agency licensed by the Commission. Tr. Pg. 102. The company is owned by Mr. Gottschalk and Mr. Crum. *Id.* Employees of Petitioner are leased to Northwest Repossession, LLC, which reimburses Petitioner at the same rate of pay as Petitioner pays. *Id.* The reimbursement amount includes proportionate compensation for all costs and benefits such as matching federal contributions, unemployment insurance, and workers compensation insurance, such that the payments to or on behalf of employees reported as expense are cancelled out by the reimbursements and the expenses and income were therefore, excluded from the annual reports. *Id.* While employees may do labor for both companies, equipment is not shared between the companies. *Id.*

B. Expenses

Petitioner asserts that it has a "serious need for an increase in revenue" to cover growing expenses. That increase can only be attained by increasing its rates. Tr. Pg. 45. Mr. Gottschalk believes that Petitioner will be out of business by 2021 unless a rate increase is granted. *Id.* Mr. Gottschalk testified that Petitioner's profits have been trending downward despite the fact that it continues to "tow[] lots of cars, [because] the cost of doing business in Cook County, Illinois, has increased drastically." Tr. Pg. 9, 16.

Petitioner's net relocation operating expenses in 2016 were $1,433,682.34. Petitioner's Ex. 3 Pg. 8. Net relocation operating expenses include total relocation towing expenses, relocation storage expenses, and the costs of selling unclaimed vehicles. In 2017, its net relocation operating expenses were $2,350,703.86. Petitioner's Ex. 4 Pg. 8. In 2018, Petitioner's net relocation operating expenses were $2,475,826.00. Petitioner's Ex. 5 Pg. 8.

Petitioner presented extensive testimony concerning its increasing operating costs. The increasing costs are also reflected in its Exhibit 1, Profit & Loss Statement, which includes the percentages by which income and expenses have increased or decreased from year-to-year. Mr. Gottschalk testified that the costs of repair and maintenance of Petitioner's trucks have increased, including auto mechanic costs which have doubled from 2017 to 2018. Tr. Pg. 19. Most people are using credit cards to pay to get their vehicles released in recent years, and people also increasingly cancel their payments to Petitioner before the payments are processed, resulting in losses for

Petitioner. Tr. Pgs. 21-22. State law[1] has changed to require lien checks within two days, where it used to be seven to ten, resulting in Petitioner having to spend more money running VIN[2] checks approximately the same day that the car is stored. Tr. Pgs. 24-25. Petitioner has hired a full-time employee just to handle the VIN checks and send out notices required by law. Tr. Pg. 68. Utility rates and gasoline prices have gone up. Tr. Pg. 47. Fuel taxes have gone up 70%, and real estate taxes have increased. Tr. Pgs. 47, 55. Mr. Crum testified that bank charges and fees have gone up 1385%, and insurance premiums have increased 2479%, including a 769% increase in health insurance premiums since from 2017 to 2018. Tr. Pgs. 90, 92.

In 2018, Petitioner moved to a new, larger location, which incurred several one-time expenses. Tr. Pgs. 52, 54. As a result, Petitioner had to rehabilitate the facility and its rent has increased. Tr. Pgs. 65, Petitioner's fleet has also significantly increased in the past few years, which corresponds to the increase in number of tows. Tr. Pgs. 42-43; 16.

C. Profits, Losses, & Cost-Cutting Measures

Petitioner's profits and losses have varied over the last few years. Looking at its business as a whole, Petitioner recorded a net income of $22,674.00 in 2015 and $6,137 in 2016; a net loss of $12,121 in 2017; and a net income of $45,237.00 in 2018. Petitioner's Ex. 1 Pg. 4. The revenues included in this calculation comprise of ICC-regulated and also non-regulated towing activities. *Id.* at Pg. 1. Regarding Petitioner's regulated relocation towing activities only, the Annual Reports reflect a net operating profit of $30,736 in 2016; net operating loss of $8,353.00 in 2017[3]; and a net operating loss of $66,413.44 in 2018. Petitioner's Ex. 3 Pg. 8, Ex. 4 Pg. 8, and Ex. 5 Pg. 8. As provided in the Expenses section above, Petitioner moved into a new facility in 2018, incurring some significant related expenses.

Petitioner's business has grown, as the number of cars towed per year has generally increased. Tr. Pg. 16; 87. However, although the number of employees has gone down, Mr. Gottschalk testified that Petitioner's payroll has increased because the industry rate for relocation towing operators has increased as other companies pay more. Tr. Pgs. 68-69. In order to keep qualified employees, these costs cannot be cut.

Petitioner presented testimony concerning the efforts it has made to cut costs in order to stay in business despite no rate increase since 2012. Tr. Pgs. 23-24; Order RTV-

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[1] See Section 1.5 of the Labor and Storage Lien Act, 770 ILCS 45/0.01 *et seq.*, which, in summary, requires any company who imposes vehicle storage fees to provide written notice to the lienholder of the vehicle within two business days.

[2] Vehicle Identification Number; See Section 4-107(g) of Chapter 4 of the Illinois Vehicle Code 625 ILCS 5/4-101, *et seq.*

[3] Exhibit 4 shows a net operating loss of $8,413.00, which appears to be erroneously calculated based on its total company operating revenue and expenses.

A-53. Mr. Gottschalk testified that Petitioner obtained a discounted fuel account for its trucks. Tr. Pg. 29. It lowered its processing fees with its credit card company three times in 2019. Tr. Pg. 29. Petitioner traded in old trucks for new ones under warranty to avoid repair costs and is no longer using costly diesel engines (although gas trucks get fewer miles per gallon of fuel). Tr. Pgs. 29-30, 57. Petitioner has reduced staff hours to the extent it could without losing full-time employees. Tr. Pg. 31, 32. Petitioner buys office supplies in bulk and has tried to lower phone and internet costs with its service providers. Tr. Pg. 67. Third-party mechanics and repair services costs have been reduced by Petitioner hiring an in-house mechanic. Tr. Pg. 93.

D. Operating Ratio

The Commission's practice in relocation towing rate increase cases has been developed on an ad hoc basis. However, there has been some consistency over the past several years, where a company's operating ratio is considered in determining whether a company's rates should be increased to a reasonable rate within the statutory ceiling set forth in the ICRTVL.

The methodology for calculating a company's operating ratio is to divide its operating expenses by its 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 would have to implement further cost-cutting measures 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 paying out operating expenses for profit and payment of non-operating expenses. No expert testimony is necessary to define operating ratios and attest to their calculations. Order RTV-A-47, Pg. 4. Order, RTV-A-58, Pg. 3. The industry recommended operating ratio is 85%, which allows for a reasonable profit margin. Tr. Pgs. 23, 96; RTV-A-55, 5/10/2016 Tr. Pgs. 99-100.

Petitioner's Exhibit 5 is its Annual Report for 2018, which it filed with the Commission in 2019 in compliance with 92 Ill. Adm. Code 1710.100. The company's net relocation operating revenues were $2,296,937.56. The net relocation operating revenue includes towing revenues, less refunds, plus revenue from the sale of unclaimed vehicles as scrap and includes storage operating revenues of $61,706.77. Petitioner's net relocation operating expenses in 2018 were $2,475,826.00, which includes towing expenses and storage expenses. Applying the methodology consistent with prior Commission rate cases, Petitioner's 2018 relocation operating ratio is approximately 108%. After eliminating Petitioner's storage revenues and expenses, as well as other relocation operating revenue from the sale of unclaimed vehicles, Petitioner's total relocation towing revenue is $1,985,361.56 and its total relocation towing expenses is $2,368,570.00. Petitioner's 2018 operating ratio based on relocation towing revenue and expenses alone is approximately 119%.

Breaking down Petitioner's 2018 operating revenue and expense by type of vehicle towed, Petitioner's light duty towing revenue of $1,693,861.56 and its light duty towing expenses of $2,232,890.00 result in Petitioner's 2018 operating ratio based on light duty revenue and expenses only at approximately 132%. Considering Petitioner's medium duty towing revenue of $155,700.00 and medium duty towing expenses of $86,655.00, Petitioner's 2018 operating ratio based on medium duty revenue and expenses only is approximately 55%. Finally, considering Petitioner's heavy-duty towing revenue of $135,800.00 and its heavy-duty towing expenses of $49,025.00, Petitioner's 2018 operating ratio based on heavy duty revenue and expenses only is approximately 36%.

Petitioner neither presented an exact projected operating ratio based on its requested rate of $230.00 as stated in its Petition, nor the maximum $238.50 rate. Tr. Pgs. 78-79. At the evidentiary hearing, there was testimony regarding the accuracy of Petitioner's number of vehicles towed per year, and whether an operating ratio had been calculated using that number, but ultimately no specific calculation(s) were presented. Tr. Pgs. 63; 79. In closing, Petitioner stated that if its request for the maximum is not granted, that, alternatively, it requests that the rate be increased to $216.00[4] as any increase would be beneficial to its ability to continue operating. Tr. Pg. 112.

Setting aside the methodology for calculating the operating ratio, a general and straightforward calculation, which Petitioner did not present, also appears to support the need for a rate increase. In 2016, Petitioner's net operating profit was $30,736.00. Petitioner's Ex. 3 Pg. 8. In 2017, Petitioner's net operating loss was $8,353.00. Petitioner's Ex. 4 Pg. 8. Most recently, in 2018, Petitioner's net operating loss was $66,413.44. Petitioner's Ex. 5 Pg. 8. Even when considering the variations in spending, such as Petitioner's large one-time expenses incurred in 2018 and the various increases in operating costs, plus the growth of Petitioner's relocation business, the record shows that a rate increase is necessary to ensure that Petitioner remains profitable.

STAFF'S POSITION

Staff cross-examined Petitioner's witnesses at the evidentiary hearing. Staff objects to a rate increase to Petitioner's $230.00 requested rate based on the lack of Commission precedent granting a rate increase to the maximum, and that Petitioner failed to present a specific calculation using the requested rate with a projected operating ratio going forward. Tr. Pg. 111.

For these reasons, Staff has no objection to a rate increase to $216.00. *Id.*

[4] $216.00 is the light-duty relocation towing rate that the Commission has granted in its most recent relocation rate cases: RTV-A-58 (2016); RTV-A-57 (2016); RTV-A-56 (2015); RTV-A-55 (2016); and RTV-A-54 (2014).

COMMISSION ANALYSIS AND CONCLUSIONS

Petitioner has been operating at a light duty relocation towing rate of $196.00 since 2012.[5] Based on the evidence it presented, its business has grown while continuing at this rate. At the same time, its expenses are also increasing, and Petitioner is experiencing difficulty staying competitive and recruiting employees. Although no specific calculations were presented, it is clear that continuing to operate Petitioner's business is unsustainable at the $196.00 rate.

In summary, Petitioner's profit margins, actual increased expenses, and increases necessary to remain competitive show that even with the requested rate increase Petitioner will likely be operating at a minimal margin. The requested increase to a light duty relocation towing rate of $230.00 is unsupported by the record. However, an increase to a $216.00 rate is reasonable, falls within currently authorized maximum rates, and should be approved.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, after reviewing the entire record and being advised of the premises, 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 existing rates of $196.00 per tow for light duty vehicles is not sufficient to allow Petitioner to operate at a reasonable profit or to avoid a loss; therefore, it is fair and reasonable to increase the Relocation Towing Rate paid by light duty vehicles which trespass on private property to $216.00 per relocation tow; and

4. The Petitioner's request comports with Chapter 625 ILCS 5/18a-200(6) in that the increased rate of $216.00 per tow of light duty vehicles does not exceed the mean average of the 5 highest rates for police tows within the territory, which was established as $238.20 per tow in RTV-A-54.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that, pursuant to Section 200(6) of the Illinois Commercial Relocation of Trespassing Vehicles Law, 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.

[5] RTV-A-53.

IT IS FURTHER ORDERED that the Appendix hereto is made a part of this Order to provide information required by Section 10-50 of the Illinois Administrative Procedure Act (5 ILCS 100).

IT IS FURTHER ORDERED that this is a final Order subject to subject to 83 Ill. Adm. Code 200.880(d) which provides that no appeal shall be allowed unless an application for rehearing shall first have been filed and disposed of by the Commission, and subject to the Administrative Review Law, 735 ILCS 5/3-101 *et seq.*, as adopted by Section 103 of the Illinois Commercial Relocation of Trespassing Vehicles Law, 625 ILCS 5/18a-103.

By Order of the Commission this 18th day of March 2020.

(SIGNED) CARRIE ZALEWSKI
CHAIRMAN

APPENDIX to RTV-A-59 Order

Pursuant to Section 10-50 of the Illinois Administrative Procedure Act (5 ILCS 100).

Parties of record and addresses as known to the Commission:

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