STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SMJ TOWING, INC., JOIE ENTERPRISES, LLC d/b/a GREEN MACHINE TOWING, NORTH SHORE TOWING, INC., NRI LLC d/b/a NORTHWEST RECOVERY, RENDERED SERVICES, INC., and URT E&R TOWING, INC., Petitioners. Petition for Relocation Towing Rate Increase	:	Docket No. M2022-01926 RTV-A-64

ORDER

By the Commission:

PROCEDURAL HISTORY

On or about February 7, 2022, Petitioners SMJ Towing, Inc., Joie Enterprises, LLC d/b/a Green Machine Towing, North Shore Towing, Inc., NRI, LLC d/b/a Northwest Recovery, Rendered Services, Inc., Safeguard, LLC,[1] and URT E&R Towing, Inc. 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 light-duty relocation towing rates they are allowed to charge, from $216.00 to $238.20 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 relating to discovery compliance, the Petition came on for the final evidentiary hearing before the duly authorized Chief Administrative Law Judge ("CALJ") of the Commission via video-conference on December 20, 2022. 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 Gary Tarr, William Nestos, and Robert Cole on December 20, 2022. There were no Intervenors and no objectors to the Petition. Staff presented no evidence or witnesses in objection to the proposed increase.

[1] Safeguard, LLC subsequently filed a petition to withdraw its rate-increase petition, which was granted on March 23, 2023.

Subsequent to the close of the December 20, 2022 hearing, Petitioners requested that the record be marked "Heard and Taken", while Staff indicated that it had no objection to the maximum rate increase to $238.20 as requested by Petitioners. The record was marked "Heard and Taken" on March 23, 2023 by Administrative Law Judge Ruling.

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 that "[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. This $238.20 rate remains of record as of the hearing date of December 20, 2022 and continues in place as of the date of this Order. Thus, it is almost nine (9) years since the last rate adjustment.

PETITIONER'S EVIDENCE

1. Relocation Towing Operating Ratio

Petitioners had a collective total operating ratio of 122.70 in 2021 and an operating ratio of 141.10 using 2021 revenues against 2022 expenses (which were analyzed to a full calendar year for purposes of illustration for 2022 because the year 2022 was incomplete as of the date discovery was answered and the date of hearing). It is commonly understood in these cases that an operating ratio less than 100 reflects revenues exceeding expenses, while an operating ratio of more than 100 reflects expenses exceeding revenues, or that the company is operating at a loss. The operating ratio is calculated by dividing expenses by revenues. If Petitioners were granted a rate increase to $238.20 in 2023 while using estimated 2022 expenses (2021 expenses increased by 15%), the collective operating ratio would be 128.80, which establishes that the expenses exceed revenue as measured collectively. The ideal operating ratio is 85.

2. Joie Enterprises, LLC

Mr. Gary Tarr testified on behalf of Joie Enterprises, Inc. Joie has four locations with 20 workers and operates 14 tow trucks. Tarr testified that Joie had an operating ratio of 132.02, which means that Joie spent $132 for every $100 in revenue. These numbers

establish that Joie's light-duty relocation towing currently operates at a loss of approximately one-third.

Fuel is a significant cost for the business, as Joie operates 24 hours a day, 7 days a week -- "24/7." Fuel costs have nearly doubled, especially diesel fuel. Joie's key expenses have all gone up in 2022, such as fuel, insurance, labor, utilities, supplies, and internet. Specific to relocation towing, Joie has security costs for bullet-proof glass; high fuel costs since Joie performs patrol activity in connection with towing of private property; as well as high labor costs in order to attract competent drivers willing to work at night.

The growth of new properties to tow automobiles from is small, as it is difficult to find new customers. When Joie does tow from a new property, there may be much tow activity in the first 30-60 days. But then as vehicle owners become educated on the rules, the trespass violations and associated tows drop off. As a result, the number of tows have decreased industry-wide for licensed relocators from year to year.

Joie's revenue has also been affected by citizens who use technology such as parking apps on their mobile phones, and due to motorists who now work remotely. Thus, these individuals, who are doing less driving and parking, are not engaged in trespass parking.

Current interest rates are at 7%, where in 2019, it was 4%. The Producer Price Index shot up in 2022. Joie is trying to keep its keep staff intact, but in order to do that, it needs a towing rate increase. Joie needs to be engaged in relocation towing in order to keep its drivers occupied with work. Joie also performs police towing due to some police departments requiring its towing vendors to be licensed relocators.

Tarr stated that if there is no rate increase, Joie will likely not be able to continue to operate as a relocator. As a result, Joie will lose police department contracts and some employees. Joie has good customers and provides great service to its customers.

3. Rendered Services, Inc.

Williams Nestos testified on behalf of Rendered Services, Inc. Nestos has been employed by Rendered since 2009 and has been in the towing business for 30 years.

Nestos testified that there has been a general decrease in Rendered's relocation towing due to relocation towing competition, city development which reduces the number of vacant parking lots, remote stay-at-home workers, and the use of ride-sharing and public transportation. Expenses have not decreased, as Rendered has customers all over the City of Chicago and performs patrol towing. As a result, Rendered has high fuel costs. Both fuel and health insurance costs for its employees have increased by 40%. Rendered has 11 tow trucks which require the expenditure of $170,000 in annual insurance premiums. Rendered needs an increase in the towing rate to help off-set the increased expenses. Nestos testified that in his 30 years of experience, he has not seen cost escalations so extreme.

Being a relocator in the City of Chicago results in certain special costs. Chicago has a local towing ordinance that requires video recording of all relocation tows as well as the storage of said recorded videos from those tows. Rendered has had to hire a full-time employee who is responsible for handing the management and storage of videos. Rendered also had to buy equipment in order to store the videos. The City requires videos to be stored for two years.

Chicago also has a minimum wage ordinance, which is currently set at $15.00 per hour. But Rendered cannot even hire employees for less than $20.00 per hour. In order to find and retain good employees, Rendered needs to pay competitive wages.

4. Robert Cole

Robert Cole testified on behalf of North Shore Towing, Inc. Cole is the President and CEO of North Shore.

North Shore performs relocation towing as part of its overall towing operations. In order to conduct towing for municipalities, North Shore needs to maintain a relocator license. Other customers also require North Shore, as part of its services to those customers, to perform relocation towing. Thus, North Shore is required to perform relocation towing. Relocation towing activities comprise 8% of North Shore's revenue. The other 92% of the revenues come from: medium and heavy-duty towing; transportation; storage; auto recalls; dealerships/body shop towing; police department towing; and motor club towing.

Relocation towing is not profitable because unlike other types of towing, where prices are not controlled or dictated by the State, relocators can only charge for towing and storage, while not collecting revenues for special or ancillary services. North Shore has not had a rate increase since 2014 and its profit margins are shrinking because of high costs. The increased costs include fuel, insurance, tires, and DEP fluid for the diesel vehicles. Since 2011, all diesel operated vehicles require fuel injections with DEP and diesel fuel is now more expensive than gasoline. North Shore's entire truck fleet uses diesel fuel.

North Shore also performs patrol towing as part of its service, which results in high fuel costs. It is difficult for the company to find skilled drivers because few workers are interested in towing as a career. As a result of inflation, costs have increased across the board and the cost of equipment has nearly doubled. North Shore needs a rate increase badly or else it will continue to lose money on relocating. The current $216 rate is below the rate for police towing. Police towing performed by North Shore is close to a $300 rate currently.

5. NRI, LLC

Based on its Annual Reports, in 2019, NRI's light-duty towing revenues were

$1,754,551.42 and its expenses were $2,318,260; in 2020, they were $1,654,154.64 and $1,883,925.54; and in 2021, they were $1,936,836 and $2,299,875. Thus, in all three recent years, NRI had unprofitable light-duty towing operations and has had to endure an unfavorable operating ratio.

6. SMJ Towing

SMJ is a very small relocation towing operation owned by Steven M. Jeritsky. Its last rate increase was $216 in 2014, where it was a petitioner in RTV-A-54. Based on its Annual Reports, its light-duty towing expenses went from $80,613 in 2019 to $161,519 in 2021, which is a 100% increase. Its annual light-duty revenues only increased by 29% during that same time period ($250,644.75 to $324,021). Due to Mr. Jeritsky's ability to set his own wages very low, SMJ has been able to stay afloat and manage its operating ratio, but its increasing business expenses are on par with the industry.

7. URT E&R Towing, Inc.

URT E&R Towing, lnc.'s unique circumstance is that it has never operated as a relocator. URT herein proves a need on the premise that it has simply taken over the business of E & R Towing and Garage, Inc. (E & R) and that it would have operated at a loss if it had operated in the shoes of E & R but charged at a $170 rate rather than E & R's $216 rate which it used under that operation. URT obtained its relocator license in April 3, 2019. URT was granted a rate increase to $216 in RTV-A-60. Even with that increase, URT's light-duty relocation operations are not profitable.

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 64% 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 six currently named Petitioners, with the remaining towing companies limited to current rates until such time as they file and proceed with their 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 accuracy of the information set forth in those documents. Additionally, Staff propounded extensive Data Requests which were responded to by Petitioners. Staff presented no evidence nor offered any witness testimony in objection to the proposed increase. Staff has stated that it does not object to the increase sought by Petitioners.

COMMISSION ANALYSIS AND CONCLUSION

This case concerns a Petition filed by seven (now six after Safeguard withdrew from this Petition) relocators for an increase in maximum light duty towing rates from $216 to $238.20.

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 by clear and convincing evidence, consistent with the law and methodology used in prior cases. Granting Petitioners' request would not contravene the Law. No increase is requested in the present storage rate applicable to Petitioners.

Information acquired from Petitioners and the testimony of record as well as evidence submitted via Administrative Notice, overwhelmingly indicate that the costs to perform relocation tows are increasing. Moreover, the data plainly establishes that the Petitioners' expenses are outpacing their revenues. Indeed, the current highest rates, now enjoyed by Petitioners, was set almost a decade ago, in 2014. Finally, the Petitioners' operating ratios, while they vary a bit due to the particular nature of each Petitioner's businesses, are insufficient -- for all, well below recommended industry standards.

In summary, the requested increase is factually supported and 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 $216 per tow is not sufficient to allow the holders of relocation towing licenses to

operate at a reasonable profit or to manage a loss; it is fair and reasonable to increase the towing fee paid by those who trespass on private property to $238.20;

5. 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 on June 11, 2014 as to Rendered Services, Inc., North Shore Towing, Inc., SMJ Towing, Inc., Joie Enterprises, LLC d/b/a Green Machine Towing, and later for the remaining Petitioners;

6. 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 SMJ Towing, Inc., Joie Enterprises, LLC d/b/a Green Machine Towing, North Shore Towing, Inc., NRI, LLC d/b/a Northwest Recovery, Rendered Services, Inc., and URT E&R Towing, Inc. 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 Petitioners SMJ Towing, Inc., Joie Enterprises, LLC d/b/a Green Machine Towing, North Shore Towing, Inc., NRI, LLC d/b/a Northwest Recovery, Rendered Services, Inc., and URT E&R Towing, Inc. be increased from $216 per tow to $238.20 per tow.

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 Relocators of Trespassing Vehicles Law, 625 ILCS 5/18a-103.

By Order of the Commission this 15th day of June 2023.

(signed) CARRIE ZALEWSKI
CHAIRMAN

APPENDIX to Order – Docket M2022-01926

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

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