STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Phillips Towing Service, Inc. an Illinois corporation et al	:	RTV-A-42
and	:	consolidated w/
SMJ Towing, Inc., an Illinois corporation and E & R Towing & Garage, Inc. an Illinois corporation Petitioners	:	RTV-A-43
Petition for Relocation Towing and Storage Rate Increase	:	

ORDER

By the Commission:

PROCEDURAL HISTORY

On May 23, 2006, in Docket Number RTV-A-42, Phillips Towing Service, Inc. (4-RTV-R) ("Phillips Towing"); Lincoln Towing Service (92 RTV-R) ("Lincoln Towing"); Rendered Services, Inc. (74 RTV-R) ("Rendered Services"); Northwest Recovery, Inc. (100 RTV-R) ("Northwest Recovery"); Rokaitis Industries, Inc. (68 RTV-R) (Rokaitis"); and S&S Towing, Inc. (66 RTV-R) ("S&S Towing"), filed a Petition with the Illinois Commerce Commission (the "Commission") for a tow 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 31, 2006, in Docket Number RTV-A-43, SMJ Towing, Inc. (134 RTV-R) ("SMJ Towing") and E&R Towing & Garage, Inc. (176 RTV-R) ("E&R Towing") likewise filed a Petition seeking a relocation tower rate increase. All of the Petitioners seek an increase in the towing rate from $150 to $170 per relocation tow and an increase in the daily storage rate charged after the first twenty-four hours from $37 to $40. On September 12, 2006, a duly authorized Administrative Law Judge of the Commission granted Petitioners' Motion to consolidate the cases for evidentiary hearing and Order. The Petitions are uncontested.

Pursuant to Motions filed by Petitioners, the evidentiary hearing on the Petitions was continued from time to time, without objection. Ultimately, pursuant to notice given in accordance with the law and rules and regulations of the Commission, the matter came on for 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 March 1, 2007. Petitioners appeared by counsel and presented the testimony of Douglas Trew, Transportation Consultant expert witness; Julie Kosanovich, Sales Manager with S&S Towing; Chris Dennis, President of Lincoln

Towing; and James Damion, Company Administrator for Rendered Services. Staff appeared by Transportation Counsel, Wil Nagel. There were no Intervenors and no objectors to the Petitions. At the conclusion of the March 1, 2007 hearing, the record was marked "Heard and Taken."

ILLINOIS COMMERCIAL TRANSPORTATION LAW APPLICABLE

Chapter 625 ILCS 5/18a-200(6) of the Illinois Commercial Transportation Law ("ICTL") grants the Commission the authority to set reasonable rates for commercial towing, including the removal of trespassing vehicles from private property. The Law provides that the Commission shall set rates not to exceed "the mean average of the 5 highest rates for police tows" in the territory served by the Petitioner relocation towing companies. 625 ILCS 5/18a-200(6). This subsection also prohibits an increase in rates less than one year from the previous rate increase.

Chapter 625 ILCS 5/18a-200(6) also confers upon the Commission the authority to set reasonable rates for the storage of relocated vehicles over 24 hours, and rates for other services provided by relocators.

PETITIONERS' EVIDENCE

A. Expert Witness Opinion

(a) Background and History of Rate Increases.

Douglas Trew is a Transportation Consultant retained by Petitioners as an expert witness in this matter. He earned a Bachelor's in Accounting degree and an MBA degree from the University of Illinois. While employed at the Illinois Commerce Commission from 1976 to 2002, inclusive, a period of twenty-eight (28) years, ultimately in the position of Director of Research and Analysis, Transportation Division, he gained a great deal of experience in towing rate cases. Trew gave testimony on behalf of Commission Staff in Case No. RTV-A-36, in support of a request for a towing rate increase from $105 to $125 and an increase in storage rates from $15 to $25. [Commission Order granting increase entered April 24, 2002.] After leaving the Commission, Trew testified as an expert witness on behalf of six towing companies in Case 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 granting increase entered August 18, 2004.] Finally, Trew testified as an expert witness on behalf of two different towing companies in Commission Case No. RTV-A-39 and RTV-A-40 (Consolidated), supporting an increase in towing and storage rates for those two Petitioners from $125 to $150, and from $25 to $37, respectively. [Commission Order granting increase entered June 7, 2006.] The two towing companies that were parties in RTV-A-39, 40 (Consolidated)

were not parties to RTV-A-37, and therefore sought the identical rate increases in their own separate case. As indicated, in all three 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 Tow Rates.

As set forth above, the Commission has the authority to set reasonable rates for commercial relocation towing and storage rates. The rates set by the Commission *shall not exceed* "the mean average of the five (5) highest rates for police tows" in the territory served by the Petitioner relocation towing companies. 625 ILCS 5/18a-200(6). As set forth below, the evidence in this case proved that the mean average of the five highest rates for police tows in the relevant territory is $196 per tow, and the evidence proved that the mean average of the five highest rates for police storage is $45 per day, after the first 24 hours after the tow. The Petitioners here are requesting that the Commission set the commercial relocation towing rate at $170 per tow, and the storage rate at $40 per day. Petitioners' request for the increased towing rate is well below the rate which is allowable under the Law. The Petitioners' request for the $40 storage rate is also below that allowed under the Law.

In the instant case, Trew first reviewed financial evidence regarding commercial relocation towing and storage rates, and rates charged by police departments for police tows, which was gathered for use in Case No. RTV-A-37 with the cooperation of the police departments of certain communities and through conferences and other contact with various relocators. Exhibit 1, prepared by Trew in Case No. RTV-A-37 and adopted by the Commission in its August 18, 2004 Order in that case, was also admitted into evidence in the instant case as Exhibit 1-A. Exhibit 1-A is a spreadsheet analysis of some of the sixteen (16) localities in which the Petitioners here operate. This was prepared in 2002 to locate the five communities in which tow rates are highest. Exhibit 1-A indicates that the five highest rates, with a mean average of $157, were found in Chicago, Melrose Park, LaGrange, LaGrange Park, and Brookfield. Petitioners in RTV-A-37 sought a towing rate of $150, which was less than the mean average of the five highest rates in evidence in that case. Trew also reviewed the evidence of storage rates from Case No. RTV-A-37, indicating that the five highest storage rates were found in LaGrange, LaGrange Park, Brookfield, Western Springs, and Calumet City, where the storage rates were $40, with a mean average of $40. In RTV-A-37, the Commission increased commercial towing rates to $150 per tow, and granted an increase in commercial storage rates to $37 per vehicle per day, for each day the vehicle remained unclaimed after the first 24 hours the vehicle was towed.

Trew noted that the above towing and storage rates in the amounts of $150 and $37, respectively, have been the maximum rates commercial towing companies have been authorized to charge since the Commission entered its Order in RTV-A-37 in August 2004. Stated another way, Trew testified that these maximum allowable rates

have been in effect for almost three years now, without any increase during that three year period.

After reviewing the police tow rates from the 2002-2004 time period, Trew personally contacted various police agencies for purposes of this case, including those listed in the above mentioned communities where the highest police tow and storage rates were found three years ago, to determine what current police tow and storage rates are now being charged. Specifically, he compiled police tow and storage rates, as of May 1, 2006, from the following communities: Northlake, Brookfield, Country Side, Hickory Hills, Hinsdale, Indian Head Park, Lyons, La Grange, La Grange Park, Western Springs and Westmont. His analysis revealed that the mean average five highest police tow rates as of that date was $196 per tow, and the mean average five highest police tow storage rates as of that date was $45.

Petitioners here seek a towing rate increase from $150 to only $170 per tow, which is far less than the $196 average police tow rate which the Law would allow commercial towing companies to charge pursuant to Commission authorization under the circumstances, according to Trew. Petitioners also seek a storage rate increase from $37 to $40, which is less than the amount allowable under the Law based upon the evidence of mean average police tow storage rates. Trew testified that the fact that Petitioners are seeking a towing rate increase some $26 lower than that which they could have requested, is a clear indication the Petitioners here are not seeking to gouge the general public. Rather, Petitioners are simply seeking to recover costs attributable to the business they are in.

(c) Evidence of Increased Costs to Support the Rate Increase.

Trew reviewed the financial records of each and every Petitioner named and involved in the Petitions at issue in this case. He also conferenced with the owners and management of each Petitioner regarding the operations, revenues and expenses of each company. He also reviewed the Annual Reports each of the Petitioners filed with the Commission as they are required to do under the Law. Trew identified numerous factors which Petitioners assert justify the request for rate relief in this case, from declining relocation towing revenues to skyrocketing expenses associated with the relocation towing business.

Trew then first testified that revenue from relocation towing has been declining since 2004, due to a decrease in the number of tows occurring over that period of time. Specifically, the number of tows decreased, on average, in each of the last three years: by 4.49% in 2004; by 3% in 2005; by approximately 3% in 2006; and will fall an estimated 3% in 2007. The reasons given for these decreases in numbers of tows include: a City of Chicago Ordinance that requires the gating, fencing and/or chaining of vacant lots; a move to turn more vacant lots into valet parking facilities; a decrease in the number of vacant lots due to the construction of buildings on more and more vacant lots; and generally just fewer opportunities to contract with lot owners to perform

relocation towing from their property due to the fewer numbers of privately owned lots in the City.

Petitioners are also losing money on the number of vehicles stored after being towed, due in part to the fewer number of vehicles being towed in the first place. Storage expenses are increasing while, at the same time, the Petitioners are losing money due to fewer vehicles being stored on existing relocation towing company storage lots. Trew stated that storage costs and expenses doubled in just the year between 2005 and 2006. Further, Petitioners are losing money on the ever increasing numbers of vehicles which remain "unclaimed" and must be junked. Unclaimed vehicles cost Petitioners revenue in lost towing fees and lost storage fees. Yet, Petitioners still must spend money, and incur expenses, on these unclaimed vehicles. In addition to still incurring tow and storage expenses on unclaimed vehicles, the Petitioners are required to expend funds performing vehicle identification number searches and Secretary of State title searches on these unclaimed vehicles. Further, Petitioners still must incur the Commission's $7.50 invoice cost per towed vehicle on these unclaimed vehicles, and that money is never reclaimed on the abandoned vehicles. According to Trew, the process to "get rid of" unclaimed, abandoned vehicles which have been towed can take up to six (6) months or more. Petitioner relocation towing companies do not get paid anything over that six month or more period of time that these vehicles remain stored on the companies' lots.

Trew next testified to the increases in costs associated with relocation tows over the past three years. The first and obvious increase in costs concerns fuel prices. On January 1, 2004, the average price of a gallon of gasoline was $1.60. On January 1. 2005, the average gallon of gasoline cost $1.93, an increase of 20.71% over the past year. By January 1, 2006, the average price per gallon had risen to $2.18, another increase of 12.68%. On January 1, 2007 the price per gallon had shot up to $2.69, a 23.62% increase just over the prior year. Therefore, between January 2004 and January 2007, gasoline prices increased an astounding 68.15%, with no end to the increase in sight. Trew testified that the fuel expenses for Petitioners' vehicles using diesel fuel increased even more over that period of time.

In addition to fuel prices, Trew testified in detail that other relocation towing expenses have increased in double digit percentages over the past 3 years, including, but not limited to, insurance premiums (property, liability, auto, and workers' compensation), real estate taxes, office expenses, utility expenses, wages, and general taxes. He testified that storage expenses and costs have likewise increased, including Chicagoland rent expenses for land, fencing expenses, gating expenses, lighting costs, yard attendant wage expenses, on-call employee expenses, and security expenses.

Trew concluded that the recommended "operating ratio" (rate of return) for relocation towing companies is approximately 85%. Stated another way, the recommended return would be each company earning $100 for every $85 spent on operations. Trew testified that none of Petitioners here come close to the 85%

operating ratio, and, even if the Commission grants the requested rate increase relief requested here, none of the Petitioners would even then attain the recommended 85% operating ratio. The majority of the companies involved here are working at making up losses in the relocation towing side of the business with income from other operations, including police tows and such. In Trew's expert witness opinion, the rate increase requested by Petitioners is necessary, fair and reasonable, and within the parameters of the Illinois Commercial Relocation of Trespassing Vehicles Law.

B. Application of Rate Relief Increase Requested.

The rate relief requested by Petitioners here will apply to the named Petitioners only, and not to any other relocation towing companies that are not party to these specific proceedings. Trew testified to the long held policy of the Commission which provides, in relevant part, that if Petitioners as a group perform more than 85% of relocation tows in the Chicagoland area, then any rate increase consented to by the Commission would apply across the board, to all relocation towing companies regulated by the Commission, not just to those a Party to the case. According to Trew, the most recent hard data on relocation tows performed is for the year 2005. In 2005, a total of 108,765 relocation tows were performed in the area. The eight specific Petitioners in this case performed 65,664 of those tows, for a percentage of 60.37% of the total. Therefore, Petitioners here are requesting that, if the Commission sees fit to grant the Petitions in this consolidated case, the proposed rate increase apply only to the named Petitioners herein.

C. Representative Petitioner Towing Company Testimony.

As support for the Petitions, and expert witness consultant Trew's testimony, herein, Petitioners offered collaborative testimony from three of the Petitioner relocation towing companies: S&S Towing, Lincoln Towing, and Rendered Services.

Julie Kosanovich, S&S Towing, testified to the police tow rates charged in Northlake, Illinois. She has been Sales Representative and Sales Manager for S&S Towing since January 2003. S&S Towing is located at 4699 West Lake Street, Melrose Park, Illinois. Kosanovich's duties include facilitating towing contracts for the company. She testified that S&S Towing has a contract agreement with the City of Northlake to perform police tows, which shows that the amount charged the general public for a police tow performed in that City is a minimum of $200 if the vehicle is towed within 24 hours of the call from the Police Department, and increases in amount charged the general public over longer periods of time. Kosanovich identified a group exhibit of S&S Towing receipts showing that members of the general public paid a minimum of $200 when their vehicles were towed by S&S Towing at the direction of the Northlake Police Department.

Chris Dennis, President of Protective Parking Service, d/b/a Lincoln Towing, offered testimony to support Petitioners' evidence that relocation towing revenue is

down, and relocation towing expenses have increased substantially over the past three years. Lincoln Towing operates out of two locations, one facility being situated on Clark Street, and performs tows in Chicago and suburban areas.

Dennis testified that income from relocation tows is down, as the number of relocation tows performed by Lincoln Towing is down. In the period from 2004 to 2006, the number of relocation tows dropped from 25,893 in 2004, to 23,109 in 2005, to 20,200 in 2006, a total decrease of 20% in business. He attributed the drop to several factors, including: the real estate boom around Wrigleyville; the disappearance of vacant lots in the area; the increase in manned and gated parking structures; and the trend in valet companies taking control of existing store lots. Dennis opined that the downward trend in relocation towing revenue will continue for the foreseeable future.

Dennis then testified that he cannot cut costs and expenses to adequately adjust because so many of his fixed costs keep rising. He pointed out that just this past year Lincoln Towing's Clark Street property was reassessed for tax purposes, and real estate taxes increased 400%, from $19,000 to $76,000. The company unsuccessfully protested the increase in real estate taxes. Dennis stated further that the company's utility expenses continue to rise, as do employee and staff wages, particularly the wages related to staffing the facilities on a 24 hour basis. He added that all insurance premium expenses are far greater than they were three years ago, including workers' compensation, premises liability, vehicle collision coverage and general liability. The business pays double the truck insurance premiums that a small business or individual would pay. Claims insurance coverage premiums have risen. Lincoln Towing is having a problem most other relocation towing companies are experiencing, namely: much higher employee turnover, and the costs associated with that trend. The company is having to pay higher wages to retain the better employees and reduce the turnover. Unemployment taxes have increased. Employee healthcare costs have risen approximately 30% per year for each of the last five years. Dennis then listed a host of other costs which have increased in the past three years, including the following: vehicle maintenance expenses; vehicle parts costs; auto mechanic labor rates; facility maintenance expenses; and security costs.

Dennis concluded by adding three other "large ticket item" expenses which have shot up in the past three years: fuel expenses, which alone have increased over 100% since 2004; legal bills, an increase of 30-40%, incurred defending the company against a multitude of frivolous small claims; and credit card business expenses, ranging from persons denying legitimate charges on their credit cards after redeeming their vehicles, which the company then has to fight (which occurs a couple hundred times each year), to the fees the credit card companies exact when a customer uses a credit card to pay for a tow.

James Damion, employed as Administrator with Rendered Services, was the final relocation towing company witness to testify in support of the Petitions. Damion stated that Rendered Services operates exclusively in the City of Chicago. According to

Damion, his company's relocation tow numbers have remained fairly consistent over the past three years; nevertheless, he proffered that Rendered Services is losing business, revenue and employees as a result of other towing companies in the area which are operating illegally. Damion testified that Rendered Services' safety-related expenses are dramatically increasing, including yard and impound lot security coverage and camera equipment. Further, insurance costs have skyrocketed due to various reasons, including the occurrence of events such as the following: one of its drivers was shot to death in 2003 while on the job; the company is absorbing losses from an increasing number of vehicle accidents in which others are at fault, but have no insurance; and the company's workers' compensation and liability insurance carriers are paying exorbitant amounts in employee claims. Damion cited two examples, one including a $490,000 workers' compensation to an employee driver who was rear-ended by an under-insured non-employee driver, during work, and the other where one of his employee drivers was struck by a drunk driver, resulting in a $390,000 insurance payout. This last year alone, Rendered Services' workers' compensation premiums rose from $100,000 per year to $130,000 annually, and the company is in jeopardy of losing the last private insurance carrier willing to insure the company. Damion also stated that his company is making in excess of $6,000 FICA payments for its employees per week.

Damion next asserted that fuel costs have escalated exponentially these past years. All of Rendered Services' thirteen (13) relocation towing vehicles have diesel engines, and diesel fuel costs an average of twenty-nine cents more per gallon than premium unleaded gasoline. Additional costs which have risen include making refunds and giving rebates to complaining members of the public, just to avoid the expenses of having to pursue or defend the claims legally. Last, Damion testified that his company, which does business on the south side of Chicago, experiences a much higher incidence of getting left with junked and abandoned unclaimed vehicles, leading to greater expenses in lost towing and storage revenue on those vehicles, in addition to costs of title searches and disposal fees. Damion estimated that Rendered Services has lost approximately $7 million over the past seven years dealing with unclaimed vehicles alone.

All of Petitioners' witnesses provided consultant Trew with their business records to support their testimony, and Trews' conclusions, in the case. Further, all were of the opinion that the rate increase relief requested in this case is necessary, fair, reasonable and supported by the evidence.

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 has no objections to granting the relief requested by Petitioners. Staff also supported the rate increases requested in Case numbers RTV-A-36 and RTV-A-37.

COMMISSION ANALYSIS AND CONCLUSION

This case concerns Petitions filed by eight relocators for an increase in tow rates from $150 to $170 and an increase in the storage rate from $37 to $40.

The Law prohibits the relocation-towing rates from exceeding the mean average of the five highest police tow rates. At the time of the hearings herein, the mean average towing rate for the five highest police tow rates was $196. The mean average storage rate for the five highest police tows was $45. Granting Petitioners' request would not contravene the Law.

Information acquired from Petitioners indicates that the costs to perform relocation tows are increasing. Moreover, data from 2004, 2005, and 2006 (actual and projected) indicate that the Petitioners' expenses are outpacing their revenues. Finally, the Petitioners' operating ratios are below recommended industry standards.

In summary, the requested increases fall within the parameters of the Law. Additionally, the 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 increases.

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 $196;

(4) the record evidence in this proceeding establishes that the mean average of the five highest rates for storage within the territory to which the Law applies is $45;

(5) the evidence presented in this case establishes that a rate of $150 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 fee paid by those who trespass on private property to $170;

(6) the evidence presented in this case establishes that a rate of $37 per day after the first twenty-four hours of storage is not sufficient to meet the expenses incurred in storage of the vehicles; it is fair and reasonable that the storage charges be increased from $37 to $40;

(7) the Petitioners' request comports with Chapter 625 ILCS 5/18a-200(6) in that the most recent rate increase approved by this Commission was more than one year ago, on August 18, 2004;

(8) the record evidence presented in this case establishes that Petitioners' data does not constitute at least 85% of the non-relocation towing industry; therefore, this rate increase shall apply only to the eight named Petitioners herein.

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 licensed relocators named herein as Petitioners be increased from $150 per tow to $170 per tow.

IT IS FURTHER ORDERED that it is fair and reasonable that storage fees for relocated vehicles be increased from $37 per day after the first twenty-four hours to $40 per day after the first twenty-four hours.

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 July 2007.

JUDGE DWJ
SECTION CHIEF
ORDERS SUPERVISOR

[redacted]
CHARLES E. BOX
CHAIRMAN