STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Area Towing, Inc., Car Search, Inc., Midnight Services, Inc., North Shore Towing, Inc., Naperville Towing Service, Inc., and Community Towing, Inc.	:	RTV-A-45
Petitioners.	:	
Petition for Relocation Towing and Storage Rate Increase.	:	

ORDER

By the Commission:

PROCEDURAL HISTORY

On October 19, 2007, Petitioners Area Towing, Inc. (148-RTV-R) ("Area Towing"); Car Search, Inc. (146 RTV-R) ("Car Search"); Midnight Services, Inc. (122 RTV-R) ("Midnight Services"); and North Shore Towing, Inc. (86 RTV-R) ("North Shore 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 November 28, 2007, Community Towing, Inc. (164 RTV-R) ("Community Towing") filed a Motion to Participate as Party Petitioner. On December 7, 2007, Naperville Towing Service, Inc. (72 RTV-R) ("Naperville Towing") also filed a Motion to Participate as Party Petitioner. A duly appointed Administrative Law Judge ("ALJ") of the Commission granted the Motions of Community Towing and Naperville Towing. Petitioners seek an increase in relocation towing rates from $125/$150 per tow to $170 per tow, and an increase in storage rates from $25/$37 to $40 per day after the first 24 hours a vehicle is towed. The Petitions for towing and storage rate increases are uncontested.

Pursuant to notice given in accordance with the law and rules and regulations of the Commission, and after a number of continuances requested by Petitioners, the Petitions 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 13, 2008 and May 9, 2008. Petitioners appeared by counsel and presented the testimony of Douglas Trew, Transportation Consultant expert witness; William Howard, owner of Naperville Towing; and Robert Cole, owner of North Shore Towing. Staff appeared by Transportation Counsel, Wil Nagel. There were no Intervenors and no objectors to the Petitions. At the conclusion of the May 9, 2008 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 testified on behalf of Commission Staff in Case No. RTV-A-36, supporting 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.] 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. Finally, Trew testified as a consulting witness on behalf of three relocation towing companies not a party to the earlier rate increase cases in Commission Case No. RTV-A-42, 43 (Consolidated), seeking the identical increase in towing/storage rates to $170/$40. [Commission Order granting increase entered July 11, 2007.] As indicated, in all five 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.

Trew sponsored into evidence the Commission's Order entered in RTV-A-42/43 Consolidated, in which the Commission found, based upon substantial evidence, that the mean average of the five highest rates for Police Tows charged in the Chicagoland and surrounding counties area is $196 per tow. In that same Order the Commission found, again based upon substantial evidence, that the mean average of the five highest rates for Police tows storage per day is $45. The Chief Administrative Law Judge took administrative notice of the Commission's findings and Orders in the RTV-A-42/43 Consolidated case. Therefore, the maximum rates allowable under the Law and Commission rules and regulations, which a relocation towing company may seek in a case such as this, is $196 per tow and $45 per day storage after the first 24 hours. The rates of $170 and $40 sought by Petitioners here are well within the maximum allowed under Law.

Trew further testified that these maximum allowable rates have been in effect for four years now, without any increase during that four year period for the towing companies involved in the Petitions here. Three of the Petitioners here are currently charging a maximum rate of $125 per tow and $25 per day storage, while the other three Petitioners are charging the current rate of $150 per relocation tow and $37 per day storage after the first 24 hours.

(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 and Amended 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 sponsored into evidence a number of exhibits showing in great detail the increases in expense and declining revenue associated with Petitioners' performing relocation towing services from the years 2005 through 2007. He noted that, while Petitioners' evidence shows an overall increase in the number of relocation tows performed over the 3 year period, that fact indicated that the Petitioner companies were losing more money each year due to: (1) the substantial increases in expenses incurred to perform a relocation tow; and (2) the current cap on the rate which the companies are allowed to charge per tow and for storage. Trew also observed that the number of relocated vehicles being abandoned has increased by 36.76% between 2005 and 2007. Trew testified that towed vehicles which are abandoned result in huge losses to relocation towing companies due to the following factors: the expense of and lost revenue from the tow, which is never recovered by the towing company; drivers' wages to perform the unreimbursed tow; the cost of gasoline to perform the tow; the cost of liability and property damage and other insurance attributed to a tow; wear on equipment; storage yard costs and lost storage revenues; and the expenses of the legal and governmental agencies' processes necessary in order to get to the point where an abandoned vehicle could be sold or dumped for scrap.

According to Trew, the trend in the towing industry over the past three years shows decreasing average revenues from relocation tows and ever increasing expenses incurred by companies for each relocation tow performed by the towers. For the year 2007 the six Petitioners here earned revenue from each relocation tow in the amount of $156.48 on average. At the same time, for the same year, the six Petitioners here incurred towing expenses from each relocation tow in the average amount of $180.77. Similar shortfalls or losses occurred in each of the prior two years 2005 and 2006. Trew testified that these numbers have been averaged among the six Petitioner companies; some of the individual Petitioners data showed significantly less income per tow and/or significantly more expenses per tow. Trew offered that all of the Petitioners have "operating ratios" in excess of 100%, an indication that each of them are losing money from the relocation towing divisions of the companies. According to Trew, an operating ration of 85% is an indication of a reasonable profit being earned by a towing company. N operating ratio of 85% means that any given company is expending eighty-five cents ($.85) in expenses for every dollar ($1.00) of revenue brought into the company in relocation towing activities. The evidence showed that, at its current allowable rate, Naperville Towing has an operating ratio of 103.98%. This means that Naperville Towing is incurring expenses in the amount of almost $1.04 for every $1.00 in revenue the company earns on a relocation tow. The company must subsidize its relocation towing business with revenues from other company non-relocation towing business in order to stay afloat. The operating ratios for the other five (5) Petitioners are as follows: North Shore Towing 116.05%; Community Towing 139.47%; Midnight Services 101.5%; Area Towing 333.15%; and Car Search 108.62%. The average operating ratio for all six Petitioners in the year 2007 is 115.54%, which indicates that

on average the companies are operating at a loss in excess of 15.5% on their relocation towing business.

Trew testified extensively as to specific expense line items which have substantially increased for members of the towing industry over the past 3-4 years. First and foremost are unleaded gasoline and diesel fuel prices which skyrocketed more than 74.86% and 72.51%, respectively, in the recent two years ending January 2008 alone. Moreover, between December 31, 2007 and May 5, 2008, gas and diesel fuel prices rose another 24.54% over and above the earlier 72+% increases. In addition to direct fuel price increases, the expense of all other products used by Petitioners in their relocation towing business which are even remotely related to petroleum based products have risen exponentially, including, but not limited to: oil, grease, truck and vehicle maintenance and repair, equipment use, rentals and repair, and parts and other equipment. Trew then testified to a vast list of other expenses which have increased for these Petitioners here, as well as the towing industry generally, including the following: advertising, bad debt charge-offs, bank service charges, interest charges, telephone and telecommunications equipment, security personnel and equipment for lots and buildings, commissions paid to drivers, customer reimbursements, refuse services, gas and electric and water utilities, postage and delivery, travel and entertainment, officers' and employees' life and health insurance, both cash and non-cash employee wages such as pension plan contributions and workers' compensation insurance premiums, and all income and sales taxes. Trew concluded with evidence that real estate property tax assessments and real estate taxes in the Chicagoland and surrounding county areas have literally gone through the roof. Furthermore, numerous municipalities and counties in northern Illinois have enacted ordinances and zoning laws requiring ornamental and decorative lighting and fencing be installed on properties and lots which, in turn, lead to increased expenses, higher property values and consequent higher real estate tax assessments.

Trew again 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 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.

B. <u>Application of Rate Relief Increase Requested.</u>

The rate relief requested by Petitioners here would normally apply to the named Petitioners only, and not to any other relocation towing companies that are not party to these specific proceedings. Trew testified that the policy of the Commission has in the

past provided 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. Prior to the commencement of the instant case, the Commission has entered Orders granting rate increases to the amounts of $170 per tow and $40 per day after the first 24 hours to towing companies performing 62% of the relocation tows in the counties regulated by the Commission. Granting the increase to the six Petitioners here will result in towing companies performing 71.76% of the relocation tows in the regulated counties being able to charge the $170/$40 rates, with the remaining towing companies limited to charging lower rates until such time as they file Petitions seeking rate relief.

There are presently seven (7) Petition cases pending in the Commission seeking towing rate increases. The seven cases include sixteen (16) different relocation towing companies, several which are involved in the instant case. The various cases seek rate increases up to between $170 and $210 per tow, and storage rates up to between $40 and $50 per day. Three of the Petitioner towing companies in these currently pending cases seek the identical rate increase sought in this case.

The Commission is of the opinion that the rate increase to $170 per tow and $40 per day storage after the first 24 hours sought in this case should be held to apply to the entire towing industry and all relocation towing companies doing business in the counties regulated by the Commission. This result is necessary in order to avoid substantial and piecemeal litigation, and to foster and promote judicial economy and efficiency. Consequently, it should be ordered that the rate increase up to $170 per tow and storage rate of $40 per day after the first 24 hours shall apply to all relocation towing companies in the regulated counties, and not just to the six Petitioners involved in this case. If any relocation towing company wishes to pursue rate increases over and above the $170/$40 rates granted here, they may continue to do so by Petition and presentation of sufficient evidence before the Commission.

C. Representative Petitioner Towing Company Testimony.

1. Naperville Towing Service

As support for the Petitions, and consultant Trew's testimony, herein, Petitioners offered corroborative testimony from two of the Petitioner relocation towing companies: Naperville Towing Service, North Shore Towing.

William Howard, owner of Naperville Towing Service, testified that he is also President of the Professional Towing and Recovery Operators of Illinois, an industry association of towing companies. His own company is a full service towing company providing small car towing for individuals, dealerships, fleet leasing companies, motor clubs and police departments for approximately 30 years. Howard testified that Naperville Towing Service has been performing relocation towing for the past 15 years, averaging 1,147 relocation tows the past two years. According to Howard, Naperville

Towing Service, which is currently charging $125 per relocation tow and $25 storage per day after the first 24 hours, is operating at a significant deficit so far as its relocation towing end of the business is concerned. The company must subsidize its relocation towing business with income from other sources in order to stay afloat. If the Petition here were granted, Howard stated that the $170 towing and $45 storage rates would result in the company eking out a small profit from its relocation towing services. Howard testified that Naperville Towing must provide relocation towing services to property owners in order to stay competitive in the general towing industry.

During his testimony, Howard testified to a litany of relocation towing and general business expense items which have increased substantially since the last time the company sought a rate increase from the Commission. First and foremost among those items was the price of leaded gasoline and diesel fuel, which was over $4.00 per gallon at the time of the hearings held in this case. Naperville Towing Services uses both leaded gasoline and diesel powered tow trucks and lifts in its operations. In addition to the huge increases in fuel prices, Howard listed other expenses which have experienced substantial increases over the past three years, namely: real estate property taxes; workers' compensation, property, liability and vehicle insurance premiums; payroll and wages; driver, dispatcher and employee training and safety costs; paperwork expenses (including the $7.50 per towing invoice fee charged by the Commission for each invoice which must be used for each relocation tow); Secretary of State and Police Departments' unclaimed vehicle processing expenses; lost storage revenue from having to hold unclaimed vehicles in the company's lot for up to 180 days pending sale of a vehicle for scrap or at auction; lost towing revenue as a result of a higher percentage (up to 37%) of vehicles going unclaimed; and costs incurred in scrapping unclaimed vehicles. In addition to all these expenses, Howard cited higher costs/expenses incurred by his company for updated accessories and equipment needed on all of the tow trucks and towing equipment utilized by Naperville Towing Service in relocation towing.

2. North Shore Towing

Robert Cole, sole shareholder and owner of North Shore Towing, testified that his company has been in the towing industry more than 27 years. The company is located in Evanston, Illinois, and is an urban-suburban towing business. In addition to relocation towing, North Shore Towing performs wrecking tows, police tows, motor club tows, and commercial and heavy duty tows. The company has averaged approximately 1,300 relocation tows of trespassing vehicles annually over the past three years. Cole testified that his company must offer relocation towing services even though that end of the business is not profitable; if it did not, the company would lose a substantial portion of its non-relocation towing business, which is profitable and subsidizes the relocation towing division of the company.

Cole testified that the "customers" of North Shore Towing are the property owners that own the land from which the company performs relocation towing. Customers are technically not the persons whose cars are found to be trespassing

vehicles, and therefore subsequently towed. North Shore Towing customers include strip malls, shopping centers, apartment buildings, two-flat buildings and the Chicago Housing Authority ("CHA"). According to Cole, while the CHA is itself a quasi-governmental entity, and owns the property from which North Shore Towing tows, the CHA is managed by a private company, and the contract for relocation towing held by North Shore Towing is between Cole's company and the private management company. Consequently, the CHA property-owned tows are considered relocation tows of trespassing vehicles under the law.

Cole echoed the testimony of William Howard, owner of Naperville Towing Service, as to the recent dramatic and substantial increases in towing expenses throughout the industry over the past three or more years, which justify the request for rate increase relief in this case. He first testified that wages and wage related expenses have soared. According to Cole, it is very difficult for towing companies to find good employees to perform relocation towing services, particularly in blighted areas. To do so, North Shore Towing must pay higher wages and incur higher training costs. Relocation towing requires that employees put in long hours doing a highly technical and difficult job in all kinds of inclement weather. Employees must have extensive training to operate the specialized towing equipment. Additionally, current and new hires themselves are experiencing higher costs in their own lives, from higher supermarket/food expenses to expenses in fuel to even get to work. As a result they are commanding higher wages just to hire new employees. Cole next detailed the ever rising fuel and fuel-related costs and expenses which have skyrocketed for the company and the industry these past three years. According to Cole, any product used by his business which is petroleum-based has increased dramatically, including but not limited to costs of fuel, tires, engine oil, hydraulic oil, and maintenance. Cole testified that truck and equipment rentals, purchases, and repairs have experienced substantial rises in costs. Moreover, suppliers used by North Shore Towing are adding fuel surcharges to all their goods and services purchased or used by the towing company. North Shore Towing cannot pass those fuel surcharges on because its towing rate structure is strictly regulated by the Commission, and can only be adjusted through rate cases such as the instant one.

Cole finally enumerated other areas where his company has experienced exorbitant cost increases in recent years. He stated that the real estate taxes on his business property and storage have gone up 30-40% in the last three years. Repair costs for the roads in and around his property, which are not paid by any municipality, have greatly increased. Insurance costs, from employees' workers compensation, health and other coverage to insurance premiums for premises and vehicle liability have increased substantially. And costs to store and ultimately dispose of unclaimed or abandoned vehicles have done nothing but go up, from costs to notify police jurisdictions, the Secretary of State and known registered and unknown unregistered owners, to lost income from having to store unclaimed and abandoned vehicles for up to 120 days before vehicles may be sold for little or no scrap value. Cole concluded that, even if the rate increase requested here is granted, his relocation towing division will still not turn a decent profit. But it will go a great distance to help alleviate the

unprofitability North Shore Towing is currently experiencing in the past three years' economy.

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, RTV-A-37 and RTV-A-42,43 Consolidated.

COMMISSION ANALYSIS AND CONCLUSION

This case concerns Petitions filed by six relocators for an increase in tow rates from $125 and $150 to $170, and an increase in the storage rate from $25 and $37 to $40, per day for each day following the first 24 hours after the tow.

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 2005, 2006, and 2007 (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. The Commission is of the further opinion, for the reasons set forth in Section B. above, that the rates of $170 per tow and $40 storage per day after the first twenty-four (24) hours, should apply industry-wide to all relocation towing companies licensed by the Commission operating in the Chicagoland area and in the counties regulated by the Commission.

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 the rates of $125 and $150 per tow are 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 $170;

(6) the evidence presented in this case establishes that the rates of $25 and $37 per day after the first twenty-four hours of storage are not sufficient to meet the expenses incurred in storage of the vehicles; it is fair and reasonable that the storage charges be increased from $25 and $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 and in previous cases establishes that Petitioners' data constitutes at least 71.76% of the non-relocation towing industry, and that there are presently seven (7) other Petitions pending in the Commission involving no fewer than ten (10) towing companies, seeking rate increases at least as much as the rate increases granted here; therefore, the rate increases granted here shall apply to the remaining relocation towing companies 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 licensed relocators named herein as Petitioners be increased from $125 and $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 $25 and $37 per day after the first twenty-four hours to $40 per day after the first twenty-four hours.

IT IS FURTHER ORDERED that the rate increases granted here shall apply to all relocation towing companies licensed by the Commission and operating within the jurisdiction of this Illinois Commerce Commission.

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 15th day of October 2008.



CHARLES E. BOX
CHAIRMAN