

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

In re the matter of: :  
: :  
Protective Parking Service Corporation d/b/a :  
Lincoln Towing Service, : 92 RTV-R Sub 17  
Respondent. : 100139 MC  
: :  
Hearing on fitness to hold a Commercial Vehicle : Honorable Latrice Kirkland-Montaque  
Relocator's License pursuant to Section 401 of :  
the Illinois Commercial Relocation of :  
Trespassing Vehicles Law, 625 ILCS 5/18a-401. :

**NOTICE OF FILING**

To: See attached service list.

**PLEASE TAKE NOTICE** that on the **23<sup>rd</sup> day of May, 2019**, the Respondent, **Protective Parking Service Corporation d/b/a Lincoln Towing Service**, by and through its attorneys, PERL & GOODSNYDER, LTD., filed its **RESPONDENT PROTECTIVE PARKING SERVICE CORPORATION D/B/A LINCOLN TOWING SERVICE'S MOTION FOR RECONSIDERATION, REHEARING, AND REOPENING OF PROCEEDINGS**, with the Office of the Processing and Information Section by mailing a copy to 527 East Capitol Avenue, Springfield, Illinois 62701 pursuant to 83 Ill. Adm. Code 200.70.



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**TRANSPORTATION**  
MAY 24 2019  
**DIVISION**

**CERTIFICATE OF SERVICE**

TO: See attached Service List.

I, an attorney under oath, hereby certify under penalties as provided by law pursuant to §1-109 of the Illinois Code of Civil Procedure, that I caused the following documents of the Defendant, **PROTECTIVE PARKING SERVICE CORPORATION, an Illinois Corporation d/b/a LINCOLN TOWING SERVICE:**

- (1) **Notice of Filing**
- (2) **Certificate of Service**
- (3) **Service List**
- (4) **Respondent Protective Parking Service Corporation d/b/a Lincoln Towing Service's Motion for Reconsideration, Rehearing, and Reopening of Proceedings**

to be served upon each attorney to whom directed at their respective addresses via:

  X   **Via Electronic Mail**, by transmitting a copy in PDF format to the email addresses listed herein with consent of the recipient where permissible under 83 Ill. Adm. Code 200.1050, before 2:30 P.M. on the **23<sup>rd</sup>** day of **May, 2019**.

Respectfully submitted,



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**SERVICE LIST**

**STAFF OF THE ICC:**

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**CLERK OF THE ILLINOIS  
COMMERCE COMMISSION**

**Illinois Commerce Commission**  
Processing and Information Section  
527 East Capitol Avenue  
Springfield, Illinois 62701  
*via FEDEX PRIORITY OVERNIGHT*  
Tracking Number: 775297960109

**ATTORNEYS FOR STAFF OF THE  
ICC:**

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**Hal Dworkin**  
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**ATTORNEYS FOR RESPONDENT:**

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**ADMINISTRATIVE LAW JUDGE**

**Honorable Judge Latrice Kirkland-  
Montaque**  
Chief Administrative Law Judge  
Review & Examination Program  
Illinois Commerce Commission  
160 N. LaSalle Street  
Chicago, IL 60601  
*lmontaqu@icc.illinois.gov*

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

In re the matter of: :  
: :  
Protective Parking Service Corporation d/b/a :  
Lincoln Towing Service, : 92 RTV-R Sub 17  
Respondent. : 100139 MC  
: :  
Hearing on fitness to hold a Commercial Vehicle : Honorable Latrice Kirkland-Montaque  
Relocator’s License pursuant to Section 401 of :  
the Illinois Commercial Relocation of :  
Trespassing Vehicles Law, 625 ILCS 5/18a-401. :

**RESPONDENT PROTECTIVE PARKING SERVICE CORPORATION**  
**D/B/A LINCOLN TOWING SERVICE’S MOTION FOR**  
**RECONSIDERATION, REHEARING, AND REOPENING OF PROCEEDINGS**

**NOW COMES** the Respondent, PROTECTIVE PARKING SERVICE CORPORATION d/b/a LINCOLN TOWING SERVICE (hereinafter referred to as “Respondent”) by and through its attorneys, PERL & GOODSNYDER, LTD., and pursuant the Illinois Commercial Transportation Law (hereinafter referred to as the “ICTL”) § 5/18c-2110 (625 ILCS 5/18c-2110), the Illinois Commerce Commission (hereinafter referred to as the “Commission” and/or the “ICC”) Rules of Practice, 83 Ill. Adm. Code 200.10 *et seq.* (hereinafter referred to as the “Rules”) § 200.900 (83 Ill. Adm. Code §200.900), and pursuant to order and direction of the Circuit Court of Cook County, County Department, Chancery Division, in the case captioned PROTECTIVE PARKING SERVICE CORPORATION d/b/a LINCOLN TOWING SERVICE v. ILLINOIS COMMERCE COMMISSION, *et al.*, 2018-CH-11531 (hereinafter referred to as the “Administrative Review”), and respectfully prays that the ICC will reconsider the above captioned matter, set the matter for rehearing, and/or otherwise re-open the underlying proceedings. In support thereof, Respondent argues as follows:

1. On or about July 2, 2018, Chief Administrative Law Judge of the Review & Examination Program Latrice Kirkland-Montaque (hereinafter referred to as the “ALJ”) issued an Administrative Law Judge’s Proposed Order, finding that “The evidence supports a finding that Protective Parking is fit, willing and able to provide relocation towing services, in accordance with Chapter 625 of the Illinois Compiled Statutes, Sections 5/18a-400 through 5/18a-501.” See Exhibit 1.

2. On or about August 9, 2018, after being fully advised in the premises with briefs on exceptions pursuant to 83 Ill. Adm. Code 200.830 having been filed by both Staff of the Illinois Commerce Commission (hereinafter referred to as the “Staff”) and Respondent, the ALJ issued a Memorandum to the Commission, informing the commission that, “The argument that the inconsistencies identified by Sergeant Sulikowski constitute violations of the ICRTVL is without merit and not supported by the record. There were no citations written or other action to initiate a hearing process on these items and therefore no disposition, no hearing, no finding of violation or finding of no violation, and no disposition by plea agreement.” See Exhibit 2.

3. The August 9, 2018 Memorandum concluded that, “The record reflects that, pursuant to stipulation, Protective Parking meets the requirements under the fitness test established by 92 Ill. Adm. Code 1710.22 (a)(2). The only other facts that bear on its fitness to hold a relocator’s license during this proceeding are the 21 guilty findings on citations it was issued between July 24, 2015, and March 23, 2016. The number of guilty findings during the relevant time period in conjunction with compliance with Section 1710.22(a)(2) render Protective Parking fit to hold a relocator’s license. I recommend that the Commission enter the attached Order finding Protective Parking Service Corporation d/b/a Lincoln Towing Service fit to hold a relocator’s license.” Exhibit 2.

4. On or about September 12, 2018, the Illinois Commerce Commission entered an order ordering that “the Commercial Vehicle Relocator’s License 92 RTV-R held by Lincoln shall be immediately revoked, and Lincoln shall be ordered to immediately cease and desist from operating a relocation towing business.” Exhibit 3.

5. The September 12, 2018 order provided no stay for a motion to reconsider.

6. The September 12, 2018 order also held, “that this is a final Order subject to the Administrative Review Law, 735 ILCS 5/3-101 et seq., in accordance with Chapter 625 ILCS 5/18c-2201 through 2206 of the Illinois Commercial Transportation Law.”

7. On September 13, 2018, Respondent filed a Verified Complaint for Temporary Restraining Order and Preliminary Injunction before the Circuit Court of Cook County, County Department, Chancery Division, in the case captioned PROTECTIVE PARKING SERVICE CORPORATION d/b/a LINCOLN TOWING SERVICE v. ILLINOIS COMMERCE COMMISSION, *et al.*, 2018-CH-11531 (hereinafter referred to as the “Administrative Review”).

8. Count 1 of the Administrative Review sought to enjoin the ICC from revoking Plaintiff’s license pending administrative review of the ICC’s Order. Count II sought administrative review.

9. On September 17, 2018, the Circuit Court heard argument on Plaintiffs request for injunctive relief. The ICC objected to Plaintiff’s request, asserting that Plaintiff had failed to exhaust its administrative remedies before the ICC by requesting a rehearing.

10. On May 23, 2019, the Circuit Court in the Administrative Review action held that, “While Plaintiff should have filed a motion for rehearing prior to filing this action, the ICC’s own actions significantly contributed to Plaintiff failing to do so within the required 30 days. The ICC asserted before this court, presumably by mistake, that it could not stay the revocation of Plaintiffs

license pending rehearing. Contrary to the ICC's assertion, its decision was already automatically stayed. Had the ICC not expressed its refusal to stay its non-final decision, this court would have required Plaintiff to exhaust its administrative remedies and Plaintiff could have filed a timely motion for rehearing." See Exhibit 4 (emphasis added).

11. The Illinois Commercial Transportation Law (hereinafter referred to as the "ICTL"), § 5/18c-2110, provides that "The Commission may, at any time after notice to the parties and the public, reopen a proceeding to consider clarification, modification, or rescission of its order." 625 ILCS 5/18c-2110 (emphasis added).

12. In addition, Section 200.900 of Title 83 of the Illinois Administrative Code, entitled "Reopening on Motion of the Commission," provides as follows:

After issuance of an order by the Commission, the Commission may, on its own motion, reopen any proceeding when it has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, such reopening. No party may petition the Commission to reopen on its own motion until after the time to petition for rehearing has expired.

83 Ill. Adm. Code §200.900

13. The Commission is empowered to issue any order to "regulate commercial vehicle relocators." 625 ILCS 5/18a-200.

14. The Circuit Court in the Administrative Review Action, held that "the ICC has the authority to reopen the proceedings. 625 ILCS 5/18c21 10(2)" Exhibit 4.

15. As acknowledged by the Circuit Court in the Administrative Review action, pursuant to *Brandt Truck Line, Inc. v. Illinois Commerce Comm'n*, 173 Ill. App. 3d 209, 217 (1st Dist. 1988), "section 18c-2110(1) operates as an automatic stay for at least 30 days or upon the filing of a motion for rehearing or reconsideration and disposition thereof by either the Commission or by operation of law."

16. Accordingly, Respondent respectfully asks that the ICC reconsider the above captioned matter, set the matter for rehearing, and/or otherwise re-open the underlying proceedings, finding that Respondent was fit, willing, and able to provide relocation towing services, in accordance with Chapter 625 of Illinois Compiled Statutes, Section 5/18a-400 through 5/18a-501.

### **CONCLUSION**

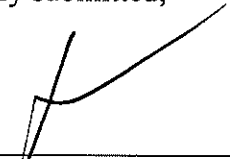
**WHEREFORE**, Respondent, PROTECTIVE PARKING SERVICE CORPORATION d/b/a LINCOLN TOWING SERVICE (heretofore referred to as “Respondent”) by and through its attorneys, PERL & GOODSNYDER, LTD., and pursuant the Illinois Commercial Transportation Law (hereinafter referred to as the “ICTL”) § 5/18c-2110 (625 ILCS 5/18c-2110), the Illinois Commerce Commission (heretofore referred to as the “Commission” and/or the “ICC”) Rules of Practice, 83 Ill. Adm. Code 200.10 *et seq.* (hereinafter referred to as the “Rules”) § 200.900 (83 Ill. Adm. Code §200.900), and pursuant to order and direction of the Circuit Court of Cook County, County Department, Chancery Division, in the case captioned PROTECTIVE PARKING SERVICE CORPORATION d/b/a LINCOLN TOWING SERVICE v. ILLINOIS COMMERCE COMMISSION, *et al.*, 2018-CH-11531 (hereinafter referred to as the “Administrative Review”), respectfully prays that the Commission will reconsider the above captioned matter, set the matter for rehearing, and/or otherwise re-open the underlying proceedings, finding that Respondent was fit, willing, and able



to provide relocation towing services, in accordance with Chapter 625 of Illinois Compiled Statutes, Section 5/18a-400 through 5/18a-501; and any such other and further relief as the Commission and Administrative Law Judge deems just and proper.

Dated: May 23, 2019

Respectfully submitted,



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Corporation d/b/a Lincoln Towing Service

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# **EXHIBIT 1**

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION



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Protective Parking Service Corporation : 92 RTV-R Sub 17  
d/b/a Lincoln Towing Service, : 100139 MC  
Respondent :  
: :  
: :  
: :  
Hearing on fitness to hold a Commercial : **SERVED ELECTRONICALLY**  
Relocator's License pursuant to Section 401 :  
of the Illinois Commercial Relocation of :  
Trespassing Vehicles Law, 625 ILCS 5/18a- :  
401. :

TO ALL COUNSEL OF RECORD:

**ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

Attached is a copy of the Administrative Law Judge's Proposed Order in the above referenced matter.

The Administrative Law Judge's Proposed Order is being sent to you pursuant to the Commission's Rules of Practice (83 Ill. Adm. Code 200). Your case is a "contested case" or "licensing case" as defined in Section 200.40 of the Rules and, therefore, the Administrative Law Judge is required under Section 200.820 to issue a Proposed Order to all parties.

Under Section 200.830 of the Rules, exceptions to the Proposed Order and replies thereto may be filed by the parties within the time periods established by the rules or such other times as fixed by the Administrative Law Judge. The times for filing Briefs on Exceptions and Briefs in Reply to Exceptions are 14 days and seven days, respectively.

Entered: July 2, 2018

A handwritten signature in black ink that reads "Latrice Kirkland Montaque".

Latrice Kirkland-Montaque  
Chief Administrative Law Judge  
Review & Examination Program

LKM

Service List

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**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

|   |   |                       |
|---|---|-----------------------|
| Protective Parking Service Corporation              | : | 92 RTV-R Sub' 17      |
| d/b/a Lincoln Towing Service,                       | : | 100139 MC             |
| Respondent  | : |                       |
|   | : |                       |
|   | : | <b>SERVED</b>         |
| Hearing on fitness to hold a Commercial Relocator's | : | <b>ELECTRONICALLY</b> |
| License pursuant to Section 401 of the Illinois     | : |                       |
| Commercial Relocation of Trespassing Vehicles Law,  | : |                       |
| 625 ILCS 5/18a-401.                                 | : |                       |

**PROPOSED ORDER**

By the Commission:

**Procedural History**

By Order entered February 24, 2016, the Illinois Commerce Commission ("Commission") initiated a hearing to inquire into the relocation towing operations of Protective Parking Service Corporation d/b/a Lincoln Towing Service ("Protective Parking" or "Respondent") to determine whether it is fit, willing, and able to properly perform the service of a commercial vehicle rellocator and to conform to the provisions of the Illinois Commercial Relocation of Trespassing Vehicles Law ("ICRTVL").

In the February 24, 2016 Order, the Commission noted that Protective Parking was issued a renewal of its authority to operate as a commercial vehicle rellocator under the ICRTVL on July 24, 2015. Pursuant to Section 401 of the Law, all rellocator licenses expire every two years. 625 ILCS 5/18a-401. That Section further provides that the Commission may at any time during the term of the license make inquiry into the management, conduct of business, or otherwise determine that the provisions of the ICRTVL and the Commission's Administrative Rules promulgated thereunder, 92 Ill. Adm. Code 1710.10 *et seq.* are being observed.

Pursuant to notice given in accordance with the Law and the rules and regulations of the Commission, this matter came to be heard before a duly-authorized Administrative Law Judge ("ALJ") of the Commission at its office in Chicago, Illinois on multiple dates between May 31, 2017, and March 21, 2018. The Staff of the Illinois Commerce Commission ("Staff") appeared by the Office of Transportation Counsel and presented the testimonies of Sergeant Timothy Sulikowski, Officer Bryan Strand, Officer John Geisbush, and Investigator Scott Kassal. The Respondent was represented by counsel and presented the testimony of Robert Munyon, General Manager of Lincoln. Each party

cross-examined the opposing parties' witnesses. The record was marked "Heard and Taken" on March 21, 2018.

After the conclusion of the evidentiary hearings, Staff and Respondent each submitted written briefs, and on June 27, 2018, the ALJ heard closing arguments of Staff and Respondent.

At a pre-hearing conference on February 1, 2017, the ALJ ruled that the relevant time period for the Commission's investigation of Protective Parking's towing operations is July 24, 2015, through March 23, 2016.

## **I. ISSUE PRESENTED**

At issue in this case is whether Protective Parking is fit, willing and able to perform the service of a commercial vehicle relocator and to conform to the provisions of the Illinois Commercial Relocation of Trespassing Vehicles Law and the Commission's Administrative Rules.

## **II. APPLICABLE LAW**

### **A. 625 ILCS 5/18a-401. Relocator's licenses – Expiration and renewal**

Relocator's licenses--Expiration and renewal. All relocator's licenses shall expire 2 years from the date of issuance by the Commission. The Commission may temporarily extend the duration of a license for the pendency of a renewal application until formally approved or denied. Upon filing, no earlier than 90 days nor later than 45 days prior to such expiration, of written application for renewal, verified under oath, in such form and containing such information as the Commission shall by regulation require, and accompanied by the required application fee and proof of security, the Commission shall, unless it has received information of cause not to do so, renew the license. If the Commission has information of cause not to renew such license, it shall so notify the applicant, and shall hold a hearing as provided for in Section 18a-400. The Commission may at any time during the term of the license make inquiry into the management, conduct of business, or otherwise to determine that the provisions of this Chapter 18A and the regulations of the Commission promulgated thereunder are being observed.

### **B. Illinois Administrative Code Title 92 § 1710.22**

#### **92 Ill. Adm. Code 1710.22. Policy on Applications**

##### **a) Relocator's Licenses.**

- 1) The Commission shall consider, with regard to applications for new or renewed relocator's licenses, the criminal conviction records (see Section 1710.22(b)(1)) of the applicant, its owners or controllers, directors, officers, members, managers, employees and agents; the safety record of those persons; the compliance record of those persons; the equipment, facilities and storage lots

of the applicant; and other facts that may bear on their fitness to hold the license.

2) The Fitness Test.

A) No person shall be deemed fit to hold a relocator's license unless the person:

- i) Owns, or has exclusive possession of under a written lease with a term of at least 1 year, at least one storage lot that meets the requirements of Subpart M;
- ii) Employs sufficient full-time employees at each storage lot to comply with Section 1710.123;
- iii) Owns or has under exclusive lease at least 2 tow trucks dedicated to use under the relocator's license;
- iv) Employs at least 2 individuals who will work as the relocator's operators; and
- v) Is in compliance with Section 4 of the Illinois Workers' Compensation Act [820 ILCS 305/4].

**III. EVIDENCE**

A. Stipulated Evidence

Protective Parking and Staff have stipulated that Protective Parking meets the requirements of the fitness test established by Section 1710.22(a)(2) of the Administrative Code. The Stipulation provides as follows:

1. Respondent owns, or has exclusive possession of under a written lease with a term of at least 1 year, at least one storage lot that meets the requirements of Subpart M, 92 Ill. Adm. Code 1710.130, *et seq.*;
2. Respondent employees sufficient full-time employees at each storage lot to comply with Section 1710.123;
3. Respondent owns or has under exclusive lease at least 2 tow trucks dedicated to use under the relocator's license;
4. Respondent employs at least 2 individuals who will work as the relocator's operators;

5. Respondent is in compliance with Section 4 of the Illinois Workers' Compensation Act [820 ILCS 305/4];
6. Respondent has sufficient available assets, management with prior experience in the towing industry, possession of adequate and properly maintained equipment, and an ability and willingness to provide commercial relocation service; and
7. Respondent is in compliance with all other procedural application requirements that would be required for a legally sufficient, complete, and proper application pursuant to 92 Ill. Adm. Code 1710.10, *et seq.* and 625 ILCS 5/18a-100, *et seq.*

B. Staff's Evidence

1. Sergeant Sulikowski

Sergeant Timothy Sulikowski, the acting Sergeant with the Illinois Commerce Commission Police Department, testified on behalf of the Commission. Sergeant Sulikowski has been an officer with the Commission since July of 2012. As acting Sergeant, he is responsible for supervising three officers, one investigator, and other civilian employees. Tr. 264, 277.

Sergeant Sulikowski testified Commission police and investigators are authorized to enforce the ICRTVL and the Commission's administrative rules by writing administrative citations which are heard by a Commission Administrative Law Judge ("ALJ"). Commission police officers are also authorized to write tickets to the motoring public for violations that are not regulated by the Commission, these tickets are brought to hearing before the Circuit Court. Investigators are not authorized to write tickets. Tr. of 1-30-18 pg. 1225

During the relevant time period, any investigations regarding Protective Parking would have been initiated in response to a consumer complaint. When a consumer's vehicle is towed, the consumer receives a copy of the tow invoice that has a preprinted complaint form on the reverse side. The consumer may fill out the complaint form and mail it to the Commission's Des Plaines office. The complaint form is date stamped when received and assigned an investigation number. The investigation is then assigned to an officer or an investigator. Tr. of 1-30-18 pg. 1226-1228

Once an officer or investigator receives an investigation assignment, they typically call the complainant to get additional information. The officer or investigator should then go to the lot from which the vehicle was towed to check the signage. They would also check the Commission's Motor Carrier Information System ("MCIS") to see whether there is a valid contract on file for the property on the tow invoice. They would also look at whether the contract is listed as a patrol or call contract and compare that information to what appears on the tow invoice. They would also check the validity of the operator and



dispatcher permits, whether the tow occurred within the proper air mileage range of the relocator's assigned territory, and whether the tow was communicated to the local police department within an hour of the tow. Tr. of 1-30-18 pg. 1232-1233. MCIS also lists the date that a summary of the contract was received by the Commission and the cancellation date of a contract. Tr. of 5-31-17 pgs. 274-275.

Sergeant Sulikowski testified that the Commission Police officers utilize MCIS daily. In addition to being used for investigations, MCIS is also used to check officer activity, such as how many citations they have written or how many traffic stops they have made. Tr. of 5-31-17 pg. 271. Sergeant Sulikowski explained that when he enters an operator's number into MCIS, data regarding the operator will appear on a screen such as when a permit was issued and when it expires. The same information is available for dispatchers. Tr. of 5-31-17 pgs. 273- 274.

Sergeant Sulikowski reviewed the 24-hour tow sheets of Protective Parking during the relevant time period. 24-hour tow sheets are logs of daily tows by Protective Parking that include the address from where a vehicle was towed, the date of the tow, the year make and model of the vehicle, and the operator who towed the vehicle. Different tow sheets are maintained for each of the lots Protective Parking maintains to store the towed cars. Protective Parking has one lot at 4601 W. Armitage Street ("Armitage Lot") and another lot at 4882 N. Clark Street ("Clark Lot"). Staff's Exhibit J comprises tow sheets for the Armitage Lot. Staff's Exhibit K comprises tow sheets for the Clark Lot. The date of the tow is located at the top right of the page. The "Driver" column identifies the operator conducting the tow.

Sergeant Sulikowski entered property address information from the 24-hour tow sheets into MCIS and looked for inconsistencies between the 24-hour tow sheets and the information in MCIS. Tr. of 5-31-17 pg. 287. At the hearing, Sergeant Sulikowski was presented with a printed out report from MCIS ("MCIS report") of the addresses that were highlighted by Staff on the 24-hour tow sheets. Staff's Exhibit A is the MCIS report of addresses that appear on the 24-hour tow sheets of tows to the Clark Lot. Staff's Exhibit B is the MCIS report of addresses that appear on the tow sheets of tows to the Armitage Lot. Sergeant Sulikowski was not certain but believed that the information in MCIS regarding the contracts between relocators and private property owners is input into MCIS by the relocation towing companies. Tr. of 5-31-17 pg. 382.

Sergeant Sulikowski testified that there were inconsistencies between the 24-hour tow sheets and the MCIS report regarding vehicles towed from the following addresses:

10 tows

111 S. Halsted According to the MCIS report, the Commission did not receive a contract from Protective Parking on the lot until April 3, 2016. Tr. 397. According to the 24-hour tow sheets, Protective Parking towed ten vehicles from that address in August and November of 2015. Tr. 394-397, Staff's Exs. B & J.

1

225 N. Columbus According to the MCIS report, Protective Parking had a contract on the lot from June 8, 2009 through January 25, 2016. Tr. 410 Another relocater's

contract was received on January 26, 2016. Protective Parking's 24-hour tow sheet indicates that one vehicle was towed from the lot on January 29, 2016. Tr. 410-412, Staff's Exs. B & J.

1           344 N. Canal According to the MCIS report, the Commission does not have a Protective Parking contract on file. Protective Parking's 24-hour tow sheet indicates a vehicle was towed from the lot on November 18, 2015. Tr. 422, Staff's Exs. B & J.

1           345 N. Canal According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. Protective Parking's 24-hour tow sheet indicates that a vehicle was towed from the lot on July 31, 2015. Tr. 436-437, Staff's Exs. B & J.

1           400 E. South Water According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. Protective Parking's 24-hour tow sheet indicates that a vehicle was towed from the lot on August 7, 2015. Tr. 439, Staff's Exs. B & J.

3           405 N. Wabash Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 27, 2008 and a cancellation on February 11, 2010. Tr. 442 Protective Parking's 24-hour tow sheets indicate that three vehicles were towed between August and December of 2015. Tr. 445, Staff's Exs. B & J.

1           440 N. LaSalle According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. The MCIS report also shows that the Commission received notice of a Protective Parking contract on March 7, 2007 and of the cancellation of the contract on September 4, 2014. Protective Parking's 24-hour tow sheet indicates that a vehicle was towed from the lot on July 24, 2015. Tr 447, Staff's Exs. B & J.

1           800 N. Kedzie According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 7, 2007 and of the cancellation of the contract on June 27, 2015. Protective Parking's 24-hour tow sheet indicates a vehicle was towed from the lot on September 30, 2015. Tr. 448-449, Staff's Exs. B & J.

1           831 N. Damen Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on December 15, 2015. Protective Parking's 24-hour sheet indicates a vehicle was towed from the lot on November 27, 2015. Tr. 452, Staff's Exs. B & J.

1           1801 N. St. Louis Ave. The 24-hour tow sheets indicate a vehicle was towed from the lot on September 19, 2015, March 8, 2016, and March 14, 2016. According to the MCIS report of the address, no relocater held a contract during the time the vehicles were towed. Tr. 454-458, Staff's Exs. B & J.

34           1900 N. Austin Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking patrol lot contract on January 5, 2007 and a

cancellation notice on November 6, 2009. The report also indicates the Commission received notice of a Protective Parking call lot contract on March 7, 2007 and a cancellation notice on October 27, 2009. The 24-hour tow sheets indicate 34 vehicles were towed from the lot between September 27, 2015 and March 11, 2016. Tr. 460-469, Staff's Exs. B & J.

1           2030 S. State According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on July 12, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed on July 31, 2015. Tr. 472-475, Staff's Exs. B & J.

12           2111 S. Clark According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. The 24-hour tow sheets indicate 12 vehicles were towed from the lot between November 2, 2015 and February 20, 2016. Tr. 475-482, Staff's Exs. B & J.

2           2113 N. Spaulding Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on February 2, 2016. The 24-hour tow sheets indicate two vehicles were towed from the lot on January 30, 2016. Tr. 483-484, Staff's Exs. B & J.

0           2201 S. Halsted According to the MCIS report of the address, there is conflicting information on file. The Commission received notice of a contract held by another relocater on May 1, 2006 and there is no cancellation notice received for that contract, thus the contract would appear to be in effect. The Commission, however, also received notice of a Protective Parking contract on March 7, 2007 and notice of cancellation on February 1, 2010. The 24-hour tow sheets indicate a vehicle was towed from the lot on August 27, 2015. Sergeant Sulikowski stated that he would have to investigate further to determine the reason for the overlapping contract dates. Tr. 485-498, Staff's Exs. B & J.

1           2233 S. Canal According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. The 24-hour tow sheets indicate a vehicle was towed from the lot on February 5, 2016. Tr. 489-491, Staff's Exs. B & J.

1           2249 N. Milwaukee Ave. According to the MCIS report of the address, another relocater has a contract with the lot owner beginning July 19, 2007 to the present. The 24-hour tow sheets indicate a vehicle was towed from the lot on August 26, 2015. Tr. 491-493, Staff's Exs. B & J.

1           2421 W. Madison According to the MCIS report of the address, another relocater has a contract with the lot owner beginning August 16, 2011, to the present. The 24-hour tow sheets indicate a vehicle was towed from the lot on November 12, 2015. Tr. 493-495, Staff's Exs. B & J.

1           2451 N. Clybourn According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 24, 2016 that is currently in

effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on March 16, 2016. Tr. 495-496, Staff's Exs. B & J.

0           2600 S. Michigan Ave. According to the MCIS report of the address, there is conflicting information on file. The Commission received notice of a contract held by another relocater on March 19, 2007 and there is no cancellation notice received for that contract, thus the contract would appear to be in effect. The Commission, however, also received notice of a Protective Parking contract on August 21, 2008 and notice of cancellation on February 1, 2010. The 24-hour tow sheets indicate six vehicles were towed from the lot between January 21, 2016 and March 23, 2016. Sergeant Sulikowski stated that he would have to investigate further to determine the reason for the overlapping contract dates. Tr. 497-507, Staff's Exs. B & J.

6           2750 W. Grand Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on September 22, 2015 that is currently in effect. The 24-hour tow sheets indicate six vehicles were towed from the lot between July 26, 2015 and August 19, 2015. Tr. 507-511, Staff's Exs. B & J.

1           2801 N. Linder Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 18, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on March 9, 2016. Tr. 511, 524-526, Staff's Exs. B & J.

8           2805 N. Linder Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 18, 2016 that is currently in effect. The 24-hour tow sheets indicate eight vehicles were towed from the lot between August 16, 2015 and September 12, 2015. Tr. 526-529, Staff's Exs. B & J.

3           2805 N. Lotus Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 18, 2016 that is currently in effect. The 24-hour tow sheets indicate three vehicles were towed from the lot between August 18, 2015 and September 4, 2015. Tr. 529-531, Staff's Exs. B & J.

1           2908 W. Fullerton According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on September 8, 2015 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on September 2, 2015. Tr. 532-533, Staff's Exs. B & J.

1           2844 W. Armitage According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on August 2, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on January 24, 2016. Tr. 534-535, Staff's Exs. B & J.

36           3100 N. Central Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on May 16, 2006 and a notice of cancellation on May 14, 2015 effecting a cancellation on May 24, 2015. The 24-hour

tow sheets indicate 36 vehicles were towed from the lot between July 25, 2015 and March 12, 2016. Tr. 536-559, Staff's Exs. B & J.

1           3901 W. Madison Ave. According to the MCIS report of the address, another  
relocator had a contract with the lot owner during the relevant time period of July 24, 2015  
through March 23, 2016. The 24-hour tow sheets indicate a vehicle was towed from the  
lot on January 16, 2016. Tr. 560, Staff's Exs. B & J.

1           4946 S. Drexel According to the MCIS report of the address, the Commission  
received notice of a Protective Parking contract on November 3, 2015 that is currently in  
effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on October 23,  
2015. Tr. 561-562, Staff's Exs. B & J.

1           5531 W. North Ave. According to the MCIS report of the address, there were no  
relocator contracts on file with the Commission for the lot owner during the relevant time  
period. The 24-hour tow sheets indicate a vehicle was towed from the lot on August 15,  
2015. Tr. 564-566, Staff's Exs. B & J.

1           7118 W. Grand Ave. According to the MCIS report of the address, another  
relocator had a contract with the lot owner during the relevant time period. The 24-hour  
tow sheets indicate a vehicle was towed from the lot on February 6, 2016. Tr. 567-567,  
Staff's Exs. B & J.

2           834 W. Leland Ave. According to the MCIS report of the address, the Commission  
received notice of a Protective Parking contract on March 24, 2016 that is currently in  
effect. The 24-hour tow sheets indicate two vehicles were towed from the lot on November  
19, 2015 and December 3, 2015. Tr. 582-585, Staff's Exs. A & K.

3           850 W. Eastwood Ave. According to the MCIS report of the address, the  
Commission received notice of a Protective Parking contract on March 9, 2017 that is  
currently in effect. The 24-hour tow sheets indicate three vehicles were towed from the  
lot between October 19, 2015 and December 22, 2015. Tr. 587-589, Staff's Exs. A & K.

1           1730 W. Terra Cotta Place According to the MCIS report of the address, the  
Commission received notice of cancellation of a Protective Parking contract on December  
21, 2015, effectuating a cancellation on December 31, 2015. The 24-hour tow sheets  
indicate a vehicle was towed from the lot on February 6, 2016. Tr. 590, Staff's Exs. A &  
K.

11           2001 W. Devon Ave. According to the MCIS report of the address, the Commission  
received notice of a Protective Parking contract on December 14, 2015 that is currently  
in effect. The 24-hour tow sheets indicate 11 vehicles were towed from the lot between  
July 25, 2015 and November 8, 2015. Tr. 582-598; Staff's Exs. A & K.

1           2626 N. Lincoln Ave. According to the MCIS report of the address, the Commission  
received notice of a Protective Parking contract on December 7, 2016 that is currently in

effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on August 6, 2015. Tr. 598-599, Staff's Exs. A & K.

43            2801 W. Devon Ave. According to the MCIS report of the address, there were no relocater contracts on file with the Commission during the relevant time period. The 24-hour tow sheets indicate 43 vehicles were towed from the lot between August 1, 2015 and February 6, 2016. Tr. 599-616, Staff's Exs. A & K.

1            3214 N. Kimball Ave. According to the MCIS report of the address, the Commission received notice of cancellation of a Protective Parking contract on February 9, 2009, effectuating a cancellation on February 19, 2009. The 24-hour tow sheets indicate a vehicle was towed from the lot on December 16, 2015. Tr. 616-617, Staff's Exs. A & K.

24           3620 N. Clark According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate 24 vehicles were towed from the lot between August 22, 2015 and February 13, 2016. Tr. 617-625, Staff's Exs. A & K.

4            3700 N. Broadway According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 18, 2016 that is currently in effect. The 24-hour tow sheets indicate four vehicles were towed from the lot between July 26, 2015 and March 9, 2016. Tr. 625-627, Staff's Exs. A & K.

1            3923 N. Clarendon Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on October 7, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on December 31, 2015. Tr. 628, Staff's Exs. A & K.

19           4102 N. Sheridan According to the MCIS report of the address, there were no relocater contracts on file with the Commission during the relevant time period. The 24-hour tow sheets indicate 19 vehicles were towed from the lot between July 26, 2015 and March 22, 2016. Tr. 628-635, Staff's Exs. A & K.

2            4801 N. Ravenswood Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on August 11, 2016 that is currently in effect. The 24-hour tow sheets indicate two vehicles were towed from the lot on July 26, 2015 and August 16, 2015. Tr. 635-638, Staff's Exs. A & K.

5            5440 N. Clark According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate five vehicles were towed from the lot between August 14, 2015 and February 23, 2016. Tr. 638-640, Staff's Exs. A & K.

3            5501 N. Kedzie According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate three vehicles were towed from the lot in January of 2016. Tr. 641-642, Staff's Exs. A & K.

5            5623 N. Clark According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate five vehicles were towed from the lot in between October 18, 2015 and January of 2016. Tr. 642-645, Staff's Exs. A & K.

4            5713 N. Kenmore According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate four vehicles were towed from the lot in between October 18, 2015 and January of 2016. Tr. 645-647, Staff's Exs. A & K.

6            5754 N. Western Ave. According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate six vehicles were towed from the lot on August 22, 2015 and December 27, 2015. Tr. 647-649, Staff's Exs. A & K.

30           6105 N. Broadway According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate 30 vehicles were towed from the lot between July 26, 2015 and March 22, 2016. Tr. 649-659, Staff's Exs. A & K.

2            6550 N. Sheridan According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on October 21, 2016 that is currently in effect. The 24-hour tow sheets indicate two vehicles were towed from the lot in July of 2015. Tr. 660, Staff's Exs. A & K.

6            6700 N. Greenview According to the MCIS report of the address, there were no relocater contracts on file with the Commission during the relevant time period. The 24-hour tow sheets indicate six vehicles were towed from the lot between July 26, 2015 and March 22, 2016. Tr. 661-664, Staff's Exs. A & K.

1            7000 N. Ridge According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on January 4, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on December 15, 2015. Tr. 665, Staff's Exs. A & K.

Sergeant Sulikowski testified on cross examination that no investigations were conducted for any of the inconsistencies he identified between the MCIS reports and Protective Parking's 24-hour tow sheets. Tr. of 1-31-18 pg. 1436, 1442. There were no consumer complaints made on these tows to trigger an investigation. Id. 1441. No citations were written for any of the tows cross-referenced on the 24-hour tow sheets contained in Staff's Exhibits J and K, and the MCIS Reports contained in Staff's Exhibits A and B. Id. 1441.

#### Operator Permits

Sergeant Sulikowski testified that there were inconsistencies between the 24-hour tow sheets and the MCIS report regarding the validity of the permits of operators who

towed vehicles during the relevant time period. Sergeant Sulikowski cross-referenced the 24-hour tow sheets from the Clark and Armitage lot with the MCIS print out of operator license information contained in Staff's Exhibit F.

Sergeant Sulikowski testified that an operator may continue to work on an existing operator's permit during the pendency of a renewal application if the renewal application is filed prior to the expiration of the existing permit. Tr. 671

Sergeant Sulikowski was presented the MCIS report's relocater operator permit screenshots for three of Protective Parking's relocation operators, Ronald Phillips with operator number 4394, Jose Negrón with operator number 2515, and Albert Solano with operator number 4190.

Operator No. 4394 – Ronald Phillips – 194 tows

According to the MCIS report, Ronald Phillips' initial operator's permit was received by the Commission on August 13, 2013, and effective from August 16, 2013 to August 16, 2015. The Commission received a renewal application on September 17, 2015, which became effective February 16, 2016 and expired on February 16, 2018. Tr. 668-669, Staff's Ex. F. Sergeant Sulikowski testified that according to the MCIS report, Mr. Phillips did not have an operator's permit from August 16, 2015 to February 16, 2016 because the renewal application was not received before the original permit expired. Tr. 671. Sergeant Sulikowski's review of Protective Parking 24-hour tow logs between August 16, 2015 and February 16, 2016, indicate Mr. Phillips performed 194 tows during that time. Tr. 671-717, Staff's Ex. F.

Sergeant Sulikowski testified on cross-examination that he did not have personal knowledge regarding whether Ronald Phillips relocated vehicles between August 16, 2015 and February 16, 2016. No investigation was done to determine if Mr. Phillips had a license during that time. No citations were issued regarding tows conducted by Mr. Phillips during that time and no complaints were received regarding any such tows. Tr. of 1-31-18 pgs. 1488-1489.

Operator No. 2515 – Jose Negrón – 1 tow

According to the MCIS report, the Commission received Jose Negrón's initial operator permit application on November 5, 2013. The permit was issued with an effective date of November 8, 2013 to November 8, 2015. A renewal Application was received on June 27, 2016, and it was issued and effective from December 6, 2016 to December 6, 2018. Sergeant Sulikowski testified that according to the MCIS report, Mr. Negrón did not have an operator's permit from November 8, 2015 to December 6, 2016. Tr. 820-822. Sergeant Sulikowski's review of Protective Parking 24-hour tow logs between November 8, 2015 and December 6, 2016 indicate Mr. Negrón performed one tow on November 21, 2015. Tr. 825, Staff Ex. J pg. 145. Although Staff contends another vehicle was towed on December 4, 2015, the handwritten operator number on the tow log appears to be 2575, not 2515. Staff Ex. J pg. 161.



Sergeant Sulikowski testified on cross-examination that he did not know whether Mr. Negron was actually licensed on November 21, 2015. No investigation was initiated and no citation was issued for the tow. Tr. of 1-31-18 pg. 1495.

Operator No. 4190 – Albert Solano – 8 tows

According to the MCIS report, the Commission received Albert Solano's initial operator permit application on February 11, 2014. The permit was issued with an effective date of February 14, 2014 to February 14, 2016. A renewal application was received on March 7, 2016 and issued with an effective date of April 22, 2016 to April 22, 2018. Sergeant Sulikowski testified that according to the MCIS report, Mr. Solano did not have an operator's permit between February 14, 2016 and April 22, 2016. Sergeant Sulikowski's review of Protective Parking 24-hour tow logs between February 14, 2016 and April 22, 2016, indicate Mr. Solano performed eight tows during that period of time. Tr. 829-833, Staff Ex. J.

Sergeant Sulikowski testified on cross-examination that he did not know when Mr. Solano sought to renew his license or whether he Mr. Solano had a license between February 14, 2016 and April 22, 2016. No investigations were initiated and no citations were issued for the tows. Tr. of 1-31-18 pg. 1496.

Summary of Tow Sheet and Operator Inconsistencies Noted by Sulikowski

In sum, Sergeant Sulikowski testified that there were 308 inconsistencies between the MCIS reports of addresses under relocation contracts and the 24-hour tow sheets from the Clark and Armitage lots. There were 203 inconsistencies between the 24-hour tow sheets and the MCIS reports of three operators. In all, there were 511 inconsistencies identified by Sergeant Sulikowski.

2. Investigator Scott Kassal

Investigator Scott Kassal testified that he is a Transportation Investigator with the Illinois Commerce Commission Police. He has been an Investigator since 1996. During the relevant time period, Investigator Kassal reviewed consumer complaints regarding relocation towing companies. Tr. 7-26-17 pg. 905. He explained the guidelines typically followed when investigating consumer complaints. Once a consumer complaint is received, it is assigned to an investigator or officer who will then use MCIS to check the validity of the operator and dispatcher permits and whether the relocation company has a contract with the property from which a vehicle was towed. Tr. of 7-26-17 pg. 906. If any of the required fields on the tow invoice, which is on the reverse side of the consumer complaint, are found to be incorrect or expired, the officer or investigator would issue an administrative citation to the towing company. The three outcomes of an investigation are finding in favor of the towing company with no further action by the Commission; finding an alleged violation and issuing an administrative citation; or reaching an agreement with the towing company whereby the towing company agrees to refund the complainant's money instead of receiving an administrative citation. Tr. of 7-26-17 pg.

908. Administrative citations are issued with a fine and the recipient company can either pay the fine imposed or request an administrative hearing on the citation. Tr. of 1-17-18 pg. 910.

Investigator Kassal testified that he issued 16 administrative citations to Protective Parking during the relevant time period for various alleged violations. Tr. of 1-17-18 pgs. 912-930; Staff's Exs. L, M, & N.

On cross-examination, Investigator Kassal testified that during the relevant time period, he opened 12 investigations relating to Protective Parking and issued 16 administrative citations. Tr. of 1-17-18 pgs. 1006-1007. Four of the sixteen citations were issued for improper signage (one of which regarding a lot under the Chicago Transit Authority elevated train track); one was issued because the tow truck driver's operator's permit was expired; one was issued because the contract summary between Protective Parking and the lot owner was not e-filed; eight were issued because the tow invoices were not accurately completed. The eight citations for inaccurate invoices were issued because the invoices lacked either or both the contract number or tow truck license plate number. In each instance where a contract number was omitted from the invoice, Investigator Kassal determined that a contract existed between the lot owner and Protective Parking. Tr. of 1-17-18 pgs. 993-994.

Two of the sixteen administrative citations issued by Investigator Kassal for invalid dispatcher permits should not have been written because there is no requirement that the person who releases a vehicle to its owner have a dispatcher permit. Tr. of 1-17-18 pg. 1006; 625 ILCS 5/18a-100(6).

### 3. Officer Bryan Strand

Officer Bryan Strand testified that he has been employed by the Illinois Commerce Commission Police Department for five years. Officer Strand described the consumer complaint process for relocation towing. Consumer complaints are received by the Commission via U.S. mail, assigned an investigation file number, and assigned to an officer or investigator. Once he receives a complaint, he reviews the invoice on the reverse side of the complaint for accuracy and completeness. Tr. of 7-26-17 pgs. 938-939. At the end of an investigation, Officer Strand will either close it without issuing any administrative citations or issue citations of alleged violations. Tr. of 7-26-17 pgs. 944-945.

Officer Strand testified that he issued 52 administrative citations to Protective Parking during the relevant time period for various alleged violations. Tr. of 7-26-17 pgs. 946-992, Staff's Exs. L, M, & N. Six of the 52 administrative citations issued by Officer Strand for expired dispatcher permits should not have been written because there is no requirement that the person who releases a vehicle to its owner have a dispatcher permit. Tr. of 7-26-17 pgs. 962, 973, 974, 976, 978, 979, 991; Tr. of 2-13-18 pgs. 1541, 1542, 1547, 1581; 625 ILCS 5/18a-100(6).

On cross-examination, Officer Strand testified that he may decide that a consumer complaint is unfounded after investigation but he could write citations for other issues that appear while investigating the complaint, such as incomplete invoices or expired operator permits. Whether these issues in fact constitute a violation of the law is determined at a hearing on a citation. Tr. of 1-16-18 pgs. 702-704, 765. Officer Strand did not know if there was a determination of a violation at hearings on any of the citations he wrote to Protective Parking during the relevant time period. Tr. of 1-16-18 pg. 704.

#### 4. Officer John Geisbush

Officer Geisbush testified that he has been employed by the Illinois Commerce Commission since July of 2012. One of his duties is to enforce relocation towing regulations. The relocation towing industry is primarily regulated through investigating consumer complaints. When he receives a consumer complaint he will review it and the information on the tow invoice on the reverse side of the complaint. He may then go to the location of the tow, call the tow company and ask them about the incident, or ask the complainant for additional information. Tr. 7-26-17 pgs. 1005-1006. In the course of his investigation, he may find issues that the consumer did not complain about. Id. 1009. The possible outcomes of an investigation are that citations are issued to the towing company, no citations are issued and the investigation is closed; or the towing company agrees to refund the consumer's money. Id. 1010.

Officer Geisbush testified on direct examination that he issued 86 administrative citations to Protective Parking during the relevant time period for various alleged violations. Tr. of 7-26-17 pgs. 1011-1096, Staff's Exs. L, M, & N.

On cross-examination, Officer Geisbush testified that 85 citations were issued by him (a difference of one from direct examination), 22 were for improper signage Tr. of 1-25-18 pgs. 1148-1150; 13 were for improper invoices Id. 1159; 10 were for overcharges Id. 1174; 10 were for no equipment lease on file Id. 1177; 2 were for towing while owner present Id. 1189; 4 were for patrolling from a call lot Id. 1193; 1 was for towing from a cancelled lot; 11 were for not having written authorization to relocate Tr. of 1-25-18 pg. 1199; and 12 were for removing authorized vehicles. Tr. of 1-25-18 pgs. 1199-1201. Officer Geisbush testified that an administrative citation is an allegation of a violation, not an adjudication that there is a violation. He did not know if any hearings were held on the citations he issued. Tr. of 1-25-18 pgs. 1041, 1213.

#### 5. Administrative Notice of Citations Issued, Administrative Law Judge Rulings, and Commission Order

Staff Exhibits G, H, I, L, M and N were admitted under administrative notice pursuant to 83 Ill. Adm. Code 200.640(2). Tr. of 2-14-18 pgs. 1728, 1731. Exhibit G consists of Administrative Law Judge Rulings of guilty on citations issued by Officers Strand, Geisbush and Investigator Kassal during the relevant time period. Exhibit H consists of Administrative Law Judge Rulings dismissing citations issued by the Officers

and Investigator. Exhibit I consists of Administrative Law Judge Rulings acknowledging voluntary settlement of citations without adjudication. Exhibits L, M and N contain copies of citations issued by the Officers and Investigator during the relevant time period.

Of the 16 citations written to Protective Parking by Investigator Kassal, five were found guilty by ALJ ruling, six were dismissed, and five were voluntarily settled without adjudication. Tr. of 7-26-17 pgs. 912-930; Staff's Exs. G, H, I, L, M, & N.

Of the 52 citations written to Protective Parking by Officer Strand, 14 were found guilty by ALJ ruling, 35 were dismissed, and three were voluntarily settled without adjudication. Tr. of 7-26-17 pgs. 946-992; Staff's Exs. G, H, I, L, M, & N.

Of the 86 citations issued to Protective Parking by Officer Geisbush, two were found guilty by ALJ ruling, 70 were dismissed, and 14 were voluntarily settled without adjudication. There is a discrepancy of one citation between the testimony and the ALJ rulings. Tr. of 7-26-17 pgs. 1011-1096; Staff's Exs. G, H, I, L, M, & N.

In sum, of the 154 citations issued to Protective Parking during the relevant time period, 21 received guilty findings, 111 were dismissed; 22 were voluntarily settled without adjudication.

The ALJ also admitted under administrative notice pursuant to 83 Ill. Adm. Code 200.640(2), the Commission Order entered on July 8, 2015 in the matter of Protective Parking Service Corporation: Application for Renewal of a Commercial Relocators License. 92 RTV-R Sub 15. This Order is the Commission's decision granting Protective Parking's last renewal application.

#### C. Protective Parking's Evidence

Robert Munyon testified that he currently is, and was during the relevant time period, general manager of Protective Parking. He has worked for Protective Parking for 32 years and as the general manager for 17 years. He stated Protective Parking has approximately 20,000 contracts with private property owners to tow from their lots.

Mr. Munyon testified that, according to the 24-hour tow sheets provided to the Commission, Protective Parking towed 9,470 vehicles during the relevant time period. Tr. of 3-15-18 pgs. 1799-1801. Staff's Exs. J and K.

#### IV. **PARTIES' POSITIONS**

##### Staff's Position

Staff argues in its post hearing brief that the testimony of Sergeant Sulikowski regarding inconsistencies between the MCIS reports and the 24-hour tow sheets

establishes that Protective Parking towed vehicles without property owner authorization, or prior to filing the tow contract with the Commission, or on a patrol basis when the contract was filed as a call lot 462 times between July 24, 2015, and March 23, 2016. Specifically, Staff argues there were 176 unauthorized tows to the Armitage Lot and 286 unauthorized tows to the Clark Lot.

Staff also argues that Protective Parking used the services of an operator without a valid or current operator's permit 369 times during the relevant time period. The 462 claimed unauthorized tows and the 369 claimed operator violations lead Staff to claim there were a total of 831 violations of the IRCTVL.

Staff's argues that a "logical syllogism" leads to the inevitable conclusion that a violation of the ICRTVL and Administrative Rules occurred in each instance of an inconsistency. Staff Br. 23. Staff further argues that Protective Parking's pattern and practice of conducting unauthorized relocations support a finding that it is unfit to hold a relocators license.

Staff does not refer to any of the testimony provided by Officer's Strand, Geisbush, or Investigator Kassal in its post hearing brief.

#### Protective Parking's Position

Protective Parking argues that the evidence adduced did not reflect that any of the 831 alleged violations actually occurred. Sergeant Sulikowski only testified to the inconsistencies between the 24-hour tow sheets and the MCIS reports. The testimony adduced at trial was that the testifying officer did not initiate or complete any investigation, did not write any citations, did not testify at a hearing on a citation, and no violation was determined by an Administrative Law Judge.

Protective Parking also argues that Staff has stipulated that Protective Parking meets each and every requirement of the required fitness test enumerated by 92 Ill. Adm. Code 1710.22(a)(2), and based on the stipulation alone, it should be determined that it is fit, willing, and able to hold a Commercial Vehicle Relocator's License.

## **V. ANALYSIS AND CONCLUSION**

The issue presented in this case is whether Protective Parking is fit, willing and able to perform the service of a commercial vehicle rellocator and to conform to the provisions of the Illinois Commercial Relocation of Trespassing Vehicles Law and the Commission's Administrative Rules.

The Commission's analysis of whether a rellocator is fit to hold a license is prescribed by Section 1710.22 of the Administrative Rules. Staff and Respondent have stipulated that Protective Parking meets the requirements of the fitness test established by the Section 1710.22(a)(2). 92 Ill. Adm. Code 1710.22 (a)(2).

The only other standard to use in evaluating whether Protective Parking is fit to hold a license is Section 1710.22(a)(1), which allows the Commission to consider the equipment, facilities and storage lots of the applicant; and other facts that may bear on their fitness to hold the license. 92 Ill. Adm. Code 1710.22 (a)(1). The evidence presented by Staff is considered as "other facts" that may bear on the fitness of Protective Parking.

The record reflects that Sergeant Sulikowski identified 308 inconsistencies between the MCIS reports of addresses under relocation contracts and the 24-hour tow sheets from the Clark and Armitage lots. The Sergeant identified 203 inconsistencies between the 24-hour tow sheets and the MCIS reports of three operators. In all, there were 511 inconsistencies identified by Sergeant Sulikowski.

Staff's claim that Protective Parking committed 831 violations of the IRCTVL is not supported by the record. In order to identify an inconsistency, Sergeant Sulikowski had to compare two sources of information, the addresses of contracts in the MCIS reports against the handwritten addresses on the 24-hour tow sheets. The Sergeant did not compare the information in Exhibits A and B to 16 addresses in Exhibits J and K cited in Staff's post hearing brief, and therefore, did not establish any inconsistencies for these addresses: 1041 N. Harding; 1919 N. Cicero; 2002 S. Wentworth; 2734 S. Wentworth; 4000 W. Grand; 4032 W. Armitage; 4645 W. Belmont; 5000 W. Madison; 5200 W. North; 223 N. Custer; 1415 W. Morse; 2245 N. Halsted; 2454 W. Peterson; 2828 N. Broadway; 4420 N. Winchester; and 5853 W. Artesian.

In addition, the Sergeant was unable to read the dates on several pages of the 24-hour tow sheets, and therefore, unable to comment on several of the tows appearing in the tow sheets. Tr. of 7-7-17 pgs. 592, 594, 601, 602, 603, 639, 640. In some instances, the Sergeant's testimony covers fewer vehicles towed from an address than reported by Staff. (ex., 3700 N. Broadway, Staff claims there were eight tows but testimony on four; 4102 N. Sheridan, Staff claims there were 23 tows but testimony on 19; and 5501 N. Kedzie, Staff claims there were six tows but testimony on three).

Sergeant Sulikowski also testified that there was conflicting information in the MCIS report regarding the status of contracts at 2201 S. Halsted and 2600 S. Michigan. He would have to do further investigation to determine the status of the contracts. Tr. of 6-1-17 pgs. 485, 497.

There is a discrepancy of 320 tows between the tows cited in Staff's post hearing brief (831) and the count of tows supported by the testimony of Sergeant Sulikowski (511).

Staff's argument that the inconsistencies identified by Sergeant Sulikowski constitute violations of the IRCTVL is without merit and not supported by the record. There were no citations written or other action to initiate a hearing process on these items and therefore no disposition, no hearing, no finding of violation or finding of no violation, and no disposition by plea agreement. Staff's four witnesses testified that when they have reason to believe a violation has occurred, they will issue an administrative citation. An administrative citation is an allegation of a violation. Sergeant Sulikowski testified that no

investigations were conducted for any of the inconsistencies he identified between the MCIS reports and Protective Parking's 24-hour tow sheets. No citations were written for any of the tows cross-referenced on the 24-hour tow sheets and the MCIS reports containing information about operator permits or relocation contracts by address.

The record does reflect that during the relevant time period, Officers Strand, Geisbush and Investigator Kassal issued 154 citations to Protective Parking. Of those, 21 received guilty findings, 111 were dismissed; 22 were voluntarily settled without adjudication.

The record also reflects that Protective Parking towed 9,470 vehicles during the relevant time period. This means that Protective Parking was found guilty of violating the Illinois Commercial Relocation of Trespassing Vehicles Law or its Administrative Rules 21 times in an eight month period when it towed a total of 9,470 vehicles, which is a violation on less than one percent of all tows conducted.

The record reflects that Protective Parking meets the requirements under the fitness test established by 92 Ill. Adm. Code 1710.22 (a)(2). The only other facts that bear on its fitness to hold a relocator's license during this proceeding are the 21 guilty findings on citations it was issued between July 24, 2015, and March 23, 2016. The number of guilty findings during the relevant time period in conjunction with compliance with Section 1710.22(a)(2) render Protective Parking fit to hold a relocator's license.

The evidence supports a finding that Protective Parking is fit, willing and able to provide relocation towing services, in accordance with Chapter 625 of the Illinois Compiled Statutes, Sections 5/18a-400 through 5/18a-501.

## **VI. PROPOSED ORDER**

A Proposed Order was served on the Parties on June 29, 2018.

## **VII. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having considered the entire record, finds that:

- (1) the Commission has jurisdiction over the Respondent and the subject-matter of this proceeding, in accordance with Section 18a-200(1) of the relocation towing law (625 ILCS 5/18a-200(1));
- (2) The relevant time period for the Commission's investigation of Protective Parking Service Corporation is July 24, 2015, through March 23, 2016;
- (3) during the relevant time period, Officers Strand, Geisbush and Investigator Kassal issued 154 citations to Protective Parking. Of those, 21 received guilty findings, 111 were dismissed; 22 were voluntarily settled without adjudication;

- (4) during the relevant time period, Protective Parking Service Corporation towed 9,470 vehicles;
- (4) by stipulation, Respondent Protective Parking meets the requirements of the fitness test established by 92 Ill. Adm. Code 1710.22(a)(2); and
- (5) The evidence supports a finding that Protective Parking is fit, willing and able to provide relocation towing services, in accordance with Chapter 625 of the Illinois Compiled Statutes, Sections 5/18a-400 through 5/18a-501.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Protective Parking Service Corporation d/b/a Lincoln Towing Service, with principal office and place of business at 4882 N. Clark Street, Chicago, Cook County, Illinois, is found to be fit, willing, and able to perform a commercial relocation service in intrastate commerce within the State of Illinois under the Illinois Commercial Relocation of Trespassing Vehicles Law (625 ILCS 5/18a-400 *et seq.*).

IT IS FURTHER ORDERED that the Commercial Vehicle Relocator's License of Protective Parking Service Corporation d/b/a Lincoln Towing Service shall expire two years from the date of this Order. Upon Applicant filing a verified Application in such form and containing such information as the Commission requires, and accompanied by the required Application fee, the Commission shall renew the Application in two years, unless it has received information of cause not to do so.

IT IS FURTHER ORDERED that the Commission retains jurisdiction over Respondent and the subject-matter of this proceeding for the purpose of issuing such other Orders as it may deem appropriate.

IT IS FURTHER ORDERED that this is a final Order subject to the Administrative Review Law, 735 ILCS 5/3-101 *et seq.*, in accordance with Chapter 625 ILCS 5/18c-2201 through 2206 of the Illinois Commercial Transportation Law.

By Order of the Commission this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

BRIEN SHEAHAN  
CHAIRMAN



# **EXHIBIT 2**

**Docket No.:** 92 RTV-R s17  
**Bench Date:** 9/12/18  
**Deadline:** N/A

**MEMORANDUM**

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**TO:** The Commission  
**FROM:** Latrice Kirkland-Montaque, Chief Administrative Law Judge  
**DATE:** August 9, 2018  
**SUBJECT:** Protective Parking Service Corporation d/b/a Lincoln Towing Service

Hearing on fitness to hold a Commercial Relocator's License pursuant to Section 401 of the Illinois Commercial Relocation of Trespassing Vehicles Law, 625 ILCS 5/18a-401.

**RECOMMENDATION:** Enter Order finding Respondent fit to hold license.

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**I. Procedural History**

By Order entered February 24, 2016, the Commission initiated the instant proceeding to inquire into the relocation towing operations of Protective Parking Service Corporation d/b/a Lincoln Towing Service ("Protective Parking" or "Respondent") to determine whether it is fit, willing, and able to properly perform the service of a commercial vehicle relocator and to conform to the provisions of the Illinois Commercial Relocation of Trespassing Vehicles Law ("ICRTVL") and the Commission's Administrative Rules, 92 Ill. Adm. Code 1710.10 et seq."

At a pre-hearing conference on February 1, 2017, the ALJ ruled that the relevant time period for the Commission's investigation of Protective Parking's towing operations is July 24, 2015, through March 23, 2016.

On April 5, 2016, discovery began. Multiple data requests and answers were exchanged, and a final deposition of one of Staff's witnesses occurred on May 3, 2017.

Evidentiary hearings were held on multiple dates between May 31, 2017, and March 21, 2018. The record was marked "Heard and Taken" on March 21, 2018.

Motions were filed by Protective Parking during the course of the evidentiary hearings. At the July 10, 2017 evidentiary hearing, Protective Parking filed an Emergency Motion to Strike Testimony and Continue Hearing. The Motion was denied. On July 26, 2017, Protective Parking filed a Motion to Stay these proceedings pending action by the Circuit Court on a review of the Commission's response to a FOIA request

made by Protective Parking to the Commission. The Motion to Stay was denied but Protective Parking was allowed instead to request the information through additional formal discovery with responses to be provided by mid-October. Evidentiary hearings resumed on January 16, 2018 and concluded on March 21, 2018.

The Staff of the Commission appeared by the Office of Transportation Counsel and presented the testimonies of Sergeant Timothy Sulikowski, Officer Bryan Strand, Officer John Geisbush, and Investigator Scott Kassal. The Respondent was represented by counsel and presented the testimony of Robert Munyon, General Manager of Lincoln. Each party cross-examined the opposing parties' witnesses.

## **II. Issue**

At issue in this case is whether Protective Parking is fit, willing and able to perform the service of a commercial vehicle relocater and to conform to the provisions of the Illinois Commercial Relocation of Trespassing Vehicles Law and the Commission's Administrative Rules.

## **III. Applicable Law**

- a. 625 ILCS 5/18a-401. Relocator's licenses – Expiration and renewal
- b. Illinois Administrative Code Title 92 § 1710.22

The Commission's analysis of whether a relocater is fit to hold a license is prescribed by Section 1710.22 of the Administrative Rules. Staff and Respondent have stipulated that Protective Parking meets the requirements of the fitness test established by the Section 1710.22(a)(2). 92 Ill. Adm. Code 1710.22 (a)(2).

The only other standard to use in evaluating whether Protective Parking is fit to hold a license is Section 1710.22(a)(1), which allows the Commission to consider the equipment, facilities and storage lots of the applicant; and other facts that may bear on their fitness to hold the license. 92 Ill. Adm. Code 1710.22 (a)(1). The evidence presented by Staff is considered as "other facts" that may bear on the fitness of Protective Parking.

## **IV. Conclusion**

The record reflects that Sergeant Sulikowski identified 308 inconsistencies between the MCIS reports of addresses under relocation contracts and Protective Parking's 24-hour tow sheets from its Clark and Armitage lots. The Sergeant identified 203 inconsistencies between the 24-hour tow sheets and the MCIS reports of three operators. In all, there were 511 inconsistencies identified by Sergeant Sulikowski.

There is a discrepancy of 320 tows between the tows cited in Staff's post hearing brief (831) and the count of tows supported by the testimony of Sergeant Sulikowski (511). Staff argues that the number of 831 tows is supported by the record because of the admission into evidence of the MCIS reports and of the 24-hour tow sheets,

notwithstanding the lack of testimony regarding 320 tows. However, it is the lack of supporting testimony on the 320 tows that creates a meaningful distinction regarding their reliability. In many instances, Sergeant Sulikowski was unable to identify an alleged inconsistency between the MCIS report and the 24-hour tow sheets because of some issue within either of the exhibits he was comparing. Without the testimony, those issues would have gone unnoticed. While a review of the records admitted into evidence may substantiate Staff's assertion of the existence of 320 other potential inconsistencies, they have not been identified on the record and cross-examination at hearing revealed that the accuracy of the data cannot be relied upon as presumptively accurate. Without any corroborating testimony, and hence cross-examination of such testimony, less weight is afforded to the 320 tows.

The argument that the inconsistencies identified by Sergeant Sulikowski constitute violations of the ICRTVL is without merit and not supported by the record. There were no citations written or other action to initiate a hearing process on these items and therefore no disposition, no hearing, no finding of violation or finding of no violation, and no disposition by plea agreement.

The record does reflect that during the relevant time period, Officers Strand, Geisbush and Investigator Kassal issued 154 citations to Protective Parking. Of those, 21 received guilty findings, 66 were dismissed pursuant to a settlement agreement of February 23, 2017, 45 were dismissed by ALJ Ruling, and 22 were voluntarily settled without adjudication pursuant to a settlement agreement of February 23, 2017.

The record also reflects that Protective Parking towed 9,470 vehicles during the relevant time period.

The record reflects that, pursuant to stipulation, Protective Parking meets the requirements under the fitness test established by 92 Ill. Adm. Code 1710.22 (a)(2). The only other facts that bear on its fitness to hold a relocator's license during this proceeding are the 21 guilty findings on citations it was issued between July 24, 2015, and March 23, 2016. The number of guilty findings during the relevant time period in conjunction with compliance with Section 1710.22(a)(2) render Protective Parking fit to hold a relocator's license.

I recommend that the Commission enter the attached Order finding Protective Parking Service Corporation d/b/a Lincoln Towing Service fit to hold a relocator's license.

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

|   |   |                 |
|---|---|-----------------|
| Protective Parking Service Corporation              | : | 92 RTV-R Sub 17 |
| d/b/a Lincoln Towing Service,                       | : | 100139 MC       |
| Respondent  | : |                 |
|   | : |                 |
|   | : |                 |
| Hearing on fitness to hold a Commercial Relocator's | : |                 |
| License pursuant to Section 401 of the Illinois     | : |                 |
| Commercial Relocation of Trespassing Vehicles Law,  | : |                 |
| 625 ILCS 5/18a-401.                                 | : |                 |

**ORDER**

By the Commission:

**Procedural History**

By Order entered February 24, 2016, the Illinois Commerce Commission ("Commission") initiated a hearing to inquire into the relocation towing operations of Protective Parking Service Corporation d/b/a Lincoln Towing Service ("Protective Parking" or "Respondent") to determine whether it is fit, willing, and able to properly perform the service of a commercial vehicle rellocator and to conform to the provisions of the Illinois Commercial Relocation of Trespassing Vehicles Law ("ICRTVL").

In the February 24, 2016 Order, the Commission noted that Protective Parking was issued a renewal of its authority to operate as a commercial vehicle rellocator under the ICRTVL on July 24, 2015. Pursuant to Section 401 of the Law, all rellocator licenses expire every two years. 625 ILCS 5/18a-401. That Section further provides that the Commission may at any time during the term of the license make inquiry into the management, conduct of business, or otherwise determine that the provisions of the ICRTVL and the Commission's Administrative Rules promulgated thereunder, 92 Ill. Adm. Code 1710.10 *et seq.* are being observed.

On April 5, 2016, discovery began when Respondent propounded discovery requests to the Office of Transportation Counsel ("OTC" or "Staff") and also submitted a Freedom of Information Act ("FOIA") request. Multiple data requests and answers were exchanged, and a final deposition of one of Staff's witnesses occurred on May 3, 2017.

Pursuant to notice given in accordance with the Law and the rules and regulations of the Commission, this matter came to be heard before a duly-authorized Administrative Law Judge ("ALJ") of the Commission at its office in Chicago, Illinois on multiple dates between May 31, 2017, and March 21, 2018. The Staff of the Illinois Commerce

Commission appeared by the Office of Transportation Counsel and presented the testimonies of Sergeant Timothy Sulikowski, Officer Bryan Strand, Officer John Geisbush, and Investigator Scott Kassal. The Respondent was represented by counsel and presented the testimony of Robert Munyon, General Manager of Lincoln. Each party cross-examined the opposing parties' witnesses. The record was marked "Heard and Taken" on March 21, 2018.

Motions were filed by Protective Parking during the course of the evidentiary hearings. At the July 10, 2017 evidentiary hearing, Protective Parking filed an Emergency Motion to Strike Testimony and Continue Hearing. The Motion was denied. On July 26, 2017, Protective Parking filed a Motion to Stay these proceedings pending action by the Circuit Court on a review of the Commission's response to a FOIA request made by Protective Parking to the Commission. The Motion to Stay was denied but Protective Parking was allowed instead to request the information through additional formal discovery with responses to be provided by mid-October. Evidentiary hearings resumed on January 16, 2018 and concluded on March 21, 2018.

After the conclusion of the evidentiary hearings, Staff and Respondent each submitted written briefs, and on June 27, 2018, the ALJ heard closing arguments of Staff and Respondent.

At a pre-hearing conference on February 1, 2017, the ALJ ruled that the relevant time period for the Commission's investigation of Protective Parking's towing operations is July 24, 2015, through March 23, 2016.

## **I. ISSUE PRESENTED**

At issue in this case is whether Protective Parking is fit, willing and able to perform the service of a commercial vehicle relocater and to conform to the provisions of the Illinois Commercial Relocation of Trespassing Vehicles Law and the Commission's Administrative Rules.

## **II. APPLICABLE LAW**

### **A. 625 ILCS 5/18a-401. Relocator's licenses – Expiration and renewal**

Relocator's licenses--Expiration and renewal. All relocater's licenses shall expire 2 years from the date of issuance by the Commission. The Commission may temporarily extend the duration of a license for the pendency of a renewal application until formally approved or denied. Upon filing, no earlier than 90 days nor later than 45 days prior to such expiration, of written application for renewal, verified under oath, in such form and containing such information as the Commission shall by regulation require, and accompanied by the required application fee and proof of security, the Commission shall, unless it has received information of cause not to do so, renew the license. If the Commission has information of cause not to renew such license, it shall so notify the applicant, and shall hold a hearing as provided for in Section 18a-400. The Commission

may at any time during the term of the license make inquiry into the management, conduct of business, or otherwise to determine that the provisions of this Chapter 18A and the regulations of the Commission promulgated thereunder are being observed.

B. Illinois Administrative Code Title 92 § 1710.22

92 Ill. Adm. Code 1710.22. Policy on Applications

a) Relocator's Licenses.

1) The Commission shall consider, with regard to applications for new or renewed relocator's licenses, the criminal conviction records (see Section 1710.22(b)(1)) of the applicant, its owners or controllers, directors, officers, members, managers, employees and agents; the safety record of those persons; the compliance record of those persons; the equipment, facilities and storage lots of the applicant; and other facts that may bear on their fitness to hold the license.

2) The Fitness Test.

A) No person shall be deemed fit to hold a relocator's license unless the person:

- i) Owns, or has exclusive possession of under a written lease with a term of at least 1 year, at least one storage lot that meets the requirements of Subpart M;
- ii) Employs sufficient full-time employees at each storage lot to comply with Section 1710.123;
- iii) Owns or has under exclusive lease at least 2 tow trucks dedicated to use under the relocator's license;
- iv) Employs at least 2 individuals who will work as the relocator's operators; and
- v) Is in compliance with Section 4 of the Illinois Workers' Compensation Act [820 ILCS 305/4].

**III. EVIDENCE**

A. Stipulated Evidence

Protective Parking and Staff have stipulated that Protective Parking meets the requirements of the fitness test established by Section 1710.22(a)(2) of the Administrative Code. The Stipulation provides as follows:

1. Respondent owns, or has exclusive possession of under a written lease with a term of at least 1 year, at least one storage lot that meets the requirements of Subpart M, 92 Ill. Adm. Code 1710.130, *et seq.*;
2. Respondent employees sufficient full-time employees at each storage lot to comply with Section 1710.123;
3. Respondent owns or has under exclusive lease at least 2 tow trucks dedicated to use under the relocater's license;
4. Respondent employs at least 2 individuals who will work as the relocater's operators;
5. Respondent is in compliance with Section 4 of the Illinois Workers' Compensation Act [820 ILCS 305/4];
6. Respondent has sufficient available assets, management with prior experience in the towing industry, possession of adequate and properly maintained equipment, and an ability and willingness to provide commercial relocation service; and
7. Respondent is in compliance with all other procedural application requirements that would be required for a legally sufficient, complete, and proper application pursuant to 92 Ill. Adm. Code 1710.10, *et seq.* and 625 ILCS 5/18a-100, *et seq.*

B. Staff's Evidence

1. Sergeant Sulikowski

Sergeant Timothy Sulikowski, the Acting Sergeant with the Illinois Commerce Commission Police Department, testified on behalf of the Commission. Sergeant Sulikowski has been an officer with the Commission since July of 2012. As Acting Sergeant, he is responsible for supervising three officers, one investigator, and other civilian employees. Tr. 264, 277.

Sergeant Sulikowski testified Commission police and investigators are authorized to enforce the ICRTVL and the Commission's administrative rules by writing administrative citations which are heard by a Commission Administrative Law Judge ("ALJ"). Commission police officers are also authorized to write tickets to the motoring public for violations that are not regulated by the Commission, these tickets are brought to hearing before the Circuit Court. Investigators are not authorized to write tickets. Tr. of 1-30-18 pg. 1225.



During the relevant time period, any investigations regarding Protective Parking would have been initiated in response to a consumer complaint. When a consumer's vehicle is towed, the consumer receives a copy of the tow invoice that has a preprinted complaint form on the reverse side. The consumer may fill out the complaint form and mail it to the Commission's Des Plaines office. The complaint form is date stamped when received and assigned an investigation number. The investigation is then assigned to an officer or an investigator. Tr. of 1-30-18 pg. 1226-1228.

Once an officer or investigator receives an investigation assignment, they typically call the complainant to get additional information. The officer or investigator should then go to the lot from which the vehicle was towed to check the signage. They would also check the Commission's Motor Carrier Information System ("MCIS") to see whether there is a valid contract on file for the property on the tow invoice. They would also look at whether the contract is listed as a patrol or call contract and compare that information to what appears on the tow invoice. They would also check the validity of the operator and dispatcher permits, whether the tow occurred within the proper air mileage range of the relocater's assigned territory, and whether the tow was communicated to the local police department within an hour of the tow. Tr. of 1-30-18 pg. 1232-1233. MCIS also lists the date that a summary of the contract was received by the Commission and the cancellation date of a contract. Tr. of 5-31-17 pgs. 274-275.

Sergeant Sulikowski testified that the Commission Police officers utilize MCIS daily. In addition to being used for investigations, MCIS is also used to check officer activity, such as how many citations they have written or how many traffic stops they have made. Tr. of 5-31-17 pg. 271. Sergeant Sulikowski explained that when he enters an operator's number into MCIS, data regarding the operator will appear on a screen such as when a permit was issued and when it expires. The same information is available for dispatchers. Tr. of 5-31-17 pgs. 273- 274.

Sergeant Sulikowski reviewed the 24-hour tow sheets of Protective Parking during the relevant time period. 24-hour tow sheets are logs of daily tows by Protective Parking that include the address from where a vehicle was towed, the date of the tow, the year make and model of the vehicle, and the operator who towed the vehicle. Different tow sheets are maintained for each of the lots Protective Parking maintains to store the towed cars. Protective Parking has one lot at 4601 W. Armitage Street ("Armitage Lot") and another lot at 4882 N. Clark Street ("Clark Lot"). Staff's Exhibit J comprises tow sheets for the Armitage Lot. Staff's Exhibit K comprises tow sheets for the Clark Lot. The date of the tow is located at the top right of the page. The "Driver" column identifies the operator conducting the tow.

Sergeant Sulikowski entered property address information from the 24-hour tow sheets into MCIS and looked for inconsistencies between the 24-hour tow sheets and the information in MCIS. Tr. of 5-31-17 pg. 287. At the hearing, Sergeant Sulikowski was presented with a printed out report from MCIS ("MCIS report") of the addresses that were highlighted by Staff on the 24-hour tow sheets. Staff's Exhibit A is the MCIS report of

addresses that appear on the 24-hour tow sheets of tows to the Clark Lot. Staff's Exhibit B is the MCIS report of addresses that appear on the tow sheets of tows to the Armitage Lot. Sergeant Sulikowski was not certain but believed that the information in MCIS regarding the contracts between relocators and private property owners is input into MCIS by the relocation towing companies. Tr. of 5-31-17 pg. 382.

Sergeant Sulikowski testified that there were inconsistencies between the 24-hour tow sheets and the MCIS report regarding vehicles towed from the following addresses:

10 tows

111 S. Halsted According to the MCIS report, the Commission did not receive a contract from Protective Parking on the lot until April 3, 2016. Tr. 397. According to the 24-hour tow sheets, Protective Parking towed ten vehicles from that address in August and November of 2015. Tr. 394-397, Staff's Exs. B & J.

1

225 N. Columbus According to the MCIS report, Protective Parking had a contract on the lot from June 8, 2009 through January 25, 2016. Tr. 410. Another relocator's contract was received on January 26, 2016. Protective Parking's 24-hour tow sheet indicates that one vehicle was towed from the lot on January 29, 2016. Tr. 410-412, Staff's Exs. B & J.

1

344 N. Canal According to the MCIS report, the Commission does not have a Protective Parking contract on file. Protective Parking's 24-hour tow sheet indicates a vehicle was towed from the lot on November 18, 2015. Tr. 422, Staff's Exs. B & J.

1

345 N. Canal According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. Protective Parking's 24-hour tow sheet indicates that a vehicle was towed from the lot on July 31, 2015. Tr. 436-437, Staff's Exs. B & J.

1

400 E. South Water According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. Protective Parking's 24-hour tow sheet indicates that a vehicle was towed from the lot on August 7, 2015. Tr. 439, Staff's Exs. B & J.

3

405 N. Wabash Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 27, 2008 and a cancellation on February 11, 2010. Tr. 442. Protective Parking's 24-hour tow sheets indicate that three vehicles were towed between August and December of 2015. Tr. 445, Staff's Exs. B & J.

1

440 N. LaSalle According to the MCIS report of the address, another relocator had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. The MCIS report also shows that the Commission received notice of a Protective Parking contract on March 7, 2007 and of the cancellation of the contract on September 4, 2014. Protective Parking's 24-hour tow sheet indicates that a vehicle was towed from the lot on July 24, 2015. Tr. 447, Staff's Exs. B & J.

1           800 N. Kedzie According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 7, 2007 and of the cancellation of the contract on June 27, 2015. Protective Parking's 24-hour tow sheet indicates a vehicle was towed from the lot on September 30, 2015. Tr. 448-449, Staff's Exs. B & J.

1           831 N. Damen Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on December 15, 2015. Protective Parking's 24-hour sheet indicates a vehicle was towed from the lot on November 27, 2015. Tr. 452, Staff's Exs. B & J.

1           1801 N. St. Louis Ave. The 24-hour tow sheets indicate a vehicle was towed from the lot on September 19, 2015, March 8, 2016, and March 14, 2016. According to the MCIS report of the address, no relocater held a contract during the time the vehicles were towed. Tr. 454-458, Staff's Exs. B & J.

34           1900 N. Austin Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking patrol lot contract on January 5, 2007 and a cancellation notice on November 6, 2009. The report also indicates the Commission received notice of a Protective Parking call lot contract on March 7, 2007 and a cancellation notice on October 27, 2009. The 24-hour tow sheets indicate 34 vehicles were towed from the lot between September 27, 2015 and March 11, 2016. Tr. 460-469, Staff's Exs. B & J.

1           2030 S. State According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on July 12, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed on July 31, 2015. Tr. 472-475, Staff's Exs. B & J.

12           2111 S. Clark According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. The 24-hour tow sheets indicate 12 vehicles were towed from the lot between November 2, 2015 and February 20, 2016. Tr. 475-482, Staff's Exs. B & J.

2           2113 N. Spaulding Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on February 2, 2016. The 24-hour tow sheets indicate two vehicles were towed from the lot on January 30, 2016. Tr. 483-484, Staff's Exs. B & J.

0           2201 S. Halsted According to the MCIS report of the address, there is conflicting information on file. The Commission received notice of a contract held by another relocater on May 1, 2006 and there is no cancellation notice received for that contract, thus the contract would appear to be in effect. The Commission, however, also received notice of a Protective Parking contract on March 7, 2007 and notice of cancellation on February 1, 2010. The 24-hour tow sheets indicate a vehicle was towed from the lot on August 27, 2015. Sergeant Sulikowski stated that he would have to investigate further to determine the reason for the overlapping contract dates. Tr. 485-498, Staff's Exs. B & J.

1           2233 S. Canal According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. The 24-hour tow sheets indicate a vehicle was towed from the lot on February 5, 2016. Tr. 489-491, Staff's Exs. B & J.

1           2249 N. Milwaukee Ave. According to the MCIS report of the address, another relocater has a contract with the lot owner beginning July 19, 2007 to the present. The 24-hour tow sheets indicate a vehicle was towed from the lot on August 26, 2015. Tr. 491-493, Staff's Exs. B & J.

1           2421 W. Madison According to the MCIS report of the address, another relocater has a contract with the lot owner beginning August 16, 2011, to the present. The 24-hour tow sheets indicate a vehicle was towed from the lot on November 12, 2015. Tr. 493-495, Staff's Exs. B & J.

1           2451 N. Clybourn According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 24, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on March 16, 2016. Tr. 495-496, Staff's Exs. B & J.

0           2600 S. Michigan Ave. According to the MCIS report of the address, there is conflicting information on file. The Commission received notice of a contract held by another relocater on March 19, 2007 and there is no cancellation notice received for that contract, thus the contract would appear to be in effect. The Commission, however, also received notice of a Protective Parking contract on August 21, 2008 and notice of cancellation on February 1, 2010. The 24-hour tow sheets indicate six vehicles were towed from the lot between January 21, 2016 and March 23, 2016. Sergeant Sulikowski stated that he would have to investigate further to determine the reason for the overlapping contract dates. Tr. 497-507, Staff's Exs. B & J.

6           2750 W. Grand Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on September 22, 2015 that is currently in effect. The 24-hour tow sheets indicate six vehicles were towed from the lot between July 26, 2015 and August 19, 2015. Tr. 507-511, Staff's Exs. B & J.

1           2801 N. Linder Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 18, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on March 9, 2016. Tr. 511, 524-526, Staff's Exs. B & J.

8           2805 N. Linder Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 18, 2016 that is currently in effect. The 24-hour tow sheets indicate eight vehicles were towed from the lot between August 16, 2015 and September 12, 2015. Tr. 526-529, Staff's Exs. B & J.

3           2805 N. Lotus Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 18, 2016 that is currently in

effect. The 24-hour tow sheets indicate three vehicles were towed from the lot between August 18, 2015 and September 4, 2015. Tr. 529-531, Staff's Exs. B & J.

1           2908 W. Fullerton According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on September 8, 2015 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on September 2, 2015. Tr. 532-533, Staff's Exs. B & J.

1           2844 W. Armitage According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on August 2, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on January 24, 2016. Tr. 534-535, Staff's Exs. B & J.

36           3100 N. Central Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on May 16, 2006 and a notice of cancellation on May 14, 2015 effecting a cancellation on May 24, 2015. The 24-hour tow sheets indicate 36 vehicles were towed from the lot between July 25, 2015 and March 12, 2016. Tr. 536-559, Staff's Exs. B & J.

1           3901 W. Madison Ave. According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. The 24-hour tow sheets indicate a vehicle was towed from the lot on January 16, 2016. Tr. 560, Staff's Exs. B & J.

1           4946 S. Drexel According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on November 3, 2015 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on October 23, 2015. Tr. 561-562, Staff's Exs. B & J.

1           5531 W. North Ave. According to the MCIS report of the address, there were no relocater contracts on file with the Commission for the lot owner during the relevant time period. The 24-hour tow sheets indicate a vehicle was towed from the lot on August 15, 2015. Tr. 564-566, Staff's Exs. B & J.

1           7118 W. Grand Ave. According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate a vehicle was towed from the lot on February 6, 2016. Tr. 567-567, Staff's Exs. B & J.

2           834 W. Leland Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 24, 2016 that is currently in effect. The 24-hour tow sheets indicate two vehicles were towed from the lot on November 19, 2015 and December 3, 2015. Tr. 582-585, Staff's Exs. A & K.

3           850 W. Eastwood Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 9, 2017 that is

currently in effect. The 24-hour tow sheets indicate three vehicles were towed from the lot between October 19, 2015 and December 22, 2015. Tr. 587-589, Staff's Exs. A & K.

1           1730 W. Terra Cotta Place According to the MCIS report of the address, the Commission received notice of cancellation of a Protective Parking contract on December 21, 2015, effectuating a cancellation on December 31, 2015. The 24-hour tow sheets indicate a vehicle was towed from the lot on February 6, 2016. Tr. 590, Staff's Exs. A & K.

11           2001 W. Devon Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on December 14, 2015 that is currently in effect. The 24-hour tow sheets indicate 11 vehicles were towed from the lot between July 25, 2015 and November 8, 2015. Tr. 582-598; Staff's Exs. A & K.

1           2626 N. Lincoln Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on December 7, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on August 6, 2015. Tr. 598-599, Staff's Exs. A & K.

43           2801 W. Devon Ave. According to the MCIS report of the address, there were no relocater contracts on file with the Commission during the relevant time period. The 24-hour tow sheets indicate 43 vehicles were towed from the lot between August 1, 2015 and February 6, 2016. Tr. 599-616, Staff's Exs. A & K.

1           3214 N. Kimball Ave. According to the MCIS report of the address, the Commission received notice of cancellation of a Protective Parking contract on February 9, 2009, effectuating a cancellation on February 19, 2009. The 24-hour tow sheets indicate a vehicle was towed from the lot on December 16, 2015. Tr. 616-617, Staff's Exs. A & K.

24           3620 N. Clark According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate 24 vehicles were towed from the lot between August 22, 2015 and February 13, 2016. Tr. 617-625, Staff's Exs. A & K.

4           3700 N. Broadway According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on March 18, 2016 that is currently in effect. The 24-hour tow sheets indicate four vehicles were towed from the lot between July 26, 2015 and March 9, 2016. Tr. 625-627, Staff's Exs. A & K.

1           3923 N. Clarendon Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on October 7, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on December 31, 2015. Tr. 628, Staff's Exs. A & K.

19           4102 N. Sheridan According to the MCIS report of the address, there were no relocater contracts on file with the Commission during the relevant time period. The 24-

hour tow sheets indicate 19 vehicles were towed from the lot between July 26, 2015 and March 22, 2016. Tr. 628-635, Staff's Exs. A & K.

2            4801 N. Ravenswood Ave. According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on August 11, 2016 that is currently in effect. The 24-hour tow sheets indicate two vehicles were towed from the lot on July 26, 2015 and August 16, 2015. Tr. 635-638, Staff's Exs. A & K.

5            5440 N. Clark According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate five vehicles were towed from the lot between August 14, 2015 and February 23, 2016. Tr. 638-640, Staff's Exs. A & K.

3            5501 N. Kedzie According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate three vehicles were towed from the lot in January of 2016. Tr. 641-642, Staff's Exs. A & K.

5            5623 N. Clark According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate five vehicles were towed from the lot in between October 18, 2015 and January of 2016. Tr. 642-645, Staff's Exs. A & K.

4            5713 N. Kenmore According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate four vehicles were towed from the lot in between October 18, 2015 and January of 2016. Tr. 645-647, Staff's Exs. A & K.

6            5754 N. Western Ave. According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate six vehicles were towed from the lot on August 22, 2015 and December 27, 2015. Tr. 647-649, Staff's Exs. A & K.

30           6105 N. Broadway According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. The 24-hour tow sheets indicate 30 vehicles were towed from the lot between July 26, 2015 and March 22, 2016. Tr. 649-659, Staff's Exs. A & K.

2            6550 N. Sheridan According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on October 21, 2016 that is currently in effect. The 24-hour tow sheets indicate two vehicles were towed from the lot in July of 2015. Tr. 660, Staff's Exs. A & K.

6            6700 N. Greenview According to the MCIS report of the address, there were no relocater contracts on file with the Commission during the relevant time period. The 24-hour tow sheets indicate six vehicles were towed from the lot between July 26, 2015 and March 22, 2016. Tr. 661-664, Staff's Exs. A & K.

1            7000 N. Ridge According to the MCIS report of the address, the Commission received notice of a Protective Parking contract on January 4, 2016 that is currently in effect. The 24-hour tow sheets indicate a vehicle was towed from the lot on December 15, 2015. Tr. 665, Staff's Exs. A & K.

Sergeant Sulikowski testified on cross examination that no investigations were conducted for any of the inconsistencies he identified between the MCIS reports and Protective Parking's 24-hour tow sheets. Tr. of 1-31-18 pg. 1436, 1442. There were no consumer complaints made on these tows to trigger an investigation. Id. 1441. No citations were written for any of the tows cross-referenced on the 24-hour tow sheets contained in Staff's Exhibits J and K, and the MCIS Reports contained in Staff's Exhibits A and B. Id. 1441.

#### Operator Permits

Sergeant Sulikowski testified that there were inconsistencies between the 24-hour tow sheets and the MCIS report regarding the validity of the permits of operators who towed vehicles during the relevant time period. Sergeant Sulikowski cross-referenced the 24-hour tow sheets from the Clark and Armitage lot with the MCIS print out of operator license information contained in Staff's Exhibit F.

Sergeant Sulikowski testified that an operator may continue to work on an existing operator's permit during the pendency of a renewal application if the renewal application is filed prior to the expiration of the existing permit. Tr. 671.

Sergeant Sulikowski was presented the MCIS report's relocater operator permit screenshots for three of Protective Parking's relocation operators, Ronald Phillips with operator number 4394, Jose Negron with operator number 2515, and Albert Solano with operator number 4190.

#### Operator No. 4394 – Ronald Phillips – 194 tows

According to the MCIS report, Ronald Phillips' initial operator's permit was received by the Commission on August 13, 2013, and effective from August 16, 2013 to August 16, 2015. The Commission received a renewal application on September 17, 2015, which became effective February 16, 2016 and expired on February 16, 2018. Tr. 668-669, Staff's Ex. F. Sergeant Sulikowski testified that according the MCIS report, Mr. Phillips did not have an operator's permit from August 16, 2015 to February 16, 2016 because the renewal application was not received before the original permit expired. Tr. 671. Sergeant Sulikowski's review of Protective Parking 24-hour tow logs between August 16, 2015 and February 16, 2016, indicate Mr. Phillips performed 194 tows during that time. Tr. 671-717, Staff's Ex. F.

Sergeant Sulikowski testified on cross-examination that he did not have personal knowledge regarding whether Ronald Phillips relocated vehicles between August 16, 2015 and February 16, 2016. No investigation was done to determine if Mr. Phillips had a license during that time. No citations were issued regarding tows conducted by Mr.



Phillips during that time and no complaints were received regarding any such tows. Tr. of 1-31-18 pgs. 1488-1489.

Operator No. 2515 – Jose Negron – 1 tow

According to the MCIS report, the Commission received Jose Negron's initial operator permit application on November 5, 2013. The permit was issued with an effective date of November 8, 2013 to November 8, 2015. A renewal Application was received on June 27, 2016, and it was issued and effective from December 6, 2016 to December 6, 2018. Sergeant Sulikowski testified that according to the MCIS report, Mr. Negron did not have an operator's permit from November 8, 2015 to December 6, 2016. Tr. 820-822. Sergeant Sulikowski's review of Protective Parking 24-hour tow logs between November 8, 2015 and December 6, 2016 indicate Mr. Negron performed one tow on November 21, 2015. Tr. 825, Staff Ex. J pg. 145. Although Staff contends another vehicle was towed on December 4, 2015, the handwritten operator number on the tow log appears to be 2575, not 2515. Staff Ex. J pg. 161.

Sergeant Sulikowski testified on cross-examination that he did not know whether Mr. Negron was actually licensed on November 21, 2015. No investigation was initiated and no citation was issued for the tow. Tr. of 1-31-18 pg. 1495.

Operator No. 4190 – Albert Solano – 8 tows

According to the MCIS report, the Commission received Albert Solano's initial operator permit application on February 11, 2014. The permit was issued with an effective date of February 14, 2014 to February 14, 2016. A renewal application was received on March 7, 2016 and issued with an effective date of April 22, 2016 to April 22, 2018. Sergeant Sulikowski testified that according to the MCIS report, Mr. Solano did not have an operator's permit between February 14, 2016 and April 22, 2016. Sergeant Sulikowski's review of Protective Parking 24-hour tow logs between February 14, 2016 and April 22, 2016, indicate Mr. Solano performed eight tows during that period of time. Tr. 829-833, Staff Ex. J.

Sergeant Sulikowski testified on cross-examination that he did not know when Mr. Solano sought to renew his license or whether he Mr. Solano had a license between February 14, 2016 and April 22, 2016. No investigations were initiated and no citations were issued for the tows. Tr. of 1-31-18 pg. 1496.

**Summary of Tow Sheet and Operator Inconsistencies Noted by Sulikowski**

In sum, Sergeant Sulikowski testified that there were 308 inconsistencies between the MCIS reports of addresses under relocation contracts and the 24-hour tow sheets from the Clark and Armitage lots. There were 203 inconsistencies between the 24-hour tow sheets and the MCIS reports of three operators. In all, there were 511 inconsistencies identified by Sergeant Sulikowski.

## 2. Investigator Scott Kassal

Investigator Scott Kassal testified that he is a Transportation Investigator with the Illinois Commerce Commission Police. He has been an Investigator since 1996. During the relevant time period, Investigator Kassal reviewed consumer complaints regarding relocation towing companies. Tr. 7-26-17 pg. 905. He explained the guidelines typically followed when investigating consumer complaints. Once a consumer complaint is received, it is assigned to an investigator or officer who will then use MCIS to check the validity of the operator and dispatcher permits and whether the relocation company has a contract with the property from which a vehicle was towed. Tr. of 7-26-17 pg. 906. If any of the required fields on the tow invoice, which is on the reverse side of the consumer complaint, are found to be incorrect or expired, the officer or investigator would issue an administrative citation to the towing company. The three outcomes of an investigation are finding in favor of the towing company with no further action by the Commission; finding an alleged violation and issuing an administrative citation; or reaching an agreement with the towing company whereby the towing company agrees to refund the complainant's money instead of receiving an administrative citation. Tr. of 7-26-17 pg. 908. Administrative citations are issued with a fine and the recipient company can either pay the fine imposed or request an administrative hearing on the citation. Tr. of 1-17-18 pg. 910.

Investigator Kassal testified that he issued 16 administrative citations to Protective Parking during the relevant time period for various alleged violations. Tr. of 1-17-18 pgs. 912-930; Staff's Exs. L, M, & N.

On cross-examination, Investigator Kassal testified that during the relevant time period, he opened 12 investigations relating to Protective Parking and issued 16 administrative citations. Tr. of 1-17-18 pgs. 1006-1007. Four of the sixteen citations were issued for improper signage (one of which regarding a lot under the Chicago Transit Authority elevated train track); one was issued because the tow truck driver's operator's permit was expired; one was issued because the contract summary between Protective Parking and the lot owner was not e-filed; eight were issued because the tow invoices were not accurately completed. The eight citations for inaccurate invoices were issued because the invoices lacked either or both the contract number or tow truck license plate number. In each instance where a contract number was omitted from the invoice, Investigator Kassal determined that a contract existed between the lot owner and Protective Parking. Tr. of 1-17-18 pgs. 993-994.

Two of the sixteen administrative citations issued by Investigator Kassal for invalid dispatcher permits should not have been written because there is no requirement that the person who releases a vehicle to its owner have a dispatcher permit. Tr. of 1-17-18 pg. 1006; 625 ILCS 5/18a-100(6).

3. Officer Bryan Strand

Officer Bryan Strand testified that he has been employed by the Illinois Commerce Commission Police Department for five years. Officer Strand described the consumer complaint process for relocation towing. Consumer complaints are received by the Commission via U.S. mail, assigned an investigation file number, and assigned to an officer or investigator. Once he receives a complaint, he reviews the invoice on the reverse side of the complaint for accuracy and completeness. Tr. of 7-26-17 pgs. 938-939. At the end of an investigation, Officer Strand will either close it without issuing any administrative citations or issue citations of alleged violations. Tr. of 7-26-17 pgs. 944-945.

Officer Strand testified that he issued 52 administrative citations to Protective Parking during the relevant time period for various alleged violations. Tr. of 7-26-17 pgs. 946-992, Staff's Exs. L, M, & N. Six of the 52 administrative citations issued by Officer Strand for expired dispatcher permits should not have been written because there is no requirement that the person who releases a vehicle to its owner have a dispatcher permit. Tr. of 7-26-17 pgs. 962, 973, 974, 976, 978, 979, 991; Tr. of 2-13-18 pgs. 1541, 1542, 1547, 1581; 625 ILCS 5/18a-100(6).

On cross-examination, Officer Strand testified that he may decide that a consumer complaint is unfounded after investigation but he could write citations for other issues that appear while investigating the complaint, such as incomplete invoices or expired operator permits. Whether these issues in fact constitute a violation of the law is determined at a hearing on a citation. Tr. of 1-16-18 pgs. 702-704, 765. Officer Strand did not know if there was a determination of a violation at hearings on any of the citations he wrote to Protective Parking during the relevant time period. Tr. of 1-16-18 pg. 704.

4. Officer John Geisbush

Officer Geisbush testified that he has been employed by the Illinois Commerce Commission since July of 2012. One of his duties is to enforce relocation towing regulations. The relocation towing industry is primarily regulated through investigating consumer complaints. When he receives a consumer complaint he will review it and the information on the tow invoice on the reverse side of the complaint. He may then go to the location of the tow, call the tow company and ask them about the incident, or ask the complainant for additional information. Tr. 7-26-17 pgs. 1005-1006. In the course of his investigation, he may find issues that the consumer did not complain about. Id. 1009. The possible outcomes of an investigation are that citations are issued to the towing company, no citations are issued and the investigation is closed; or the towing company agrees to refund the consumer's money. Id. 1010.

Officer Geisbush testified on direct examination that he issued 86 administrative citations to Protective Parking during the relevant time period for various alleged violations. Tr. of 7-26-17 pgs. 1011-1096, Staff's Exs. L, M, & N.

On cross-examination, Officer Geisbush testified that 85 citations were issued by him (a difference of one from direct examination), 22 were for improper signage Tr. of 1-25-18 pgs. 1148-1150; 13 were for improper invoices Id. 1159; 10 were for overcharges Id. 1174; 10 were for no equipment lease on file Id. 1177; 2 were for towing while owner present Id. 1189; 4 were for patrolling from a call lot Id. 1193; 1 was for towing from a cancelled lot; 11 were for not having written authorization to relocate Tr. of 1-25-18 pg. 1199; and 12 were for removing authorized vehicles. Tr. of 1-25-18 pgs. 1199-1201. Officer Geisbush testified that an administrative citation is an allegation of a violation, not an adjudication that there is a violation. He did not know if any hearings were held on the citations he issued. Tr. of 1-25-18 pgs. 1041, 1213.

5. Administrative Notice of Citations Issued, Administrative Law Judge Rulings, and Commission Order

Staff Exhibits G, H, I, L, M and N were admitted under administrative notice pursuant to 83 Ill. Adm. Code 200.640(2). Tr. of 2-14-18 pgs. 1728, 1731. Exhibit G consists of Administrative Law Judge Rulings of guilty on citations issued by Officers Strand, Geisbush and Investigator Kassal during the relevant time period. Exhibit H consists of Administrative Law Judge Rulings dismissing citations issued by the Officers and Investigator. Exhibit I consists of Administrative Law Judge Rulings acknowledging voluntary settlement of citations without adjudication. Exhibits L, M and N contain copies of citations issued by the Officers and Investigator during the relevant time period.

Of the 16 citations written to Protective Parking by Investigator Kassal, five were found guilty by ALJ ruling, one was dismissed by settlement agreement of February 23, 2017, five were dismissed by ALJ Ruling, and five were voluntarily settled without adjudication pursuant to a settlement agreement of February 23, 2017. Tr. of 7-26-17 pgs. 912-930; Staff's Exs. G, H, I, L, M, & N.

Of the 52 citations written to Protective Parking by Officer Strand, 14 were found guilty by ALJ ruling, 11 were by dismissed by ALJ Ruling, 24 were dismissed pursuant to a settlement agreement of February 23, 2017, and three were voluntarily settled without adjudication pursuant to a settlement agreement of February 23, 2017. Tr. of 7-26-17 pgs. 946-992; Staff's Exs. G, H, I, L, M, & N.

Of the 86 citations issued to Protective Parking by Officer Geisbush, two were found guilty by ALJ ruling, 41 were dismissed pursuant to a settlement agreement of February 23, 2017, 29 were dismissed by ALJ Ruling, and 14 were voluntarily settled without adjudication pursuant to a settlement agreement of February 23, 2017. There is a discrepancy of one citation between the testimony and the ALJ rulings. Tr. of 7-26-17 pgs. 1011-1096; Staff's Exs. G, H, I, L, M, & N.

In sum, of the 154 citations issued to Protective Parking during the relevant time period, 21 received guilty findings, 66 were dismissed pursuant to a settlement agreement

of February 23, 2017, 45 were dismissed by ALJ Ruling, and 22 were voluntarily settled without adjudication pursuant to a settlement agreement of February 23, 2017.

The ALJ also admitted under administrative notice pursuant to 83 Ill. Adm. Code 200.640(2), the Commission Order entered on July 8, 2015 in the matter of Protective Parking Service Corporation: Application for Renewal of a Commercial Relocators License. 92 RTV-R Sub 15. This Order is the Commission's decision granting Protective Parking's last renewal application.

C. Protective Parking's Evidence

Robert Munyon testified that he currently is, and was during the relevant time period, general manager of Protective Parking. He has worked for Protective Parking for 32 years and as the general manager for 17 years. He stated Protective Parking has approximately 20,000 contracts with private property owners to tow from their lots.

Mr. Munyon testified that, according to the 24-hour tow sheets provided to the Commission, Protective Parking towed 9,470 vehicles during the relevant time period. Tr. of 3-15-18 pgs. 1799-1801. Staff's Exs. J and K.

**IV. PARTIES' POSITIONS**

Staff's Position

Staff argues in its post hearing brief that the testimony of Sergeant Sulikowski regarding inconsistencies between the MCIS reports and the 24-hour tow sheets establishes that Protective Parking towed vehicles without property owner authorization, or prior to filing the tow contract with the Commission, or on a patrol basis when the contract was filed as a call lot 462 times between July 24, 2015, and March 23, 2016. Specifically, Staff argues there were 176 unauthorized tows to the Armitage Lot and 286 unauthorized tows to the Clark Lot.

Staff also argues that Protective Parking used the services of an operator without a valid or current operator's permit 369 times during the relevant time period. The 462 claimed unauthorized tows and the 369 claimed operator violations lead Staff to claim there were a total of 831 violations of the ICRTVL.

Staff's argues that a "logical syllogism" leads to the inevitable conclusion that a violation of the ICRTVL and Administrative Rules occurred in each instance of an inconsistency. Staff Br. 23. Staff further argues that Protective Parking's pattern and practice of conducting unauthorized relocations support a finding that it is unfit to hold a relocators license.

Staff does not refer to any of the testimony provided by Officer's Strand, Geisbush, or Investigator Kassal in its post hearing brief.

### Protective Parking's Position

Protective Parking argues that the evidence adduced did not reflect that any of the 831 alleged violations actually occurred. Sergeant Sulikowski only testified to the inconsistencies between the 24-hour tow sheets and the MCIS reports. The testimony adduced at trial was that the testifying officer did not initiate or complete any investigation, did not write any citations, did not testify at a hearing on a citation, and no violation was determined by an Administrative Law Judge on any of the inconsistencies.

Protective Parking also argues that Staff has stipulated that Protective Parking meets each and every requirement of the required fitness test enumerated by 92 Ill. Adm. Code 1710.22(a)(2), and based on the stipulation alone, it should be determined that it is fit, willing, and able to hold a Commercial Vehicle Relocator's License.

## **V. ANALYSIS AND CONCLUSION**

The issue presented in this case is whether Protective Parking is fit, willing and able to perform the service of a commercial vehicle rellocator and to conform to the provisions of the Illinois Commercial Relocation of Trespassing Vehicles Law and the Commission's Administrative Rules.

The Commission's analysis of whether a rellocator is fit to hold a license is prescribed by Section 1710.22 of the Administrative Rules. Staff and Respondent have stipulated that Protective Parking meets the requirements of the fitness test established by the Section 1710.22(a)(2). 92 Ill. Adm. Code 1710.22 (a)(2).

The only other standard to use in evaluating whether Protective Parking is fit to hold a license is Section 1710.22(a)(1), which allows the Commission to consider the equipment, facilities and storage lots of the applicant; and other facts that may bear on their fitness to hold the license. 92 Ill. Adm. Code 1710.22 (a)(1). The evidence presented by Staff is considered as "other facts" that may bear on the fitness of Protective Parking.

The record reflects that Sergeant Sulikowski identified 308 inconsistencies between the MCIS reports of addresses under relocation contracts and the 24-hour tow sheets from the Clark and Armitage lots. The Sergeant identified 203 inconsistencies between the 24-hour tow sheets and the MCIS reports of three operators. In all, there were 511 inconsistencies identified by Sergeant Sulikowski.

Staff's claim that Protective Parking committed 831 violations of the ICRTVL is not supported by the record. In order to identify an inconsistency, Sergeant Sulikowski had to compare two sources of information, the addresses of contracts in the MCIS reports against the handwritten addresses on the 24-hour tow sheets. The Sergeant did not compare the information in Exhibits A and B to 16 addresses in Exhibits J and K cited in Staff's post hearing brief, and therefore, did not establish any inconsistencies for these addresses: 1041 N. Harding; 1919 N. Cicero; 2002 S. Wentworth; 2734 S. Wentworth; 4000 W. Grand; 4032 W. Armitage; 4645 W. Belmont; 5000 W. Madison; 5200 W. North;

223 N. Custer; 1415 W. Morse; 2245 N. Halsted; 2454 W. Peterson; 2828 N. Broadway; 4420 N. Winchester; and 5853 W. Artesian.

In addition, the Sergeant was unable to read the dates on several pages of the 24-hour tow sheets, and therefore, unable to comment on several of the tows appearing in the tow sheets. Tr. of 7-7-17 pgs. 592, 594, 601, 602, 603, 639, 640. In some instances, the Sergeant's testimony covers fewer vehicles towed from an address than reported by Staff. (ex., 3700 N. Broadway, Staff claims there were eight tows but testimony on four; 4102 N. Sheridan, Staff claims there were 23 tows but testimony on 19; and 5501 N. Kedzie, Staff claims there were six tows but testimony on three).

Sergeant Sulikowski also testified that there was conflicting information in the MCIS report regarding the status of contracts at 2201 S. Halsted and 2600 S. Michigan. He would have to do further investigation to determine the status of the contracts. Tr. of 6-1-17 pgs. 485, 497.

There is a discrepancy of 320 tows between the tows cited in Staff's post hearing brief (831) and the count of tows supported by the testimony of Sergeant Sulikowski (511). Staff argues that the number of 831 tows is supported by the record because of the admission into evidence of the MCIS reports and of the 24-hour tow sheets, notwithstanding the lack of testimony regarding 320 tows. However, it is the lack of supporting testimony on the 320 tows that creates a meaningful distinction regarding their reliability. In many instances, Sergeant Sulikowski was unable to identify an alleged inconsistency between the MCIS report and the 24-hour tow sheets because of some issue within either of the exhibits he was comparing. Without the testimony, those issues would have gone unnoticed. While a review of the records admitted into evidence may substantiate Staff's assertion of the existence of 320 other potential inconsistencies, they have not been identified on the record and cross-examination at hearing revealed that the accuracy of the data cannot be relied upon as presumptively accurate. Without any corroborating testimony, and hence cross-examination of such testimony, less weight is afforded to the 320 tows.

Staff's argument that the inconsistencies identified by Sergeant Sulikowski constitute violations of the ICRTVL is without merit and not supported by the record. There were no citations written or other action to initiate a hearing process on these items and therefore no disposition, no hearing, no finding of violation or finding of no violation, and no disposition by plea agreement. Staff's four witnesses testified that when they have reason to believe a violation has occurred, they will issue an administrative citation. An administrative citation is an allegation of a violation. Sergeant Sulikowski testified that no investigations were conducted for any of the inconsistencies he identified between the MCIS reports and Protective Parking's 24-hour tow sheets. No citations were written for any of the tows cross-referenced on the 24-hour tow sheets and the MCIS reports containing information about operator permits or relocation contracts by address.

The record does reflect that during the relevant time period, Officers Strand, Geisbush and Investigator Kassal issued 154 citations to Protective Parking. Of those,

21 received guilty findings, 66 were dismissed pursuant to a settlement agreement of February 23, 2017, 45 were dismissed by ALJ Ruling, and 22 were voluntarily settled without adjudication pursuant to a settlement agreement of February 23, 2017.

The record also reflects that Protective Parking towed 9,470 vehicles during the relevant time period. This means that Protective Parking was found guilty of violating the Illinois Commercial Relocation of Trespassing Vehicles Law or its Administrative Rules 21 times in an eight month period when it towed a total of 9,470 vehicles, which is a violation on less than one percent of all tows conducted.

The record reflects that Protective Parking meets the requirements under the fitness test established by 92 Ill. Adm. Code 1710.22 (a)(2). The only other facts that bear on its fitness to hold a relocator's license during this proceeding are the 21 guilty findings on citations it was issued between July 24, 2015, and March 23, 2016. The number of guilty findings during the relevant time period in conjunction with compliance with Section 1710.22(a)(2) render Protective Parking fit to hold a relocator's license.

The evidence supports a finding that Protective Parking is fit, willing and able to provide relocation towing services, in accordance with Chapter 625 of the Illinois Compiled Statutes, Sections 5/18a-400 through 5/18a-501.

## **VI. PROPOSED ORDER**

A Proposed Order was served on the Parties on July 2, 2018. Staff filed a Brief on Exception on July 16, 2018. Protective Parking filed a Brief in Reply to Exceptions on July 23, 2018.

## **VII. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having considered the entire record, finds that:

- (1) the Commission has jurisdiction over the Respondent and the subject-matter of this proceeding pursuant to Section 18a-200(1) of the ICRTVL (625 ILCS 5/18a-200(1));
- (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 relevant time period for the Commission's investigation of Protective Parking Service Corporation is July 24, 2015, through March 23, 2016;
- (4) during the relevant time period, Officers Strand, Geisbush and Investigator Kassal issued 154 citations to Protective Parking. Of those, 21 received guilty findings, 66 were dismissed pursuant to a settlement agreement of February 23, 2017, 45 were dismissed by ALJ Ruling, and 22 were



voluntarily settled without adjudication pursuant to a settlement agreement of February 23, 2017;

- (5) during the relevant time period, Protective Parking Service Corporation towed 9,470 vehicles;
- (6) by stipulation, Respondent Protective Parking meets the requirements of the fitness test established by 92 Ill. Adm. Code 1710.22(a)(2); and
- (7) The evidence supports a finding that Protective Parking is fit, willing and able to provide relocation towing services, in accordance with Chapter 625 of the Illinois Compiled Statutes, Sections 5/18a-400 through 5/18a-501.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Protective Parking Service Corporation d/b/a Lincoln Towing Service, with principal office and place of business at 4882 N. Clark Street, Chicago, Cook County, Illinois, is found to be fit, willing, and able to perform a commercial relocation service in intrastate commerce within the State of Illinois under the Illinois Commercial Relocation of Trespassing Vehicles Law (625 ILCS 5/18a-400 *et seq.*).

IT IS FURTHER ORDERED that the Commercial Vehicle Relocator's License of Protective Parking Service Corporation d/b/a Lincoln Towing Service shall expire two years from the date of this Order. Upon Applicant filing a verified Application in such form and containing such information as the Commission requires, and accompanied by the required Application fee, the Commission shall renew the Application in two years, unless it has received information of cause not to do so.

IT IS FURTHER ORDERED that the Commission retains jurisdiction over Respondent and the subject-matter of this proceeding for the purpose of issuing such other Orders as it may deem appropriate.

IT IS FURTHER ORDERED that this is a final Order subject to the Administrative Review Law, 735 ILCS 5/3-101 *et seq.*, in accordance with Chapter 625 ILCS 5/18c-2201 through 2206 of the Illinois Commercial Transportation Law.

By Order of the Commission this 12th day of September 2018.

BRIEN SHEAHAN  
CHAIRMAN

# **EXHIBIT 3**

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Protective Parking Service Corporation  
d/b/a Lincoln Towing Service,  
Respondent

: 92 RTV-R Sub 17/  
: 100139 MC  
:  
:  
:

Hearing on fitness to hold a Commercial Vehicle  
Relocator's License pursuant to Section 18a-401 of the  
Illinois Commercial Relocation of Trespassing Vehicles  
Law, 625 ILCS 5/18a-401.

**SERVED  
ELECTRONICALLY**

**ORDER**

September 12, 2018

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**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

|  |   |                       |
|--|---|-----------------------|
| Protective Parking Service Corporation                 | : | 92 RTV-R Sub 17/      |
| d/b/a Lincoln Towing Service,                          | : | 100139 MC             |
| Respondent   | : |                       |
|  | : |                       |
|  | : | <b>SERVED</b>         |
| Hearing on fitness to hold a Commercial Vehicle        | : | <b>ELECTRONICALLY</b> |
| Relocator's License pursuant to Section 18a-401 of the | : |                       |
| Illinois Commercial Relocation of Trespassing Vehicles | : |                       |
| Law, 625 ILCS 5/18a-401.                               | : |                       |

**ORDER**

By the Commission:

**I. PROCEDURAL HISTORY**

By Order entered February 24, 2016, the Illinois Commerce Commission ("Commission") initiated a hearing to inquire into the relocation towing operations of Protective Parking Service Corporation d/b/a Lincoln Towing Service ("Lincoln" or "Respondent") to determine whether it is fit, willing and able to properly perform the service of a commercial vehicle relocator and to conform to the provisions of the Illinois Commercial Relocation of Trespassing Vehicles Law ("ICRTVL") and the Commission's Administrative Code ("Commission Rules").

The February 24, 2016 Order stated that Commission Staff reviewed Commission records to ascertain Lincoln's compliance with applicable Commission Rules and Illinois state laws. Since the date of Lincoln's last license renewal on July 24, 2015, the Commission Police Department had opened 166 investigations into Lincoln's relocation towing operations, 28 of which resulted in administrative citations issued against Lincoln. Commission Police investigation # 15-0088 alleged that during the time between October 15, 2014 and November 23, 2014, Lincoln had committed 54 violations of issuing incomplete or inaccurate tow invoices in violation of 92 Ill. Adm. Code 1710.170(c), 3 violations of using tow trucks to perform relocations without an equipment lease on file with the Commission as required by 625 ILCS 5/18a-300(16), and 19 violations of 625 ILCS 5/18a-300(3) by using a dispatcher with an expired relocation towing employment permit. Investigation # 15-0088 remained pending at the time of the February 24, 2016 Order. At the time of the Order, there were 92 pending administrative citations issued to Lincoln alleging similar and other violations of the ICRTVL and Commission Rules. Comm'n Initiating Order, 1.

In the Order, the Commission noted that Lincoln was issued a renewal of its authority to operate as a commercial vehicle relocator under the ICRTVL on July 24,

2015. Pursuant to Section 18a-401 of the Law, all relocater licenses expire every two years. 625 ILCS 5/18a-401.

Staff of the Commission ("Staff") participated in this proceeding. No petitions to intervene were filed.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, this matter came to be heard before a duly-authorized Administrative Law Judge ("ALJ") of the Commission at its office in Chicago, Illinois on multiple dates between May 31, 2017, and March 21, 2018. The Staff of the Illinois Commerce Commission ("Staff") appeared by the Office of Transportation Counsel and presented the testimonies of Sergeant Timothy Sulikowski, Officer Bryan Strand, Officer John Geisbush, and Investigator Scott Kassal. The Respondent was represented by counsel and presented the testimony of Robert Munyon, General Manager of Lincoln. Each party cross-examined the opposing party's witnesses. The record was marked "Heard and Taken" on March 21, 2018.

After the conclusion of the evidentiary hearings, Staff and Respondent each submitted written Post-Hearing Briefs. Staff filed its Post-Hearing Brief on May 2, 2018. On May 21, 2018, Lincoln filed an Emergency Motion to Strike Brief of Staff, to Remove Brief from the Commission's Website, and Post Retraction. Staff filed a Response to the Emergency Motion on May 24, 2018. On May 31, 2018, Lincoln filed a Reply in support of its Motion to Strike Brief of Staff. The ALJ denied Lincoln's Motion on June 4, 2018. Lincoln filed its Post-Hearing Brief on June 18, 2018. Staff replied to Lincoln's Post-Hearing Brief on June 25, 2018. Oral Arguments were held at the Commission on June 27, 2018. On July 2, 2018, a Proposed Order was served on the parties. On July 16, 2018, Staff filed its Brief on Exceptions ("BOE") to the Proposed Order. On July 23, 2018, Lincoln filed its Brief in Reply to Exceptions ("RBOE").

At a pre-hearing conference on February 1, 2017, the ALJ ruled that the relevant time period for the Commission's investigation of Lincoln's towing operations is July 24, 2015, through March 23, 2016.

## **II. ISSUE PRESENTED**

Whether Lincoln is fit, willing and able to properly perform the service of a commercial vehicle relocater and to conform to the ICRTVL and the Commission Rules.

## **III. BACKGROUND AND APPLICABLE LAW**

Prior to the enactment of ICRTVL, one who towed an automobile from a private parking lot without the vehicle owner's consent and withheld it for failure to pay a towing and storage fee was guilty of conversion. *Kunde v. Biddle*, 41 Ill. App. 3d 223 (4th Dist. 1976). While it protected vehicle owners, this rule created problems for property owners in urban areas where street parking was scarce. A lot owner could pursue a trespass action against the vehicle owner, but this rarely resulted in a prompt and effective

resolution of the issue. The legislature, in promulgating the ICRTVL, sought to resolve this problem.

The ICRTVL authorizes the towing of a trespassing vehicle by a licensed relocater. 625 ILCS 5/18a-300(7); 625 ILCS 5/18a-302. The towing company obtains a possessory lien on the trespassing vehicle, which is discharged by the payment of the towing fee. 625 ILCS 5/18a-501. In order to obtain the lien, the towing company must comply with numerous regulatory requirements established by the ICRTVL and the Commission Rules. 625 ILCS 5/18a-300(19). The failure to comply with the ICRTVL and the Commission Rules invalidates the lien and makes the company's tows unlawful. 92 Ill. Adm. Code 1710.30; 625 ILCS 5/18a-300.

Section 18a-101 of the ICRTVL vests enforcement authority in the Commission "to supervise and regulate the commercial removal of trespassing vehicles from private property, and the subsequent relocation and storage of such vehicles in such manner as to fairly distribute rights and responsibilities among vehicle owners, private property owners and commercial vehicle relocators." 625 ILCS 5/18a-101. The Commission's jurisdiction to regulate commercial vehicle relocators extends to their employees and agents as well. 625 ILCS 5/18a-200(1).

The towing company, in order to receive or retain its license, must be fit, willing and able to "...conform to provisions of this Chapter and the requirements, rules and regulations of the Commission thereunder." 625 ILCS 5/18a-400(d); 625 ILCS 5/18a-401. In other words, a towing company must meet all of the regulatory requirements for each and every relocation tow. Each license issued to a relocater, operator, or dispatcher is conditioned upon compliance with the provisions of the ICRTVL and the applicable Commission Rules. 92 Ill. Adm. Code 1710.30.

The Commission, "upon its own initiative may, investigate whether any commercial vehicle relocater, operator, dispatcher, or person otherwise required to comply with any provision of this Chapter or any rule promulgated hereunder, has failed to comply with any provision or rule." 625 ILCS 5/18a-200(10). Moreover, Section 18a-401 of the ICRTVL authorizes the Commission to "at any time during the term of the license make inquiry into the management, conduct of business, or otherwise to determine that the provisions of this Chapter 18A and the regulations of the Commission promulgated thereunder are being observed." 625 ILCS 5/18a-401. Pursuant to Section 18a-401, the Commission initiated this investigation into the fitness of Lincoln because of the numerous investigations and citations which were completed or pending at the time. The issue herein is to determine Lincoln's fitness and ability to meet the legal and regulatory requirements for relocation towing in the State of Illinois, during the time period of July 24, 2015 to March 23, 2016. Tr. of 2-01-17 pg. 146.

The ICRTVL enumerates several specific "unlawful practices" for any commercial vehicle relocater to engage in. 625 ILCS 5/18a-300. However, more broadly, the law states that a relocater's failure to comply with the ICRTVL or Commission regulations

constitutes a violation of the ICRTVL. 625 ILCS 5/18c-1701; 625 ILCS 5/18a-307. Several of the abovementioned unlawful practices are listed below.

A relocator is prohibited from employing or using the services of an operator who does not have a valid, current operator's employment permit. 625 ILCS 5/18a-300(2). It shall be unlawful for any commercial vehicle relocater "[t]o employ as an operator, or otherwise so use the services of, any person who does not have at the commencement of employment or service, or at any time during the course of employment or service, a valid, current operator's employment permit, or temporary operator's employment permit issued in accordance with Sections 18a-403 or 18a-405 of this Chapter." 625 ILCS 5/18a-300(2).

A relocater shall not relocate a vehicle without first obtaining the required authorization. No vehicle shall be relocated from private property without express, written authorization from the property owner, lessee, or agent in conformance with Section 1710.91. 92 Ill. Adm. Code 1710.41; 625 ILCS 5/18a-300(7).

A relocater has no authorization to relocate trespassing vehicles from a property until the Commission has a copy of a contract between the relocater and the owner of the property from which the relocater will tow improperly parked vehicles. 92 Ill. Adm. Code 1710.91(f)(1). No authorization to tow or contract shall be effective until a completed copy of the Commission's Relocater Contract Summary form covering the authorization or contract has been electronically filed with and accepted by the Commission. 92 Ill. Adm. Code 1710.91(f)(1).

Two or more relocaters cannot be authorized to relocate trespassing vehicles from the same property at the same time. 92 Ill. Adm. Code 1710.91(f)(2). Only one authorization to tow or contract shall be in effect for any lot at any time. No other authorization or contract shall become effective until the prior authorization has been cancelled and notice of cancellation is filed with the Commission. 92 Ill. Adm. Code 1710.91(f)(2). It is the responsibility of the relocater to file a notice of cancellation with the Commission when a contract has been terminated between the relocater and the property owner. 92 Ill. Adm. Code 1710.91(f)(4).

A contract filed with the Commission must specify whether the relocater is authorized to relocate trespassing vehicles on a patrol basis, or on a call basis (upon being contacted by a property owner). 92 Ill. Adm. Code 1710.91(f)(3). Relocater Contract Summaries shall state whether trespassing vehicles will be removed from the property on a patrol basis or only when contacted by the property owner, lessee or agent. *Id.* When a contract permits removal of trespassing vehicles by both a property owner's request and a patrol basis, the relocater shall file that contract as a patrol contract. *Id.* When one authorization to tow applies to multiple parking lot locations, each address shall be filed electronically with the Commission. *Id.*



#### IV. EVIDENCE

##### A. Stipulated Evidence

Lincoln and Staff have stipulated that Lincoln meets the requirements of Section 1710.22(a)(2) of the Commission Rules. The parties stipulated to the following:

1. Respondent owns, or has exclusive possession of under a written lease with a term of at least one year, at least one storage lot that meets the requirements of Subpart M, 92 Ill. Adm. Code 1710.130, *et seq.*;
2. Respondent employs sufficient full-time employees at each storage lot to comply with Section 1710.123;
3. Respondent owns or has under exclusive lease at least two tow trucks dedicated to use under the relocater's license;
4. Respondent employs at least two individuals who will work as the relocater's operators;
5. Respondent is in compliance with Section 4 of the Illinois Workers' Compensation Act (820 ILCS 305/4);
6. Respondent has sufficient available assets, management with prior experience in the towing industry, possession of adequate and properly maintained equipment, and an ability and willingness to provide commercial relocation service; and
7. Respondent is in compliance with all other procedural application requirements that would be required for a legally sufficient, complete, and proper application pursuant to 92 Ill. Adm. Code 1710.10, *et seq.* and 625 ILCS 5/18a-100, *et seq.*

##### B. Staff's Evidence

###### 1. Sergeant Sulikowski and Staff's Exhibits

Sergeant Timothy Sulikowski, the Acting Sergeant with the Illinois Commerce Commission Police Department, testified on behalf of the Commission. Sergeant Sulikowski has been an officer with the Commission since July 2012. As Acting Sergeant, he is responsible for supervising three officers, one investigator, and other civilian employees. Tr. of 5-31-17 pgs. 264, 276-277.

Sergeant Sulikowski testified that Commission police and investigators are authorized to enforce the ICRTVL and the Commission Rules by writing administrative citations which are heard by a Commission Administrative Law Judge. Commission police officers are also authorized to write tickets to the motoring public for violations that are not regulated by the Commission, these tickets are brought to hearing before

the Circuit Court. Investigators are not authorized to write tickets. Tr. of 1-30-18 pg. 1225.

During the relevant time period, any investigation regarding Lincoln would have been initiated in response to a consumer complaint. When a consumer's vehicle is towed, the consumer receives a copy of the tow invoice, which has a preprinted complaint form on the reverse side. The consumer may fill out the complaint form and mail it to the Commission's Des Plaines office. The complaint form is date stamped when received and assigned an investigation number. The investigation is then assigned to an officer or an investigator. Tr. of 1-30-18 pgs. 1226-1228.

Once an officer or investigator receives an investigation assignment, he/she calls the complainant to obtain additional information. The officer or investigator would inspect the lot from which the vehicle was towed for proper signage. The Commission's Motor Carrier Information System ("MCIS") contains a relocation towing company's profile, which includes all investigations, tickets written, complaints, property addresses of towing contracts, effective dates of the operator permits and expiration dates, and information pertaining to its operators and dispatchers. Tr. of 5-31-18 pg. 265. The officer or investigator checks the MCIS to verify that there is a valid contract on file for the property on the tow invoice. He/she also verifies whether the contract is listed as a patrol or call contract and compare that information to what appears on the tow invoice. The officer or investigator also reviews the validity of the operator and dispatcher permits, whether the tow occurred within the proper air mileage range of the relocater's assigned territory, and whether the tow was communicated to the local police department within an hour of the tow. Tr. of 1-30-18 pgs. 1232-1233. The MCIS also lists the date that a summary of the contract was received by the Commission and the cancellation date of a contract. Tr. of 5-31-17 pgs. 274-275. Staff's Exhibits A and B consist of contract listings by property address from the MCIS for the period of July 24, 2015 through March 23, 2016. Staff's Exhibit F comprises relocater-operator/operator permit information from the MCIS.

Sergeant Sulikowski testified that Commission Police officers utilize the MCIS daily. In addition to being used for investigations, the MCIS is also used to check officer activity, such as how many citations he/she has written or how many traffic stops he/she has made. Tr. of 5-31-17 pg. 271. Sergeant Sulikowski explained that when he enters an operator's number into the MCIS, data regarding the operator will appear on a screen, such as when a permit was issued and when it expires. The same information is available for dispatchers. Tr. of 5-31-17 pgs. 273-274.

Sergeant Sulikowski testified that he reviewed Lincoln's 24-hour tow reports during the relevant time period. These reports are logs of daily tows Lincoln completes at the time a vehicle is towed and includes the address from where a vehicle was towed, the date of tow, the year make and model of the vehicle towed, and the operator who towed the vehicle. Tr. of 2-14-19, pg. 1713. The reports also indicate whether the tow was on a patrol or call basis. Different tow sheets are maintained for each of the

lots Lincoln maintains to store the towed cars. Lincoln has one lot at 4601 W. Armitage Street ("Armitage Lot") and another lot at 4882 N. Clark Street ("Clark Lot"). Staff's Exhibit J comprises of tow sheets for the Armitage Lot. Staff's Exhibit K comprises of tow sheets for the Clark Lot. The date of the tow is located at the top right of the page. The "Driver" column identifies the operator conducting the tow.

Sergeant Sulikowski cross-referenced the entries in Lincoln's 24-hour tow sheets, such as property address, operator number, and dispatcher number with the information contained in the MCIS. Tr. of 5-31-17 pgs. 285, 287. At the hearing, Sergeant Sulikowski was presented with a report from MCIS ("MCIS report") showing the addresses Staff highlighted. Staff's Exhibit A is the MCIS report of addresses that appear for the Clark Lot and Staff's Exhibit B is the MCIS report of addresses that appear for the Armitage Lot. Sergeant Sulikowski believed that the contracts between relocators and private property owners in the MCIS is based on input from the relocation towing companies. Tr. of 5-31-17 pg. 382. These contracts are electronically submitted to the Commission through eRelocator, a portal on the Commission's website, for which two of Lincoln's employees (including the General Manager) maintain accounts. Tr. of 2-14-18 pg. 1714.

Comparing Lincoln's tow logs with the MCIS report regarding vehicles towed from the addresses listed below revealed the following discrepancies during the relevant time period:

111 S. Halsted: Lincoln towed a total of ten vehicles on July 24, 2015; August 25, 2015; November 14-15, 2016; and November 20-21, 2015. According to the MCIS report, Lincoln did not file its contract for this lot until April 3, 2016. Tr. of 5-31-17 pgs. 394-397, Staff's Exs. B & J.

225 N. Columbus: Lincoln towed one vehicle from this lot on January 29, 2016, although Lincoln's contract for this lot ended on January 25, 2016, and was replaced by another relocator's contract on January 26, 2016. Tr. of 5-31-17 pgs. 410-412, Staff's Exs. B & J.

344 N. Canal: According to the MCIS report of the address, the Commission does not have a Lincoln contract on file. Lincoln's 24-hour tow sheet indicates two vehicles were towed from the lot on November 18, 2015. Tr. of 5-31-17 pg. 422, Staff's Exs. B & J.

345 N. Canal: According to the MCIS report of the address, a different relocator had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. Lincoln's 24-hour tow sheet indicates that a vehicle was towed from the lot on July 31, 2015. Tr. of 6-01-17 pgs. 436-438, Staff's Exs. B & J.

400 E. South Water: According to the MCIS report of the address, a different relocator had a contract with the lot owner during the relevant time period of July 24,

2015 through March 23, 2016. Lincoln's 24-hour tow sheet indicates that a vehicle was towed from the lot on August 7, 2015. Tr. of 6-01-17 pgs. 438-439, Staff's Exs. B & J.

405 N. Wabash Ave: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on March 27, 2008 and a cancellation on February 11, 2010. Tr. 442. Lincoln's 24-hour tow sheets indicate that three vehicles were towed between August and December of 2015. Tr. of 6-01-17 pgs. 442-445, Staff's Exs. B & J.

440 N. LaSalle: According to the MCIS report of the address, a different relocater had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. The MCIS report also shows that the Commission received notice of a Lincoln contract on March 7, 2007 and of the cancellation of the contract on September 4, 2014. Lincoln's 24-hour tow sheet indicates that a vehicle was towed from the lot on July 24, 2015. Tr. of 6-01-17 pgs. 446-447, Staff's Exs. B & J.

800 N. Kedzie: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on March 7, 2007 and of the cancellation of the contract on June 27, 2015. Lincoln's 24-hour tow sheet indicates a vehicle was towed from the lot on September 30, 2015. Tr. of 6-01-17 pgs. 448-450, Staff's Exs. B & J.

831 N. Damen Ave: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on December 15, 2015. Lincoln's 24-hour tow sheet indicates a vehicle was towed from the lot on November 27, 2015. Tr. of 6-01-17 pgs. 451-453, Staff's Exs. B & J.

1041 N. Harding: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on December 15, 2015. Lincoln's 24-hour tow sheet indicates a vehicle was towed from the lot on November 27, 2015. Tr. of 6-01-17 pg. 452, Staff's Exs. B & J.

1801 N. St. Louis Ave: Lincoln's 24-hour tow sheets indicate three vehicles were towed from the lot on September 19, 2015, March 8, 2016, and March 14, 2016. According to the MCIS report of the address, no relocater held a contract during the time the vehicles were towed. Tr. of 6-01-17 pgs. 454-459, Staff's Exs. B & J.

1900 N. Austin Ave: According to the MCIS report of the address, the Commission received notice of a Lincoln patrol lot contract on January 5, 2007 but received a cancellation notice on November 6, 2009. The report also indicates the Commission received notice of a Lincoln call lot contract on March 7, 2007, but later received a cancellation notice on October 27, 2009. However, Lincoln's 24-hour tow sheets indicate 34 vehicles were towed from the lot between September 27, 2015 and March 11, 2016. Tr. of 6-01-17 pgs. 460-469, Staff's Exs. B & J.

1919 N. Cicero: Lincoln towed one vehicle on a patrol basis on November 14, 2015, but its contract was filed as a call basis. Staff's Exs. B & J.

2002 S. Wentworth: Lincoln towed eight vehicles on a patrol basis on November 7, 2015; November 15, 2015; December 3, 2015; December 25, 2015; January 1, 2016; January 7, 2016; January 9, 2016; and March 18, 2016, but its contract was filed as a call basis on July 21, 2009. Staff's Exs. B & J.

2030 S. State: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on July 12, 2016 that is currently in effect. However, Lincoln's 24-hour tow sheets indicate one vehicle was towed on July 31, 2015. Tr. of 6-01-17 pgs. 472-475, Staff's Exs. B & J.

2111 S. Clark: According to the MCIS report of the address, a different relocater had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. Lincoln's 24-hour tow sheets indicate 12 vehicles were towed from the lot between November 2, 2015 and February 20, 2016. Tr. of 6-01-17 pgs. 475-482, Staff's Exs. B & J.

2113 N. Spaulding Ave: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on February 2, 2016. The 24-hour tow sheets indicate two vehicles were towed from the lot on January 30, 2016. Tr. of 6-01-17 pgs. 483-484, Staff's Exs. B & J.

2201 S. Halsted: According to the MCIS report of the address, there is conflicting information on file. The Commission received notice of a contract held by another relocater on May 1, 2006 and there is no cancellation notice received for that contract, thus the contract would appear to be in effect. The Commission, however, also received notice of a Lincoln contract on March 7, 2007 and notice of cancellation on February 1, 2010. Lincoln's 24-hour tow sheets indicate a vehicle was towed from the lot on August 27, 2015. Sergeant Sulikowski stated that he would have to investigate further to determine the reason for the overlapping contract dates. Tr. of 6-01-17 pgs. 485-489, Staff's Exs. B & J.

2233 S. Canal: According to the MCIS report of the address, a different relocater had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. Lincoln's 24-hour tow sheets indicate a vehicle was towed from the lot on February 5, 2016. Tr. of 6-01-17 pgs. 489-491, Staff's Exs. B & J.

2249 N. Milwaukee Ave: According to the MCIS report of the address, another relocater has a contract with the lot owner beginning July 19, 2007 to the present. Lincoln's 24-hour tow sheets indicate a vehicle was towed from the lot on August 26, 2015. Tr. of 6-01-17 pgs. 491-493, Staff's Exs. B & J.

2421 W. Madison: According to the MCIS report of the address, another relocater has a contract with the lot owner beginning August 16, 2011, to the present. Lincoln's 24-hour tow sheets indicate a vehicle was towed from the lot on November 12, 2015. Tr. of 6-01-17 pgs. 493-495, Staff's Exs. B & J.

2451 N. Clybourn: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on March 24, 2016 that is currently in effect. Lincoln's 24-hour tow sheets indicate a vehicle was towed from the lot on March 16, 2016. Tr. of 6-01-17 pgs. 495-497, Staff's Exs. B & J.

2600 S. Michigan Ave: According to the MCIS report of the address, there is conflicting information on file. The Commission received notice of a contract held by another relocater on March 19, 2007 and there is no cancellation notice received for that contract, thus the contract would appear to be in effect. The Commission, however, also received notice of a Lincoln contract on August 21, 2008 and notice of cancellation on February 1, 2010. Lincoln's 24-hour tow sheets indicate six vehicles were towed from the lot between January 21, 2016 and March 23, 2016. Sergeant Sulikowski stated that he would have to investigate further to determine the reason for the overlapping contract dates. Tr. of 6-01-17 pgs. 497-507, Staff's Exs. B & J.

2734 S. Wentworth: Lincoln towed five vehicles on a patrol basis on October 8, 2015; November 3, 2015; January 8, 2016; February 29, 2016; and March 5, 2016, but its contract was filed as a call basis. Staff's Exs. B & J.

2750 W. Grand Ave: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on September 22, 2015 that is currently in effect. Lincoln's 24-hour tow sheets indicate six vehicles were towed from the lot between July 26, 2015 and August 19, 2015. Tr. of 6-01-17 pgs. 507-511, Staff's Exs. B & J.

2801 N. Linder Ave: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on March 18, 2016 that is currently in effect. Lincoln's 24-hour tow sheets indicate two vehicles were towed from the lot on March 9, 2016 and March 16, 2016. Tr. of 6-01-17 pgs. 511-512, 524-526, Staff's Exs. B & J.

2805 N. Linder Ave: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on March 18, 2016 that is currently in effect. Lincoln's 24-hour tow sheets indicate eight vehicles were towed from the lot between August 16, 2015 and September 12, 2015. Tr. of 6-01-17 pgs. 526-529, Staff's Exs. B & J.

2805 N. Lotus Ave: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on March 18, 2016 that is currently in effect. Lincoln's 24-hour tow sheets indicate three vehicles were towed from the lot between August 18, 2015 and September 4, 2015. Tr. of 6-01-17 pgs. 529-532, Staff's Exs. B & J.

2908 W. Fullerton: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on September 8, 2015 that is currently in effect.

Lincoln's 24-hour tow sheets indicate a vehicle was towed from the lot on September 2, 2015. Tr. of 6-01-17 pgs. 532-533, Staff's Exs. B & J.

2844 W. Armitage: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on August 2, 2016 that is currently in effect. Lincoln's 24-hour tow sheets indicate a vehicle was towed from the lot on January 24, 2016. Tr. of 6-01-17 pgs. 534-535, Staff's Exs. B & J.

3100 N. Central Ave: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on May 16, 2006 and a notice of cancellation on May 14, 2015 effecting a cancellation on May 24, 2015. Lincoln's 24-hour tow sheets indicate 36 vehicles were towed from the lot between July 25, 2015 and March 12, 2016. Tr. of 6-01-17 pgs. 536-559, Staff's Exs. B & J.

3901 W. Madison Ave: According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period of July 24, 2015 through March 23, 2016. Lincoln's 24-hour tow sheets indicate a vehicle was towed from the lot on January 16, 2016. Tr. of 6-01-17 pg. 560, Staff's Exs. B & J.

4000 W. Grand: According to the MCIS report of the address, Lincoln towed one vehicle on July 26, 2015 although its contract for this lot was cancelled on February 15, 2010. Staff's Ex. B & J.

4032 W. Armitage: According to the MCIS report of the address, Lincoln towed four vehicles on August 18, 2015; August 19, 2015; October 6, 2016; and October 11, 2015, although it did not file its contract for this lot until May 4, 2016. Staff's Ex. J.

4645 W. Belmont: According to the MCIS report of the address, Lincoln towed two vehicles on a patrol basis on October 19, 2015 and March 17, 2016 although its contract for this lot was filed as a call lot. Staff's Ex. J.

4946 S. Drexel: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on November 3, 2015 that is currently in effect. Lincoln's 24-hour tow sheets indicate a vehicle was towed from the lot on October 23, 2015. Tr. of 6-01-17 pgs. 561-562, Staff's Exs. B & J.

5000 W. Madison: According to the MCIS report of the address, Lincoln towed five vehicles on a patrol basis on October 15, 2015; January 8, 2016; January 21, 2016; February 9, 2016; and February 13, 2016 although its contract for this lot was filed as a call lot. Staff's Exs. B & J.

5200 W. North: According to the MCIS report of the address, Lincoln towed one vehicle on August 31, 2015 although this lot was already under contract with another relocater. Staff's Exs. B & J.

5531 W. North Ave: According to the MCIS report of the address, there were no relocater contracts on file with the Commission for the lot owner during the relevant time

period. Lincoln's 24-hour tow sheets indicate a vehicle was towed from the lot on August 15, 2015. Tr. of 6-01-17 pgs. 564-566, Staff's Exs. B & J.

7118 W. Grand Ave: According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. Lincoln's 24-hour tow sheets indicate Lincoln towed three vehicles from the lot on February 6, 2016. Tr. of 6-01-17 pgs. 567-569, Staff's Exs. J.

223 N. Custer: According to the MCIS report of the address, Lincoln's held a contract for this lot that was cancelled on February 11, 2010 and was replaced by another relocater's contract on March 12, 2012. Lincoln's 24-hour tow sheets indicate Lincoln towed four vehicles from this lot on October 28, 2015; November 4, 2015; November 16, 2015; and December 15, 2015. Staff's Exs. A & K.

834 W. Leland Ave: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on March 24, 2016 that is currently in effect. Lincoln's 24-hour tow sheets indicate two vehicles were towed from the lot on November 19, 2015 and December 3, 2015. Tr. of 7-07-17 pgs. 582-585, Staff's Exs. A & K.

850 W. Eastwood Ave: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on March 9, 2017 that is currently in effect. Lincoln's 24-hour tow sheets indicate three vehicles were towed from the lot between October 19, 2015 and December 22, 2015. Tr. of 7-07-17 pgs. 587-589, Staff's Exs. A & K.

1415 W. Morse: According to the MCIS report of the address, Lincoln towed three vehicles on a patrol basis on November 10, 2015; November 24, 2015; and December 15, 2015 although its contract for this lot was filed as a call lot on March 7, 2007. Tr. of 7-07-17 pg. 589. Staff's Ex. A.

1730 W. Terra Cotta Place: According to the MCIS report of the address, the Commission received notice of cancellation of a Lincoln contract on December 21, 2015, effectuating a cancellation on December 31, 2015 and replaced with another relocater's contract on the same day. However, Lincoln's 24-hour tow sheets indicate three vehicles were towed from the lot on February 6, 2016; March 6, 2016; and March 12, 2016. Tr. of 7-07-17 pgs. 589-590, Staff's Exs. A & K.

2001 W. Devon Ave: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on December 14, 2015 that is currently in effect. Lincoln's 24-hour tow sheets indicate 19 vehicles were towed from the lot between July 25, 2015 and November 8, 2015. Tr. of 7-07-17 pgs. 591-598; Staff's Exs. A & K.

2245 N. Halsted: According to the MCIS report of the address, Lincoln towed one vehicle on July 28, 2015 although this lot was already under contract with another relocater. Staff's Ex. A.



2454 W. Peterson: According to the MCIS report of the address, Lincoln towed two vehicles on a patrol basis on December 16, 2015 and January 16, 2016 although its contract for this lot was filed as a call lot. Staff's Ex. A.

2626 N. Lincoln Ave: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on December 7, 2016 that is currently in effect. Lincoln's 24-hour tow sheets indicate a vehicle was towed from the lot on August 6, 2015. Tr. of 7-07-17 pgs. 598-599, Staff's Exs. A & K.

2801 W. Devon Ave: According to the MCIS report of the address, there were no relocater contracts on file with the Commission during the relevant time period. Lincoln's 24-hour tow sheets indicate 78 vehicles were towed from the lot between August 1, 2015 and February 6, 2016. Tr. of 7-07-17 pgs. 599-616, Staff's Exs. A & K.

2828 N. Broadway: According to the MCIS report of the address, Lincoln towed two vehicles on a patrol basis on August 13, 2015 and December 5, 2015 although its contract for this lot was filed as a call lot on March 7, 2007. Staff's Exs. A & K.

3214 N. Kimball Ave: According to the MCIS report of the address, the Commission received notice of cancellation of a Lincoln contract on February 9, 2009, effectuating a cancellation on February 19, 2009. Lincoln's 24-hour tow sheets indicate a vehicle was towed from the lot on December 16, 2015. Tr. of 7-07-17 pgs. 616-617, Staff's Exs. A & K.

3620 N. Clark: According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. Lincoln's 24-hour tow sheets indicate 34 vehicles were towed from the lot between August 22, 2015 and February 13, 2016. Tr. of 7-07-17 pgs. 617-625, Staff's Exs. A & K.

3700 N. Broadway: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on March 18, 2016 that is currently in effect. Lincoln's 24-hour tow sheets indicate eight vehicles were towed from the lot between August 8, 2015 and March 9, 2016. Tr. of 7-07-17 pgs. 625-627, Staff's Exs. A & K.

3923 N. Clarendon Ave: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on October 7, 2016 that is currently in effect. Lincoln's 24-hour tow sheets indicate four vehicles were towed from the lot between September 5, 2015 and January 10, 2016. Tr. of 7-07-17 pgs. 628-629, Staff's Exs. A & K.

4102 N. Sheridan: According to the MCIS report of the address, there were no relocater contracts on file with the Commission during the relevant time period. Lincoln's 24-hour tow sheets indicate 23 vehicles were towed from the lot between July 26, 2015 and March 22, 2016. Tr. of 7-07-17 pgs. 629-635, Staff's Exs. A & K.

4420 N. Winchester: According to the MCIS report of the address, Lincoln towed one vehicle on a patrol basis on November 18, 2015 although its contract for this lot was filed as a call lot on March 7, 2007. Staff's Ex. A.

4801 N. Ravenswood Ave: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on August 11, 2016 that is currently in effect. Lincoln's 24-hour tow sheets indicate two vehicles were towed from the lot on July 26, 2015 and August 16, 2015. Tr. of 7-07-17 pgs. 635-638, Staff's Exs. A & K.

5440 N. Clark: According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. Lincoln's 24-hour tow sheets indicate ten vehicles were towed from the lot between August 14, 2015 and March 6, 2016. Tr. of 7-07-17 pgs. 638-641, Staff's Exs. A & K.

5501 N. Kedzie: According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. Lincoln's 24-hour tow sheets indicate six vehicles were towed from the lot between January 29, 2016 and February 27, 2016. Tr. of 7-07-17 pgs. 641-642, Staff's Exs. A & K.

5623 N. Clark: According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. Lincoln's 24-hour tow sheets indicate six vehicles were towed from the lot in between August 14, 2015 and January 3, 2016. Tr. of 7-07-17 pgs. 642-645, Staff's Exs. A & K.

5713 N. Kenmore: According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. Lincoln's 24-hour tow sheets indicate five vehicles were towed from the lot in between August 3, 2015 and September 8, 2015. Tr. of 7-07-17 pgs. 645-647, Staff's Exs. A & K.

5754 N. Western Ave: According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. Lincoln's 24-hour tow sheets indicate six vehicles were towed from the lot on August 22, 2015 and December 27, 2015. Tr. of 7-07-17 pgs. 647-649, Staff's Exs. A & K.

5853 W. Artesian: According to the MCIS report of the address, Lincoln towed one vehicle on a patrol basis on February 12, 2016 although its contract for this lot was filed as a call lot on June 11, 2009. Staff's Ex. A.

6105 N. Broadway: According to the MCIS report of the address, another relocater had a contract with the lot owner during the relevant time period. Lincoln's 24-hour tow sheets indicate 47 vehicles were towed from the lot between July 31, 2015 and February 27, 2016. Tr. of 7-07-17 pgs. 649-659, Staff's Exs. A & K.

6550 N. Sheridan: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on October 21, 2016 that is currently in effect. Lincoln's 24-hour tow sheets indicate three vehicles were towed from the lot between July 24, 2015 and August 1, 2015. Tr. of 7-07-17 pgs. 659-661, Staff's Exs. A & K.

6700 N. Greenview: According to the MCIS report of the address, there were no relocater contracts on file with the Commission during the relevant time period. Lincoln's 24-hour tow sheets indicate ten vehicles were towed from the lot between July 25, 2015 and March 23, 2016. Tr. of 7-07-17 pgs. 661-664, Staff's Exs. A & K.

7000 N. Ridge: According to the MCIS report of the address, the Commission received notice of a Lincoln contract on January 4, 2016 that is currently in effect. Lincoln's 24-hour tow sheets indicate a vehicle was towed from the lot on December 15, 2015. Tr. of 7-07-17 pgs. 665-666, Staff's Exs. A & K.

Sergeant Sulikowski testified on cross examination that no investigations were conducted for any of the unauthorized tows he identified between the MCIS reports and Lincoln's 24-hour tow sheets. Tr. of 1-31-18 pgs. 1436, 1442. No citations were written for any of the tows cross-referenced on the 24-hour tow sheets contained in Staff's Exhibits J and K, and the MCIS Reports contained in Staff's Exhibits A and B. *Id.* at 1441.

#### Operator Permits

Sergeant Sulikowski testified that there were discrepancies between Lincoln's 24-hour tow sheets and the MCIS report regarding the validity of the permits of operators who towed vehicles during the relevant time period. Sergeant Sulikowski cross-referenced Lincoln's 24-hour tow sheets from the Clark and Armitage lots with the MCIS print out of operator license information contained in Staff's Exhibit F.

Sergeant Sulikowski testified that an operator may continue to work on an existing operator's permit during the pendency of a renewal application if the renewal application is filed prior to the expiration of the existing permit. Tr. of 7-07-17 pgs. 670-671.

Sergeant Sulikowski was presented with the MCIS report's relocater operator permit screenshots for three of Lincoln's relocation operators, Ronald Phillips with operator number 4394, Jose Negron with operator number 2515, and Albert Solano with operator number 4190.

#### Operator No. 4394 – Ronald Phillips – 358 tows

According to the MCIS report, Ronald Phillips' initial operator's permit was received by the Commission on August 13, 2013, and effective from August 16, 2013 to August 16, 2015. The Commission received a renewal application on September 17, 2015, which became effective February 16, 2016 and expired on February 16, 2018. Tr. of 7-07-17 pgs. 668-670, Staff's Ex. F. Sergeant Sulikowski testified that according to the MCIS report, Mr. Phillips did not have an operator's permit from August 16, 2015 to February 16, 2016 because the renewal application was not received before the original permit expired. Tr. of 7-07-17 pg. 671. A review of Lincoln's 24-hour tow logs between August 16, 2015 and February 16, 2016, indicate Mr. Phillips performed 358 tows during that time. Tr. of 7-07-17 pgs. 671-717, Staff's Ex. F.

Sergeant Sulikowski testified on cross-examination that he did not have personal knowledge regarding whether Mr. Phillips relocated vehicles between August 16, 2015 and February 16, 2016. No investigation was initiated and no citation was issued for the tows as no complaints were filed. Tr. of 1-31-18 pgs. 1488-1489.

Operator No. 2515 – Jose Negron – 2 tows

According to the MCIS report, the Commission received Jose Negron's initial operator permit application on November 5, 2013. The permit was issued with an effective date of November 8, 2013 to November 8, 2015. A renewal Application was received on June 27, 2016, and it was issued and effective from December 6, 2016 to December 6, 2018. Sergeant Sulikowski testified that according to the MCIS report, Mr. Negron did not have an operator's permit from November 8, 2015 to December 6, 2016. Tr. of 7-10-17 pgs. 820-822. A review of Lincoln's 24-hour tow logs between November 8, 2015 and December 6, 2016 indicate Mr. Negron performed two tows on November 21, 2015 and March 13, 2016. Tr. of 7-10-17 pgs. 824-825, Staff Ex. J pg. 145.

Sergeant Sulikowski testified on cross-examination that he did not know whether Mr. Negron was actually licensed on November 21, 2015. No investigation was initiated and no citation was issued for the tows as no complaint was filed. Tr. of 1-31-18 pg. 1495.

Operator No. 4190 – Albert Solano – 9 tows

According to the MCIS report, the Commission received Albert Solano's initial operator permit application on February 11, 2014. The permit was issued with an effective date of February 14, 2014 to February 14, 2016. A renewal application was received on March 7, 2016 and issued with an effective date of April 22, 2016 to April 22, 2018. Sergeant Sulikowski testified that according to the MCIS report, Mr. Solano did not have an operator's permit between February 14, 2016 and April 22, 2016. A review of Lincoln's 24-hour tow logs between February 14, 2016 and April 22, 2016, indicate Mr. Solano performed nine tows during that period of time. Tr. of 7-10-17 pgs. 829-833, Staff's Ex. J.

Sergeant Sulikowski testified on cross-examination that he did not have personal knowledge when Mr. Solano sought to renew his license or whether Mr. Solano had a license between February 14, 2016 and April 22, 2016. No investigations were initiated and no citations were issued for the tows as no complaints were filed. Tr. of 1-31-18 pg. 1496.

2. Investigator Scott Kassal

Investigator Scott Kassal testified that he is a Transportation Investigator with the Illinois Commerce Commission Police. He has been an Investigator since 1996. During the relevant time period, Investigator Kassal reviewed consumer complaints regarding relocation towing companies. Tr. of 7-26-17 pg. 905. He explained the guidelines

typically followed when investigating consumer complaints. Once a consumer complaint is received, it is assigned to an investigator or officer who will then use the MCIS to check the validity of the operator and dispatcher permits and whether the relocation company has a contract with the property from which a vehicle was towed. Tr. of 7-26-17 pg. 906. If any of the required fields on the tow invoice, which is on the reverse side of the consumer complaint, are found to be incorrect or expired, the officer or investigator would issue an administrative citation to the towing company. The three outcomes of an investigation are finding in favor of the towing company with no further action by the Commission; finding an alleged violation and issuing an administrative citation; or reaching an agreement with the towing company whereby the towing company agrees to refund the complainant's money instead of receiving an administrative citation. Tr. of 7-26-17 pg. 908. Administrative citations are issued with a fine and the recipient company can either pay the fine imposed or request an administrative hearing on the citation. Tr. of 1-17-18 pg. 910.

Investigator Kassal testified that he issued 16 administrative citations to Lincoln during the relevant time period for various alleged violations. Tr. of 1-17-18 pgs. 912-930; Staff's Exs. L, M, & N.

On cross-examination, Investigator Kassal testified that during the relevant time period, he opened 12 investigations relating to Lincoln and issued 16 administrative citations. Tr. of 1-17-18 pgs. 1006-1007. Four of the 16 citations were issued for improper signage (one was regarding a lot under the Chicago Transit Authority elevated train track); one was issued because the tow truck driver's operator's permit was expired; one was issued because the contract summary between Lincoln and the lot owner was not e-filed; eight were issued because the tow invoices were not accurately completed. The eight citations for inaccurate invoices were issued because the invoices lacked either or both the contract number or tow truck license plate number. In each instance where a contract number was omitted from the invoice, Investigator Kassal determined that a contract existed between the lot owner and Lincoln. Tr. of 1-17-18 pgs. 993-994.

Two of the 16 administrative citations issued by Investigator Kassal for invalid dispatcher permits should not have been written because there is no requirement that the person who releases a vehicle to its owner have a dispatcher permit. Tr. of 1-17-18 pg. 1006; 625 ILCS 5/18a-100(6).

### 3. Officer Bryan Strand

Officer Bryan Strand testified that he has been employed by the Illinois Commerce Commission Police Department for five years. Officer Strand described the consumer complaint process for relocation towing. Consumer complaints are received by the Commission via U.S. mail, assigned an investigation file number, and assigned to an officer or investigator. Once he receives a complaint, he reviews the invoice on the reverse side of the complaint for accuracy and completeness. Tr. of 7-26-17 pgs.

938-939. At the end of an investigation, Officer Strand will either close it without issuing any administrative citations or issue citations of alleged violations. Tr. of 7-26-17 pgs. 944-945.

Officer Strand testified that he issued 52 administrative citations to Lincoln during the relevant time period for various alleged violations. Tr. of 7-26-17 pgs. 946-992, Staff's Exs. L, M, & N. Six of the 52 administrative citations issued by Officer Strand for expired dispatcher permits should not have been written because there is no requirement that the person who releases a vehicle to its owner have a dispatcher permit. Tr. of 7-26-17 pgs. 962, 973, 974, 976, 978, 979, 991; Tr. of 2-13-18 pgs. 1541, 1542, 1547, 1581; 625 ILCS 5/18a-100(6).

On cross-examination, Officer Strand testified that while he may decide a consumer complaint is unfounded after investigation he could write citations for other issues that appear while investigating the complaint, such as incomplete invoices or expired operator permits. Whether these issues in fact constitute a violation of the law is determined at a hearing. Tr. of 1-16-18 pgs. 702-704, 765. Officer Strand did not know if there was a determination of a violation at hearings on any of the citations he issued to Lincoln during the relevant time period. Tr. of 1-16-18 pg. 704.

#### 4. Officer John Geisbush

Officer Geisbush testified that he has been employed by the Illinois Commerce Commission since July of 2012. One of his duties is to enforce relocation towing regulations. The relocation towing industry is primarily regulated through investigating consumer complaints. When he receives a consumer complaint he will review it. He may then go to the location of the tow, call the tow company and ask them about the incident, or ask the complainant for additional information. Tr. of 7-26-17 pgs. 1005-1006. In the course of his investigation, he may find issues that the consumer did not complain about. *Id.* at 1009. The possible outcomes of an investigation are that citations are issued to the towing company, no citations are issued and the investigation is closed; or the towing company agrees to refund the vehicle owner's money. *Id.* at 1010.

Officer Geisbush testified on direct examination that he issued 86 administrative citations to Lincoln during the relevant time period for various alleged violations. Tr. of 7-26-17 pgs. 1011-1096, Staff's Exs. L, M, & N.

On cross-examination, Officer Geisbush testified that 85 citations were issued by him (a difference of one from direct examination), 22 were for improper signage (Tr. of 1-25-18 pgs. 1148-1150), 13 were for improper invoices (*Id.* at 1159), 10 were for overcharges (*Id.* at 1174), 10 were for no equipment lease on file (*Id.* at 1177), 2 were for towing while owner being present (*Id.* at 1189), 4 were for patrolling from a call lot (*Id.* at 1193), 1 was for towing from a cancelled lot; 11 were for not having written authorization to relocate (Tr. of 1-25-18 pg. 1199), and 12 were for removing authorized vehicles (Tr. of 1-25-18 pgs. 1199-1201). Officer Geisbush testified that an

administrative citation is an allegation of a violation, not an adjudication that there is a violation. He did not know if any hearings were held on the citations he issued. Tr. of 1-25-18 pgs. 1041, 1213.

5. Administrative Notice of Citations Issued, Administrative Law Judge Rulings, and Commission Order

Staff's Exhibits G, H, I, L, M, and N were admitted into the record under administrative notice pursuant to 83 Ill. Adm. Code 200.640(2). Tr. of 2-14-18 pgs. 1728, 1731. Exhibit G consists of Administrative Law Judge Rulings of "guilty" on citations issued by Officers Strand, Geisbush and Investigator Kassal during the relevant time period. Exhibit H consists of Administrative Law Judge Rulings dismissing citations issued by the Officers and Investigator. Exhibit I consists of Administrative Law Judge Rulings acknowledging voluntary settlement of citations without adjudication. Exhibits L, M, and N contain copies of citations issued by the Officers and Investigator during the relevant time period.

Of the 16 citations issued to Lincoln by Investigator Kassal, five were found guilty by ALJ ruling, six were dismissed, and five were voluntarily settled without adjudication. Tr. of 7-26-17 pgs. 912-930; Staff's Exs. G, H, I, L, M, & N.

Of the 52 citations written to Lincoln by Officer Strand, 14 were found guilty by ALJ ruling, 35 were dismissed, and three were voluntarily settled without adjudication. Tr. of 7-26-17 pgs. 946-992; Staff's Exs. G, H, I, L, M, & N.

Of the 86 citations issued to Lincoln by Officer Geisbush, two were found guilty by ALJ ruling, 70 were dismissed, and 14 were voluntarily settled without adjudication. There is a discrepancy of one citation between the testimony and the ALJ rulings. Tr. of 7-26-17 pgs. 1011-1096; Staff's Exs. G, H, I, L, M, & N.

In sum, of the 154 citations issued to Lincoln during the relevant time period, 21 received guilty findings, 111 were dismissed; 22 were voluntarily settled without adjudication.

The ALJ also admitted under administrative notice pursuant to 83 Ill. Adm. Code 200.640(2), the Commission Order entered on July 8, 2015 in the matter of Lincoln Service Corporation: Application for Renewal of a Commercial Relocator's License. 92 RTV-R Sub 15. This Order is the Commission's decision granting Lincoln's last renewal application.

C. Lincoln's Evidence

Robert Munyon testified that he currently is, and was during the relevant time period, General Manager of Lincoln. He has worked for Lincoln for 32 years and as the General Manager for 17 years. He stated Lincoln has approximately 20,000 contracts with private property owners to tow from their lots.

Mr. Munyon testified that, according to Lincoln's 24-hour tow sheets provided to the Commission, Lincoln towed 9,470 vehicles during the relevant time period. Tr. of 3-15-18 pgs. 1799-1802. Staff's Exs. J and K.

## V. PARTIES' POSITIONS

### A. Staff's Position

Staff argues in its Post-Hearing Brief that Lincoln's repeated violations of the ICRTVL and Commission Rules show it is not fit to perform the service of a commercial vehicle relocater and not able to conform to the provisions of the ICRTVL and the Commission Rules. In summary, Staff asserts the following in support of this argument:

- (1) Based on Staff's Exhibits B and J, Respondent conducted unauthorized tows to the 4601 W. Armitage St. Facility for failure to have an effective contract on file with the Commission in violation of 92 Ill. Admin. Code 1710.91(f)(1) fifty-four (54) times between July 24, 2015, and March 23, 2016.<sup>1</sup>
- (2) Based on Staff's Exhibits B and J, Respondent conducted unauthorized tows to the 4601 W. Armitage St. Facility for failure to have authorization from the property owner in violation of 92 Ill. Admin. Code 1710.41 one-hundred (100) times between July 24, 2015, and March 23, 2016.
- (3) Based on Staff's Exhibits B and J, Respondent conducted unauthorized tows to the 4601 W. Armitage St. Facility for towing vehicles on a patrol basis when its contract was filed as a call lot in violation of 92 Ill. Admin. Code 1710.91(f)(3) twenty-one (21) times between July 24, 2015, and March 23, 2016.
- (4) Based on Staff's Exhibits A and K, Respondent conducted unauthorized tows to the 4882 N. Clark St. Facility for failure to have an effective contract on file with the Commission in violation of 92 Ill. Admin. Code 1710.91(f)(1) one-hundred-ninety-eight (198) times between July 24, 2015, and March 23, 2016.<sup>2</sup>
- (5) Based on Staff's Exhibits A and K, Respondent conducted unauthorized tows to the 4882 N. Clark St. Facility for failure to have authorization from the property owner in violation of 92 Ill. Admin. Code 1710.41 seventy-nine (79) times between July 24, 2015, and March 23, 2016.
- (6) Based on Staff's Exhibits A and K, Respondent conducted unauthorized tows to the 4882 N. Clark St. Facility by towing vehicles

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<sup>1</sup> The Commission has corrected the number of violations from 55 to 54 using the record relied upon by Staff in their Post-Hearing Brief.

<sup>2</sup> The Commission has corrected the number of violations from 200 to 198 using the record relied upon by Staff in their Post-Hearing Brief.



on a patrol basis when its contract was filed as a call lot in violation of 92 Ill. Admin. Code 1710.91(f)(3) nine (9) times between July 24, 2015, and March 23, 2016.

- (7) Based on Staff's Exhibits J, K, and F, Respondent used the services of an operator without a valid, current operator's permit in violation of Section 18a-300(2) of the ICRTVL three-hundred sixty-nine (369) times between July 24, 2015, and March 23, 2016.
- (8) Respondent violated the ICRTVL and Commission Rules a total of eight-hundred-thirty (830) times between July 24, 2015 and March 23, 2016.<sup>3</sup>
- (9) Respondent's pattern and practice of conducting unauthorized relocations harms the public and demonstrates that Lincoln is incompetent and unfit to hold a Commercial Vehicle Relocator's License.
- (10) While the issuance of an administrative citation is not dispositive of a violation of a particular rule or statute, the administrative citations in evidence are indicative of Respondent's incompetence to properly manage its business operations to ensure regulatory compliance.
- (11) Thus, given the ongoing pattern and practice of violations found, Lincoln is unfit to hold a Commercial Vehicle Relocator's License pursuant to Section 18a-401 of the ICRTVL.

#### B. Lincoln's Position

Lincoln argues that the evidence adduced is not sufficient to substantiate any of the alleged violations claimed by Staff. Sergeant Sulikowski only testified to the inconsistencies between Lincoln's 24-hour tow sheets and the MCIS reports. The testimony adduced at trial was that the testifying officer did not initiate or complete any investigation, did not write any citations, did not testify at a hearing on a citation, and no violation was determined by an Administrative Law Judge.

Lincoln also argues that Staff has stipulated that Lincoln meets each and every requirement of the required fitness test enumerated by 92 Ill. Adm. Code 1710.22(a)(2), and based on the stipulation alone, it should be determined that it is fit, willing, and able to hold a Commercial Vehicle Relocator's License.

## VI. ANALYSIS AND CONCLUSION

The Commission must "supervise and regulate the commercial removal of trespassing vehicles from private property, and the subsequent relocation and storage of such vehicles in such manner as to fairly distribute rights and responsibilities among vehicle owners, private property owners and commercial vehicle relocators." 625 ILCS

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<sup>3</sup> The Commission has corrected the total number of violations from 831 to 830 using the record relied upon by Staff in their Post-Hearing Brief.

5/18a-101. The Commission does not take this role lightly. The purpose of relocating towing regulations is no different from other State licensing regulations, to prevent injury to the public by "assuring that the occupation will be practiced with honesty and integrity, excluding from the profession those who are incompetent or unworthy." *Alexander v. Director, Dep't. of Agriculture*, 111 Ill. App. 3d 927, 931 (3d Dist. 1983). Given that a relocator's license allows the seizing of a person's property without his/her explicit consent, to preserve the public peace, the Commission must be vigilant in ensuring that its rules are being strictly observed as to "fairly distribute rights and responsibilities among vehicle owners, private property owners and commercial vehicle relocators." 625 ILCS 5/18a-101.

In February of 2016, the Commission launched an investigation to determine whether Lincoln is fit, willing and able to hold a relocator's license in Illinois. The Commission initiated the investigation with its authority vested under Section 18a-401 of the ICRTVL, to inquire into the management, conduct of business or otherwise to determine that applicable law and Commission Rules are observed. 625 ILCS 5/18a-401.

Although the parties have stipulated that Lincoln satisfies each element of the "fitness test" under Section 1710.22 of the Commission Rules, it is not sufficient to find that Lincoln is fit and able to comply with Commission Rules and the ICRTVL. The Section 1710.22 test is a minimal operational requirements checklist for relocation towers, such as owning tow trucks and storage space that a relocator must possess to hold a license. "No person shall be deemed fit to hold a relocator's license unless...." 92 Ill. Adm. Code 1710.22(a)(2)(A). The rule does not state a company *shall be deemed fit* if it meets the requirements, it states that it cannot be deemed fit if *it does not meet* the requirements.

Moreover, the Commission Rules allow "other facts" to be considered in a fitness proceeding. 92 Ill. Adm. Code 1710.22(a)(1). The relevant "other facts" in the instant proceeding go to the determination of whether Lincoln is complying with the other applicable Commission Rules and state laws. "Each license issued to a relocator, operator, or dispatcher is conditioned upon compliance with the provisions of the Law and this Part. Operations in violation of the Law or this Part are unauthorized and render the license subject to suspension or revocation." 92 Ill. Adm. Code 1710.30.

#### A. Lincoln's Compliance with Commission Rules & the ICRTVL

Over the relevant time period of 8 months and 9,470 tows, Staff has uncovered evidence for over 800 unauthorized tows by Lincoln. Staff Post-Hearing Brief at 8-23. Each incidence was revealed by comparing Lincoln's 24-hour tow sheet, which lists all tows from a specific property, with the Commission's MCIS, an electronic database that stores contracts, licenses, and other pertinent information on relocation towers. Staff Post-Hearing Brief at 5-7. To illustrate Staff's evidence and argument with an example, Staff's Exhibit J, pg. 220, which are copies of Lincoln's 24-hour tow reports, shows that

Lincoln towed one vehicle from 225 N. Columbus on January 29, 2016. Staff's Exhibit B, pg. 2, records from the Commission's MCIS, shows that Lincoln's contract for 225 N. Columbus was cancelled on January 25, 2016, and replaced by another relocater's contract on January 26, 2016. A relocation tower cannot tow from a property without an active contract with that property filed with the Commission. 92 Ill. Adm. Code 1710.91(f)(1). Therefore, Lincoln made an unauthorized tow from 225 N. Columbus. It is difficult to find Lincoln's contention against Staff's argument and evidence here convincing because Lincoln is the source and legally responsible for much of the underlying information. 92 Ill. Adm. Code 1710.91(f). The tow contract summaries and records of all tows undertaken during the period from the MCIS are supplied by Lincoln. Tr. of 2-14-18 pg. 1714. Lincoln's 24-hour tow sheets are maintained and submitted by Lincoln. Tr. of 2-14-19 pg. 1713.

In an attempt to trivialize the evidence produced by Staff as mere "inconsistencies," Lincoln argues that such evidence has no bearing and should not be addressed by the Commission unless a separate citation or investigation has already been held in each instance. Lincoln RBOE at 18-19. This argument has no legal basis. Nowhere in Commission Rules or applicable law suggest individual citation hearings must be held for each instance of violation. Such a requirement would make it impractical for the Commission to carry out its responsibilities of ensuring compliance from relocation towers. The Illinois General Assembly could not have intended to specifically grant the Commission broad investigative powers under Section 18a-401 to only render it impotent by requiring separate citation hearings to adjudicate on the findings. We cannot give the statute a construction that would render the phrase superfluous or meaningless; we must give it some reasonable meaning. *Huskey v. Bd. of Managers of Condos. of Edelweiss*, 297 Ill. App. 3d 292, 295 (1st Dist. 1998).

In its persistence to argue that certain Staff witnesses believed Lincoln to be fit is relevant to the outcome of this proceeding, Lincoln seems to misunderstand the role of witnesses in a legal proceeding. It is well settled that "expert testimony as to legal conclusions that will determine the outcome of the case is inadmissible." *Todd W. Musburger, Ltd. v. Meier*, 394 Ill. App. 3d 781, 800 (1st Dist. 2009) citing *Good Shepherd Manor Found., Inc. v. City of Mokenca*, 323 F.3d 557, 564 (7th Cir. 2003). The determination of overall fitness is a legal conclusion, and therefore under the purview of the Commission, not the witnesses testifying in its proceedings. 625 ILCS 5/18a-400(d); 625 ILCS 5/18a-401.

The only substantial evidence Lincoln submitted to contest Staff's argument is the testimony of the General Manager and recordkeeper for Lincoln, Robert Munyon. Mr. Munyon claimed that Lincoln had a towing contract during the applicable period for every lot listed in Staff's Exhibits A and B. Tr. of 3-15-18 pgs. 1805, 1811-25. His testimony to this claim was not corroborated by any supporting documentation.

It begs the question: If such contracts did exist, as Mr. Munyon claims, and the Commission's records were in error, why did Lincoln fail to submit those contracts or

contract summaries into evidence? Lincoln's contention in oral arguments it was denied the opportunity to submit such evidence is simply false. The ALJ in this proceeding properly denied Lincoln's Motion to Stay the Hearing and Reopen Discovery because it was clear that Lincoln's intention at the time was to redepose the *same witnesses*. Tr. of 4-25-2017 pgs. 76-77, 104,112; Tr. of 7-10-2017, pgs. 777-780. The Company instead opted for numerous procedural objections to deny the admissibility of evidence submitted by Staff. Without contrary evidence, the Commission is left with no other choice, based on a preponderance of evidence standard, to find Staff's evidence and argument compelling.

#### B. Admissibility of Staff's Evidence

Lincoln argues that most of Staff's evidence is inadmissible and should not be considered by the Commission. Lincoln's argument against the admissibility of Staff's evidence can be summarized to two grounds: 1) no witnesses can testify as to how and when the original entry behind the Commission's records were created; and 2) certain inaccuracies make Staff's evidence unreliable and therefore inadmissible. The Commission finds both arguments to lack legal merit.

In Illinois, public records are admissible evidence. Ill. R. Evid. 803(8). The Commission's records of contract summaries of relocation towers' and operators' licenses are public records maintained by public officials or employees in connection with the performance of their official duties. *Village of Arlington Heights v. Anderson*, 2011 IL App (1st) 110748, ¶ 14.

Certified public records do not need witness testimony for their admissibility or presumption of accuracy. Public records can be self-certified through an official certification. Ill. R. Evid. 803(8); Ill. R. Evid. 902(1). The Commission has authority to certify its transportation records. 625 ILCS 5/18c-1204b. Certified copies of records are admissible if relevant, *i.e.*, if they tend to prove or disprove a matter in controversy. *Trimble v. Olympic Tavern, Inc.*, 239 Ill. App. 3d 393, 402 (2d Dist. 1993). In this proceeding, the Commission's records, submitted as evidence by Staff, were properly certified by a Commission recordkeeper. Furthermore, public records "are seen as inherently trustworthy based on the assumptions that public officers will perform their duties and are without motive to falsify." *Eastman v. Dep't of Public Aid*, 178 Ill. App. 3d 993, 997 (2d Dist. 1989). No motives to falsify were raised in this proceeding. Thus, Lincoln's contentions concerning the admissibility of the Commission's records based on lack of witness testimonies have no legal basis.

The Commission's records, however, are not perfect. Lincoln was able to identify an activation date of "12/31/1899" for "about 15" licenses that expired in the 1990s. Tr. of 1-30-2018 pg. 1316. But these errors have no bearing on the present investigation. None of the operators that were identified to have towed vehicles without their operator's license were misidentified because of this error. This was simply a scrivener's error. *Eddards v. Illinois Workers' Compensation Comm'n*, 2017 IL App (3d)

150757WC, ¶ 19 (typographical or scrivener's errors can include dates). Such harmless errors do not render public records inadmissible. See *People v. Wyzgowski*, 323 Ill. App. 3d 604, 605-607 (3d Dist. 2001) (The Court found "scrivener's error" in an officer's sworn report "merely a formal defect" where the report incorrectly stated the date of arrest as July 7, 2000, as opposed to July 6, 2000). Pointing out the same harmless error over a series of hearings and briefs does not raise its relevance. Lincoln also misrepresented the testimony of Sergeant Sulikowski when Lincoln argued Sergeant Sulikowski testified that the Commission's records are inaccurate and unreliable. Sergeant Sulikowski merely agreed in recognizing the obvious scrivener's errors. Sergeant Sulikowski affirmed the general reliability of the information in the Exhibits and the MCIS. Tr. of 1-30-18. pg. 1339. Thus, the Commission finds that these scrivener's errors have no relation to the issues raised in this proceeding and are not relevant in determining the admissibility of Staff's evidence.

### C. Notice & Due Process

A commercial vehicle relocation towing license constitutes a property right that cannot be deprived without due process of law. *Pioneer Towing, Inc. v. Illinois Commerce Comm'n*, 99 Ill. App. 3d 403, 404 (1st Dist. 1981). Due process, however, is a flexible concept which "requires only such procedural protections as fundamental principles of justice and the particular situation demand." *Abrahamson v. Illinois Dep't of Prof'l Regulation*, 153 Ill. 2d 76, 92 (1992). An administrative proceeding need not involve a hearing in the nature of a judicial proceeding in order to comply with due process. *Id.*

Lincoln asserts it was deprived of due process because Staff did not file a formal complaint that would have properly notified Lincoln of the claims against it. Although Illinois Civil Procedure requires notice and hearings to be held in revoking a license (5 ILCS 100/10-65(d)), it does not require the filing of a formal complaint in the instant proceeding. Lincoln's citation to Section 200.170 of the Illinois Public Utilities Act does not substantiate its argument. Lincoln Post-Hearing Brief at 3. Section 200.170 simply defines the elements of a formal complaint. 83 Ill. Adm. Code 200.170. Furthermore, even if it did apply, in construing the sufficiency of the notice, courts focus not on "whether the notice is formally and technically correct, but whether the object and intent of the law were substantially attained thereby." *Fienhold v. Babcock*, 275 Ill. 282, 289-290 (1916); *Conrad v. Conrad*, 329 Ill. App. 33, 37 (4th Dist. 1946) *aff'd*, 396 Ill. 101 (1947). In the context of administrative proceedings, notice is sufficient if the respondent is "reasonably apprised of the case against him to intelligently prepare his defense." *Rasky v. Dep't of Reg. & Educ.*, 87 Ill. App. 3d 580, 585 (1st Dist. 1980); see also *Tarr v. Hallihan*, 375 Ill. 38, 42 (1940); *Strickland v. Dept. of Regis. & Educ.*, 60 Ill. App. 3d 1, 17 (1st Dist. 1978); *Carrao v. Bd. of Educ.*, 46 Ill. App. 3d 33, 37 (1st Dist. 1977); *Kelly v. Police Bd. of City of Chicago*, 25 Ill. App. 3d 559, 564 (1st Dist. 1975).

Lincoln was undoubtedly aware of the case against it. This investigation began in early 2016 with a Commission Order that spelled out the intent of this fitness

proceeding, to investigate and determine whether Lincoln is fit to hold a relocator's license. Comm'n Initiating Order, 1. It is unbeknownst to the Commission how Lincoln can argue it was not notified of the case against it, or that the Commission failed to hold hearings as required by Section 18a-401. 625 ILCS 5/18a-401. More than 25 hearings and statuses were held in this docket. Although the citations and investigations referenced in the Commission's Initiating Order did not form the total basis for our decision here, the sheer volume of issues referenced in the Initiating Order served its purpose of putting Lincoln on notice - that the Commission was seeking to determine whether Lincoln is fit to hold a relocator's license and able to comply with the laws and regulations its license is conditioned upon.

The new evidence introduced against Lincoln as the investigation proceeded did not create a trial by ambush. The purpose of investigations is to uncover evidence, and in this proceeding, the investigation did just that. The Exhibits that form the basis of Staff's case were submitted by April 25, 2017. Tr. of 4-25-17 pgs. 36-39, 43, 45-47, 49; Tr. of 5-31-17 pg. 141. Staff called Sergeant Sulikowski in June of 2017 to testify on the purpose of the Exhibits, dispelling any pretension of ignorance or confusion by Lincoln. Instead of submitting contrary evidence to prove its case, Lincoln raised numerous procedural objections to evade the evidence. Its procedural objections made it clear that Lincoln had the opportunity to respond and was well aware of the evidence and adverse allegations.

In summary, the Commission's role in this proceeding is to determine whether Lincoln meets the statutory requirements to hold a Commercial Vehicle Relocators License and is in fact fit to do so. The privilege of holding such a license is significant as it entitles the licensee to seize the private property of others without their knowledge or consent under certain lawful circumstances. A licensee's solemn obligation is to strictly comply with Illinois law and Commission Rules, and to do so with honesty and integrity in order to prevent injury to the public.

After an extensive proceeding during which Staff presented evidence for over 800 unauthorized property seizures by the licensee, the Commission finds, based on a preponderance of the evidence, that Protective Parking Service Corporation d/b/a Lincoln Towing has not conducted its business with honesty and integrity, that it is—in fact—incompetent or unworthy to be entitled to hold a Commercial Vehicle Relocators License and that its license shall be immediately revoked and Lincoln Towing be ordered to immediately cease and desist from operating a relocation towing business in the State of Illinois.

**VII. COMMISSION FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having considered the entire record, finds that:

- (1) the Commission has jurisdiction over the Respondent and the subject-matter of this proceeding, pursuant to Section 18a-200(1) of the relocation towing law (625 ILCS 5/18a-200(1));
- (2) the facts recited and the conclusions reached in the prefatory portion of this Order are supported by the record herein and are hereby adopted as findings of fact and conclusions of law;
- (3) during the relevant time period of July 24, 2015 through March 23, 2016, Respondent has towed without proper authorization over eight-hundred (800) times;
- (4) the evidence shows that Lincoln has no regard for Commission Rules and the ICRTVL, therefore it is unfit to hold a Commercial Vehicle Relocator's License as provided by Section 18a-401 of the ICRTVL; and
- (5) the Commercial Vehicle Relocator's License 92 RTV-R held by Lincoln shall be immediately revoked, and Lincoln shall be ordered to immediately cease and desist from operating a relocation towing business.

WHEREFORE, IT IS HEREBY ORDERED by the Illinois Commerce Commission that the Commercial Vehicle Relocator's License issued to Protective Parking Service Corporation d/b/a Lincoln Towing Service, 92 RTV-R, be immediately revoked.

IT IS FURTHER ORDERED that Protective Parking Service Corporation d/b/a Lincoln Towing Service, shall immediately cease and desist from operating a relocation towing business and/or from providing any relocation towing services to the general public in the State of Illinois.

IT IS FURTHER ORDERED that the Commission retains jurisdiction over Respondent and the subject-matter of this proceeding for the purpose of issuing such other Orders as it may deem appropriate.

IT IS FURTHER ORDERED that this is a final Order subject to the Administrative Review Law, 735 ILCS 5/3-101 *et seq.*, in accordance with Chapter 625 ILCS 5/18c-2201 through 2206 of the Illinois Commercial Transportation Law.

By Order of the Commission this 12<sup>th</sup> day of September, 2018.



BRIEN SHEAHAN

CHAIRMAN

# **EXHIBIT 4**



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

PROTECTIVE PARKING SERVICE )  
CORPORATION, d/b/a Lincoln Towing )  
Service, )

Plaintiff, )

18 CH 11531

ILLINOIS COMMERCE )  
COMMISSION, )

Defendant. )

ENTERED  
Judge Neil H. Cohen-2021  
MAY 23 2019  
DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, IL  
DEPUTY CLERK

MEMORANDUM AND ORDER

Defendants, the Illinois Commerce Commission, and Brien J. Sheahan, in his official capacity as Chairman of the Commission (collectively "ICC"), have filed a Motion to Dismiss pursuant to 735 ILCS 5/2-619.1.

I. Background

Plaintiff Protective Parking Service Corporation, d/b/a Lincoln Towing Service, was licensed as a Commercial Vehicle Relocator in the State of Illinois. On February 24, 2016, the ICC initiated a fitness hearing against Plaintiff to determine whether Plaintiff was fit, willing and able to perform the service of a commercial vehicle relocator in conformance with the Illinois Commercial Relocation of Trespassing Vehicles Law ("ICRTVL") and ICC Rules. The hearing took place before an Administrative Law Judge ("ALJ") over multiple dates.

On July 2, 2018, the ALJ issued a proposed ruling finding that Plaintiff was fit, willing and able to hold a Commercial Vehicle Relocators license ("License"). On September 12, 2018, the ICC entered an order rejecting the ALJ's proposed ruling and revoking Plaintiff's License ("ICC's Order").

On September 13, 2018, Plaintiff filed a Verified Complaint for Temporary Restraining Order and Preliminary Injunction ("Complaint"). Count I of the Complaint sought to enjoin the ICC from revoking Plaintiff's license pending administrative review of the ICC's Order. Count II sought administrative review.

On September 17, 2018, this court heard argument on Plaintiff's request for injunctive relief. The ICC objected to Plaintiff's request asserting that Plaintiff had failed to exhaust its administrative remedies before the ICC by requesting a rehearing.

On the same date, this court entered an order granting Plaintiff a stay of the ICC's Order pursuant to §3-111 of the Administrative Review Law, 735 ILCS 5/3-111.<sup>1</sup> This court also ordered the ICC to file the administrative record and granted Plaintiff leave to file an amended complaint.

Plaintiff subsequently filed a First Amended Complaint. The First Amended Complaint again asserts a claim for injunctive relief (Count I) and a claim for administrative review (Count II).

## II. Motion to Dismiss

The ICC is moving to dismiss the First Amended Complaint pursuant to 735 ILCS 5/2-619.1. "A section 2-615 motion to dismiss challenges the legal sufficiency of the complaint. Yoon Ja Kim v. Jh Song, 2016 IL App (1st) 150614-B, ¶41. "Such a motion does not raise affirmative factual defenses but alleges only defects on the face of the complaint." Id. "All well-pleaded facts and all reasonable inferences from those facts are taken as true. Where unsupported by allegations of fact, legal and factual conclusions may be disregarded." Kagan v. Waldheim Cemetery Co., 2016 IL App (1st) 131274, ¶29. "In determining whether the allegations of the complaint are sufficient to state a cause of action, the court views the allegations of the complaint in the light most favorable to the plaintiff. Unless it is clearly apparent that the plaintiff could prove no set of facts that would entitle him to relief, a complaint should not be dismissed." Id.

A §2-619 motion to dismiss "admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action." Cohen v. Compact Powers Sys., LLC, 382 Ill. App. 3d 104, 107 (1<sup>st</sup> Dist. 2008). A dismissal under §2-619 permits "the disposal of issues of law or easily proved facts early in the litigation process." Id. Section 2-619(a)(9) authorizes dismissal where "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9).

### *A. Count I (Injunctive Relief)*

The ICC is moving to dismiss Count I of the First Amended Complaint, for injunctive relief, pursuant to §2-615. The ICC is correct that Plaintiff's sole remedy is under the Administrative Review Law and, therefore, Count I must be dismissed. 735 ILCS 5/3-102.

Furthermore, "[a]n injunction is only a remedy for an underlying cause of action and is not a cause of action in itself." People ex rel. Madigan v. J.T. Einoder, Inc., 2013 IL App (1st) 113498, ¶66. Therefore, Count I does not state any cause of action and is also subject to dismissal on this basis.

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<sup>1</sup> While Count I of the Complaint sought injunctive relief, administrative review of ICC proceedings is governed by the Administrative Review Law, 625 ILCS 5/18a-103. Under the Administrative Review Law, §3-111 governs requests to stay the effect of an administrative decision.

## ***B. Count II (Administrative Review)***

The ICC contends that Plaintiff failed to exhaust its administrative remedies and, therefore, Count II, seeking administrative review, is not ripe and must be dismissed pursuant to §2-619.

Illinois case law is clear “that parties aggrieved by the action of an administrative agency ordinarily cannot seek judicial review in the trial court without first pursuing all administrative remedies available to them.” Catledge v. Dowling, 2017 IL App (1st) 162033, ¶14 (citing Castaneda v. Illinois Human Rights Comm'n, 132 Ill. 2d 304, 308 (1989)). “Requiring the exhaustion of remedies allows the administrative agency to fully develop and consider the facts of the cause before it; it allows the agency to utilize its expertise; and it allows the aggrieved party to ultimately succeed before the agency, making judicial review unnecessary.” Id. (quoting Castaneda, 132 Ill. 2d at 308).

### ***1. Law of the Case***

Initially, Plaintiff argues that this court cannot consider whether it failed to exhaust its administrative remedies based on the law of the case. Plaintiff asserts that because this court granted Plaintiff's request for a stay, that ruling is the law of the case and bars any argument that Plaintiff failed to exhaust its administrative remedies.

First, this court did not make any explicit findings regarding whether Plaintiff had exhausted its administrative remedies or was required to do so. Second, and more importantly, the law of the case has no application here.

Only final and appealable orders which are left undisturbed by the appellate court become the law of the case. Ericksen v. Rush-Presbyterian-St. Luke's Medical Ctr., 289 Ill. App. 3d 159, 168 (1<sup>st</sup> Dist. 1997). This court has entered no final and appealable order and may revisit any of its rulings at any time.

### ***2. Statutory Requirements Regarding Exhaustion of Administrative Remedies***

Section 5/18a-103 of the ICRTVL provides that person aggrieved by an order of the ICC under this chapter may, in addition to any other remedy, seek review by the Circuit Court in accordance with the Administrative Review Law. 625 ILCS 5/18a-103. Section 5/18a-307 adopts the enforcement provisions of Article VII of subchapter 1 of the Illinois Commercial Transportation Law (“ICTL”). 625 ILCS 5/18a-307. Section 5/18c-2206 of the ICTL states that where the ICTL is silent, proceedings for judicial review of a Commission action, regulation, or order shall be governed by the provisions of the Administrative Review Law (“ARL”). 625 ILCS 5/18c-2206.

Section 5/18c-2103 of the ICTL allows the commission to adopt general and special rules of practice to govern administrative proceedings under this chapter. 625 ILCS 5/18c-2103(1). Section 200.880(a) of the Illinois Administrative Code states that after the “issuance of an order

on the merits by the Commission, a party may file an application for rehearing [. . . and said] application shall be filed within 30 days after service of the order on the party.” 83 Ill. Adm. Code 200.880. Section 200.880(d) provides that no “appeal shall be allowed from any order or decision of the Commission unless and until an application for rehearing thereof shall first have been filed and finally disposed of by the Commission.” 83 Ill. Adm. Code 200.880.

Section 3-101 of the Administrative Review Law provides that:

[i]n all cases in which a statute or a rule of the administrative agency requires or permits an application for a rehearing or other method of administrative review to be filed within a specified time (as distinguished from a statute which permits the application for rehearing or administrative review to be filed at any time before judgment by the administrative agency against the applicant or within a specified time after the entry of such judgment), and an application for such rehearing or review is made, no administrative decision of such agency shall be final as to the party applying therefor until such rehearing or review is had or denied.

735 ILCS 5/3-101.

Section 5/18c-2201 of the ICTL provides that:

(1) Standing to Seek Judicial Review. *No person shall have standing to seek judicial review of a Commission action unless such person shall have an administratively cognizable interest in the order, be aggrieved by it, and have exhausted its administrative remedies.* \* \* \*

(2) Exhaustion of Administrative Remedies. A person shall be deemed to have exhausted its administrative remedies only if:

(a) The person participated as a party to the proceeding before the Commission, or filed a timely pleading seeking to participate as a party and was entitled as matter of right to participate as a party;

*(b) The person filed a timely motion for reconsideration or rehearing which was denied by the Commission or by operation of law, unless the Commission expressly waived the filing of such a motion; and*

(c) The action of which judicial review is sought is, in all respects, a final order of the Commission.

735 ILCS 5/18c-2201 (emphasis added). Section 18c-2110(1) of the provides that a party has thirty days from the issuance of the ICC’s decision to file a motion for rehearing. 735 ILCS 5/18c-2110(1).

The statutes and rules are clear that a party before the ICC must file a timely request for reconsideration or rehearing in order to exhaust its administrative remedies. Plaintiff did not file

a request for reconsideration or rehearing prior to filing this lawsuit and still has not filed any such request. Therefore, Plaintiff did not exhaust its administrative remedies.

### 3. *Exceptions to the Exhaustion of Administrative Remedies*

Plaintiff contends that it was excused from exhausting its administrative remedies. A plaintiff is not required to exhaust its administrative remedies where: (1) where a statute, ordinance or rule is attacked as unconstitutional on its face; (2) where the plaintiff has multiple administrative remedies and at least one has been exhausted; (3) where the agency cannot provide an adequate remedy or seeking relief before the agency would be futile; (4) where there are no issues of fact or agency expertise is not involved; (5) where irreparable harm will result from further pursuit of administrative remedies; (6) or where the agency's jurisdiction is attacked as not authorized by statute. Castenada v. Illinois Human Rights Comm'n, 132 Ill. 2d 304, 309 (1989).

Plaintiff first asserts that it was not required to exhaust its administrative remedies because the requirement to file a request for rehearing is unconstitutional. Plaintiff, however, has not cited to any case holding that such a requirement is unconstitutional. Rather, Illinois case law is clear that compliance with such requirements is necessary to exhaust administrative remedies. E.g., Castenada, 132 Ill. 2d at 321-33; Carledge v. Dowling, 2017 IL App (1<sup>st</sup>) 162033, ¶14; Burns v. Department of Ins., 2013 IL App (1<sup>st</sup>) 122449, ¶12.

Plaintiff further argues that it would have been futile to request a rehearing. The law is clear, however, "[e]ven clear indications that the administrative agency will rule adversely are not sufficient to bypass or terminate the administrative process. The exhaustion of remedies requirement cannot be avoided simply because relief may be, or even probably will be, denied by the agency." AEH Constr. v. State, 318 Ill. App. 3d 1158, 1163 (3d Dist. 2000). The likelihood that the ICC would reject Plaintiff's arguments on rehearing is insufficient to show futility.

Plaintiff also argues that it was excused from exhausting its administrative remedies because it would have been irreparably harmed and deprived of due process because there is no mechanism for an automatic stay of the ICC's decision pending the resolution of a request for rehearing. Case law is clear, however, that the ICC's decision would have been automatically stayed.

In Brandt Truck Line, Inc. v. Illinois Commerce Commission, 173 Ill. App. 3d 209 (1st Dist. 1988), the First District considered whether a decision rendered under the ICTL was subject to an automatic stay upon the filing of a request for rehearing. Construing §5/18c-2110 in conjunction with §3-101 of the Administrative Review Law, the First District concluded that the ICC's decision was automatically stayed until the time for filing a motion for rehearing expires or a filed motion is acted upon by the Commission or denied by operation of law. Id. at 217.

The First District specifically stated that to find otherwise would render the right to seek judicial review meaningless. Id. The First District explained:

. . . based on the Commission's argument that its order . . . was immediately effective, and thus final for purposes of mandating that it issue a certificate, we note that if the Commission did not act upon the rehearing motion within 35 days and the rehearing motion did not stay the time within which to seek judicial review, a party would be denied his right to appeal the agency decision under the Administrative Review Law. Similarly, we observe that the Commission is empowered to refrain from acting upon a motion for rehearing for 45 days (or 90 days where the period for acting on the motion has been extended by the Commission), the result of which is denial of the motion by operation of law. The effect of this provision would also deny a party's right to seek timely judicial review under the Administrative Review Law. We cannot believe that it was the intent of the legislature to provide a right to a party under the Administrative Review Law and to contravene it at the same time pursuant to the Commission's interpretation of section 18c -- 2110(1) of the Commercial Transportation Law, *i.e.*, the statute permitting rehearing does not stay a Commission's order granting a certificate.

Id.<sup>2</sup>

Had Plaintiff filed for rehearing as required, the revocation of Plaintiff's license would have been automatically stayed. Therefore, requiring Plaintiff to exhaust its administrative remedies could not result in irreparable harm and could not deprive Plaintiff of due process.

Plaintiff has not established that it was excused from exhausting its administrative remedies. Therefore, the filing of this action was premature and this court has no jurisdiction to consider Plaintiff's request for administrative review.

### *C. Proceedings Following the Dismissal of This Action*

Plaintiff's administrative review claim must be dismissed because Plaintiff has not exhausted its administrative remedies. Plaintiff must file the required motion for rehearing to exhaust those administrative remedies.

This court is aware that the time for filing a motion for rehearing has expired. However, the ICC has the authority to reopen the proceedings. 625 ILCS 5/18c-2110(2).

While Plaintiff should have filed a motion for rehearing prior to filing this action, the ICC's own actions significantly contributed to Plaintiff failing to do so within the required 30 days. The ICC asserted before this court, presumably by mistake, that it could not stay the revocation of Plaintiff's license pending rehearing. Contrary to the ICC's assertion, its decision was already automatically stayed.

Had the ICC not expressed its refusal to stay its non-final decision, this court would have required Plaintiff to exhaust its administrative remedies and Plaintiff could have filed a timely motion for rehearing. Under these circumstances, if the ICC now refused to consider Plaintiff's

<sup>2</sup> The First District also noted that neither the ICC's rules nor §5/18c-2110 of the ICTL contained any provision stating that a motion for rehearing or reconsideration does not stay the effectiveness of a Commission's order unlike other sections of the ICTL. Id.

motion for rehearing, Plaintiff would have a convincing argument for excusing its failure to exhaust its administrative remedies and this court would entertain that argument.

**III. Conclusion**

Count I of the First Amended Complaint is dismissed with prejudice pursuant to §2-615.

Count II of the First Amended Complaint is dismissed without prejudice pursuant to §2-619 based on Plaintiff's failure to exhaust its administrative remedies by filing the required motion for rehearing.

The status date of June 4, 2019 at 9:30 a.m. is stricken.

Enter: 5-23-19

*Neil H. Cohen #2021*  
\_\_\_\_\_  
Judge Neil H. Cohen

ENTERED  
Judge Neil H. Cohen-2021  
MAY 23 2019  
DOROTHY E.  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, ILL.  
DEPUTY CLERK