

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

LOUISIANA PUBLIC SERVICE COMMISSION EX PARTE

Docket R-33105 - In re: Consumer Price Index (CPI) biennial rate review as provided for in General Order March 26, 2010 with regards to non-consensual towing and recovery rates.

(Decided at the April 2, 2014 Business and Executive Meeting)

Amends and supersedes General Orders dated March 26, 2010, November 22, 2011, May 3, 2012, and November 19, 2012.

Purpose

This rulemaking was opened by the Louisiana Public Service Commission (the "Commission") for the biennial adjustment to the *Schedule of Prescribed Rates and Requirements for Towing and Recovery* ("the *Schedule*"). This order, which includes the *Schedule* as Attachment A, incorporates the changes made in the General Orders dated March 26, 2010, November, 22, 2011, May 3, 2012, and November 19, 2012.

Background

The Commission, in the General Order dated March 26, 2010, ordered the use of the consumer priced index ("CPI") to adjust the prescribed rates for non-consensual towing and wrecker services every two years, beginning January 1, 2012. In addition to addressing rates, the 2010 General Order amended and superseded previous orders to include all definitions and general provisions of previous towing and recovery general orders.

In the General Order dated November 22, 2011, the Commission amended the General Order dated March 26, 2010 to provide a requirement that towing and recovery professionals refund the change due consumers paying invoices in cash and to provide for rates and weight classification for private property tows.

In the General Order dated May 3, 2012, the Commission authorized rate increases based on the the CPI biennial rate review and made other changes to definitions and provisions in the order. The order stated that all rates set by the rate schedule shall be increased or decreased by an amount equal to the annual percentage rate as determined by the U.S. Department of Labor, Consumer Price Index ("CPI") for the South Region, Urban Population Parameter, "Transportation Commodities Less Motor Fuel Parameter."

In the General Order dated November 19, 2012, the Commission adopted the definition non-consensual towing contained in House Bill 895 which was enacted as Act 806 of the Legislature's 2012 Legislative Session, now codified at La. R.S. 32:1713.

Jurisdiction

The Commission exercises jurisdiction over common carriers and public utilities in Louisiana pursuant to Article IV, Section 21(B) of the Louisiana Constitution, which states:

The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

The Commission is charged with the regulation of rates for non-consensual towing and wrecker services. La. R.S. 45:180.1.C(1) provides:

The commission has power and authority necessary to supervise, govern, regulate, and control the business of the operation and use of wreckers and towing services, to designate classes and categories of said vehicles, to fix reasonable and just rates, fares, tolls, charges for storage services, or charges for the commodities furnished or services rendered by persons engaging in the operation and use of said vehicles.

Staff Recommendation

Commission Staff opened this rulemaking to conduct the biennial rate review for non-consensual towing and wrecker services. This rulemaking was published in the Commission's Official Bulletin dated January 31, 2014. No parties intervened in the rulemaking. On February 3, 2014, Commission Staff requested comments. No parties submitted comments.

The Commission Staff Auditor reviewed the applicable CPI for the South Urban Section of the United States for "Transportation Commodities Less Motor Vehicle Fuel" for the period January 1, 2012 through December 31, 2013, and concluded that the applicable index rates on file with the Commission would increase by 1.5%. Staff filed a notice on March 7, 2014 that it would be recommending a rate increase of 1.5% and requested comments on this recommendation. Commission Staff further recommended that all rates subject to the CPI increase be adjusted to the nearest \$.50. No parties submitted comments.

Commission Consideration

The Commission considered Staff's recommendation at the Commission's April 2, 2014 Business and Executive Session. On motion of Commissioner Skrmetta, seconded by

Commissioner Holloway, with Commissioners Boissiere and Angelle concurring and Commissioner Campbell abstaining due to possible conflict, the Commission voted to adopt Staff's Recommendation.

IT IS THEREFORE ORDERED THAT:

1. All rates contained in General Order dated May 3, 2012 Attachment A, "*Amended Schedule of Prescribed Rates and Requirements for Towing and Recovery*" subject to the CPI review shall be increased by 1.5% and adjusted to the nearest \$.50.
2. The *Schedule of Prescribed Rates and Requirements for Towing and Recovery* reflecting this 1.5% increase is made part of this Order as Attachment A and supersedes all previous schedules.
3. This order shall be effective immediately.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA**

April 17, 2014

/S/ ERIC F. SKRMETTA
DISTRICT I
CHAIRMAN ERIC F. SKRMETTA

/S/ CLYDE C. HOLLOWAY
DISTRICT IV
VICE CHAIRMAN CLYDE C. HOLLOWAY

/S/ FOSTER L. CAMPBELL
DISTRICT V
COMMISSIONER FOSTER L. CAMPBELL

/S/ LAMBERT C. BOISSIERE
DISTRICT III
COMMISSIONER LAMBERT C. BOISSIERE, III


EVE KAHAO GONZALEZ
SECRETARY

/S/ SCOTT A. ANGELLE
DISTRICT II
COMMISSIONER SCOTT A. ANGELLE

ATTACHMENT "A"

SCHEDULE OF PRESCRIBED RATES AND REQUIREMENTS FOR TOWING & RECOVERY

Effective _____

I DEFINITIONS

- A. Light Duty - is defined as the towing, transport, and recovery of motor vehicles with a gross vehicle weight rating of 10,000 pounds or less.
- B. Medium Duty - is defined as the towing, transport, and recovery of motor vehicles with a gross vehicle weight rating of 10,001 pounds to 26,000 pounds.
- C. Heavy Duty - is defined as the towing, transport and recovery of motor vehicles with a gross vehicle weight rating of 26,001 pounds and greater.
- D. Motor Vehicle - is defined as every self-propelled vehicle (except traction engines; road rollers, farm tractors, tractor cranes, power shovels and well drillers) and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails as per La. R.S. 32: 851 (4).
- E. Tow Only - is defined as a routine/standard tow that does NOT require special techniques or special equipment as defined in Recovery. Tow Only equipment is considered normal use of a tow sling, wheel lift, or winch cable to winch a vehicle onto a tilt bed tow truck. Tow Only rates as met in this definition shall apply whether the vehicle is either mobile or immobile and is in contact of the roadway surface.
- F. Recovery - is defined as the use of one or more of the following techniques under the following scenario: The use of air bags, winching, hoisting, up-righting, removing, or otherwise relocating a vehicle when the vehicle is found in such a location, state or position in which it could not remove itself from the location, state or position under the use of its own power, even if it were in complete operating condition.
- G. Simple Water Recovery - is defined as the recovery of a vehicle when it is partially submerged in water and where the amount of water impedes recovery, but does not exceed 12 inches in depth.
- H. Complicated or Difficult Recovery
 - 1. Rollover recovery - when additional operator required or needed.
 - 2. Removal of unsecured load or debris from accident scene.
 - 3. Unloading and reloading box trailers, box trucks, and flatbed trailers.
 - 4. Water recovery - when an additional operator is required or needed other than those water recoveries defined as "Simple Water Recovery" above.
- I. Non-consensual towing - is defined as the movement or transportation of a vehicle by a tow truck without the prior consent or authorization of the owner or operator of the vehicle. This includes private property tows conducted in accordance with the provisions of R.S. 32:1736 and tows by law enforcement or other public agencies. Whenever an owner or operator of a vehicle requests a law enforcement officer or other public agency to initiate a tow, such tow shall be considered non-consensual and subject to Louisiana Public Service Commission tow rates.
- J. Stand-by - is defined as any hour or half of an hour during which a towing or recovery unit is not actively engaged in the towing or recovery of a vehicle. Travel time from dispatch to arrival on the scene shall not be considered Stand-By.
- K. Outside Storage - is defined as a vehicle being placed outside and exposed to the elements.
- L. Covered Storage - is defined as continuous covering which adequately protects a vehicle and its contents, where said vehicle and/or its contents have some intrinsic value. Covered storage includes, but is not limited to, the use of a tarpaulin or similar covering, such as "Crash Wrap," which protects the vehicle and its interior from rain, dew, moisture and other elements.
- M. Oversized Vehicle Storage - is defined as the storage of a vehicle which has greater than 4 wheels on the ground.
- N. Unsecured Loads, Debris and Trailers - are defined by the weight of the items according to definitions A, B and C above.
- O. Private Property Tow - a tow from a location as provided for in accordance with La R.S. 32:1736.

II TOWING, RECOVERY & EQUIPMENT CHARGES

Light Duty Towing & Recovery			
Towing Charges	Standard Recovery Charges	Simple Water Recovery Charges	Stand-by
\$ 107.50 per hour *	\$147.00 per hour ^	\$168.50 per hour ^	\$ 54.00 per hour ^
*There is a 1 1/2 hour minimum charge. After the 1 1/2 hour minimum, charges will be computed in 1/2 hour increments. Computed in 1/2 hour increments.			^ Computed in 1/2 hour increments.

Medium Duty Towing & Recovery			
Towing Charges	Standard Recovery Charges	Simple Water Recovery Charges	Stand-by
\$ 236.00 per hour*	\$ 303.50 per hour ^	\$324.50 per hour ^	\$ 117.50 per hour ^
*There is a 1 hour minimum charge. After the 1 hour minimum, charges will be computed in 1/2 hour increments. Computed in 1/2 hour increments.			^ Computed in 1/2 hour increments.

Heavy Duty Towing & Recovery			
Towing Charges	Standard Recovery Charges	Simple Water Recovery Charges	Stand-by
\$ 303.50 per hour*	\$ 370.50 per hour ^	\$392.00 per hour ^	\$ 151.50 per hour ^
*There is a 1 hour minimum charge. After the 1 hour minimum, charges will be computed in 1/2 hour increments. Computed in 1/2 hour increments.			^ Computed in 1/2 hour increments.

Other Towing, Equipment and Manpower Charges	
Private Property Tow	\$ 107.50 flat rate - Light Duty \$ 236.00 flat rate - Medium Duty \$303.50 flat rate - Heavy Duty
Private Property Tow when specialized equipment such as Go-Jacks or Slide Outs are used or if additional manpower is needed <i>(equipment and/or additional manpower must be documented)</i>	\$131.50 flat rate
Mechanical Breakdown Tow	\$ 107.50 per hour*
Extra Truck & Trailer For Removal of Load	\$ 135.00 per hour*
Laborer	\$ 40.00 per hour*
Supervisor (see section III item # 6)	\$ 67.50 per hour*
*There is a 1 hour minimum charge. After the 1 hour minimum, charges will be computed in 1/2 hour increments	
Complete Air Bag Unit	\$ 2,156.50 flat rate (includes all equipment and personnel associated with the air bag recovery)
Rotator (when used according to the Provision in Section III # 5)	\$210.50 per hour **
**There is a 2 hour minimum charge. After the 2 hour minimum, charges will be computed in 1/2 hour increments	

Storage Fees		
Outside Storage Rate \$19.00 per day	Covered Storage Rate \$23.50 per day	Oversize Storage Rate \$38.00 per day

Fuel Surcharge	
The following surcharges shall apply on a per gallon basis to the total amount of the hourly rate charged and shall be applicable only to towing & recovery professionals performing non-consensual towing.	
Fuel Price (per gallon)	Fuel Surcharge
\$0.00 to \$0.90	3% reduction
\$0.91 to \$1.24	No reduction/surcharge
\$1.25 to \$1.99	3% surcharge
\$2.00 to \$2.99	9% surcharge
\$3.00 to \$3.99	12% surcharge
\$4.00 to \$4.99	14% surcharge
\$5.00 and greater	16% surcharge
There shall be no change in the top portion of the brackets. If fuel ever returns to the \$1.24 level and below, a surcharge shall not be charged. The surcharge will be based on the average price of self-service diesel fuel as determined based upon the price reported by the U. S. Department of Energy (DOE) for the Petroleum Administration for Defense District 3 (Gulf Coast).	

III MISCELLANEOUS PROVISIONS

1. Charges will not be allowed for any services or equipment not listed or addressed in the approved "SCHEDULE OF PRESCRIBED RATES AND REQUIREMENTS FOR TOWING & RECOVERY"
2. Rates are charged from time of dispatch at terminal until unhooked from towed vehicle.
3. All charges for all towing & recovery services are for truck and driver.
4. If the Towing & Recovery Professional must rent or subcontract equipment or labor not used in the normal course of a towing procedure (i.e. professional diver, bulldozers, front end loaders, dump trucks, forklifts, etc.), a maximum 10% surcharge may be added to the actual amount of the rental or subcontractors invoice. If said equipment is owned by the Towing & Recovery Professional or said labor is provided by the employee of the Towing & Recovery Professional it shall be invoiced at current market value, plus a 10% surcharge may be added thereto. Charges will not be allowed for the use of equipment, tools or supplies owned and/or provided by the Towing & Recovery Professional including but not limited to, oil-absorbing materials, brooms, shovels, flashlights, electric lanterns, fire extinguishers, emergency warning devices, steering wheel clamps, tow slings or tow plates, cables, blocks, chains, hooks, or any other truck components or hand tools mandated by the Louisiana State Police.
5. A rotator may be used only if ordered by the law enforcement agency in charge of the accident or incident scene and the rotator is necessary to safely and efficiently restore the flow of traffic to travel lanes. The use of a rotator is not justified to ensure that the recovered and towed vehicle will not suffer any additional damage, beyond what is reasonable and customary. A rotator is a specialized piece of equipment and shall be invoiced as such, in that the hourly charge fixed herein in Section II shall be billed in addition to the charges for the tow and recovery at the appropriate rate (light, medium or heavy). If a rotator is used, but is not authorized by the provisions of this paragraph, the rotator use cannot be invoiced and the tow and recovery shall be invoiced at the appropriate rate as previously stated.
6. A Supervisor may be dispatched when two or more units and/or laborers are required or needed during complicated or difficult recovery according to "H" in Section I of DEFINITIONS. Also, additional manpower may be dispatched on as need basis during complicated or difficult recovery according to "H" in Section I of DEFINITIONS.
7. Recovery of hazardous materials cargo, as defined by LDEQ or State Police Hazmat Unit may be billed at 50% above the rate allowed on towing & recovery charges.
8. All bills for non-consensual towing & recovery shall be itemized on a line item basis, including all LPSC prescribed and non-prescribed charges (i.e. gate fees, administrative fees.) For all charges other than storage fees, surcharges and the hourly rates for towing, recovery and stand-by, the towing company shall attach an invoice for the service rendered (including, but not limited to extra labor, extra equipment, administrative fees, etc. as provided for in item #4 above)
9. All bills for non-consensual towing and/or recovery shall specifically state the time of dispatch and the time Towing & Recovery Professional unhooked from towed vehicle. All recovery rates shall be invoiced as a line item for only the time actually spent in recovery. The invoice shall reflect the tow charge, the recovery charge and standby charge (if applicable) separately.
10. In addition to any fines authorized by LSA- R.S. Title 45, Section 163 et. seq., the Louisiana Public Service Commission may order a refund of up to 200% of any overcharges found to have occurred.
11. All bills for non-consensual towing and/or recovery shall include the following language printed on the bill: Complaints may be addressed to the Louisiana Public Service Commission- Attention Transportation Division, P.O. Box 91154, Baton Rouge, Louisiana 70821 or by contacting a district Commissioner. (In the event a complaint is made in writing to the Transportation Division of the LPSC or made to a district Commissioner, storage fees shall not accrue beyond the date of said complaint and shall not be charged to the vehicle owner if the charges are ultimately found to be excessive in a hearing before the Administrative Law Division or if the carrier pleads guilty to charging excessive rates.)
12. It shall not be necessary for a complainant to pay a towing invoice to obtain standing to a towing complaint to the Commission and/or a District Commissioner.

13. When a Towing & Recovery Professional performs a non-consensual tow, the Towing & Recovery Professional shall provide the following written notice to the vehicle owner or driver at the scene or at first contact: **IMPORTANT NOTICE:** This regulated non-consensual towing & recovery by [insert tow company name here] has been designated as a non-consensual tow. [insert tow company name here] is required to charge rates set by Louisiana Public Service Commission orders. These rates may be found on the internet by accessing www.lpsc.org or by contacting the Louisiana Public Service Commission, Transportation Division at 1-888-342-5717. If you have a complaint against this towing company regarding the amount charged for this non-consensual tow, complaints should be made in writing and addressed to P.O. Box 91154, Baton Rouge, Louisiana 70821 or by contacting a District Commissioner.
14. All complaints made under the Order and these Provisions shall be subject to the mediation orders and rules of the Commission.
15. All towing and recovery professionals are encouraged to accept other forms of payment besides cash. However, if a towing and recovery professional accepts only cash in payment of the invoice, they must either provide change at the time of payment or must state on the invoice the total amount of the invoice, the amount of cash received and the amount of change due to the consumer. The change due to the consumer SHALL be paid within 10 days of the payment of the invoice, by mailing a check to the consumer. It shall be the responsibility of the towing and recovery professional to retain evidence of said payment in the form of a cancelled check or certified mail receipt (green card). The towing and recovery professional must also post a clearly visible sign in its place of business advising consumers that if change is due, it will be mailed to the consumer within 10 days.
16. All rates set by this schedule shall be increased or decreased by an amount equal to the annual percentage rate as determined by the U.S. Department of Labor, Consumer Price Index (CPI) *for the South Region, Urban Population Parameter, "Transportation Commodities Less Motor Fuel Parameter."* The first adjustment shall be made on January 1, 2012 and every two years thereafter.