LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

LOUISIANA PUBLIC SERVICE COMMISSION
EX PARTE

DOCKET NO. R- 31953 - Louisiana Public Service Commission, ex parte. In re: Discussion on formulating and adopting a General Order establishing procedures for the enforcement of the payment of accurate Inspection and Supervision fees by motor carriers and public utilities, including audit procedures, a hearing process and the establishment of fines and fees for the failure to properly report and pay said fees.

(Decided at the November 9, 2011 Business and Executive Meeting)

PURPOSE

The Louisiana Public Service Commission ("Commission" or "LPSC") initiated a Rulemaking in order to determine and provide for an efficient and accurate method of assessing and collecting Inspection and Supervision ("I & S Fees") and to insure that LPSC regulated companies (Motor Carriers and Public Utilities) are properly and accurately reporting their regulated income to the Louisiana Department of Revenue and paying all I & S Fees due the Commission as provided for in La. R.S. 45:1177. The Commission adopted this General Order to provide for the above recited goals as well as to provide for the imposition of fines and fees, after notice and a hearing, upon regulated companies who are found guilty of having failed to properly report and pay the I & S Fees due the Commission. In addition, this Order requires that all Annual Reports filed by regulated companies be notarized or certified with a sworn statement as to their accuracy. Finally, the Order directs Staff to require that all LPSC regulated companies, their affiliates and Associations of regulated motor carriers provide to the Commission, evidence of compliance with the provisions of La. R.S. 45:1177 before the Commission acts upon any applications for a rate increase, a name change, a sale, transfer of assets, LPSC authority and/or a request for expanded or amended authority or any other action that requires Commission approval or non-opposition. The Order provides that evidence of compliance may include, but is not limited to, copies of I & S filings with the Department of Revenue and copies of proof of payment.

JURISDICTION

This Rulemaking was established pursuant to the following Constitutional and legislative authority:

Article IV, Section 21 (B) of the Louisiana State Constitution provides that:
The [public service] 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.

La. R.S. 45:1177 A (1) provides that:

Each motor carrier as defined in R.S. 45:162(10) and public utility doing business in Louisiana and subject to control and jurisdiction of the commission shall pay to the state a fee for the inspection, control, and supervision of the business service and rates of such common carrier and public utility, in addition to any and all property, franchise, license, and other taxes, and fees and charges now or hereafter fixed, assessed, or charged by law against such common carrier and public utility. The amount of the fees shall be measured by the gross receipts of each public utility from its Louisiana intrastate business. The amount of the fees for each motor carrier as defined in R.S. 45:162(10) shall be measured by the gross receipts of such carrier derived from those activities that are subject to the control and jurisdiction of the commission.

La. R.S. 45:1179 provides that:

The collector of revenue shall supervise and enforce the collection of the inspection and supervision fee under the provisions of R.S. 45:1177 and 45:1178 and in assessing the annual fee, the sworn annual statements filed with the commission shall be used to ascertain the amount of the gross revenues upon which the fee is to be computed.

La. R.S. 45:1180 (A) provides that:

Whenever the commission makes an examination of the affairs of any person doing a public service or public utilities business in Louisiana concerning matters affecting services or rates charged by such public service or public utilities businesses to Louisiana consumers, all expenses incurred by the commission for services necessary to assist the commission in conducting such examination, including the expenses and fees of engineers, consultants, accountants, or such other support staff and clerical assistants specially employed to make the examination, shall, at the discretion of the commission, be paid by the person so examined.

General Order dated August 4, 2004 provides in part as follows:

Contract attorneys and consultants shall be retained by the Commission in those instances in which the Commission has determined that such is necessary for the Commission to fulfill its constitutional mandate, due to insufficient available manpower or inadequate levels of expertise or experience within the existing Commission staff.

BACKGROUND

At the May 17, 2011 Business and Executive Session, Staff was directed to open a Rulemaking Docket for the Transportation and Utilities Divisions of the Commission, to examine procedures for the enforcement of the payment of accurate I & S Fees, including audit procedures, a hearing process and the establishment of fines and fees for the failure to properly report and pay to the Louisiana Department of Revenue, I & S Fees, provided for in La. R.S. 45:1177. Notice of the Rulemaking was published in Bulletin 985, May 27, 2011 and provided

for an intervention period of 15 days. Staff requested specific comments no later than June 15, 2011. Interventions and Comments were filed by Atmos Energy Corporation, Sprint Spectrum, L.P. D/B/A Sprint PCS, Sprint Communications Company, LP, Nextel South Corp., NPCR, Inc. D/B/A Nextel Partners, Cleco Power LLC, CenterPoint, Small Company Committee, Cox Louisiana Telcom, LLC, Custom Ecology, Inc., Stranco, Inc., Vacuum Truck Carriers of Louisiana, Inc., East Ascension Telephone Company D/B/A EATEL, The Association of Louisiana Electric Cooperatives, Inc. D/B/A ALEC and Dixie Electric Membership Corporation ("DEMCO").

INTERVENTIONS AND COMMENTS

The majority of the interventions filed simply stated an interest in the rulemaking as a regulated company subject to the payment of I & S Fees. The intervenors simply perfected their right to participate in the rulemaking and to present additional comments once the proposed rule was formulated and became available for review. Intervenors, Custom Ecology, Inc., Stranco, Inc. and Vacuum Truck Carriers of Louisiana, Inc., filed comments noting that as certificated carriers, they pay I & S Fees and support the placement of a system whereby all common carriers must pay their I & S Fees. They noted that the failure of some carriers to pay said fees places them at an unfair competitive advantage and that all carriers should operate from a leveled playing field.

A Technical Conference was held on August 8, 2011. Janet Boles appeared on behalf of Custom Ecology, Inc., Stranco, Inc. and Vacuum Truck Carriers of Louisiana, Inc. and offered comments on the proposed order, pointing out that the order applies only to LPSC regulated companies and suggested that a provision should be included to impose inspection and supervision fees as a portion of the fine imposed upon illegal carriers when found guilty of operating without LPSC authority. Ms. Boles also requested that the Commission provide a grace period for implementation of this order to provide regulated companies a reasonable period of time to come into compliance and correct any possible errors in their inspection and supervision accounts with the Department of Revenue. Jim Ellis appeared on behalf of various regulated companies and expressed a concern about the cost associated with auditing small firms and the imposition of those cost upon said companies. Jamie Watts appeared on behalf of Cox

Louisiana Telecom and questioned what is defined as regulated income for purposes of the payment of inspection and supervision fees. Towing and Recovery Professionals of Louisiana also appeared, but offered no comments.

This PROPOSED ORDER was first published in Commission Bulletin 991, on August 19, 2011. The parties were given until August 29, 2011 to file comments. During this comment period, comments were filed by the Small Company Committee of the Louisiana Telecommunications Association, ("SCC"), Sprint Communications Company L.P., Sprint Spectrum, L.P. d/b/a Sprint PCS, Nextel South Corp. and NPCR, Inc. d/b/a Nextel Partners ("Sprint"), tw telecom of Louisiana llc ("TW"), the Competitive Carriers of the South, Inc. ("CompSouth"), Custom Ecology, Inc., Stranco, Inc. and the Vacuum Truck Carriers of Louisiana, Inc.

In its comments, SCC suggested that only motor carriers should be required to provide annual reports executed before notaries and that the provision should not apply to other regulated companies due to the present mode of their filings with the Commission and the Department of Revenue. However, Staff noted that the Proposed Order merely includes the provisions of La. R.S. 45:1179. Sprint's comments, which were adopted by TW, primarily addressed the audit provisions of the Proposed Order. Sprint recommended set "threshold events" which would trigger an audit and further suggested a time schedule whereby site audits would be conducted. Staff's position is that the proposed order is not vague and ambiguous. It sets out powers and procedures which the Commission has always had under its constitutional mandate to regulate and the powers provided for under Title 45. In their comments, Custom Ecology, Inc., Stranco, Inc. and the Vacuum Truck Carriers of Louisiana, Inc. suggested that when fining violators who operate without Commission authority, the Commission should incorporate the amount of Inspection and Supervision Fees due in determining a penalty. Staff noted that the amount of avoided Inspection and Supervision Fees is already considered when fining carriers who are found guilty or plead guilty to operating without authority.

On October 14, 2011, in Commission Bulletin 995, the PROPOSED ORDER was again published, but with additional language. In short, the additional language authorizes the

cancellation of a motor carrier's authority for failure to properly pay Inspection and Supervision Fees. This language is necessary because the general authority to cancel, suspend or revoke a certificate under La. R.S. 45:166 A does not include a violation of La. R.S. 45:1177 as grounds for cancellation. In addition, a provision was added which directs Staff to require all LPSC regulated companies, their affiliates and Associations of regulated motor carriers to provide to the Commission evidence of compliance with the provisions of La. R.S. 45:1177 before acting upon any applications for a rate increase, a name change, a sale, transfer of assets, LPSC authority and/or a request for expanded or amended authority or any other action that requires Commission approval or non-opposition. The PROPOSED ORDER provides that evidence of compliance may include, but is not limited to, copies of I & S filings with the Department of Revenue and copies of proof of payment. Staff requested specific comments on the additional provisions by October 21, 2011.

Staff received numerous comments regarding the additional provisions. CompSouth offered alternative language which tracks the Commission's constitutional mandate as opposed to making the additional language applicable to "regulated companies, their affiliates and Associations of regulated motor carriers." CompSouth also suggested that evidence of compliance should be limited to copies of filings with the Department of Revenue and should be provided by the regulated company upon a "reasonable" request by Staff in connection with the company's filings.

Custom Ecology, Inc., Stranco, Inc., and the Vacuum Truck Carriers of Louisiana, Inc., also filed additional comments and objected to making Inspection and Supervision compliance a prerequisite to obtaining certain relief from the Commission. The Louisiana Household Goods Carriers Association, Inc. ("LHGCA") filed comments raising enforcement issues with regards to illegal carriers and objected to the language's application to "associations." Staff agreed to language which makes clear that the provision directed at "Associations of motor carriers" applies only to filings made by Associations on behalf of their membership as a whole. Cox also filed additional comments and noted that since some regulated companies make multiple tariff filings per year, furnishing evidence of compliance for each filing will become burdensome to the companies. Cox suggested that regulated companies simply furnish evidence of compliance

yearly. Comments were also filed by CenterPoint, Cleco Power LLC, SCC and TW. In said comments the companies noted that by extending the procedure to affiliates it may encompass entities which are not regulated by the Commission. In addition, the companies contended that the procedure will be burdensome if required at the time of each filing and should become applicable only upon a "reasonable" request by Staff. Staff notes that since non-regulated companies do not pay Inspection and Supervision Fees, evidence of their compliance will never be required by the Proposed Order.

Staff's position is that the procedure established by the Proposed Order is a clear and unambiguous enforcement mechanism to aid the Commission in ascertaining whether the fee is being accurately paid. Providing proof of filings with the Department of Revenue and proof of payment is not unreasonable, nor should it be burdensome, when entities are seeking relief with the Commission. Regulated entities are required by law to make the payments. Now, they will be required to furnish proof of compliance with that obligation when making filings with the Commission.

STAFF RECOMMENDATION

Staff recommended that the Commission adopt the following Order:

Commission Staff is hereby authorized to audit any and all companies regulated by the Commission (public utilities and motor carriers) to determine whether said companies are accurately reporting regulated income to the Louisiana Department of Revenue for purposes of paying I & S Fees due to the Commission. Said audits may be conducted by mail inquiry and/or site audits as deemed necessary by Commission Staff. If it is determined by Commission Staff that a regulated company has failed to pay I & S Fees which are due to the Commission, the Staff may issue a citation to the regulated company to show cause at a public hearing before the Commission Administrative Law Division why it should not be Ordered to pay said fees, together with a fine not greater than $10,000.00 and the fees, costs and expenses associated with said audit if performed by an outside consultant or specially employed personnel pursuant to the provisions of La. R.S. 45:1180 (A) and General Order dated August 4, 2004. The Staff may, at its discretion pursue the payment of all I & S fees due to the Commission by forwarding the

results of its investigation audit findings to the Louisiana Department of Revenue for assessment and collection of said fee. With regards to motor carriers, said citation may also seek the cancellation, revocation and/or suspension of the carrier's authority for failure to comply with the provisions of La. R.S. 45:1177 et seq.

Staff also recommended that said order provide the additional following provisions:

All Annual Reports filed with the Commission by regulated companies shall form the basis for the assessment of I & S Fees as provided for in La. R.S. 45:1179 and shall be sworn to before a notary public by the owner or officer/officers having personal knowledge of the fact set forth therein.

Staff is hereby directed to require of all LPSC regulated companies, their affiliates and Associations of regulated motor carriers to provide to the Commission evidence of compliance with the provisions of La. R.S. 45:1177 before acting upon any applications for a rate increase, a name change, a sale, transfer of assets, LPSC authority and/or a request for expanded or amended authority or any other action that requires Commission approval or non-opposition. Evidence of compliance may include, but is not limited to, copies of I & S filings with the Department of Revenue and copies of proof of payment. The provisions of this paragraph shall only apply to Associations, when filings are made by the Association on behalf of its membership as a whole.

Staff also recommended that this order become effective immediately, but not be implemented for a period of 60 days to allow all regulated companies the opportunity to receive notice of the order and to correct any possible issues which may exist with their Department of Revenue inspection and supervision accounts and/or to come in compliance with their inspection and supervision obligations under La RS 45:1177 et seq.

COMMISSION ACTION

On motion of Commissioner Field, seconded by Commissioner Boissiere, and unanimously adopted, the Commission voted to accept the Staff Recommendation and adopt the Proposed General Order.

IT IS THEREFORE ORDERED

That Commission Staff is hereby authorized to audit any and all companies regulated by the Commission (public utilities and motor carriers) to determine whether said companies are accurately reporting regulated income to the Louisiana Department of Revenue for purposes of paying I & S Fees due to the Commission. Said audits may be conducted by mail inquiry and/or site audits as deemed necessary by Commission Staff. If it is determined by Commission Staff that a regulated company has failed to pay I & S Fees which are due to the Commission, the Staff may issue a citation to the regulated company to show cause at a public hearing before the Commission Administrative Law Division why it should not be Ordered to pay said fees, together with a fine not greater than $10,000.00 and the fees, costs and expenses associated with said audit if performed by an outside consultant or specially employed personnel pursuant to the provisions of La. R.S. 45:1180 (A) and General Order dated August 4, 2004. The Staff may, at its discretion pursue the payment of all I & S fees due to the Commission by forwarding the results of its investigation audit findings to the Louisiana Department of Revenue for assessment and collection of said fee. With regards to motor carriers, said citation may also seek the cancellation, revocation and/or suspension of the carrier's authority for failure to comply with the provisions of La. R.S. 45:1177 et seq.

IT IS FURTHER ORDERED THAT

All Annual Reports filed with the Commission by regulated companies shall form the basis for the assessment of I & S Fees as provided for in La. R.S. 45:1179 and shall be sworn to before a notary public by the owner or officer/officers having personal knowledge of the facts set forth therein.

Staff is hereby directed to require of all LPSC regulated companies, their affiliates and Associations of regulated motor carriers to provide to the Commission evidence of compliance with the provisions of La. R.S. 45:1177 before acting upon any applications for a rate increase, a

name change, a sale, transfer of assets, LPSC authority and/or a request for expanded or amended authority or any other action that requires Commission approval or non-opposition. Evidence of compliance may include, but is not limited to, copies of I & S filings with the Department of Revenue and copies of proof of payment. The provisions of this paragraph shall only apply to Associations, when filings are made by the Association on behalf of its membership as a whole.

This order is effective immediately, but is not to be implemented for a period of 60 days to allow all regulated companies the opportunity to receive notice of the order and to correct any possible issues which may exist with their Department of Revenue inspection and supervision accounts and/or to come in compliance with their inspection and supervision obligations under La RS 45:1177 et seq.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA

November 22, 2011

/S/ JAMES M. FIELD
DISTRICT II
CHAIRMAN JAMES M. FIELD

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

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/S/ ERIC F. SKRMETTA
DISTRICT I
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