

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

LOUISIANA PUBLIC SERVICE COMMISSION, EX PARTE

Docket No. R-33916. In re: Amendments and revisions to the General Order dated April 17, 2014 (Schedule of Prescribed Rates and Requirements for Towing and Recovery) and biennial rate review.

(Decided at the Commission's Business and Executive Session held July 27, 2016.)

Purpose

The Louisiana Public Service Commission ("LPSC" or "Commission") Staff opened this rulemaking with three objectives: 1) conduct a review of the rates for non-consensual towing services, 2) address the Commission's directive given to Staff at the October 28, 2015 Business & Executive Session regarding standard operating procedures for towing companies, and 3) consider whether additional changes to the Commission's General Order dated April 17, 2014 are warranted.

This order supersedes the Commission's General Order dated April 17, 2014. The requirements in this General Order apply to all persons engaged in providing non-consensual towing services ("Towing & Recovery Professional" or "Tow Company").

Jurisdiction

The Commission exercises jurisdiction over motor carriers pursuant to Article IV, Section 21 of the Louisiana Constitution which provides in pertinent part,

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.

In addition, the Louisiana Legislature declared that the "use and operation of wreckers and towing services should be the subject of regulation by the Louisiana Public Service Commission," and that the Commission has "the power and authority necessary to supervise, govern, regulate, and control the business of the operation and use of wreckers and towing services...[and] to fix reasonable and just rates, fares, tolls, charges for storage services[.]"¹ The Commission's power, authority, and duties in this regard includes "all matters connected with the service to be given or rendered[.]"²

¹ La. R.S. 45:180.1(C)(1).

² La. R.S. 45:180.1(C)(2).

The Commission's constitutional authority to regulate common carriers was previously limited by the Interstate Commerce Act, as amended by the Federal Aviation Administration Authorization Act of 1994 and the Interstate Commerce Commission Termination Act of 1995, which preempted state regulation of the prices, routes and services of motor carriers of property.³ Tow trucks are motor carriers of property, therefore falling within the scope of this federal legislation. The federal statutes, however, explicitly exempted states' regulatory authority over the rates charged for towing services performed without the prior consent or authorization of the owner or operator of the motor vehicle ("non-consensual tows"). The federal preemption changed in December 2015, when President Obama signed the Fixing America's Surface Transportation Act ("FAST Act"). Section 5514 of the FAST Act changed 49 USC 14501(c)(2)(C) to allow states to regulate tow truck operations.

Staff Review

This rulemaking was published in the Commission's Official Bulletin #1104 on December 18, 2015. Staff requested comments on a draft of the proposed order by January 13, 2016 and held a technical conference on January 19, 2016. The parties were provided additional time until February 5, 2016 to submit comments on the draft order. After considering the comments, Staff issued a recommendation, response to comments, and proposed order. Staff issued an amended recommendation on April 18, 2016 and requested comments no later than May 2, 2016.

In the Commission's General Order dated March 26, 2010, the Commission ordered the use of the CPI to adjust the LPSC's rates for nonconsensual towing services every two years, beginning January 1, 2012. As required by the Commission's May 3, 2012 General Order, the LPSC's rates are 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 LPSC Staff considered whether the rates for non-consensual towing services should be increased or decreased based for the period January 1, 2014 through December 31, 2015. Staff determined that, based on a CPI review, the rates should decrease by 0.43%; however, based on the comments submitted in this rulemaking docket and the negligible amount of the decrease, Staff did not recommend that the Commission approve a decrease in rates.

³ See 49 U.S.C. § 14501(c).

At the October 28, 2015 Business & Executive Session the Commission directed Staff to consider requiring tow companies to file standard operating procedures that include measures to exercise due diligence to insure the safety and well being of all parties during the conduct of the tow. Staff did not recommend that tow companies be required to file SOPs, since tow companies that operate motor vehicles in an unsafe manner are subject to citation by local law enforcement agencies and the Louisiana State Police.

Additionally, Staff proposed changes to the order that will assist in clarifying the intent of the order; however, Staff was unable to recommend rate increases that are not justified by an analysis of tow company expenses that explains why the current rates do not generate sufficient revenue. Staff reviewed the rates for non-consensual tows in other jurisdictions and did not find information supporting an increase to the LPSC's rates. In sum, Staff recommended that the Commission adopt Staff's findings as stated in the Amended Recommendation and Response to Comments and:

1. make no changes to the current rates based on CPI, despite the decrease by 0.43%,
2. establish no new requirements regarding SOPs, since tow companies that operate motor vehicles in an unsafe manner are subject to citation by local law enforcement agencies and State Police,
3. approve the Proposed Order, including Attachment A, "Schedule of Prescribed Rates and Requirements for Non-Consensual Towing and Recovery Services," and
4. direct Staff to issue an RFP for a consultant who will conduct an audit of a cross-section of LPSC-regulated towing companies and make a recommendation regarding the rates in the General Order.

Commission Action

On motion of Commissioner Skrmetta, seconded by Commissioner Campbell, with Commissioner Boissiere and Vice Chairman Angelle concurring, and Chairman Holloway absent, the Commission voted to accept Staff recommendation with the following provisions:

1. that the Order be interim in nature, pending retention of an outside consultant to review rates and fees and the potential further revision of the Order upon receipt of the consultant's report, and

2. that effective immediately the presently authorized respective storage rates for "Outside Storage," "Covered /Inside Storage," and "Oversize Storage" each be increased by \$5.00 per day.

IT IS THEREFORE ORDERED:

The Proposed Order, including Attachment A, "Schedule of Prescribed Rates and Requirements for Non-Consensual Towing and Recovery Services," is approved as interim in nature, pending retention of an outside consultant to review rates and fees and the potential further revision of the Order upon receipt of the consultant's report.

Effective immediately the presently authorized respective storage rates for "Outside Storage," "Covered /Inside Storage," and "Oversize Storage" each be increased by \$5.00 per day.

This order is effective immediately.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
August 5, 2016

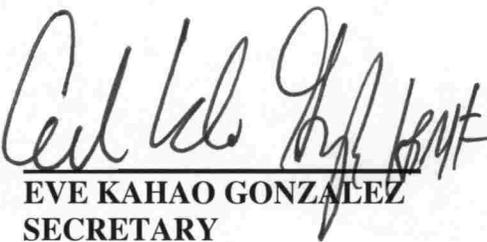
ABSENT

DISTRICT IV
CHAIRMAN CLYDE C. HOLLOWAY

/S/ SCOTT A. ANGELLE
DISTRICT II
VICE CHAIRMAN SCOTT A. ANGELLE

/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/ ERIC F. SKRMETTA
DISTRICT I
COMMISSIONER ERIC F. SKRMETTA

Attachment A to the General Order

SCHEDULE OF PRESCRIBED RATES AND REQUIREMENTS FOR NON-CONSENSUAL TOWING AND RECOVERY SERVICES

I. DEFINITIONS

- A. Light Duty - the towing, transport, and recovery of a vehicle with a gross vehicle weight rating of 10,000 pounds or less.
- B. Medium Duty - the towing, transport, and recovery of a vehicle with a gross vehicle weight rating of 10,001 pounds to 26,000 pounds.
- C. Heavy Duty - the towing, transport and recovery of a vehicle with a gross vehicle weight rating of 26,001 pounds and greater.
- D. Vehicle - every self-propelled vehicle and trailer and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.
- E. Non-consensual towing - 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.
- F. Debris - materials and objects from a vehicle including, but not limited to, broken glass, bumpers, fluids, and hubcaps present at the scene of the accident.
- G. Cargo - the goods or merchandise conveyed in a vehicle or attached trailer.
- H. Hazardous Material Cargo - cargo that includes hazardous material defined as a substance or material that the U.S. Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table in 49 CFR 172.101, and materials that meet the defining criteria for hazard classes and divisions in part 49 CFR 173.
- I. Tow - a standard tow that does not require special techniques or special equipment as defined in Recovery but does require normal use of a tow sling, wheel lift, or winch cable to winch a vehicle onto a tilt bed tow truck. Tow rates shall apply whether the vehicle is either mobile or immobile and is in contact of the roadway surface.
- J. Private Property Tow - a tow from a location as provided for in accordance with La R.S. 32:1736.
- K. Mechanical Breakdown - a light duty tow that results from a mechanical breakdown.
- L. Stand-by - time 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.
- M. Recovery - The use of air bag unit(s), 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. Rates for recovery include the time conducting actual recovery and not Stand-by or Tow time.
- N. Simple Water Recovery - 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.

O. Complicated Recovery

1. Rollover recovery - when a vehicle is overturned or positioned in such an irregular way that requires repositioning and an additional operator to complete the recovery.
2. Removal of cargo that has become unsecured from the vehicle.
3. When unloading and reloading cargo in box trailers, box trucks, flatbed trailers and tank trucks is necessary to complete the recovery.
4. Water recovery – when an additional operator is required to complete the recovery of a vehicle in water greater than 12 inches of depth.

P. Air Bag Unit - special equipment used to recover a vehicle by at least partially lifting the vehicle.

Q. Rotator - a specialized tow truck with a rotator system that enables the Tow Company to both lift and lower vehicles and move them horizontally.

R. Laborer - a Tow Company employee, other than the driver, who the Tow Company utilizes in a Complicated Recovery to perform the following services: unloading or loading cargo, cleaning up debris, applying oil absorbing material, directing traffic, or other services necessary to complete a Complicated Recovery.

S. Supervisor - a Tow Company employee, other than the driver or a laborer, who the Tow Company utilizes in a Complicated Recovery when two or more towing units or laborers are required.

T. Specialized Labor or Equipment - specialized labor or equipment necessary to complete a Complicated Recovery. Specialized labor is a certified professional diver or a law enforcement officer. Specialized equipment is heavy equipment including, but not limited to, a bulldozer or forklift.

U. Covered Storage- 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.

V. Oversized Vehicle Storage- the storage of a vehicle which has greater than 4 wheels on the ground or a vehicle, or any permanent portion thereof, that is greater than 20 feet in length.

W. Outside Storage- a vehicle being placed outside and exposed to the elements.

II. RATES

A. TOWING, RECOVERY, STAND-BY

Towing rates start at time of dispatch.

Light Duty			
Towing	Standard Recovery	Simple Water Recovery	Stand-by
<i>\$ 107.50 per hour *</i>	<i>\$147.00 per hour ^</i>	<i>\$168.50 per hour ^</i>	<i>\$ 54.00 per hour ^</i>
* 1 ½ hour minimum. After minimum, compute in ½ hour increments. ^ Computed in ½ hour increments.			
Medium Duty			
Towing	Standard Recovery	Simple Water Recovery	Stand-by
<i>\$ 236.00 per hour*</i>	<i>\$ 303.50 per hour ^</i>	<i>\$324.50 per hour ^</i>	<i>\$ 117.50 per hour ^</i>
*1 hour minimum. After minimum, compute in ½ hour increments ^ Computed in ½ hour increments.			
Heavy Duty			
Towing	Standard Recovery	Simple Water Recovery	Stand-by
<i>\$ 303.50 per hour*</i>	<i>\$ 370.50 per hour ^</i>	<i>\$392.00 per hour ^</i>	<i>\$ 151.50 per hour ^</i>
*1 hour minimum. After minimum, compute in ½ hour increments ^ Computed in ½ hour increments.			

Private Property Tow
Light Duty - \$107.50 flat rate; or \$131.50 flat rate when repositioning equipment, a fold down light bar, or an additional operator is required. The Tow Company must document why repositioning equipment, a fold down light bar or an additional operator is required.
Medium Duty - \$ 236.00 flat rate
Heavy Duty - \$303.50 flat rate
Mechanical Breakdown Tow
\$107.50 per hour with a 1 hour minimum. After minimum compute in 1/2 hour increments.

B. ADDITIONAL CHARGES FOR COMPLICATED RECOVERY

These charges are only allowed if the recovery meets the definition of Complicated Recovery in Section I. paragraph O.

Extra Tow Truck or Truck and Trailer For Removal of Cargo or Oversized Debris. The Tow Company must provide photographs and documentation explaining why oversized debris will not fit on the initial truck.	\$ 135.00 per hour*
Laborer	\$ 40.00 per hour*
Supervisor	\$ 67.50 per hour*
* 1 hour minimum. After the minimum, 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	\$210.50 per hour in addition to the Standard Recovery rate in A.** This charge is only allowed if the law enforcement officer at the scene completes the LPSC Rotator Certification Form as found in section III.E.
**2 hour minimum After the minimum, compute in 1/2 hour increments	
Recovery of Hazardous Material Cargo	If hazardous material cargo becomes unsecured, the Tow Company may charge 50% above the rates for towing, recovery, laborer, and supervisor
For medium and heavy duty recoveries, oil absorbing material in excess of the minimum 5 gallons required by LAC Title 55.	\$6 per gallon
<p>Specialized Labor or Equipment</p> <p>When it is necessary for a Tow Company to utilize Specialized Labor or Equipment to complete a Complicated Recovery, the Tow Company may charge for the Specialized Labor or Equipment as outlined in paragraphs 1 -3 below.</p> <ol style="list-style-type: none"> 1. If the Tow Company rents or subcontracts Specialized Labor or Equipment, the Tow Company may charge the amount of the actual rental invoice or subcontractor invoice plus 10%. The Tow Company shall attach the rental invoice or subcontractor invoice to the Tow Company invoice. 2. If the Tow Company provides the Specialized Labor or Equipment, the Tow Company may charge the amount of the current market value of the labor or equipment plus 10%. The Tow Company shall attach documentation evidencing the current market value to the Tow Company invoice. 3. A Tow Company may not charge for use of equipment, tools, 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 tools required to be on the tow truck by LAC Title 55, Chapter 19. 	

C. STORAGE

Rates are per calendar day. A power unit and trailer are considered two separate vehicles for storage purposes.

Outside Storage <i>\$24.00 per day</i>	Covered Storage <i>\$28.50 per day</i>	Oversize Storage <i>\$43.00 per day</i>
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D. FUEL SURCHARGE

A Tow Company shall apply the fuel surcharge on the sum of the towing and recovery and extra truck and trailer charges only.	
Fuel Price (per gallon)	Fuel Surcharge
\$0.00 to \$1.24	No 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).	

E. GENERAL PROVISIONS

1. A Tow Company shall only charge the rates stated in this order and fees allowed by State Police in LAC Title 55.
2. All rates for towing, recovery, and stand-by in Section II.A include the truck and driver.
3. A Tow Company shall only charge for equipment and personnel that are present at the scene of the recovery or tow.
4. The Commission’s jurisdiction is from the time that the towing or recovery unit is dispatched to provide the non-consensual tow service until the time the vehicle is released to the owner (or authorized representative) of the vehicle. Rates in addition to those allowed by this order are not allowed for removal of debris from the scene or for draining fluids, removing batteries, or other similar activity aimed at preventing the vehicle from leaking.

III. INVOICES

- A. The Tow Company shall provide an invoice to the vehicle owner (or authorized representative) at the time the vehicle is released to the owner, or upon request.
- B. The invoice shall include the time of dispatch and the time the Tow Company unhooks from the towed vehicle.
- C. The invoice shall be itemized on a line item basis to clearly reflect how all recovery, standby, towing, storage, fuel surcharge charges and any additional charges were calculated.
- D. All invoices shall include the following language: 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 by the LPSC’s Administrative Hearings Division or **if** the Towing Company pleads guilty to charging excessive rates.)

- E. Rotator Certification Form. In order to charge rates for a rotator, a form with the following language shall be completed by the law enforcement officer at the scene.

LPSC ROTATOR CERTIFICATION FORM

Being present as the law enforcement officer in charge of the incident scene at

street

city

parish

I agree that use of a rotator to safely and efficiently conduct recovery and ensure the flow of traffic to travel lanes was proper in this situation.

Printed Name

Title

Law Enforcement Agency

Signature

Date

IV. NOTICE TO VEHICLE OWNER/OPERATOR

All Towing Companies shall provide the following written notice to the vehicle owner or driver at the scene or at first contact: IMPORTANT NOTICE: This 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.louisiana.gov or by contacting the Louisiana Public Service Commission, Transportation Division at 1-888-342-5717. If you have a complaint against this Tow Company regarding the amount charged for this non-consensual tow, complaints should be made in writing and addressed to LPSC Transportation Division, P.O. Box 91154, Baton Rouge, Louisiana 70821 or by contacting an LPSC District Commissioner.

V. FORMS OF PAYMENT

The Commission encourages all Tow Companies to accept forms of payment other than cash. However, if a Tow Company accepts only cash in payment of the invoice, the Tow Company 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 Tow Company to retain evidence of payment of the change in the form of a cancelled check or certified mail receipt (green card). The Tow Company 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.

VI. COMPLAINTS AND FINES

- A. It shall not be necessary for a complainant to pay a towing invoice to obtain standing to a towing complaint to the Commission or District Commissioner.
- B. In addition to any fines authorized by La. R.S. Title 45 or Commission Orders, the Commission may order a refund of up to 200% of any overcharges.