

**LOUISIANA PUBLIC SERVICE COMMISSION**

**GENERAL ORDER**

**LOUISIANA PUBLIC SERVICE COMMISSION  
EX PARTE**

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Docket No. R-27859 - In Re: Amendments to the Commission's General Order of October 18, 1988 in order to address franchise right agreements and franchise fees.

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**(Decided at the May 24, 2007 Business and Executive Session.)  
(Amends and Supersedes the General Order Dated October 31, 2006)**

***Background***

In Docket No. R-26966, the Louisiana Public Service Commission ("Commission" or "LPSC") considered whether the Commission's General Order of March 12, 1974 ("Promotional Practices Order") needed to be amended to exclude practices with respect to franchise agreements. The Commission concluded in the General Order dated April 7, 2004, that granting of franchise fees in connection with franchise right agreements is not prohibited by the Promotional Practices order. In the course of that docket, however, the Commission discovered that the rules pertaining to franchise right agreements and the recovery of franchise payments need to be clarified. Specifically, the Commission decided to clarify the following issues: 1) the manner in which franchise fees are provided 2) whether a franchise fee payment should be included in a utility's cost of service in setting the utility's base rates, or alternatively, should be recovered in the manner provided in Louisiana Revised Statute 33:4510 and 3) whether there should be a cap placed on the amount of a franchise fee. Consistent with the above, the Commission Staff opened Docket R-27859 with the goal of clarifying the Commission's prior Orders with respect to the payment and recovery of franchise fees.

***Jurisdiction***

The Louisiana Constitution, Article IV, Section 21, provides:

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.

Louisiana Revised Statute 45:1163(A)(1) provides:

(A)(1): The commission shall exercise all necessary power and authority over any street, railway, gas, electric light, heat, power, waterworks, or other local public utility for the

purpose of fixing and regulating the rates charged or to be charged by and service furnished by such public utility.

Additionally, LSA-R.S. 33:4510(A) provides in pertinent part:

Whenever any political subdivision of the state of Louisiana...shall collect or receive any payment from any public utility operating within such political subdivision, including those utilities whose rates and charges are regulated by the Louisiana Public Service Commission, for the use of its streets, alleys, or public ways or places... whether such payment shall be called a license, occupational, privilege, franchise, or inspection tax, charge, or fee, or otherwise, the amount of such tax or payment may, to the extent that such tax or payment was not included as a part of the cost of furnishing services in the fixing of the rates and charges for such services by the Louisiana Public Service Commission, be added to the sales price of such public utility's service and billed pro rata to the utility's customers receiving local service within the political subdivision collecting such taxes or receiving such payments.

### ***Procedural History***

This matter was published in the Commission's Official Bulletin of March 26, 2004. Comments were received on behalf of Southwestern Electric Power Company ("SWEPCO"), Cleco Power, LLC ("Cleco"), Entergy Louisiana, Inc., Entergy Gulf States, Inc., (collectively referred to as "Entergy"), Southwest Louisiana Electric Membership Corporation ("SLEMCO"), Association of Louisiana Electric Cooperatives ("ALEC"), and Point Coupee Electric Membership Corporation. Staff issued proposed general orders on August 23, 2006, September 8, 2006, and September 22, 2006. Following consideration of Staff's proposals, and the comments submitted by the parties, the Commission enacted the General Order dated October 31, 2006 ("10/31/06 G.O."), which prohibited the recovery of any franchise payments from a utility through base rates. Additionally, the 10/31/06 G.O. required that franchise payments be line-itemed on a pro rata basis to the utility's customers.

The Louisiana Municipal Association ("LMA"), not an initial intervener or interested party in this docket, was allowed by the Commission, on its own motion, to present its concerns relative to the 10/31/06 G.O. at the November 29, 2006 Business and Executive Session. Further, the Commission granted the LMA intervener status, granted a rehearing, and directed Staff to review the rulemaking. The LMA subsequently filed comments in the docket on January 3, 2007. Staff issued a Report on Rehearing on January 24, 2007 with an amended recommendation filed on March 1, 2007. The Commission considered the matter at the March 21, 2007 Open Session and directed Staff to further consider the discussed proposals and report back to the Commission at the April Open Session. An additional round of comments was received from Atmos Energy Corporation



(“Atmos”), SWEPCO, Cleco, Entergy, the LMA and the ALEC. Following review of these comments, the Commission Staff issued a Memorandum in Support of the 10/31/06 G.O. The various rounds of reports and comments were ultimately considered by the Commission at its May 24, 2007 Business and Executive Session.

### ***Analysis***

#### Manner of Franchise Payment

Louisiana Revised Statute 33:4401 grants municipalities the authority to enter into franchise right agreements. The Commission takes no position regarding the manner in which a utility pays its franchise payment, i.e., in one lump sum or on a monthly basis, as long as the final amount is properly recovered in accordance with the provisions of this Order.

#### Franchise Payment Recovery

The Commission has the authority and responsibility to ensure that franchise payments are appropriately recovered by utilities in conformity with LPSC Rules, Regulations and Orders. The Commission may approve a utility’s recovery of prudently incurred franchise payments through a utility’s base rates as a cost of furnishing utility service, or alternatively, the Commission may elect to require utilities to recover franchise fee payments pursuant to Louisiana Revised Statute 33:4510, which provides for the recovery of franchise fee payments to the extent that those payments are not included as part of the cost of furnishing services in the fixing of the rates and charges for such services by the LPSC. Pursuant to the statute, franchise fee payments can be recovered on a pro rata basis from the utility’s customers receiving local service within the political subdivision receiving such payments.

The LPSC’s October 18, 1988 General Order required that charges and other assessments paid to governmental entities not related to a utility’s tariffs on file with the Commission appear on customer bills as a line item entry. Consistent with the October 18, 1988 General Order and R.S. 33:4510, some utilities were collecting franchise fees through base rates, while others had such fees removed from base rates for collection on a line item basis. The Commission initially found that franchise payments should not be recovered through base rates, concluding that franchise payments should appear as a line item on the bills of customers within the political subdivision that collects the franchise fees, and should be collected on a pro rata basis from the customers who provide the

revenues to which the franchise fee is applied.

The primary concern raised by the LMA in its comments, was that the Commission's reasoning and conclusions in the 10/31/06 G.O. did not attempt to quantify any benefits that rural customers receive from franchise payments. The LMA further argued that it is not reasonable to raise the fees paid by municipal ratepayers while lowering the fees paid by rural ratepayers when municipal ratepayers subsidize the cost of providing service to rural areas. Staff recognized this, and in its March 1, 2007 filing concluded that,

it is not unreasonable to suggest that a utility's provision of service to both municipal and rural customers may result in a lower average cost of providing service to all customers. It would therefore not be unreasonable for the Commission to find that rural customers should be responsible for a portion of the benefits of a franchise agreement. In order to address this apportionment, Staff recommends that the Commission direct utilities to collect a percentage of fees from all customers through base rates and a percentage of fees from municipal customers through a line item.

Consistent with this conclusion, Staff recommended that utilities be allowed to recover franchise fees of up to 5% in base rates from all customers. Amounts greater than 2% would be required to be recovered from customers living within the municipality.

#### ***Commission Action***

Following the review of the additional rounds of comments and recommendations, the Commission reconsidered this matter at its May 24, 2007 Business and Executive Session. Initially, Commissioner Field moved as follows:

That 50 percent of franchise fees shall be placed in base rates and shall be collected from all of the utility ratepayers. 2) The other 50 percent of franchise fees shall be borne only by the ratepayers located within the municipality charging said franchise fee and shall be noted on those ratepayers' bills as a line item. 3) Nothing in this Order requires any telecommunications service provider subject to price regulation by this Commission to include in rates any portion of franchise payments that are paid, credited or otherwise put to a political subdivision. Such telecommunications service providers shall recover franchise payments through the line item procedures described in this Order, but shall not be required to adjust rates with respect to any franchise payments that are paid, credited or otherwise paid to a political subdivision pursuant to an agreement or practice in effect prior to the date such telecommunications service provider became subject to price regulation by the Commission.

Following discussion, Commissioner Blossman offered a substitute motion, seconded by Commissioner Boissiere, to accept the above compromise, and to grandfather the gas companies to continue billing as they are. Commissioner Field stated he would amend his motion to state that franchise fees should be placed on electrical providers only at this time. To accomplish this,



Commissioner Blossman withdrew his substitute motion. Commissioner Field then amended his original motion to read as follows:

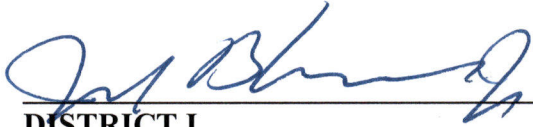
50 percent of franchise fees derived from electric utilities shall be placed in base rates and shall be collected from all of the electric utilities ratepayers. The other 50 percent of the franchise fees from electrical utilities shall be borne only by the ratepayers located within the municipality charging said franchise fee and shall be noted on those ratepayers bills as a line item. Paragraph 3 remains as it was originally read into the record by Commissioner Field with reference to telecommunications service providers. The compliance remains the same to be effective November 1, 2007 for electric utilities. Commissioner Sittig seconded this motion, with Commissioners Blossman and Campbell concurring, and Commissioner Boissiere dissenting.

In addition to the above vote, the Commission directed Staff to come back to the June 20<sup>th</sup> Business and Executive Session with a proposed rule for franchise fees for underground utilities, mainly water and gas.

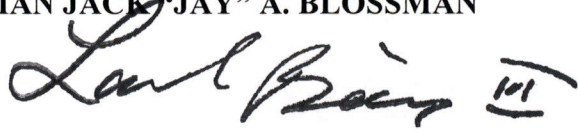
**IT IS THEREFORE ORDERED:**

1. 50 percent of franchise fees derived from electric utilities shall be placed in base rates and shall be collected from all of the electric utilities ratepayers. The other 50 percent of the franchise fees from electrical utilities shall be borne only by the ratepayers located within the municipality charging said franchise fee and shall be noted on those ratepayers bills as a line item.
2. Staff shall provide the Commission with a proposed rule for franchise fees for water and gas utilities.
3. Nothing in this Order requires any telecommunications service provider subject to price regulation by this Commission to include in rates any portion of franchise payments that are paid, credited or otherwise put to a political subdivision. Such telecommunications service providers shall recover franchise payments through the line item procedures described in this Order, but shall not be required for adjust rates with respect to any franchise payments that are paid, credited or otherwise paid to a political subdivision pursuant to an agreement or practice in effect prior to the date such telecommunications service provider became subject to price regulation by the Commission.
4. This Order Shall Be Effective Immediately

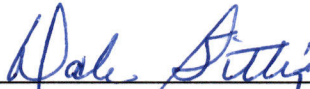
BY ORDER OF THE COMMISSION  
BATON ROUGE, LOUISIANA  
October 12, 2007



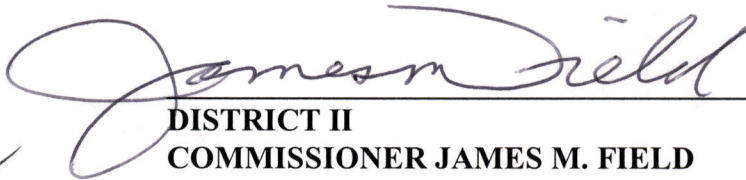
DISTRICT I  
CHAIRMAN JACK "JAY" A. BLOSSMAN



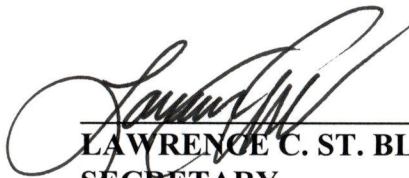
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VICE CHAIRMAN LAMBERT C. BOISSIERE, III



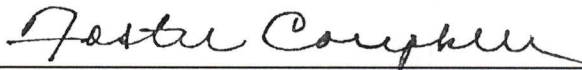
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COMMISSIONER C. DALE SITTIG



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COMMISSIONER JAMES M. FIELD



LAWRENCE C. ST. BLANC  
SECRETARY



DISTRICT V  
COMMISSIONER FOSTER L. CAMPBELL