

# LOUISIANA PUBLIC SERVICE COMMISSION

## GENERAL ORDER

### LOUISIANA PUBLIC SERVICE COMMISSION, EX PARTE.

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*In re: Amendment to Rules of Practice and Procedure by adding Rule 55-A and amending current Rule 56.*

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(Decided at the Business and Executive Session held December 16, 2013)

At the December 16, 2013 open meeting of the Louisiana Public Service Commission ("Commission"), the proposed addition of Rule 55-A and amendments to Rule 56 of the Rules of Practices and Procedures of the Louisiana Public Service Commission ("Rules") were considered. The objective of these changes is to make it easier and more cost-effective for the Administrative Hearings Division ("AHD") to send certain documents via email or fax instead of by U.S. Mail.

These proposed changes were evaluated by the Commission Staff and published in the Commission's Official Bulletin #1048 dated October 25, 2013. No comments were received.

Upon motion of Commissioner Holloway, seconded by Commissioner Angelle, and unanimously adopted, the Commission voted to adopt the proposed changes to the Rules of Practices and Procedures of the Louisiana Public Service Commission. These Rules will now read as follows:

#### **Rule 55-A: ADMINISTRATIVE HEARINGS DIVISION TRANSMITTAL OF DOCUMENTS TO PARTIES OF RECORD**

When the Administrative Hearings Division issues and files a document (e.g., a notice, report, ruling, recommendation, or referral) into the record of a proceeding, the Division shall contemporaneously transmit a copy of the document to each party of record via one of the following means and in the following order of preference: e-mail; fax (if the service list does not reflect an e-mail address for a party); or U.S. Mail (if the service list does not contain an e-mail address or fax number for a party).

#### **RULE 56: PROCEDURE FOR REVIEW OF RECOMMENDATIONS REGARDING FINAL DETERMINATIONS**

(a) Except as is provided in subparts (b), (c), (d), and (e) of this Rule, the preparation and review procedure for a recommendation regarding a final determination in a proceeding is as follows:

(1) At the conclusion of the taking of any evidence and testimony on the matter to be decided and after consideration of the evidence and testimony and any pertinent authority, the administrative law judge shall prepare a written proposed recommendation of final determination. Unless the nature of the proceeding necessitates a different format and substance, the proposed recommendation shall contain a summary of the allegations or application, pertinent legal authority and factual background, a review of the procedural history of the matter, findings of fact, conclusions of law and the recommended determination. The proposed recommendation shall be filed into the record, with copies contemporaneously transmitted by the Administrative Hearings Division to all parties of record.

(2) Within fifteen (15) days of the filing of the proposed recommendation, any party may file into the record an exception to the proposed recommendation. The exception shall be in the form of a legal memorandum, and shall contain a statement of errors, pertinent legal authority, and references to the record in the proceeding, as appropriate. The exception shall not make reference to evidence of any kind which is not already a part of

the record, except that a party may argue as to evidence tendered but excluded (offers of proof).

(3) If no party timely files an exception to the proposed recommendation, the recommendation shall become a final recommendation and shall be immediately forwarded to the Commissioners for consideration and for vote.

(4) If an exception to the proposed recommendation is timely filed, any party wishing to oppose the exception shall have fifteen (15) days from the filing of the exception in which to file an opposition memoranda into the record. The opposition memoranda shall address the statement of errors contained in the exception and shall include pertinent legal authority and references to the record in the proceeding, as appropriate. The opposition memoranda shall not include references to evidence of any kind which is not already a part of the record, except that a party may argue as to evidence tendered but excluded (offers of proof).

(5) At the conclusion of the time period for filing opposition memoranda to timely filed exceptions, no further briefing shall be allowed, except with the consent of the administrative law judge or by vote of the Commissioners.

(6) After reviewing any timely filed exception and opposition memoranda, the administrative law judge shall prepare a final recommendation. The final recommendation shall contain the elements described in subpart (a)(1) of this Rule.

(7) At the time the final recommendation is filed into the record, copies of the final recommendation shall be forwarded to the Commissioners and transmitted to all parties of record.

(8) Upon submission of the final recommendation into the record, copies of the final recommendation shall be forwarded to the Secretary for placement on the Commission meeting agenda for a vote by the Commissioners.

(9) Within five (5) working days of the final recommendation, any party may request the opportunity to present oral argument at the Commission meeting. The request shall be in writing and shall be filed directly with the Secretary. The requesting party shall also mail a copy of the request to each Commissioner and to each party of record and shall file a copy of the request in the record of the proceeding. The request shall state the reasons why oral argument should be permitted and shall be considered a request on behalf of all parties to the proceeding. The Secretary shall place the request for oral argument on the Commission meeting agenda along with the final recommendation and shall notify the parties of its placement on the agenda. The request for oral argument shall be granted only upon a majority vote of the Commissioners at the Commission meeting, in response to a timely filed, written request. In granting a request for oral argument, the Commissioners may direct either that argument be presented during the course of that Commission meeting or at a subsequent Commission meeting. A party may waive its opportunity to present oral argument, either expressly or through its failure to appear and participate in the oral argument. Nothing in this subpart shall be construed as precluding any Commissioner from soliciting information, positions or recommendations or asking questions of any party appearing at a Commission meeting, regardless of whether a request for oral argument has been filed.

(10) In the event the Commission votes to grant the request for oral argument, each opposing 24 Revised February 7, 2013 party (unless otherwise specified in the Commission vote) shall be allotted a maximum of 10 minutes. In addition, when several parties are aligned on the same side, those parties shall be allowed a total of ten (10) minutes to be allotted among them.

(11) In the event the Commissioners affirm the final recommendation of the administrative law judge, the recommendation shall be incorporated into the Order issued

by the Commission. The Order shall be prepared by the administrative law judge who submitted the final recommendation affirmed by the Commission.

(12) In the event the Commissioners overrule the final recommendation of the administrative law judge, the resulting Order shall be prepared by the Legal Division of the Commission.

(b) Upon motion to the administrative law judge and upon a showing of good cause, or upon stipulation of all parties to the proceeding, the administrative law judge may extend or shorten the deadlines for the procedures described in subpart (a) of this Rule or, otherwise, may, extend, abbreviate or omit portions of those procedures.

(c) To the extent the Commission has delegated to the Commission staff the handling of certain uncontested matters, the procedures within subpart (a) of this Rule shall not apply.

(d) Except at the discretion of the administrative law judge, the procedures contained within subpart (a) of this Rule shall not apply to a motion to dismiss jointly filed by all parties of record, a motion to dismiss with prejudice filed by the party who instituted the proceeding, or a motion to dismiss without prejudice filed by a party who instituted the proceeding but prior to the filing of any other party's filing of a responsive pleading. Upon the filing of such a motion to dismiss, the administrative law judge may forego all recommendation procedures and prepare an appropriate order of dismissal for issuance by the Commission.

(e) For transportation violation matters, at the conclusion of the taking of any evidence and testimony on the matter to be decided and after consideration of the evidence and testimony and any pertinent authority, the administrative law judge shall prepare a written final recommendation of final determination. No proposed recommendation will be issued. The procedures outlined in paragraph (a) regarding the final recommendation and the processes contemporaneous with and subsequent to its issuance remain applicable.

**BY ORDER OF THE COMMISSION**

**BATON ROUGE, LOUISIANA**

January 15, 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