

# *Louisiana Public Service Commission*



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## **MEDIA RELEASE**

April 29, 2013

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For Immediate Release

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## **LPSC Wins Appeal Regarding Funds Sweep**

The Louisiana Court of Appeal for the First Circuit ruled in favor of the ongoing efforts of the Louisiana Public Service Commission in its challenge of an unconstitutional tax upon the Commission's ratepayers. In 2009 and 2010, the Legislature seized approximately \$9 million in inspection and supervision fees paid by the Commission's ratepayers for the exclusive purpose of funding the Commission's constitutionally-mandated duty to regulate public utilities and common carriers. The fees are paid each month as an assessment added to the ratepayers' electric, water, sewer and natural gas bills. The Commission receives no funding from the State General Fund where these fees serve as the Commission's primary source of funding. Instead of appropriating the fees for the Commission's use, the Legislature diverted the fees towards funding other statewide programs.

The Commission considers this redirection of fees to be an unconstitutional tax upon its jurisdictional ratepayers, who are now being forced to subsidize government programs that will benefit citizens that contributed nothing to the diverted funds. Citizens who are exempt from the Commission's jurisdiction (such as customers of municipally-owned and operated utility companies) were never assessed the fees in question. In the Commission's view, its ratepayers' due process and equal protection rights were violated when the Legislature took the funds paid by the Commission's ratepayers and used those monies to finance other projects.

In order to resolve this issue, the Commission filed a Petition for Declaratory Judgment against the Louisiana State Legislature in July 2010. Attorneys for the Commission and for the Legislature argued before the 19<sup>th</sup> Judicial District Court in November 2010. That court ruled that no grounds currently exist for the ratepayers, the Commission or any other party to contest the Legislature's actions.

However, in a decision released last Friday, the First Circuit found that the Commission articulated valid grounds to challenge the seizure of the fees; thereby reversing the District Court's decision and remanding the case. The District Court must now decide whether the LPSC is the proper body to bring such a challenge, and if so, whether or not the seizures of the fees were unconstitutional.

The First Circuit's decision represents the end of only the first chapter in the Commission's ongoing lawsuit against the State Legislature. While the legal challenge continues, the Commission remains dedicated to protecting its ratepayers from unfair taxation.

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