

**LOUISIANA PUBLIC SERVICE COMMISSION**

**GENERAL ORDER**

**LOUISIANA PUBLIC SERVICE COMMISSION**

**EX PARTE.**

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**In re: Amendment to Rule 6 of the Rules of Practice and Procedure of the Louisiana Public Service Commission.**

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(Decided at the March 19, 2003 Business and Executive Session)

At the March 19, 2003 meeting of the Louisiana Public Service Commission (“Commission”), a proposed amendment to Rule 6 of the Rules of Practice and Procedure (“Rules”) of the Commission was considered. The primary objectives of the amendment are, to insure that all parties to a proceeding are treated equally, to create certainty and predictability when considering proposed settlements and/or stipulations by some or all parties to a proceeding, and to reflect more accurately some of the current procedures which are followed when settlement is considered. The new Rule outlines some procedures similar to those currently practiced by the Commission. The filing requirements and some of the time limits are new provisions, included in an attempt to avoid unnecessary delays in the process especially with regard to contested stipulated settlements. The new rule also provides different procedures for contested and uncontested settlements. Finally, the new rule makes it clear that the Commission may waive any and all requirements of the new Rule if it finds such to be in the public interest.

The proposed Rule was circulated throughout the various departments of the Commission for Comments. Thereafter, the revised Rule was published in the Commission’s December 7, 2001 Official Bulletin for further Comments. The final revised version was then circulated to the Commissioners for comment.

Following discussion, and upon motion by Commissioner Dixon, seconded by Commissioner Field and unanimously adopted, the Commission voted to amend Rule 6 of the Rules of Practice and Procedure of the Louisiana Public Service Commission as follows:

**RULE 6: STIPULATION/SETTLEMENT AGREEMENTS.**

**A. Applicability.**

This rule applies to the stipulated settlement of all issues, or any set of issues categorized for separate hearing, in any ratemaking or adjudicatory proceeding before the Commission, with certain exceptions described in Part I, below.

**B. Uncontested Proposed Stipulated Settlements.**

When all parties to a proceeding reach agreement with regard to all issues in the form of a Proposed Stipulated Settlement signed by all parties or their representatives (“Uncontested Stipulated Settlement”), the following procedures shall be followed:

1. *Filing*  
Upon the filing of an Uncontested Stipulated Settlement, executed by all parties, the administrative law judge (“ALJ”) may continue without date any previously established procedural schedule in the proceeding.
2. *Timing of Filing.*  
Parties may file an Uncontested Stipulated Settlement at any time after the deadline has passed for filing interventions.
3. *Hearings.*  
In all cases, except as described in Part B.7, or I below, a hearing before the ALJ shall be held on the Uncontested Stipulated Settlement.

4. *Scheduling of Hearing.*

A stipulation hearing will be scheduled by the ALJ upon the parties' filing of the following:

- a. Copies of any document, testimony in affidavit form, financial analysis, or exhibit which supports the Stipulated Settlement (in rate cases, a full rate analysis and sworn statement and recommendation by the Commission Staff, as well as sworn supporting testimony by one or more representatives of the applicant, and a proposed new tariff form), and
- b. A joint motion for the scheduling of a stipulation hearing.

5. *Procedure at the Stipulation Hearing*

At the hearing, the parties shall call the witnesses whose testimony was filed with the Stipulated Settlement, and shall introduce into evidence the signed Uncontested Stipulated Settlement, as well as the supporting documentation. Affidavits, in lieu of live testimony, may be submitted.

6. *Post-Hearing Report by Administrative Law Judge.*

Following the hearing, the ALJ shall forward to the Commissioners, without a recommendation on the merits, a report of the proceeding and a copy of the Uncontested Stipulated Settlement.

7. *Consideration Without Hearing.*

The Commissioners, for reason of public need, may dispense with the requirement of a stipulation hearing and consider an Uncontested Stipulated Settlement based upon the filed documentation.

**C. Uncontested Proposed Partial Stipulated Settlements**

When all parties to a proceeding reach agreement with regard to some, but not all, issues in the form of a Proposed Partial Stipulated Settlement signed by all parties or their representatives (an "Uncontested Proposed Partial Stipulated Settlement"), all provisions of this Rule that apply to Uncontested Proposed Stipulated Settlements shall apply except that the previously established procedural schedule referred to at Section B.1. above shall not be continued without date as to the remaining issues. A hearing on the merits shall be heard at the time and in accordance with a new procedural schedule to be set by the ALJ.

**D. Contested Proposed Stipulated Settlements.**

When two or more non-aligned parties (including intervenors, but not interested parties), but not all parties, to a proceeding reach agreement with regard to all issues in the form of a Proposed Stipulated Settlement signed by the agreeing parties or their representatives (a "Contested Stipulated Settlement"), the agreeing parties may initiate a process culminating in the Commissioners' consideration of their proposal as follows:

1. *Initiation of the Process.*

Any two or more opposing parties to a contested proceeding before the Commission (the "Agreeing Parties") may file a Contested Stipulated Settlement and request a hearing ("Request").

2. *Contents of Request.*

The Request shall consist of the following:

- a. A joint motion by the Agreeing Parties requesting a Stipulation Hearing;
- b. The Stipulated Settlement, signed by all Agreeing Parties, attesting to their agreement with its terms;
- c. Copies of any document, testimony in affidavit form, financial analysis, or exhibit which supports the Stipulated Settlement, together with a statement of how the proposed settlement is in the public interest.
- d. Citations to law or jurisprudence which support the Stipulated Settlement; and
- e. If the proceeding is a rate proceeding, a proposed new tariff form

incorporating the Stipulated Settlement.

3. *Time for Filing Request.*  
The Request may be filed at any time after the time frame permitted in the procedural schedule for general discovery has ended, but no later than 15 days prior to the hearing on the merits except upon a showing of good cause.
4. *Service of Request.*  
The Request (in full) shall be served, concurrently with its filing with the Administrative Hearings Division, upon all parties of record.
5. *Effect of Filed Request on Existing Procedural Schedule.*  
Upon the timely filing of a Request, the ALJ may continue without date the previously established procedural schedule.
6. *Evaluation of Confidential Information.*  
Parties to the proceeding shall have an opportunity to review confidential documents involved in the settlement. If the documents are not included with the Request, they shall be made available for immediate review subject to a confidentiality agreement. Upon a showing of good cause, the ALJ may extend the time period for filing comments to allow for the examination of confidential documents.
7. *Contents of Comments.*  
Comments contesting a proposed Stipulated Settlement or any portion of it shall consist of:
  - a. A specific listing of each element of the Stipulated Settlement which is being contested, together with the commenting party's reasons for contesting those elements;
  - b. Copies of any document, testimony in affidavit form, financial analysis, or exhibit which supports the commenting party's position; and
  - c. Citations to law or jurisprudence that support the commenting party's position.
8. *Time for Filing Comments.*
  - a. Comments must be filed with the Administrative Hearings Division within 30 days of the filing of the Request.
  - b. The comments (in full) shall be served, concurrently with their filing with the Administrative Hearings Division, on all parties of record.
9. *Waiver.*  
The failure to file timely comments shall constitute a waiver of all objections to the Stipulated Settlement.
10. *Rebuttal Comments.*
  - a. The Agreeing Parties may file rebuttal comments to timely filed comments contesting the Stipulated Settlement.
  - b. Such rebuttal comments shall be filed with the Administrative Hearings Division within 7 days of the deadline for filing comments. This time period may be extended or shortened by the ALJ upon a showing of good cause.
  - c. The rebuttal comments (in full) shall be served, concurrently with its filing with the Administrative Hearings Division, upon all parties of record.
  - d. Rebuttal comments shall consist of:
    - i. Copies of any document, testimony in affidavit form, financial analysis, or exhibit which rebuts the timely filed comments by other parties; and
    - ii. Citations to law or jurisprudence that rebut the timely filed comments by other parties.

**E. Stipulation Hearings.**

In scheduling hearings, the ALJ charged with the hearing shall give priority to any proposed stipulated settlement. A minimum of 10 days notice of the hearing must be sent to all parties in the proceeding, unless there is a pressing public need for expedited hearing.

1. *Uncontested Proposed Stipulated Settlements.*  
When no comments contesting the proposed Contested Stipulated Settlement are filed within the time frame for doing so, it shall become an Uncontested Stipulated Settlement and the same hearing procedures shall apply as provided at Section B herein.
2. *Contested Proposed Stipulated Settlements.*  
When comments contesting the proposed Contested Stipulated Settlement are filed within the time frame for doing so, the following procedures shall apply:
  - a. *Contested Stipulated Settlement Hearings.*  
A hearing shall be held on all Contested Stipulated Settlements within fifteen (15) days of receiving comments. At the hearing, all parties shall introduce into evidence the testimony and documentation (including the Stipulated Settlement) previously filed into the record, and nothing more. The witnesses who provided the previously filed testimony in affidavit form shall be present at the hearing, where their direct testimony shall be limited to the testimony previously provided in affidavit form. The witnesses shall be subject to cross-examination by the other parties, followed by re-direct examination by the sponsoring parties. Parties to the proceeding who failed to file timely comments contesting the Stipulated Settlement shall not be allowed to present witnesses or evidence.
  - b. Following the hearing, the ALJ shall issue a recommendation to the Commissioners with regard to the Stipulated Settlement.

**F. Discovery/Admissibility of Settlement Discussions, Admissions, or Concessions.**

Discovery shall not be permitted during the Stipulated Settlement process, except by permission of the ALJ upon a showing of good cause. Settlement discussions, admissions or concessions are not subject to discovery and are not admissible in evidence, except by agreement of all parties.

**G. Non-Approval of Proposed Stipulated Settlement.**

In the event the Commission does not approve a Stipulated Settlement, the ALJ shall schedule a status conference to establish a procedural schedule leading to a hearing on the merits.

**H. Burden of Proof With Regard to Proposed Stipulated Settlements.**

The parties proposing a stipulated settlement shall have the burden of proving that the Stipulated Settlement is reasonable in light of the record, consistent with the law, and not contrary to the public interest.

**I. Exceptions.**

1. In the following instances, the ALJ may, at his or her discretion, dispense with the procedures and requirements outlined above and, instead, permit the parties to present, at the hearing on the merits, a proposed stipulation as to guilt or innocence and as to an appropriate penalty or other outcome:
  - a. In proceedings instituted as a result of Commission Staff allegations of a motor carrier's violation of Commission regulations or other applicable law, when all parties to the proceeding are in agreement as to the proposed stipulation.
  - b. In proceedings instituted as a result of Commission Staff allegations of a telecommunications company's violation of Commission regulations or other

applicable law, when all parties to the proceeding are in agreement as to the proposed stipulation.

- c. In other like proceedings, or when directed to do so by vote of the Commission.
  
- 2. Notwithstanding any of the above provisions in this Rule, the Commission may, on its own motion, vote to waive any and/or all of the requirements of this Rule and ratify and/or approve a settlement if it finds it to be in the public interest.

This Order shall become effective immediately.

**BY ORDER OF THE COMMISSION  
BATON ROUGE, LOUISIANA  
April 4, 2003**

**/S/ JACK "JAY" A. BLOSSMAN  
DISTRICT I  
CHAIRMAN JACK "JAY" A. BLOSSMAN**

**/S/ IRMA MUSE DIXON  
DISTRICT III  
COMMISSIONER IRMA MUSE DIXON**

**/S/ C. DALE SITTIG  
DISTRICT IV  
COMMISSIONER C. DALE SITTIG**

**/S/ JAMES M. FIELD  
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**LAWRENCE C. ST. BLANC  
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**/S/ FOSTER L. CAMPBELL  
DISTRICT V  
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