

# LOUISIANA PUBLIC SERVICE COMMISSION

## SPECIAL ORDER NO. 68-2011

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*Re: Possible implementation of Interim Rule 67 of the Commission's Rules of Practice and Procedure (300 foot rule disputes).*

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(Decided at the September 7, 2011 Business and Executive Session)

### *I. Background*

Rule 67 of the Commission's Rules of Practice and Procedure currently provides special procedural rules regarding the pre-adjudication and adjudication of "300 Foot Rule" disputes involving electric utilities. Under the existing Rule 67, prior to such a dispute being docketed, the dispute is to be investigated by a "staff team", who then renders a Staff Opinion on the matter. If either party disagrees with the Staff Opinion, the matter would then be docketed and presumably proceed on an expedited basis as a de novo proceeding. When the existing rule was adopted, it was done so with the laudable goal of expediting the adjudication process involving "300 Foot Rule" disputes. However, the existing rule did not accomplish its purpose, and often resulted in more protracted proceedings due to the "pre-adjudication" requirements that Staff investigate the matter prior to actual docketing.

In an attempt to address these concerns, Staff drafted modifications to the existing Rule 67 which eliminate the "pre-adjudication" requirements, but at the same time preserve the filing requirements, both of which should ensure a more streamlined procedure and adjudication. Staff believes this proposed Rule would save time and resources, advance the process and result in a resolution to these disputes in a more timely fashion, while at the same time preserving Staff's rights as a party to any adjudication filed with the Commission.

### *II. Jurisdiction*

Art. IV, Section 21 of the Louisiana Constitution of 1974 provides the LPSC with the following authority:

B. **Powers and Duties.** 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. (emphasis added).

Consistent with the above authority, the Commission has adopted the Commission's Rules of Practice and Procedure, in which Rule 67 is included.

### ***III. Proposed Interim Rule and Commission Consideration***

Staff's proposed Rule 67 was published in the Commission's Official Bulletin dated September 2, 2011. Nonetheless, Staff believing it is beneficial to adopt the rule on an interim basis pending formal adoption of the rule, recommended the interim Rule 67 be adopted on an interim basis by the Commission pending formal adoption. The proposed interim Rule 67 provides as follows:

**RULE 67: SPECIAL FILING REQUIREMENTS FOR BRINGING "THREE HUNDRED FOOT RULE" ELECTRIC UTILITY DISPUTES BEFORE THE COMMISSION**

- A. An electric utility desiring to initiate a proceeding before the Commission for the purpose of alleging a violation of the "300 foot rule" pursuant to La. R.S. 45:123 and/or the applicable Commission's Orders regarding territorial disputes and/or promotional practices, shall file a formal complaint, together with the following attachments:
  - 1. Sworn Testimony and evidence in support of all allegations contained in the complaint;
  - 2. A sworn statement by the utility (through counsel or an official representative) that a copy of this rule and copies of the complaint, supporting testimony and exhibits have been served by certified mail on the defendant utility and the customer whose service is at issue. United States Post Office certificates evidencing proof of certified mail service shall be filed with the Commission upon receipt.
- B. Upon the Commission's determination that the utility has filed a formal complaint, supporting testimony and evidence, and a sworn statement concerning service, the matter will be docketed and published in the Commission's Official Bulletin. The notice will specify an intervention period of fifteen days.
- C. The defendant utility shall be deemed a party to the proceeding without the filing of a formal intervention pleading.
- D. The customer whose service is at issue may monitor the proceeding as an "Interested Party" or may choose to participate fully as a party to the proceeding. The customer will be deemed an "Interested Party" only, unless the customer files an intervention, advising of its intent to participate fully as a party to the proceeding.

Staff's proposed interim Rule 67 was considered by the Commission at its September 7, 2011 Business and Executive Session. On Motion of Commissioner Field, seconded by

Commissioner Campbell, and unanimously adopted, the Commission voted to accept the Staff Recommendation and adopt the interim Rule 67 as published in the Commission's Official Bulletin dated September 2, 2011, with one correction: Section B is modified to read as follows:

If determined by the Commission Staff that the utility has filed a formal complaint, supporting testimony and evidence, in a sworn statement concerning service, the matter will be docketed and published in the Commission's Official Bulletin. The notice will specify an intervention period of 15 days. The defendant utility shall be deemed a party to the proceedings without the filing of a formal intervention pleading. The customer whose service is at issue may monitor the proceedings as an interested party or may choose to participate fully as a party to the proceedings. The customer will be deemed the interested party only unless the customer files an intervention advising of its intent to participate fully as a party to the proceedings

**IT IS HEREBY ORDERED THAT:**

Rule 67 of the Commission's Rules of Practice and Procedure is modified and superseded by Staff's Proposed Interim Rule 67, as modified herein.

**BY ORDER OF THE COMMISSION  
BATON ROUGE, LOUISIANA**

February 10, 2012

/S/ JAMES M. FIELD  
DISTRICT II  
CHAIRMAN JAMES M. FIELD

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