

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER 3-16-2021 (R-35848)

LOUISIANA PUBLIC SERVICE COMMISSION, EX PARTE

Docket No. R-35848, In re: Possible amendments to the General Order dated May 4, 2017 regarding Commission approval for Household Goods Carriers operating as Transportation Service Providers for the United States Department of Defense to include affiliated companies on their Common Carrier Certificates while operating under Tender of Service Agreements with the United States Department of Defense's Non-temporary Storage Program.

(Decided at the February 24, 2021 Business and Executive Session.)

This General Order amends and supersedes General Order dated May 4, 2017 (R-32587).

ORDER

I. Background

The Commission's General Order dated May 17, 2004 was issued in Docket R-27734 ("5-17-04 G.O.") to develop the rules and regulations necessary to implement procedures governing household good carriers. Specifically, the 5-17-04 G.O. addressed what requirements a household goods carrier ("HGC" or "Carriers") must meet prior to being permitted to legally operate within the State of Louisiana. The 5-17-04 G.O. was repealed and replaced by the Commission's General Order dated May 4, 2017 in Docket No. R-34385 ("5-4-17 G.O."). The 5-4-17 G.O. added the requirement that HGCs maintain a physical location or place of business open and staffed during regular business hours.

In January of 2021, Commission Staff was notified that the United States Department of Defense ("DOD") regulations relative to its Non-temporary Storage ("NTS") Program were reinterpreted. The NTS Program governs the movement and storage of household goods and related services by Transportation Service Providers ("TSPs") on behalf of the DOD. The agreement between the DOD and a TSP to provide this service is referred to as a Tender of Service ("TOS").

This rulemaking docket was opened to amend the 5-4-17 G.O. to allow HGCs to include the names of certain affiliated TSP companies on such Carriers' Common Carrier Certificates for the sole purpose of satisfying the DOD's regulatory requirement to operate under its NTS Program.

II. Jurisdiction

Article IV, Section 21 (B) of the Louisiana Constitution of 1974 grants the LPSC constitutional jurisdiction over common carriers, and specifically provides as follows,

"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."

The Louisiana Supreme Court has repeatedly held that the above-referenced provision gives the Commission exclusive, plenary power to regulate all common carriers and public utilities. Furthermore, acts or omissions of the Legislature cannot subtract from the Commission's power. Global Tel Link, Inc. v. Louisiana Public Service Commission, 97-0645, pp. 6-7 (La. 1/21/98), 707 So. 2d 28, 33; Bowie v. Louisiana Public Service Commission, 627 So. 2d 164 (La. 1993). The Commission's power in this regard is as complete in every respect as the regulatory power that would have been vested in the legislature in the absence of Art. IV § 21 (B.) Bowie.

III. Staff Review

When household goods are transported intrastate in Louisiana under the DOD's NTS Program, such transportation is a service regulated by the Commission, and thus TSPs operating intrastate under the NTS Program are required to obtain a Common Carrier Certificate from the Commission. However, the storage of household goods under the NTS Program is not a service regulated by the Commission.

Prior to the DOD's reinterpretation of the NTS Program's regulations, TSP's could enter into TOS agreements with the DOD without possessing a Common Carrier Certificate from the Commission, provided that the transportation of household goods was sub-contracted to a HGC with authority from the Commission. Often, this certificated HGC is a company that shares the same ownership as the TSP. Under the DOD's new interpretation, all TSP's operating intrastate in Louisiana are required to obtain a Common Carrier Certificate from the Commission, regardless of whether or not the TSP sub-contracts the transportation services to a regulated carrier.

Under the Commission's current rules and practices, all common carrier certificates and contract carrier permits issued by the Commission are issued in the name of a single person or entity. Thus, the effect of the DOD's new regulatory interpretation would be to require TSPs that only provide for the storage of household goods under a TOS agreement, and thus do not provide a service regulated by the Commission, to obtain a common carrier certificate from the Commission.

In order to reduce the regulatory burden on TSPs that do not transport household goods, while also ensuring the continued compliance of HGCs operating under the NTS Program, the Commission, by way of this Order, adopts the following:

Section I-General Provisions:

1. Household Goods Carriers need not prove public convenience and necessity.
2. The provisions of this Order do not eliminate any other Commission requirements for Household Goods Carriers or motor carriers under other relevant Commission orders, rules, regulations or laws unless they conflict with this Order.
3. The provisions of this Order shall only apply when a contract or agreement for moving household goods exceeds \$250.00.
4. Any person found guilty of violating this Order shall be fined in accordance with the provisions of La. R.S. 45:171.
5. To the extent that the provisions in this Order conflict with any other Commission Order or Rule, this Order shall control.

Section II-Definitions:

1. **Commission:** Louisiana Public Service Commission.
2. **Household Goods Carrier:** A motor carrier that is transporting household goods for an amount greater than \$250.00.
3. **Motor Carrier:** Includes both a common carrier by motor vehicle and a contract carrier by motor vehicle, or any other classification of carriers created by law, operating for compensation or hire, including Household Good Carriers.

Section III-Requirements:

1. Any Household Goods Carrier that wishes to operate within the State of Louisiana must first apply for and secure a registration permit from the Commission. In order to secure a registration permit from the Commission, the applicant must perform the following:
 - a. File bodily injury/property damage insurance certificates on a uniform form as required by the Commission. Minimum limits for intrastate household good carriers are the following: public liability - \$250,000.00, 500,000.00 per occurrence and property damage of \$10,000.00. However, these limits may be amended by the Commission. Minimum limits for interstate household good carriers shall be determined by the Federal Motor Carrier Safety Administration.
 - b. Carry motor truck cargo carriers insurance of at least \$50,000.00 per truck and \$100,000.00 per catastrophe.
 - c. Secure and maintain workers' compensation insurance.
 - d. Secure a surety bond by a qualified surety company with the Commission in the amount of \$5,000.00 and file the same with the Commission.
 - e. Register the address and telephone number of its permanent establishment with the Secretary of State and the Public Service Commission. Proof of filing with the Secretary of State must be provided to the Commission. If a household goods carrier ceases to maintain a permanent establishment in the state, the right to conduct business will be suspended immediately or cancelled at the discretion of the Commission.
 - f. Have its physical location or place of business open and staffed during regular business hours. Such staffing shall be by one or more persons employed by the carrier on a permanent basis for the purpose of general management of the household goods moving business.
 - g. File an annual report on or before the 30th of April every year. Annual report filings shall be governed by the July 21, 1921 and April 19, 2001 General Orders, along with any other relevant Commission Orders, rules or regulations.
 - h. Be determined by the Commission to be a fit applicant. This determination will be made by the Commission Staff on a case-by-case basis. A written decision shall be sent to the applicant. Any decision made by the Commission Staff may be appealed and brought before a Commission Administrative Law Judge ("ALJ") for reconsideration. Any decision by an ALJ may be appealed to the Commission. Finally, any further appeal may be made pursuant to Article IV Louisiana State Constitution, Article IV, Section 21(E). The minimum requirements, although the Commission may make exceptions on a case by case basis, for a fit applicant are as follows:
 - i. No unpaid fines or fees imposed upon the Household Goods Carrier as a result of Commission Orders, rules or regulations.
 - ii. No current violations of Commission Orders, rules or regulations.
 - iii. No current violations of any other relevant State or Federal rules or regulations.
 - iv. Adequate financial, technical and managerial ability to perform and maintain operations within the State of Louisiana.
 - v. Other requirements which may be determined by the Commission on a case by case basis.

- vi. Each applicant shall submit an affidavit certifying to the ownership of the applicant and agreeing to disclose in writing any change in ownership of the applicant and/or operator within 30 days of such change. An unfit applicant/operator shall include any entity applying for authority or operating under La. R.S. 45:164(e) which in the opinion of the Commission is subject to the control of a previous operator who persistently failed to meet one or more of the minimum requirements of sub-section (g). Operator as used herein shall mean any person and/or entity who/which currently has or had authority pursuant to La. R.S. 45:164(e).
2. Once authority is granted under this Order, the authority may be revoked if a Household Goods Carrier does not continue to comply with any of the requirements found in this Order.
 3. The following shall apply to entities operating within the State of Louisiana as Transportation Service Providers under Tender of Service Agreements with the United States Department of Defense's Non-temporary Storage Program.
 - a. Transportation Service Providers that transport household goods within the State of Louisiana are considered Household Goods Carriers and shall comply with all of the requirements of this General Order.
 - b. Transportation Service Providers that do not transport household goods within the State of Louisiana may, for the sole purpose of satisfying the United States Department of Defense's regulatory requirement to operate under its Non-temporary Storage Program, be listed as authorized Transportation Service Providers on a Household Goods Carrier's common carrier certificate when the Transportation Service Provider contracts with the Household Goods Carrier to provide for the transportation of household goods under its Tender of Service Agreement.
 - c. Any Household Goods Carrier seeking to include authorized Transportation Service Providers on its common carrier certificate pursuant to this Section shall submit an application to the Transportation Division to approve the addition of such Transportation Service Providers. The application shall include:
 - i. A copy of the Secretary of State Certificate and Articles of Incorporation or Formation from the state of origin for the authorized Transportation Service Provider;
 - ii. A copy of the Louisiana Secretary of State's Certificate of Good Standing for the authorized Transportation Service Provider;
 - iii. A copy of the agreement between the Household Goods Carrier and the authorized Transportation Service Provider for the transportation of household goods under a Tender of Service Agreement with the United States Department of Defense;
 - iv. A sworn statement from the Transportation Service Provider indicating that it: (1) understands that its inclusion on a Household Goods Carrier's certificate is solely for the purpose of satisfying the United States Department of Defense's regulatory requirement to operate under its Non-temporary Storage Program, and (2) that this recognition from the Commission does not grant the Transportation Service Provider the authority to transport household goods within the State of Louisiana; and,
 - v. Any additional documents requested by Commission Staff.

Commission Action:

This matter was brought before the Commission for consideration at the February 24, 2021 Business and Executive Session. On motion of Commissioner Francis, seconded by Vice Chairman Skrmetta, with Chairman Greene and Commissioner Campbell concurring and Commissioner Boissiere temporarily absent, the Commission voted to accept Staff's Proposed Recommendation filed in to the record on January 15, 2021.

IT IS THEREFORE ORDERED THAT:

1. The 5-4-17 G.O. is amended and superseded in its entirety by the instant General Order; and,
2. This General Order is effective immediately.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
March 16, 2021**



A handwritten signature in blue ink, appearing to read "Brandon M. Frey".

**BRANDON M. FREY
SECRETARY**

/S/ CRAIG GREENE

**DISTRICT II
CHAIRMAN CRAIG GREENE**

/S/ ERIC F. SKRMETTA

**DISTRICT I
VICE CHAIRMAN ERIC F. SKRMETTA**

/S/ FOSTER L. CAMPBELL

**DISTRICT V
COMMISSIONER FOSTER L. CAMPBELL**

TEMPORARILY ABSENT

**DISTRICT III
COMMISSIONER LAMBERT C. BOISSIERE, III**

/S/ MIKE FRANCIS

**DISTRICT IV
COMMISSIONER MIKE FRANCIS**