

# **LOUISIANA PUBLIC SERVICE COMMISSION**

## **GENERAL ORDER**

(Amends and Supplements General Order Dated 1-18-1954)

### **LOUISIANA PUBLIC SERVICE COMMISSION EX PARTE**

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IN RE: AMENDMENT AND/OR INTERPRETATION OF JANUARY 10, 1954 GENERAL  
ORDER AND JANUARY 18, 1954 GENERAL ORDER.  
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(Decided at Open Session, May 15, 1996)

#### **ISSUE CONSIDERED**

Gulf States Utilities ("GSU") argued that amendment and/or interpretation of the January 10, 1954 General Order and January 18, 1954 General Order entitled "Definition of the Territories of Water and Gas Utilities" was appropriate, citing the desirability of customer choice and a decision of the Commission that was overturned by the court. GSU suggested modification of the Gas Order to reflect a rule similar to R.S. 45:123 for electric utilities, that would grant exclusive right to serve only within 300 feet of existing facilities. Trans Louisiana Gas Company, Entex, ArkLa, St. Amant Gas Company, and The Polaris Corporation disagreed with Gulf States and stated that the Gas Order has functioned well for forty some years, has provided stability in the industry, and there is no need for change or interpretation of the Order. It is the position of these gas utilities that preservation of the current General Order promotes both efficiency and lower rates by minimizing the total cost of gas utility facilities.

#### **PROCEDURAL BACKGROUND**

Gulf States Utilities Company originally filed a Petition to Rescind the January 10, 1954 General Order and the January 18, 1954 General Order Concerning Definition of Territory of Water and Gas Utilities on October 24, 1994 (Docket No. U-21267). Louisiana Gas Service Co., Trans Louisiana Gas Company, The Polaris Corporation, Entex, Arkla, and St. Amant Gas Company filed notices of intervention. Parties were invited to submit lists of suggested issues and a prehearing scheduling conference was held on March 29, 1995. At the status conference, General Counsel for the Commission appeared and moved to have all information which had been filed in U-21267 moved to a newly created Docket No. U-21375 entitled Louisiana Public Service Commission, ex parte, In re: Amendment and/or Interpretation of January 10, 1954 General Order and January 18, 1954 General Order (Gas Only). Docket No. U-21267 was dismissed. Announcement of the new docket was published in the April 21, 1995 Commission Bulletin. Prefiled testimony and rebuttal was filed into the record on June 14, and June 28th respectively. Hearing in the matter was held on July 20, 1995. Briefing deadlines, at the request of the parties, were extended until the end of October. Some negotiations were ongoing, and it was possible that the matter might be resolved. A Proposed Recommendation of the Administrative Law Judge was issued on March 12, 1996. Gulf States Utilities Company filed an exception to the Proposed Recommendation of the Administrative Law Judge on March 27, 1996. Corrections to the Exception were received on April 1, 1996. The Commission voted on May 15, 1996 to add the following clarifying language to the January 18, 1954 Gas General Order: The Commission is not precluded from considering the entire area of a subdivision, if appropriate, when determining which utility is closest and can serve with the least costly extension. Order No. U-21375 was issued on June 24, 1996 reflecting the Commission's decision in this matter. Issuance of the Commission's decision in the form of a general, as well as a specific, order will increase accessibility.

#### **GULF STATES UTILITIES' POSITION**

Gulf States submitted that it is appropriate and timely that the Commission reconsider its 1954 General Order on Gas territories. The 1954 Order greatly limits customer choice and grants rather expansive and exclusive areas of service to gas utilities in contrast to electric and water utilities which currently enjoy exclusive areas of service only within 300 feet of their existing facilities. GSU disputed the opposition's statements that the close proximity of gas lines to one another could create a safety problem. GSU saw no reason why competition that is available in electric, and now in the water industry, should not be available in the gas industry. The

Commission has moved in the direction of greater competition among utilities. The Commission in July of 1983 rescinded its March 1974 Order "In re: Duplication of Electric Facilities", eliminating an Electric Order that resembled the 1954 Gas and Water Order. On June 1, 1995 the Commission issued a General Order which amended the 1954 Order with regard to water utilities. Water utilities, under the June 1, 1995 Order, are now governed by a 300' rule much like electric utilities.

In a recent case, Docket N. U-21065, Natural Gas of Louisiana vs. Gulf States Utilities Company, the Commission found that the developer of Santa Maria Subdivision should have a choice of natural gas suppliers, holding that the 1954 Order "was adopted to prevent like utilities from providing duplicate services that will cause increased costs and therefore increased rates. The Commission does not find it to be the case in this complaint... There is a differential in costs to reach the area by each utility but this differential is minimal when the entire subdivision... is considered." Natural Gas of Louisiana was the company closest to the location of the first filing. However, Gulf States Utilities was closer to other sections of the subdivision. The Commission concluded that there would not be any burden placed on existing ratepayers by either company serving Santa Maria. The courts were not willing to uphold the Commission's decision, requiring that the Commission first articulate a rationale for classifying cases to which the rule will not apply before excluding application of the order to a particular case.

Gulf States recommended that, as an alternative, if the Commission did not want to modify its General Order, then the Commission should at least clarify certain terms in the existing Order. The terms which GSU selected for clarification are the following: "necessary and desirable." Gulf States proposed the following language for inclusion in and clarification of the 1954 General Order.

For purposes of this Order and notwithstanding any other provision herein the terms "necessary or desirable" shall include those circumstances in which the projected revenues over four (4) years from service to a customer to be served from a feeder main, and/or a tap or taps from such a feeder main, equal or exceed the cost of extensions required to serve the customer. The term "customer" shall refer to any retail customer of a gas utility, including a developer of a project requiring gas service.

Gulf States filed an exception to the Administrative Law Judge's Proposed Recommendation which re-urged the arguments made in its Post Hearing Brief and also urged that the Commission should take this opportunity to clarify the 1954 Gas Order so as to make clear those occasions when the Commission will consider the entirety of the subdivision, rather than a particular section of a subdivision when determining the utility that can serve with the closest or least costly extension.

#### **OTHER GAS COMPANIES' POSITION**

Arkla, Entex, Louisiana Gas Service, and TransLa filed a joint brief expressing their opposition to Gulf States' Proposal. These parties argued that the Gas Order has been in effect for over forty years and that it has worked well and that there is no reason to believe that this Order will not continue to work well in the future. As evidence of the effectiveness of the Order, they pointed out that over the years very few cases have been brought contesting the right to serve a particular area by a gas utility. Further, the preference to the utility that can provide service with the shortest or least expensive extension is based on sound economic and operational considerations.

If the explanation of "necessary and desirable" suggested by GSU were adopted, Arkla, Entex, LGS, and TransLa argued that the interpretation would result in a less objective standard which would provide less predictability to the companies, encourage gas utilities to extend service into the areas of competing utilities, and increase the number of disputes involving service territories. The view of the other gas companies was that GSU's proposed amendments or interpretations are inconsistent with the stated purpose of the Order which is to avoid duplication of facilities which result in higher rates.

The location of the lines of different gas utilities in close proximity to one another may lead to confusion and delayed response time which could have a negative impact on public safety. Unlike electric distribution facilities which consist predominately of aerial wiring, gas lines are located underground. A gas leak has a greater potential for creating an emergency situation than typically does a water leak.

Either of GSU's proposals, according to the Protestant Gas Companies, could result in a situation in which a combination gas and electric utility (of which GSU is the only one) has a

competitive advantage over a company that provides only gas (all of the opposition utilities). Intervenor suggests that "an electric utility may waive the additional charges it would otherwise impose for underground electric service if the developer agrees to build only all electric homes. To the extent the developer agrees to this, the ability of the local gas utility to compete for new service in the affected area is significantly impaired."

## CONCLUSIONS

The 1954 Gas General Order should remain in place, at least for the time being. The evidence presented indicated that there have been few problems with the 1954 Gas General Order over time. The Order has been in effect for forty two years and has resulted in very few cases before the Commission, at least as far as information presented by the parties to this docket established. (Interrogatories were sent to all the parties asking them to state whether they had been a party to a case docketed before the Commission in which they or the opposing party relied on or asserted any provision of the 1954 Order in support of their claim or defense. Information was provided regarding six cases, U-19757 Polaris v. Louisiana Gas Service ("LGS"); U-19747 St. Charles Natural Gas Co. v. LGS; U-21001 Entex vs. LGS; U-16156 LGS v. TransLa; U-20165 LGS v. Gulf States. Reference was made to an ongoing docket, U-21356 LGS v. GSU. Data responses were, by agreement of the parties, made part of the record.) The industry has relied on the 1954 Order and the majority of parties stated that they did not have a problem with interpretation of the Order.

If Gulf States Utilities Company's proposed explanation of the terms "necessary and desirable" were incorporated into the 1954 Order, the result would be a more subjective evaluation of who should serve an area. Current predictability would be lost, and the likelihood of disputes would increase as each case would have to be looked at in terms of projected revenues and costs over time instead of relative distances and expenses of extending a line.

Entex, ArkLa, TransLa, Polaris and St. Amant Gas Companies argued that GSU's unique position as the only gas and electric utility among the group would give GSU an advantage were greater competition permitted in the gas industry. However, as the crux of their argument appears to be that GSU would gain this advantage by encouraging customers to go all electric, it is difficult to appreciate how the combination utility would be a greater threat to competition than any stand alone electric utility would be who would presumably have a greater incentive to promote all electric homes than a combination utility would.

It is the case that a number of substantial changes have occurred recently in the regulation of the gas industry, particularly in the wake of FERC order 636. However no evidence was presented that recent federal enactments had any effect on the issue at hand. GSU argues that, given recent occurrences in other industries' regulations, it would be appropriate to encourage competition in the gas industry. Such broad policy questions are matters for the Commissioners. This proceeding only dealt with specific evidence presented in the docket.

Several disputes have arisen recently in situations wherein a developer has chosen to contract with one of several utilities that could reasonably and economically provide service to an entire subdivision. Because of the particular point within the subdivision at which initial construction was undertaken, one or another of the utilities would be somewhat closer; whereas, were construction initiated within the same subdivision, but at a different point, the other utility would be closer. The existing General Order on Gas would not necessarily preclude the Commission from considering the subdivision as a whole rather than only the first filing when determining the closest and least expensive extension, provided the appropriate information were supplied in the record. However, the court, in the absence of articulation of this option in the Order, as well as in the absence of substantial information in the docket, has declined to look at the whole subdivision as opposed to just the first filing. The Commission wishes to be able, in the limited number of cases in which there are several utilities that could economically serve an area and either utility is the "closest" utility to the subdivision, depending on the defined area, to consider the boundaries of an entire subdivision, rather than a particular filing. Therefore clarifying language is to be added to the 1954 Gas Order to assure that the Commission is not precluded from considering the entire area of a subdivision, if appropriate, when determining which utility is closest and can serve with the least costly extension.

The predominance of the evidence presented in this docket was that the 1954 Gas Order has functioned well over time to provide predictability to the industry, to limit line extension costs and to curtail territorial disputes among companies. The January 18, 1954 General Order is to remain in place for the time being with the addition of clarifying language regarding the area that may be considered when determining the closest utility.

IT IS THEREFORE ORDERED:

That the following clarifying language be and hereby is appended to the Commission's January 18, 1954 Gas General Order.

ORDERED

The Commission is not precluded from considering the entire area of a subdivision, if appropriate, when determining which utility is closest and can serve with the least costly extension.

The ordering language of the January 18, 1954 Gas General Order therefore now reads as follows:

\* \* \*

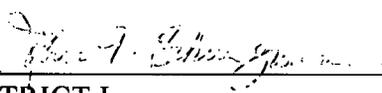
ORDERED

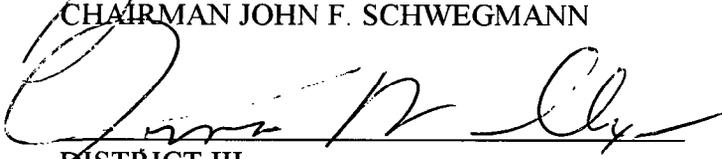
That no extension of mains shall be made by a Water or Gas Public Utility that will duplicate the service of another like utility serving the same commodity, nor shall extensions made to serve customers that could be served by a Public Utility already in existence in an economic and justifiable manner. In cases where it may be economically feasible for more than one utility company to serve a given customer or area, service shall be rendered by that company which can do so with the shortest, or least expensive extension. **The Commission is not precluded from considering the entire area of a subdivision, if appropriate, when determining which utility is closest and can serve with the least costly extension.** If a Public Utility, for a good cause, refuses to serve a prospective customer within its defined territory, another like utility may serve the said customer upon proper written authority from this Commission. And it is further

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BY ORDER OF THE COMMISSION  
BATON ROUGE, LOUISIANA

August 28, 1996

  
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VICE CHAIRMAN IRMA MUSE DIXON

  
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DISTRICT IV  
COMMISSIONER C. DALE SITTIG

DON OWEN - ABSENT  
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COMMISSIONER DON OWEN

  
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