

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

LOUISIANA PUBLIC SERVICE COMMISSION, EX PARTE

Docket No. R-35595, In re: Review of the Schedule of Prescribed Rates and Requirements for Towing and Recovery services in General Order dated August 05, 2016.

(Decided at the January 25, 2022 Business and Executive Session.)

This General Order amends Attachment A to General Order dated October 18, 2021 (R-35595).

ORDER

I. Background

The Louisiana Public Service Commission (“LPSC” or “Commission”) Staff opened this rulemaking pursuant to an unopposed directive at the Commission’s June 24, 2020 Business and Executive Session “to review and consider recommendations to the Commission regarding potential modifications and possible tariff increases regarding non-consensual towing and recovery services” as set forth in the Commission’s General Order dated August 05, 2016 (“8-5-2016 G.O.”).

Subsequently, the Commission’s General Order dated October 18, 2021 (“10-18-2021 G.O.”) was issued in this matter. This Interim General Order was issued in response to Act No. 206 of the 2021 Regular Session of the Louisiana Legislature, which granted the Commission the authority to fix the amount for certain fees which had previously been authorized by either statute or the administrative code. By way of the 10-18-2021 G.O., the Commission amended Attachment A to the 8-5-2016 G.O. to adopt the previously allowed charges, and thereby providing continuity to regulated towing companies until such fees can be fully examined by the Commission.

Under prior non-consensual towing and recovery orders, the Commission would adjust rates by an amount equal to the annual percentage rate as determined by the U.S. Department of Labor, Consumer Price Index (CPI) for the South Region, Urban Population Parameter, “Transportation Commodities Less Motor Fuel Parameter.” Commission Staff conducted a CPI review of the rates as currently set forth in Attachment A to the 10-18-2021 G.O., and determined that an interim rate increase was necessary.

On November 15, 2021 Staff filed its Proposed Recommendation for Interim CPI Increase and Request for Comments (“Proposed Interim Recommendation”), wherein Staff requested that

all comments be submitted on or before November 29, 2021. Staff received comments from the Towing & Recovery Professionals of Louisiana, Inc. (“TRPL”) and Rudy Smith Service, Inc. (“Rudy Smith”).

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.”

In addition, the Louisiana Legislature declared that the “use and operation of wreckers and towing services should be the subject of regulation by the Louisiana Public Service Commission,” and that the Commission has “the power and authority necessary to supervise, govern, regulate, and control the business of the operation and use of wreckers and towing services...[and] to fix reasonable and just rates, fares, tolls, charges for storage services[.]” The Commission’s power, authority, and duties in this regard includes “all matters connected with the service to be given or rendered[.]”

III. Staff Review

The Commission’s Audit Staff conducted a CPI review of the non-consensual towing and recovery rates in the 10-18-2021 G.O. Utilizing the LPSC’s previous methodology of calculating Transportation CPI increases for the towing industry, Staff determined that a 3.19% increase was necessary. The data period used was January 2019 through December 2020. Further, Staff used the Motor Vehicle Insurance CPI data for the first six months of 2021 to determine that the insurance CPI increased by 3.72%.

The Commission’s non-consensual towing and recovery rates had not been increased using a CPI analysis since 2016. Therefore, Staff recommended in its Proposed Interim Recommendation to add the two-year transportation CPI increase of 3.19% with the six-month insurance CPI increase of 3.72% to provide an overall one-time increase of 6.91%. Staff further noted that the 6.91% increase would be an interim increase only until the LPSC is able to issue a final order in this matter.

Staff filed its Proposed Interim Recommendation on November 15, 2021 and requested that all comments be submitted on or before November 29, 2021. On November 24, 2021, Staff received comments from TRPL, which indicated that it agreed with the Proposed Interim Recommendation.

On November 30, 2021, Staff received a Motion to Intervene Out of Time and Submit Comments from Rudy Smith. The Motion to Intervene was subsequently granted, and the comments by Rudy Smith were considered by Staff. Generally, these comments disagreed with Staff's application of the CPI rate review methodology. In the alternative, Rudy Smith requested that Staff conduct a survey of four to five towing companies, reviewing their receipts relative to insurance, equipment, and labor, and adjusting rates on a temporary basis pursuant to Staff's findings from this survey.

In responding to the comments submitted by Rudy Smith, Staff noted that a more thorough review of non-consensual towing and recovery rates is ongoing, and will be addressed in a future recommendation. Staff further noted that, while the Transportation CPI and the Motor Vehicle Insurance CPI do not solely reflect economic data from the towing and recovery industry, the use of a CPI adjustment has been previously applied by the Commission in adjusting non-consensual towing and recovery rates. Therefore, Staff recommended that the Commission issue an interim order amending Attachment A to the Commission's 10-18-2021 G.O. implementing a 6.91% interim rate increase.

Commission Action:

This matter was brought before the Commission for consideration at the January 25, 2022 Business and Executive Session. Vice Chairman Skrmetta made the following motion:

While recognizing that the Consumer Price Index has been used in the past by this Commission to adjust towing rates, I believe that the CPI is less accurate at tracking the effects of inflation on the towing industry, and that the Producer Price Index would be a more reasonable measure. Therefore, I move that we reject Staff's Final Interim Recommendation and instead implement a 15% increase on non-consensual towing and recovery rates, which is more in line with recent price increases as indicated by the PPI.

Vice Chairman Skrmetta's motion was seconded by Commissioner Francis.

Commissioner Campbell made a substitute motion to implement an Interim Rate Increase of \$11.50. The substitute motion failed due to a lack of a second.

On Vice Chairman Skrmetta's motion, seconded by Commissioner Francis, with Chairman Greene and Commissioner Boissiere concurring, and Commissioner Campbell opposing, the Commission voted to reject Staff's Proposed Recommendation for Interim Rate Increase of 6.91% and instead implement a 15% increase on non-consensual towing and recovery rates.

IT IS THEREFORE ORDERED THAT:

1. A 15% increase on non-consensual towing and recovery rates is authorized; and,
2. This Interim Order is effective immediately.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
February 17, 2022



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

BRANDON M. FREY
SECRETARY

/S/ LAMBERT C. BOISSIERE, III

DISTRICT III
CHAIRMAN LAMBERT C. BOISSIERE, III

/S/ MIKE FRANCIS

DISTRICT IV
VICE CHAIRMAN MIKE FRANCIS

OPPOSED

DISTRICT V
COMMISSIONER FOSTER L. CAMPBELL

/S/ ERIC F. SKRMETTA

DISTRICT I
COMMISSIONER ERIC F. SKRMETTA

/S/ CRAIG GREENE

DISTRICT II
COMMISSIONER CRAIG GREENE

Amended Attachment A to the second Interim General Order

**SCHEDULE OF PRESCRIBED RATES AND REQUIREMENTS FOR
NON-CONSENSUAL TOWING, RECOVERY AND RELATED SERVICES**

I. DEFINITIONS

- A. Light Duty - the towing, transport, and recovery of a vehicle with a gross vehicle weight rating of 10,000 pounds or less.
- B. Medium Duty - the towing, transport, and recovery of a vehicle with a gross vehicle weight rating of 10,001 pounds to 26,000 pounds.
- C. Heavy Duty - the towing, transport and recovery of a vehicle with a gross vehicle weight rating of 26,001 pounds and greater.
- D. Vehicle - every self-propelled vehicle and trailer and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.
- E. Non-consensual towing - the movement or transportation of a vehicle by a tow truck without the prior consent or authorization of the owner or operator of the vehicle. This includes private property tows conducted in accordance with the provisions of R.S. 32:1736 and tows by law enforcement or other public agencies. Whenever an owner or operator of a vehicle requests a law enforcement officer or other public agency to initiate a tow, such tow shall be considered non-consensual and subject to Louisiana Public Service Commission tow rates.
- F. Debris - materials and objects from a vehicle including, but not limited to, broken glass, bumpers, fluids, and hubcaps present at the scene of the accident.
- G. Cargo - the goods or merchandise conveyed in a vehicle or attached trailer.
- H. Hazardous Material Cargo - cargo that includes hazardous material defined as a substance or material that the U.S. Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table in 49 CFR 172.101, and materials that meet the defining criteria for hazard classes and divisions in part 49 CFR 173.
- I. Tow - a standard tow that does not require special techniques or special equipment as defined in Recovery but does require normal use of a tow sling, wheel lift, or winch cable to winch a vehicle onto a tilt bed tow truck. Tow rates shall apply whether the vehicle is either mobile or immobile and is in contact of the roadway surface.
- J. Private Property Tow - a tow from a location as provided for in accordance with La R.S. 32:1736.
- K. Mechanical Breakdown - a light duty tow that results from a mechanical breakdown.
- L. Stand-by - time during which a towing or recovery unit is not actively engaged in the towing or recovery of a vehicle. Travel time from dispatch to arrival on the scene shall not be considered Stand-By.
- M. Recovery - The use of air bag unit(s), winching, hoisting, up-righting, removing, or otherwise relocating a vehicle when the vehicle is found in such a location, state or position in which it could not remove itself from the location, state or position under the use of its own power, even if it were in complete operating condition. Rates for recovery include the time conducting actual recovery and not Stand-by or Tow time.
- N. Simple Water Recovery - the recovery of a vehicle when it is partially submerged in water and where the amount of water impedes recovery, but does not exceed 12 inches in depth.
- O. Complicated Recovery
 - 1. Rollover recovery - when a vehicle is overturned or positioned in such an irregular way that requires repositioning and an additional operator to complete the recovery.
 - 2. Removal of cargo that has become unsecured from the vehicle.
 - 3. When unloading and reloading cargo in box trailers, box trucks, flatbed trailers and tank trucks is necessary to complete the recovery.
 - 4. Water recovery – when an additional operator is required to complete the recovery of a vehicle in water greater than 12 inches of depth.

- P. Air Bag Unit - special equipment used to recover a vehicle by at least partially lifting the vehicle.
- Q. Rotator - a specialized tow truck with a rotator system that enables the Tow Company to both lift and lower vehicles and move them horizontally.
- R. Laborer - a Tow Company employee, other than the driver, who the Tow Company utilizes in a Complicated Recovery to perform the following services: unloading or loading cargo, cleaning up debris, applying oil absorbing material, directing traffic, or other services necessary to complete a Complicated Recovery.
- S. Supervisor - a Tow Company employee, other than the driver or a laborer, who the Tow Company utilizes in a Complicated Recovery when two or more towing units or laborers are required.
- T. Specialized Labor or Equipment - specialized labor or equipment necessary to complete a Complicated Recovery. Specialized labor is a certified professional diver or a law enforcement officer. Specialized equipment is heavy equipment including, but not limited to, a bulldozer or forklift.
- U. Covered Storage- continuous covering which adequately protects a vehicle and its contents, where said vehicle and/or its contents have some intrinsic value. Covered storage includes, but is not limited to, the use of a tarpaulin or similar covering, such as “crash wrap,” which protects the vehicle and its interior from rain, dew, moisture and other elements.
- V. Oversized Vehicle Storage- the storage of a vehicle which has greater than 4 wheels on the ground or a vehicle, or any permanent portion thereof that is greater than 20 feet in length.
- W. Outside Storage- a vehicle being placed outside and exposed to the elements.
- X. Gate fee- For the purposes of this general order, gate fee shall have the same meaning as the definition provided in La. R.S. 32:1734
- Y. Normal business hours- For the purposes of this general order, normal business hours shall have the same meaning as the definition provided in La. R.S. 32:1734

II. RATES

A. TOWING, RECOVERY, STAND-BY

Towing rates start at time of dispatch.

Light Duty			
Towing	Standard Recovery	Simple Water Recovery	Stand-by
\$123.50 per hour *	\$169.00 per hour ^	\$194.00 per hour ^	\$62.00 per hour ^
* 1 ½ hour minimum. After minimum, compute in ½ hour increments. ^ Computed in ½ hour increments.			
Medium Duty			
Towing	Standard Recovery	Simple Water Recovery	Stand-by
\$271.50 per hour*	\$349.00 per hour ^	\$373.00per hour ^	\$135.00 per hour ^
*1 hour minimum. After minimum, compute in ½ hour increments ^ Computed in ½ hour increments.			
Heavy Duty			
Towing	Standard Recovery	Simple Water Recovery	Stand-by
\$349.00 per hour*	\$426.00 per hour ^	\$451.00 per hour ^	\$174.00 per hour ^
*1 hour minimum. After minimum, compute in ½ hour increments ^ Computed in ½ hour increments.			

Private Property Tow
<i>Light Duty - \$123.50 flat rate; or \$151.00 flat rate</i> when repositioning equipment, a fold down light bar, or an additional operator is required. The Tow Company must document why repositioning equipment, a fold down light bar or an additional operator is required.
<i>Medium Duty - \$271.50 flat rate</i>
<i>Heavy Duty - \$349.00 flat rate</i>
Mechanical Breakdown Tow
<i>\$123.50 per hour</i> with a 1 hour minimum. After minimum compute in 1/2 hour increments.

B. ADDITIONAL CHARGES FOR COMPLICATED RECOVERY

These charges are only allowed if the recovery meets the definition of Complicated Recovery in Section I. paragraph O.

Extra Tow Truck or Truck and Trailer For Removal of Cargo or Oversized Debris. The Tow Company must provide photographs and documentation explaining why oversized debris will not fit on the initial truck.	<i>\$155.50 per hour*</i>
Laborer	<i>\$46.00 per hour*</i>
Supervisor	<i>\$77.50 per hour*</i>
* 1 hour minimum. After the minimum, computed in 1/2 hour increments	
Complete Air Bag Unit	<i>\$2,480.00 flat rate</i> (includes all equipment and personnel associated with the air bag recovery)
Rotator	<i>\$242.00 per hour in addition to the Standard Recovery rate in A.**</i> This charge is only allowed if the law enforcement officer at the scene completes the LPSC Rotator Certification Form as found in section III.E.
**2 hour minimum After the minimum, compute in 1/2 hour increments	
Recovery of Hazardous Material Cargo	If hazardous material cargo becomes unsecured, the Tow Company may charge 50% above the rates for towing, recovery, laborer, and supervisor
For medium and heavy duty recoveries, oil absorbing material in excess of the minimum 5 gallons required by LAC Title 55.	\$7.00 per gallon
<p>Specialized Labor or Equipment</p> <p>When it is necessary for a Tow Company to utilize Specialized Labor or Equipment to complete a Complicated Recovery, the Tow Company may charge for the Specialized Labor or Equipment as outlined in paragraphs 1 -3 below.</p> <ol style="list-style-type: none"> 1. If the Tow Company rents or subcontracts Specialized Labor or Equipment, the Tow Company may charge the amount of the actual rental invoice or subcontractor invoice plus 10%. The Tow Company shall attach the rental invoice or subcontractor invoice to the Tow Company invoice. 2. If the Tow Company provides the Specialized Labor or Equipment, the Tow Company may charge the amount of the current market value of the labor or equipment plus 10%. The Tow Company shall attach documentation evidencing the current market value to the Tow Company invoice. 3. A Tow Company may not charge for use of equipment, tools, oil-absorbing materials, brooms, shovels, flashlights, electric lanterns, fire extinguishers, emergency warning devices, steering wheel clamps, tow slings, or tow plates, cables, blocks, chains, hooks, or any other truck components or tools required to be on the tow truck by LAC Title 55, Chapter 19. 	

C. STORAGE

Rates are per calendar day. A power unit and trailer are considered two separate vehicles for storage purposes.

Outside Storage <i>\$27.50 per day</i>	Covered Storage <i>\$33.00 per day</i>	Oversize Storage <i>\$49.50 per day</i>
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D. FUEL SURCHARGE

A Tow Company shall apply the fuel surcharge on the sum of the towing and recovery and extra truck and trailer charges only.	
Fuel Price (per gallon)	Fuel Surcharge
\$0.00 to \$1.24	No surcharge
\$1.25 to \$1.99	3% surcharge
\$2.00 to \$2.99	9% surcharge
\$3.00 to \$3.99	12% surcharge
\$4.00 to \$4.99	14% surcharge
\$5.00 and greater	16% surcharge
There shall be no change in the top portion of the brackets. If fuel ever returns to the \$1.24 level and below, a surcharge shall not be charged. The surcharge will be based on the average price of self-service diesel fuel as determined based upon the price reported by the U. S. Department of Energy (DOE) for the Petroleum Administration for Defense District 3 (Gulf Coast).	

E. GENERAL PROVISIONS

1. A Tow Company shall only charge the rates stated in this order and fees allowed by State Police in LAC Title 55.
2. All rates for towing, recovery, and stand-by in Section II.A include the truck and driver.
3. A Tow Company shall only charge for equipment and personnel that are present at the scene of the recovery or tow.
4. The Commission’s jurisdiction is from the time that the towing or recovery unit is dispatched to provide the non-consensual tow service until the time the vehicle is released to the owner (or authorized representative) of the vehicle. Rates in addition to those allowed by this order are not allowed for removal of debris from the scene or for draining fluids, removing batteries, or other similar activity aimed at preventing the vehicle from leaking.

F. GATE FEES; OTHER FEES

1. A towing or storage company that assesses gate fees shall not assess such fee in an amount in excess of **\$52.00**.
2. No towing or storage company shall charge a fee for the retrieval of contents from a stored or towed vehicle during normal business hours. However, a towing or storage company may charge a fee, not to exceed **\$52.00**, for the retrieval of contents from a stored or towed vehicle at a time other than during normal business hours.

G. ADMINISTRATIVE AND MAILING FEES

1. Licensed storage companies may charge the vehicle owner/lien holder those administrative costs incurred by filing an Official Report of Stored Vehicle (“ORSV”) along with any postal charges related to the mailing of the ORSV notices and certificate of mailing letters sent to the vehicle owner and any lien holder.
2. The maximum administrative fee that may be charged by a storage company for filing of the ORSV notice shall be **\$29.00** for in-state notifications and **\$34.50** for out-of-state notifications. The maximum administrative fee that may be charged for mailing certificate of mailing letters to the vehicle owner and lien holder shall be no more than the rate for US Postal Service plus **\$4.50** per required letter.
3. All costs must be documented with receipts, which shall be made available to the Commission, vehicle owner, and lien holder upon demand.

