

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

LOUISIANA PUBLIC SERVICE COMMISSION,
EX PARTE

Docket No. R-34054, In re: Rulemaking to examine the Commission's Rules of Practice and Procedure related to a motor carrier of waste proving public convenience and necessity when applying for a common carrier certificate or contract carrier permit, as well as possible adoption of rules and regulations specific to applications for common carrier certificates or contract carrier permits as it relates to hauling waste

(Decided at the September 20, 2017 Business and Executive Session)

This General Order repeals and reenacts Rule 33 and Rule 34 of the Rules of Practice and Procedure of the Louisiana Public Service Commission and supersedes General Order dated May 30, 2012 (R-30297).

I. Background

Docket No. R-34054 was originally opened pursuant to a Commission Directive issued at the April 28, 2016 Business and Executive Session ("B&E") directing Commission Staff to examine exempting motor carriers of waste from having to prove public convenience and necessity when applying for a common carrier certificate or contract carrier permit. The initial notice for this docket was published in the Commission's May 6, 2016 Official Bulletin. The "in re" contained in the original publication was as follows:

Amendments to Rule 33 of the LPSC's Rules of Practice and Procedure to remove the requirement for motor carriers of waste to prove public convenience and necessity, while maintaining the requirement to prove fitness to operate.

In response to the Original publication, timely interventions and initial comments were received from the following: Roy Bailey Construction, Inc.; Stranco, LLC; Stafford Transport of Louisiana, Inc. d/b/a CEI; Sprint Waste Service, LP; Vanguard Vacuum Trucks, LLC; Gulf Coast Responders, LLC; CNC Oilfield Services; G&C Construction International, LLC d/b/a G&C Energy Services; F.A.S. Environmental Services, LLC and Deepwell Energy Services, LLC. In addition to the aforementioned intervenors, interested party filings and/or requests to be added to the service list were submitted by the following law firms: Parker Strauss, LP; Marionneaux Kantrow, LLC, and Roedel Parsons.

An initial request for comments was issued, after which Staff counsel issued a Proposed Staff Recommendation" ("8/3/2016 Recommendation") on August 3, 2016. The 08/03/2016 Recommendation provided an overview of the historical concept of public convenience and necessity ("PC&N"), and its ultimate application in Motor Carrier regulation. The 08/03/2016 Recommendation ultimately recommended that the Commission modify existing Rule 33 of the

Rules of Practice and Procedure to eliminate the requirement that a waste hauler be required to prove PC&N.

Comments were submitted in response to the 08/03/16 Recommendation jointly by Roy Bailey, Stranco and CEI, jointly by G&C Construction, G&C Energy and Deepwell, and jointly by Sprint, Vanguard and Gulf Coast Responders. The docket remained dormant for some time following receipt of these comments. In an effort to re-engage parties, Staff issued a request for additional comments, and noticed a technical conference on February 21, 2017.

The technical conference was attended by representatives for a number of the intervenors and interested parties in this docket. Proposed Rules and Regulations were circulated at the technical conference for discussion purposes. Comments were received by a number of parties on those Proposed Rules and Regulations. Additionally, Hine Environmental Waste Service, LLC (“Hine”), a party that had not previously intervened, filed specific comments in response to the Proposed Rules and Regulations.

Due to concerns regarding the scope of the docket, and potential notice issues raised by intervenors, Docket No. R-34054 was re-published in the Commission’s April 4, 2017 Official Bulletin with the following amended “in re”:

Rulemaking to examine the Commission’s Rules of Practice and Procedure related to a motor carrier of waste proving public convenience and necessity when applying for a common carrier certificate or contract carrier permit, as well as possible adoption of rules and regulations specific to applications for common carrier certificates or contract carrier permits as it relates to hauling waste. (This docket is being republished to clarify the scope of the rulemaking and to allow any interested party to intervene).

On May 5, 2017, Staff issued its Final Recommendations and Draft Rules and Regulations (“05/05/2017 Recommendation”), which still required that an applicant prove both fitness and PC&N, but set forth the specific factors required to make such a showing. Staff’s 05/05/2017 Recommendation was considered at the Commission’s May 19, 2017 B&E. Commissioner Skrmetta made a motion to adopt Staff’s 05/05/2017 Recommendation. The motion died for lack of a second. After discussion, on motion of Commissioner Campbell, seconded by Commissioner Boissiere, with Vice Chairman Skrmetta and Chairman Angelle concurring, and Commissioner Francis recusing himself due to a conflict of interest, the Commission voted to defer the consideration of Staff’s 05/05/2017 Recommendation to the June 23, 2017 B&E.

On May 24, 2017, Staff issued a Request for Specific Comments regarding the 05/05/2017 Recommendation, with any additional comments being accepted until June 5, 2017. In response to this request, Staff received four sets of comments from the following: 1) Louisiana Mid-Continent Oil and Gas Association; 2) Marionneaux Kantrow, LLC; 3) Roy Bailey Construction, Inc., Stranco, LLC, and Stafford Transport of Louisiana, Inc. d/b/a CEI; and 4) G&C Construction International, LLC d/b/a G&C Energy Services and Deepwell Energy Services, LLC. In response to comments received after the May 24, 2017 B&E, Staff issued its Amended Final Recommendation and Draft Rules and Regulations on June 9, 2017 (“06/09/2017 Recommendation”).

Staff’s 06/09/2017 Recommendation was considered at the Commission’s June 28, 2017 B&E. Chairman Skrmetta made a motion to accept the 06/09/2017 Recommendation. Commissioner Campbell made a substitute motion to accept the law as stated by the Legislature in Act 278.¹ The substitute motion was seconded by Commissioner Boissiere, with Chairman Skrmetta and Commissioner Baldone opposing and Commissioner Francis recusing himself due to a conflict of interest. The motion failed with a 2:2 vote. Chairman Skrmetta re-urged his original motion. The motion was seconded by Commissioner Baldone, with Commissioner Campbell and Commissioner Boissiere opposing and Commissioner Francis recusing himself due to a conflict of interest. The motion failed with a 2:2 vote.

At the request of Commissioner Francis, Staff’s 06/09/2017 Recommendation was reconsidered at the September 20, 2017 B&E.

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.”

¹ On June 15, 2017, Act No. 278 of the 2017 Regular Session of the Louisiana Legislature (“Act 278”) was signed by Governor John Bel Edwards. Act 278 removed statutory provision within Title 45 of the Louisiana Revised Statutes that referenced the requirement for Commission regulated carriers to prove PC&N.

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. Commission Action:

This matter was brought before the Commission for reconsideration at the September 20, 2017 Business and Executive Session. On motion of Chairman Skrmetta, seconded by Commissioner Francis, with Vice Chairman Boissiere and Commissioner Baldone concurring and Commissioner Campbell absent, the Commission voted to reconsider the matter. On motion of Chairman Skrmetta, seconded by Commissioner Francis, with Vice Chairman Boissiere and Commissioner Baldone concurring and Commissioner Campbell absent, the Commission voted to adopt Staff's Amended Final Recommendation and Draft Rules and Regulations filed June 9, 2017.

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IT IS THEREFORE ORDERED THAT:

Consistent with the above-cited constitutional authority, the Commission, by way of this Order, adopts Staff's June 9, 2017 Recommendation, attached hereto and made part hereof as Exhibit A, and the accompanying rules and regulations, attached hereto and made part hereof as Exhibit B, which apply to all applications for waste hauling authority.

This Order is effective immediately.

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

October 18, 2017

/S/ ERIC F. SKRMETTA
DISTRICT I
CHAIRMAN ERIC F. SKRMETTA

/S/ LAMBERT C. BOISSIERE
DISTRICT III
VICE CHAIRMAN LAMBERT C. BOISSIERE

ABSENT
DISTRICT V
COMMISSIONER FOSTER L. CAMPBELL

/S/ MIKE FRANCIS
DISTRICT IV
COMMISSIONER MIKE FRANCIS


EVE KAHAO GONZALEZ
SECRETARY

/S/ DAMON J. BALDONE
DISTRICT II
COMMISSIONER DAMON J. BALDONE

EX PARTE

In re: Rulemaking to examine the Commission's Rules of Practice and Procedure related to a motor carrier of waste proving public convenience and necessity when applying for a common carrier certificate or contract carrier permit, as well as possible adoption of rules and regulations specific to applications for common carrier certificates or contract carrier permits as it relates to hauling waste

STAFF'S AMENDED FINAL RECOMMENDATION AND DRAFT RULES AND REGULATIONS

I. BACKGROUND

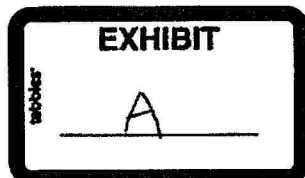
The above-captioned docket was originally opened pursuant to a Commission Directive issued at the April 28, 2016 Business and Executive Session ("B&E"), with the initial notice published in the Commission's May 6, 2016 Official Bulletin. The "in re" contained in the original publication was as follows:

Amendments to Rule 33 of the LPSC's Rules of Practice and Procedure to remove the requirement for motor carriers of waste to prove public convenience and necessity, while maintaining the requirement to prove fitness to operate.

In response to the Original publication, timely interventions and initial comments were received from the following: Roy Bailey Construction, Inc.; Stranco, LLC; Stafford Transport of Louisiana, Inc. d/b/a CEI; Sprint Waste Service, LP; Vanguard Vacuum Trucks, LLC; Gulf Coast Responders, LLC; CNC Oilfield Services; G&C Construction International, LLC d/b/a G&C Energy Services; F.A.S. Environmental Services, LLC and Deepwell Energy Services, LLC.

In addition to the above-listed intervenors, interested party filings and/or requests to be

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added to the service list were submitted by the following law firms: Parker Strauss, LP; Marionneaux Kantrow and Roedel Parsons.

A. Proposed Staff Recommendation Issued August 3, 2016

An initial request for comments was issued, after which former Staff counsel issued a “Proposed Staff Recommendation” (“8/3/16 Proposed Rec.”) on August 3, 2016. As noted in the 8/3/16 Proposed Rec., the Commission has previously considered exempting motor carriers of waste from proving Public Convenience and Necessity (“PC&N”), but instead “struck a balance between the historical requirement to prove PC&N and the reality of the current trucking industry¹.”

The 8/3/16 Proposed Rec. provides an overview of the historical concept of PC&N, and its ultimate application in Motor Carrier regulation². The 8/3/16 Proposed Rec. ultimately recommend that the Commission modify existing Rule 33 of the Rules of Practice and Procedure to eliminate the requirement that a waste hauler be required to prove PC&N³. But, as will be pointed out herein, the 8/3/16 Proposed Rec.’s ultimate conclusion was based on an incomplete analysis of current state transportation regulation, and relied on what is clearly a distinguishable and unbinding federal district court decision⁴.

B. Further Comments and Technical Conference

Comments were submitted in response to the 8/3/16 Proposed Rec. jointly by Roy Bailey, Stranco and CEI, jointly by G&C Construction, G&C Energy and Deepwell, and jointly by Sprint, Vanguard and Gulf Coast Responders. However, the docket remained dormant for some

¹ 8/3/16 Proposed Rec. at page 1.

² Id at 3-5

³ Id at 8-10

⁴ Id at 7-8

time following receipt of these comments. In an effort to re-engage parties, Staff issued a request for additional comments, and noticed a technical conference on February 21, 2017. The technical conference was attended by representatives for a number of the intervenors and interested parties in this docket. Additionally, Proposed Rules and Regulations were circulated at the technical conference for discussion purposes. Comments were received by a number of parties on those Proposed Rules and Regulations, which will be summarized supra. Additionally, Hine Environmental Waste Service, LLC “Hine”, a party that had not previously intervened, filed specific comments in response to the Proposed Rules and Regulations.

Due to concerns regarding the scope of the docket, and potential notice issues raised by intervenors, the matter was re-published in the Commission’s April 4, 2017 Official Bulletin with the following amended “in re”:

Rulemaking to examine the Commission’s Rules of Practice and Procedure related to a motor carrier of waste proving public convenience and necessity when applying for a common carrier certificate or contract carrier permit, as well as possible adoption of rules and regulations specific to applications for common carrier certificates or contract carrier permits as it relates to hauling waste. (This docket is being republished to clarify the scope of the rulemaking and to allow any interested party to intervene).

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 [public service] 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

*Staff’s Amended Final Recommendation and
Draft Rules and Regulations
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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. POST TECHNICAL CONFERENCE COMMENTS REGARDING DRAFT "RULES AND REGULATIONS"

Following issuance of the 8/3/16 Proposed Rec., this matter sat dormant for some time. As noted *infra*, a technical conference was convened on February 21, 2017, to address the existing 8/3/16 Proposed Rec., the comments submitted in reply thereto, and other outstanding concerns. To further the discussion, Staff circulated draft "Rules and Regulations". Staff specifically recommended for discussion that more weight be given to the benefits of healthy competition and protecting the public health, safety and welfare and less weight be given to protecting the economic interests of existing carriers. Nonetheless, in an effort to achieve balance, a two-tiered permitting process was proposed. Finally, Staff recommended that the Commission modify Rule 33 and Rule 34, as outlined therein. Comments were received from a number of parties, which are summarized as follows.

I. Sprint, Vanguard and Gulf Coast Responders. ("Joint Supporters")

The Joint Supporters filed comments that generally agreed and fully supported the Proposed Rules and Regulations circulated at the technical conference⁵. Additionally, they suggested that proposed Section 401, for both TIER I and TIER II applications, include a

⁵ Joint Supports Comments filed March 17, 2017 at page 3.

mandatory requirement that an applicant must appear before an ALJ⁶. The Joint Supporters further suggested that proposed Section 501 be amended to add factors to be considered by Staff and the Commission when reviewing potential violations⁷. Finally, the Joint responders suggested Section 701 be amended to require specific insurance levels of \$2,000,000/ \$100,000 / \$2,000,000⁸.

2. *Hine Environmental*

Hine filed comments on March 17, 2017, wherein the company fully supported the 8/3/16 Proposed Rec⁹. Hine further argued that the Proposed Rules and Recommendation, by not modifying the existing PC&N requirements, makes no changes to the existing Commission policy¹⁰. Hine believes the existing rules amount to economic protectionism, a prohibited rationale, citing *Brewer v. Zawacki*¹¹ in support of this argument. Rather than require PC&N, Hine suggested the Commission apply a fitness test to future waste hauling applicants¹². Alternatively, if the Commission approves the two-Tier process, Hine agrees with the requirements of Section B.1, and believes that Section B.2. should be modified to state that if requirements a-e are satisfied, the burden of proof has been satisfied. Hine specifically rejected a “needs” based approach, arguing competition and free enterprise should not be stifled¹³. Hine also rejected that concept that a Tier II application could be contested.

⁶ Id.

⁷ Id at pages 3-4.

⁸ Id at pages 4-5.

⁹ Hine Comments at page 1.

¹⁰ Id at 1-2.

¹¹ *Brewer v. Zawacki*, 997 F.Supp. 2d. 691 (E.D. Ky. 2014).

¹² Hine comments at page 3.

¹³ Id.

3. *Gayle Busch of Roedel Parsons*

Ms. Busch filed general comments in response to the Proposed Rules and Regulations, noting the comments were not being submitted on behalf of any carrier. Like Hine, Ms. Busch supported the 8/3/16 Proposed Rec. previously issued in the docket¹⁴. She further argued that the break-point suggested in the two-Tier approach is arbitrary and capricious and should be rejected¹⁵. Finally, she stated that the Proposed Rules and Regulations blur the existing distinction between common and contract carriers, and should therefore be rejected¹⁶.

4. *G&C Construction, G&C Energy Services, and Deepwell Energy Services (“Joint Opponents”)*

The Joint Opponents argue the proposed Rules and Regulations are unduly burdensome, will produce a chilling effect on future applications, are arbitrary and capricious and violate due process¹⁷. The Joint Opponents further argue that the proposed rules are similar to the Kentucky regulations struck down by *Brewer* as arbitrary and capricious, and should be rejected¹⁸. They further argue that the proposed rules represent a “step back” and are more burdensome than the existing requirements¹⁹. The remainder of the comments essentially echo findings contained in the 8/3/16 Proposed Rec., namely that PC&N as a concept should be rejected, as no other states are requiring it²⁰. The Joint Opponents argue that Staff should shift the burden to protestants to challenge recommendations, rather than on the applicant. The group further argue that proposed sections of the rule (violations, insurance) are outside the scope of the rulemaking, and should

¹⁴ Busch comments at page 1.

¹⁵ *Id.* at 1-2.

¹⁶ *Id.*

¹⁷ Joint Opponents at page 8.

¹⁸ *Id.* at 9.

¹⁹ *Id.* at 2.

²⁰ *Id.* at 3-4.

thus not be considered in the current docket²¹. Finally, the group suggests that opening up the process could bring in additional revenue to the Commission, which could allow for greater enforcement of the existing regulations. In the alternative, the Joint Opponents recommended the Proposed Rules and Regulations be provided to the Commission as an alternative to the 8/3/16 Proposed Rec., with suggested amendments²².

5. Roy Bailey Construction, Inc.; Stranco, LLC and Stafford Transportation of Louisiana, Inc. d/b/a CEI

Roy Bailey, et al did not file comments in reply to the pre-technical conference notice, or in response to the Proposed Rules and Regulations discussed therein. However, as the group did file comments in response to the 8/13/16 Proposed Rec., and as those comments questioned the Commission's ability to enact rules on this topic, they are being summarized and addressed herein. Specifically, Bailey argues the requirements for proving PC&N are statutorily defined, and thus, the legislature, and not the Commission, is the proper venue for modifying those requirements²³. Bailey further argues that the Commission is restricted to enacting procedural rules, while the legislature can freely legislate substantive matters as long as it does not attempt to reduce LPSC jurisdiction²⁴.

IV. ANALYSIS

As is evident by the comments received not only in the multiple rounds of comments in the current docket, but in prior dockets that attempted to address this issue, the concept of PC&N, and its application to transportation regulations, elicits robust discussions on both sides of the issue. In an attempt to clarify the existing requirements in a more thorough manner, Staff

²¹ Id.

²² Id at 6; Exhibit D attached to comments.

²³ See Roy Bailey et. al. comments at page 1-2.

²⁴ Id at 3.

suggested at the technical conference the Commission should consider adopting a set of “Rules and Regulations” that would apply to the industry as a whole. Specifically, Staff proposed for discussion “Rules and Regulations” specific to the topic of waste hauling, and its regulation by the Commission.

The Commission has previously adopted such “global rules and regulations” in other areas of Commission jurisdiction (water and wastewater²⁵, telecommunications²⁶, correctional phones²⁷ and common carrier pipelines²⁸ to name a few). In each of these instances, efforts were made to codify, on a Commission level consistent with the constitutional rulemaking authority, all rules and regulations applicable to a particular industry or class of carriers. Simply put, the current definition of PC&N, and its application to waste haulers, does not properly belong in the Commission’s procedural Rules of Practice and Procedure. It is also clear that the Commission, as the constitutionally-created agency charged with regulating common carriers, is the proper forum to enact such rules and regulations.

Unfortunately, Staff’s efforts at consolidation have been initially met with due process concerns from a number of the respondents. To rectify these concerns, the matter was republished in the April 4, 2017 Official Bulletin to clarify the scope of the docket through a new “in re” and to allow the opportunity for additional interventions. It is important to note, however, that no additional interventions have been received since the republication.

²⁵ See Water and Wastewater Rules and Regulations, as most recently modified by the General Order dated September 12, 2014.

²⁶ See Regulations for Competition in the Local Telecommunications Market, as most recently amended by the General Order dated July 26, 2013

²⁷ Inmate Calling Services Rules and Regulations, adopted by the General Order dated April 20, 2016.

²⁸ Rules Applicable to Common Carrier Pipelines, adopted by the General Order dated March 9, 2015.

A. The Current state of PC&N in Common Carrier Regulation

Some of the Intervenor's placed a great deal of reliance in statements made in the 8/3/16 Proposed Rec., and specifically, the following language contained therein,

The requirement to prove PC&N evolved to promote the sound development of the motor carrier industry at a time the industry was in its infancy. That purpose no longer exists. In fact, a regulation that promotes existing carriers at the expense of prohibiting new carriers from entering the market could be legally challenged as not serving a legitimate public purpose... It is not surprising that Staff only found two states other than Louisiana that utilize a PC&N requirement to regulate waste carriers' entry into the market.²⁹

Unfortunately, however, this conclusion was based on research into PC&N that was incomplete and does not accurately reflect the current status of PC&N in other jurisdictions. Finding additional PC&N regulations when performing initial research caused Staff to undertake a comprehensive review of the regulatory environment in other jurisdictions, and the results were rather surprising. Specifically, as is shown in the chart attached as Exhibit A, Staff identified eighteen public utility commissions³⁰, other than Louisiana, that exercise jurisdiction over transportation by common carrier. Of these eighteen, five, in addition to Louisiana, have specific authority to regulate some form of waste hauling. Three of these five (or four of six if Louisiana is included) require a showing of PC&N prior to receiving authority to haul waste. It is worth noting that the two states with waste hauling regulatory authority, but do not require PC&N, require an annual re-registration by waste haulers. Thus, all six jurisdictions where public utility commissions regulate waste place a greater emphasis on regulating waste haulers. But even more

²⁹ See 8/3/16 Proposed Rec. at page 7 of 10. Internal citations omitted.

³⁰ This research initially focused on State Utility Commission members of NARUC that have similar regulatory authority to the LPSC. As is seen by the number, while all state PSCs regulate some form of public utilities, a limited number also regulate motor carriers. In other jurisdictions, such as Kentucky and Nevada, transportation agencies engage in similar regulation. However, as non-PSC type entities, the research did not focus on these agencies.

surprising, thirteen of the eighteen states require a showing of need or PC&N prior to certification for passenger and/or household goods carriers (HHG); this finding is interesting given that the LPSC has not required a showing of PC&N for HHG authority since 2004³¹, and has not required a showing of PC&N to receive passenger authority since 1999, and is specifically contrary to the analysis contained in the 8/3/16 Proposed Rec. and many of the comments filed in support thereof. The conclusion is obvious: PC&N is not an antiquated concept as was suggested in the 8/3/16 Proposed Rec., but continues to be applied in many jurisdictions in areas the LPSC has determined it is no longer needed.

B. How do other jurisdictions define "PC&N"?

Given that a number of jurisdictions still require a showing of PC&N, a review of the specific requirements, whether it be for waste or other common carriers, is beneficial. What Staff found in conducting this review is that the requirements vary from jurisdiction to jurisdiction. In some states, a test similar to *Matlack*³² is applied, while in others a showing that the public need supports the application³³, while in others, the showing is nothing but a "fitness test"³⁴ similar to the one the LPSC currently uses when registering HHG and passenger carriers. Yet all of these jurisdictions cited refer to the ultimate authority provided to a successful applicant as a Certificate of PC&N.

Thus, as has consistently been suggested by the LPSC, and the courts, the concept of PC&N is not susceptible to a precise definition³⁵, but rather is dynamic and flexible. And other

³¹ General Order dated May 17, 2004 specifically exempted HHGs from the requirement of proving PC&N as a prerequisite to certification.

³² *Matlack Inc. v. LPSC*, 622 So.2d 640 (La. 1993)..

³³ Illinois, Nebraska and Washington

³⁴ Ohio

³⁵ *Florane v. LPSC*, 433 So.2d 120 (1983).

states have found such a distinction exists as is evidenced by the various requirements and regulations that differ on a jurisdiction by jurisdiction basis.

*C. Bruner v. Zawacki; Wilson-Perlman v. MacKay*³⁶

The 8/3/16 Proposed Rec., and a number of subsequent comments, suggest that any PC&N regulations that provide existing certificate holders an opportunity to protest an application are in violation of Constitutional Due Process as found in *Bruner*. However, a thorough reading of *Bruner*, and the Kentucky regulations it struck down, clearly paint the picture of a thoroughly distinguishable and antiquated concept of PC&N employed by Kentucky Transportation Cabinet Division of Motor Carriers. As stated in *Bruner*, from 2007 through 2012, thirty-nine applications for certificates were filed with the Kentucky entity, eliciting 114 protests in opposition. Nineteen of the thirty-nine applications involved multiple protests, and in those instances, sixteen of the applicants withdrew their applications. The three that went forward were denied by the Cabinet. In summary, the Cabinet has never issued a Certificate to a new applicant when a protest from a competing mover was made. Contrasted with the number of applications filed with the LPSC, and the number of certificates issued, a clear distinction is evident. Given this background, the *Bruner* decision found that “the notice, protest, and hearing procedures” to be unconstitutional.

However, a contrary decision was rendered subsequent to *Bruner* in *Wilson-Perlman*, wherein the Federal district court found Nevada statutes that require a showing of PC&N, and also allow for a competitor’s protest, not an unconstitutional requirement. Specifically, *Wilson-Perlman v. Mackay*, determined that Nevada had provided a rational public purpose for the statutes and they did not amount to economic protectionism, as the statutory scheme’s stated

³⁶ *Wilson-Pearlman v. MacKay* 2016 WL 1170990 , USDC Nevada (2016)

purpose of providing for fair and impartial regulation and promoting safe, adequate, economical and efficient service, while at the same time discouraging practices that would increase or create competition detrimental to motor carrier business to be a rational bases for the regulations³⁷.

A simple conclusion to be reached from these conflicting rulings is that a state may continue to require a showing of PC&N, even with the opportunity for a competitor to veto, as long as those regulations are not applied in a manner that result in the denial of all protested applications.

D. Staff's Proposed PC&N and Waste Hauling Rules and Regulations

Given the continued applicability of PC&N regulations in other jurisdictions, comments previously received in this docket, and the potential concerns about expanding the scope of this docket to include additional regulations, Staff proposes the attached Draft Rules and Regulations be adopted, for the reasons set forth herein. While the format is similar to that provided for discussion at the Technical Conference, these Draft Rules and Regulations contain many substantive changes. Specifically, the Draft Rules and Regulations accomplish the following:

1. Adopts historic definitions for Common Carriers, Contract Carriers, and waste and specifically codifies them herein.
2. Maintains the historical distinction between Common and Contract Carriers
3. Eliminate the two-Tier approach suggested earlier, and replace it with a defined Common Carrier and Contract Carrier application process
4. Establish the following requirements, which if satisfied creates a rebuttable presumption.
 - a. Contract carriers must show fitness and a public need to be permitted.
 - b. Common carriers must show fitness and a public need to satisfy PC&N requirements.

³⁷ *Wilson-Perlman* at page 7.

5. Provides specific forms for applying for either a Common Carrier Certificate or Contract Carrier Permit³⁸.
6. Reserves for further rulemaking the issue of increased insurance requirements.

E. Amendments to Staff's Proposed PC&N and Waste Hauling Rules and Regulations following the May 19, 2017 Business and Executive Session

At the Commission's May 19, 2017 B&E, Staff's Final Recommendation and Draft Rules and Regulations were discussed and ultimately deferred to the June 23, 2017 B&E.

On May 24, 2017, Staff issued a Request for Specific Comments regarding the Recommendation and Proposed Rules and Regulations, with any additional comments being accepted until June 5, 2017. In response to this request, Staff received four sets of comments from the following: 1) Louisiana Mid-Continent Oil and Gas Association³⁹; 2) Marionneaux Kantrow, LLC; 3) Roy Bailey Construction, Inc., Stranco, LLC, and Stafford Transport of Louisiana, Inc. d/b/a CEI; and 4) G&C Construction International, LLC d/b/a G&C Energy Services and Deepwell Energy Services, LLC.

In general, all comments that recommended the addition of references to Senate Bill 50⁴⁰ or the removal of the requirement that Contract or Common Carriers prove PC&N were rejected for reasons as discussed above. Staff did amend its Proposed Rules and Regulations, adopting some of the comments received. Some of the comments received, and amendments adopted, were to clarify an Applicants requirements to receive authority to haul regulated waste, to remove time

³⁸ Staff has not completed application forms to coincide with the Draft Rules and Regulations, but once finalize, Staff will make said forms available to all potential applicants.

³⁹ LMOGA filed a Motion to intervene late and included comments with its Motion.

⁴⁰ Senate Bill 50 of the 2017 Regular Session of the Louisiana Legislature.

restrictions from current Carrier's Permits/Certificates, to clarify all applications must still proceed through an Administrative Hearings process, as well as some technical amendments.

Attached, as Exhibit A, are the Proposed Rules and Regulations reflecting the adopted amendments as well as a strike-through copy of the Proposed Rules and Regulations, as Exhibit B, reflecting those areas which were amended as a result of the comments received.

CONCLUSION

As outlined throughout this recommendation, and as stated in the purpose of the Proposed Rules and Regulations, the changes proposed herein are consistent with the Commission's stated goals of promoting healthy competition, while at the same time protecting the public health, safety and welfare. Finally, this recommendation, as discussed throughout, is consistent with the Commission's constitutionally-delegated rulemaking authority. Consistent with the above, and for the reasons stated herein, Staff recommends that the Commission adopt the attached Proposed Rules and Regulations.

Respectfully Submitted,
Executive Counsel/LPSC Staff



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CERTIFICATE OF SERVICE

I certify that a copy of Staff's Final Recommendation and Draft Rules and Regulations has been served upon the service list in Docket R-34054 via or electronic mail on this 9th day of June, 2017.



Kathryn H. Bowman

LOUISIANA PUBLIC SERVICE COMMISSION DOCKET NUMBER R-34054

EX PARTE

In re: In re: Rulemaking to examine the Commission's Rules of Practice and Procedure related to a motor carrier of waste proving public convenience and necessity when applying for a common carrier certificate or contract carrier permit, as well as possible adoption of rules and regulations specific to applications for common carrier certificates or contract carrier permits as it relates to hauling waste

RULES AND REGULATIONS

Purpose

The above-captioned docket originally was opened to address possible amendments to Rule 33 of the Louisiana Public Service Commission's Rules of Practice and Procedure ("Rules of P&P"). After reviewing the comments filed herein, the Louisiana Public Service Commission Staff ("Commission", "LPSC", "Staff") proposes these rules in an effort to establish formal regulations applicable to all motor carrier of waste applications for authority.

In light of the present maturity of the waste transportation industry and substantially changed economic conditions, Staff specifically recommends that more weight be given to the benefits of healthy competition and protecting the public health, safety and welfare and less weight be given to protecting the economic interests of existing carriers.¹ Nonetheless, in an effort to achieve balance, a modified permitting process is proposed that applies a fitness test and a needs based test to Contract Carriers and Common Carriers. Additionally, Staff recommends that the Commission modify Rule 33 and Rule 34, as outlined herein. Further Staff recommends the following Rules and Regulations be adopted.

Authority

Article. 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.

Consistent with the above authority, the Commission has adopted rules and regulations that apply generally to all public utilities and Common Carriers, and in some instances motor carriers

¹ See *Assure Competitive Transp., Inc. v. U.S.*, 635 F.2d 1301, 1305 (7th Cir. 1980).



specifically. These rules and regulations are contained in individual Commission Orders memorializing the rules and regulations, and in the instance of waste haulers, in the Rules of P&P.

It is consistent with the above-cited constitutional authority that the Commission adopts these rules and regulations that are intended to apply to all applications for waste hauling authority.

Section 101. Definitions

- A. "Certificate" means the authority granted, pursuant to the terms defined herein, to Common Carriers of waste by motor vehicles.
- B. "Common Carrier of waste by motor vehicle" means any person, the essential nature of whose business comprises engaging in, soliciting, or accepting waste, for intrastate transportation for hire, charge, or compensation as an employment or holding himself out as so available to the public generally and indiscriminately for such business, whether or not the business is conducted over a regular route, between fixed termini, within a defined area, or upon a regular or irregular schedule. Any person, who, with or without specific contracts, furnishes such transportation to more than five separate shippers of waste shall be prima facie held to be a Common Carrier and the burden shall rest upon him to show by a clear preponderance and to the satisfaction of the commission that the character of his operations is not that of a Common Carrier.
- C. "Contract" as used in this Section means any arrangement, agreement, or understanding covering or contemplating the intrastate transportation of waste for hire, charge, compensation, or for any benefit amounting to a consideration, and such arrangement, agreement, or understanding shall be considered a contract within the meaning of this Paragraph if it contemplates a reasonably large and regular or periodic movement for a particular party or parties, for a period of time exhibiting some permanence to the arrangement, agreement, or understanding.
- D. "Contract Carrier of waste by motor vehicle" means any person not included under Paragraph (B) of this Section, whose essential nature of its business comprises engaging in, soliciting, or accepting waste, for intrastate transportation for hire, charge, or compensation as an employment, under special and individual contracts or agreements, and whether directly or by other arrangement, whether or not the business is conducted over a regular route, between fixed termini, within a defined area, or upon a regular or irregular schedule.
- E. "Motor carriers of waste" include both a Common Carrier by motor vehicle and Contract Carrier by motor vehicle, which transports waste intrastate, or any other classification of carriers created by law which transports waste intrastate for compensation or hire.
- F. "Permit" means the authority granted under the terms of these regulations to Contract Carriers by motor vehicle.
- G. "Waste" means:
 - (1) "Non-hazardous oilfield wastes" means waste defined as non-hazardous oilfield wastes by R.S. 30:1 et seq. and regulations adopted pursuant thereto disposed of at facilities not owned or operated by said transporters.
 - (2) "Non-hazardous industrial solid waste" means waste defined as non-hazardous industrial solid waste by the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and solid waste regulations adopted pursuant thereto (Louisiana Administrative Code 33.VII.101 et seq.), disposed of at facilities not owned or operated by said transporters.
 - (3) "Hazardous waste" means waste defined as hazardous by the Louisiana

Environmental Quality Act, R.S. 30:2001 et seq., and the hazardous waste regulations adopted pursuant thereto (Environmental Regulator Code 33:V.101 et seq.), disposed of at facilities not owned or operated by said transporters.

Section 201. Applicability

The provisions of these rules are applicable to all applications for Common Carrier Certificates and Contract Carrier Permits of waste and all applications for expansion of existing waste authority, including those applications which are presently pending before the Commission that have not yet received a recommendation from an Administrative Law Judge. Restrictions on existing Certificates or Permits are valid until expansion of authority is applied for and a new Certificate or Permit is granted. However, restrictions on existing Certificates or Permits that restrict the time within which a current Certificate or Permit holder may apply for expanded waste hauling authority shall be null and void.

Section 301. Operating Without Authority; Prohibition

No motor carrier of waste shall operate as a Common Carrier or Contract Carrier without first having obtained from the Commission a Common Carrier Certificate or Contract Carrier Permit.

Section 401. Applications for Contract Carrier Permit Authority or expansion of existing authority to Transport Non-Hazardous Oilfield Waste, Non-Hazardous Industrial Solid Waste and Hazardous Waste.

Applications for Contract Carrier Permits shall be subject to the standards as outlined in the below regulations.

Application for a Contract Carrier Permit of Non-Hazardous Oilfield Waste, Non-Hazardous Solid Waste and /or Hazardous Waste.

A carrier may apply for Contract Carrier of waste hauling authority or expansion of its current Contract Carrier authority using the following application process, and the LPSC application form. Such an application is limited to a maximum of 5 contracts, as defined herein.

A. Application Minimum Requirements

An applicant must submit a complete Contract Carrier application to the Commission for review which shall include:

1. Applicable application fee
2. A copy of the Secretary of State Certificate and Articles of Incorporation or Formation from the State of origin or existence.
3. A copy of the Louisiana Secretary of State's Certificate of Good Standing.

4. The company's operating structure, names of regulatory contacts, bookkeepers, CPA, dispatchers, or other employees anticipated to be involved with the transportation and disposal of waste.
5. Financial statements and balance sheets for the company for the last two complete years. For a newly formed company, a detailed statement from the owner(s) outlining the financial ability to operate all transportation functions authorized by the applied for authority.
6. A complete list of equipment anticipated to be used if the Permit is granted.
7. A letter from an insurance company (or agent) authorized to do business in Louisiana, stating such company will write the required insurance coverage as currently exist, and as may be established in Section 801 below in the event Permit is granted.
8. A complete copy of the company's safety manual either by print, flash drive or CD.
9. Copies of permits required by any and all other state and federal agencies for the transportation and disposal of waste or a detailed list of those required permits in which the applicant has applied for, including a detailed compliance history under any jurisdiction the Applicant is currently subject to for each regulatory agency's jurisdiction.
10. a. Copy(s) of contract(s) with shippers executed by both parties that include(s):
 - i. Complete name and address of both parties to the contract;
 - ii. Work to be performed and the specific rate(s) to be charged under the contract;
 - iii. A specified term of no less than ninety (90) days; and
 - iv. Execution by all parties to the contract
- b. In lieu of contract(s), applicant may submit conditional agreement(s) that include(s):
 - i. Complete name and address of both parties;
 - ii. Proposed work to be performed and proposed rate(s) to be charged under the contract;
 - iii. An agreement that the term of the contract shall be no less than ninety (90) days; and
 - iv. Execution by all parties to the agreement.

In order to allow an efficient review of the applicant's request by LPSC Staff, the above-listed information shall be provided in the applicant's initial filing. An application that does not provide the minimum requirements listed in Section 401(A)(1)-(10) will be rejected.

B. Applicant's Burden of Proof

In order to be granted a Contract Carrier Permit, an applicant must present evidence that a public need exists for the applicant's service and, thus that the grant of authority is in the public interest. Applicants for a Contract Carrier Permit authorizing waste hauling may satisfy the burden of proof that a public need exists for the applicant's services through the submission of either contract(s) or conditional agreement(s) with shippers executed by all parties as outlined in Section 401(A)(10) above. In addition, the applicant must demonstrate the following to the Commission:

1. Applicant maintains, or is capable of maintaining, all insurance requirements of the Commission, as currently exist, and as may be established in Section 801 below;

2. Applicant has the financial ability to operate all transportation functions authorized by the applied for authority;
3. Applicant has obtained, or is capable of obtaining, all of the necessary permits required by any and all other state and federal agencies for the transportation and disposal of waste;
4. Applicant has, or is capable of acquiring, adequate equipment and man power for hauling and disposal of waste;
5. Applicant and its employees have been adequately trained in the safe hauling and disposal of waste; and
6. Applicant maintains or is capable of obtaining a terminal location in the State of Louisiana. Proof of such Louisiana terminal location shall be provided to the Commission prior to the issuance of the permit.

C. Commission Staff Review of Application; Docketing Process

Within 60 days of LPSC Staff acknowledging receipt of a Contract Carrier of waste application, unless additional time for review is authorized by the Commission, LPSC Staff shall issue a report either recommending approval, conditional approval, or denial of the requested authority. Satisfying the above-listed requirements shall create a rebuttable presumption that a Permit should be issued. Once the Staff Report has been issued, the application will be docketed and published in the official bulletin at which time any party may intervene and conduct discovery regarding any issue that is relevant to the subject matter of the docketed proceeding, as long as the requested information is not privileged. Upon completion of publication, the application shall be assigned to the Administrative Hearings Division for a hearing on the merits.

D. Contesting Staff's Report

Applicant and Intervenors, if any, may conduct discovery regarding Staff's Report and its ultimate determination as to whether Applicant has satisfied the burden of proof, as outlined in Section 401 (B) above. Discovery shall be restricted to those documents and factors set forth in Sections 401(A) and (B).

Section 501. Application for Common Carrier Certificate or expansion of authority of existing Certificate for Non-Hazardous Oilfield Waste and/or Non-Hazardous Industrial Solid Waste and/or Hazardous Waste.

Applications for Common Carrier Certificates shall be subject to the standards as outlined in the below regulations. A carrier may apply for a Common Carrier Certificate authorizing waste hauling using the following application process, and the LPSC form, when the applicant requests Common Carrier authority or when an applicant requests an expansion of existing Common Carrier authority.

A. Application Minimum Requirements

An applicant must submit a complete Common Carrier application to the Commission for review which shall include:

1. Applicable application fee.
2. A copy of the Secretary of State Certificate and Articles of Incorporation or Formation from the State of origin or existence.
3. A copy of the Louisiana Secretary of State's Certificate of Good Standing.
4. The company's operating structure, names of regulatory contacts, bookkeepers, CPA, dispatchers, or other employees anticipated to be involved with the transportation and disposal of waste.
5. Financial statements and balance sheets for the company for the last two complete years. For a newly formed company, a detailed statement from the owner(s) outlining the financial ability to operate all transportation functions authorized by the applied for authority.
6. A complete list of equipment anticipated to be used if the Certificate is granted.
7. A letter from an insurance company (or agent) authorized to do business in Louisiana, stating such company will write the required insurance coverage as currently exist, and as may be established in Section 801 below in the event Certificate is granted.
8. A complete copy of the company's safety manual either by print, flash drive or CD.
9. Copies of permits required by any and all other state and federal agencies for the transportation and disposal of waste or a detailed list of those required permits in which the applicant has applied for, including a detailed compliance history under any jurisdiction the Applicant is currently subject to for each regulatory agency's jurisdiction.
10. Affidavits, on the attached form, from shippers or potential shippers of waste that will use the applicants services, if certificated, or Affidavits from representatives of industry, industry groups or associations that show that increased waste will be generated. These Affidavits shall specifically identify the parishes and/or regions of the State in which the need will exist.

In order to allow an efficient review of the applicant's request by LPSC Staff, the above-listed information shall be provided in the applicant's initial filing. An application that does not provide the minimum requirements listed in Section 501(A)(1)-(10) will be rejected.

B. Applicant's Burden of Proof

In order to be granted a Common Carrier Certificate, an applicant must present evidence that a public need exists for the applicant's service and, thus that the grant of authority is in the public interest. Applicants for Common Carrier Certificates authorizing waste hauling may satisfy the burden of proof that a public need exists for the service through the submission of Affidavits as set forth in Section 501(A)(10) above. In addition, the applicant must demonstrate the following to the Commission:

1. Applicant maintains, or is capable of maintaining, all insurance requirements of the Commission, as currently exist, and as may be established in Section 801 below;
2. Applicant has the financial ability to operate all transportation functions authorized by the applied for authority;

3. Applicant has obtained, or is capable of obtaining, all of the necessary permits required by any and all other state and federal agencies for the transportation and disposal of waste;
4. Applicant has, or is capable of acquiring, adequate equipment and man power for hauling and disposal of waste;
5. Applicant and its employees have been adequately trained in the safe hauling and disposal of waste; and
6. Applicant maintains or is capable of obtaining a terminal location in the State of Louisiana. Proof of such Louisiana terminal location shall be provided to the Commission prior to the issuance of the Certificate.

C. Commission Staff Review of Application; Docketing Process

Within 90 days of LPSC Staff acknowledging receipt of a Common Carrier authority application, unless additional time for review is authorized by the Commission, LPSC Staff shall issue a report either recommending approval, conditional approval, or denial of the requested authority. Satisfying the above-listed requirements shall create a rebuttable presumption that a Certificate should be issued. Once the Staff Report has been issued, it will be docketed and published in the official bulletin where any party may intervene and conduct discovery regarding any issue that is relevant to the subject matter of the docketed proceeding, as long as the requested information is not privileged. Upon completion of publication, the application shall be assigned to the Administrative Hearings Division for a hearing on the merits.

D. Contesting Staff's Report

Applicant and Intervenors, if any, may conduct discovery regarding Staff's Report and its ultimate determination as to whether Applicant has satisfied the burden of proof, as outlined in Section 501(B) above. Discovery shall be restricted to those documents and factors set forth in Sections 501(A) and (B).

Section 601. Violations

- A. No person shall violate or knowingly assist in the violation of any of the rules, regulations, orders, or decrees of the Commission or rules and regulations promulgated under Title 45 of the Louisiana Revised Statutes, or operate as a Common or Contract Carrier without having obtained a Certificate or Permit from the Commission.
- B. The term "person" means but is not limited to any carrier, shipper, consignee, consignor, agent, servant, broker, employee, or other natural or legal entity violating any of the provisions of these Rules and Regulations.

- C. The term "shipper" means the owner of the goods or commodities transported who knowingly assists in a violation by any other person as defined in this Section.
- D. Whoever violates these Rules and Regulations shall be fined by the Commission at open hearing not less than one hundred dollars nor more than ten thousand dollars for each violation. The Commission in its discretion may assess and impose, as costs, any actual expenses incurred in the investigation and disposition of an act found to be a violation. This assessment shall be limited to no more than the amount of any monetary fine levied by the Commission. Such expenses may include transportation, lodging, or other costs necessary to conduct a hearing on the act or acts in question. As an additional sanction, the Commission in its discretion may order the recovery and forfeiture to the state treasurer of all revenue derived by any person, as defined in this Section, from any violation of the Commission's rules, regulations, orders, or decrees of the Commission or rules and regulations promulgated under Title 45 of the Louisiana Revised Statutes.

Section 701. Filing Fees

The following filing fees shall apply:

- A. Contract Carrier Applications shall require a filing fee of \$150, payable at the time the application is submitted.
- B. Common Carrier Applications shall require a filing fee of \$200, payable at the time the application is submitted.

Section 801. Insurance Requirements

RESERVED FOR FUTURE RULEMAKING

Section 901. Impact on Previously Authorized Rules and Regulations; Waiver; Other Laws; Severability

- A. Rule 33 of the Commission's Rules of Practice and Procedure shall be amended to read as follows:

**RULE 33: APPLICATIONS FOR AUTHORITY TO
TRANSPORT NON-HAZARDOUS OILFIELD WASTE,
NON-HAZARDOUS INDUSTRIAL SOLID WASTE AND
HAZARDOUS WASTE.**

- A. Applications for authority to transport non-hazardous oilfield waste, non-hazardous industrial solid waste and hazardous waste shall be submitted and reviewed in accordance with the procedures adopted by Order R-34054.

B. Repudiation of the Pan American Test and Its Progeny

The Commission has found that public convenience and necessity is “dynamic and flexible” and that the test established in *Pan-American Bus Lines Operations*, 1 M.C.C. 190 (1936) is no longer applicable to the trucking industry as it exists today and to the needs of the shippers for the transportation and disposal of waste in Louisiana. Therefore, the test for evaluating and proving public convenience and necessity found in *Pan American* and subsequently followed by the Louisiana Supreme Court in *Mailack, Inc. v. LPSC*, 622 So.2d 640 (La. 1993) and its progeny is hereby rejected.

C. Deleted

D. Deleted

E. Deleted

- B. Rule 34 of the Commission’s Rules of Practice and Procedure shall be amended to remove the second paragraph and read as follows:

RULE 34: APPLICATIONS FOR AUTHORITY TO TRANSPORT NON-HAZARDOUS OILFIELD WASTE, NON-HAZARDOUS INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE.

In any uncontested proceeding, the Commissioner shall receive, without regard to the legal rules of admissibility, any evidence of a form and character which would ordinarily be relied upon by a prudent person in an ordinary business transaction, including, without limitation, affidavits, documents and other forms of hearsay testimony deemed by him to be reliable.

C. Severability

1. If a court of competent jurisdiction finds any provision of these Regulations to be invalid or unenforceable as to any Common Carrier or Contract Carrier or circumstance, such finding shall not render that provision invalid or unenforceable as to any other Common Carrier or Contract Carrier or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of these Regulations in all other respects shall remain valid and enforceable.
2. If any provision of these Regulations is stayed in connection with a judicial review of these Regulations, the remaining provisions of these Regulations shall remain valid and enforceable.

**ATTACHMENT A-SHIPPER AFFIDAVIT
LOUISIANA PUBLIC SERVICE COMMISSION**

_____, **EX PARTE**

AFFIDAVIT

BEFORE ME, the undersigned Notary, duly commissioned and qualified in and for the State of _____
and the Parish/County of _____, personally came and appeared _____ (“Affiant”),
whose title and company are _____.

After being duly sworn, did depose and state that:

1. Affiant is employed by _____ (“Shipper”), which is domiciled in _____,
with the following address _____.
2. The nature of Shipper’s business is _____
_____.
3. Affiant has personal knowledge of Shipper’s need for waste hauling services.
4. Shipper intends to use the services of _____ (“Applicant”)
to haul the following types of waste to Louisiana disposal facilities (select all that apply):

- Non-hazardous oilfield waste.
- Non-hazardous industrial solid waste.
- Hazardous waste.

5. Shipper intends to use Applicant’s waste hauling services in the following (select all that apply):

- | | | | |
|-------------------------------------|---|---|---|
| <input type="checkbox"/> Acadia | <input type="checkbox"/> East Baton Rouge | <input type="checkbox"/> Madison | <input type="checkbox"/> St. Landry |
| <input type="checkbox"/> Allen | <input type="checkbox"/> East Carroll | <input type="checkbox"/> Morehouse | <input type="checkbox"/> St. Martin |
| <input type="checkbox"/> Ascension | <input type="checkbox"/> East Feliciana | <input type="checkbox"/> Natchitoches | <input type="checkbox"/> St. Mary |
| <input type="checkbox"/> Assumption | <input type="checkbox"/> Evangeline | <input type="checkbox"/> Orleans | <input type="checkbox"/> St. Tammany |
| <input type="checkbox"/> Avoyelles | <input type="checkbox"/> Franklin | <input type="checkbox"/> Ouachita | <input type="checkbox"/> Tangipahoa |
| <input type="checkbox"/> Beauregard | <input type="checkbox"/> Grant | <input type="checkbox"/> Plaquemines | <input type="checkbox"/> Tensas |
| <input type="checkbox"/> Bienville | <input type="checkbox"/> Iberia | <input type="checkbox"/> Pointe Coupee | <input type="checkbox"/> Terrebonne |
| <input type="checkbox"/> Bossier | <input type="checkbox"/> Iberville | <input type="checkbox"/> Rapides | <input type="checkbox"/> Union |
| <input type="checkbox"/> Caddo | <input type="checkbox"/> Jackson | <input type="checkbox"/> Red River | <input type="checkbox"/> Vermilion |
| <input type="checkbox"/> Calcasieu | <input type="checkbox"/> Jefferson | <input type="checkbox"/> Richland | <input type="checkbox"/> Vernon |
| <input type="checkbox"/> Caldwell | <input type="checkbox"/> Jefferson Davis | <input type="checkbox"/> Sabine | <input type="checkbox"/> Washington |
| <input type="checkbox"/> Cameron | <input type="checkbox"/> Lafayette | <input type="checkbox"/> St. Bernard | <input type="checkbox"/> Webster |
| <input type="checkbox"/> Catahoula | <input type="checkbox"/> Lafourche | <input type="checkbox"/> St. Charles | <input type="checkbox"/> West Baton Rouge |
| <input type="checkbox"/> Claiborne | <input type="checkbox"/> LaSalle | <input type="checkbox"/> St. Helena | <input type="checkbox"/> West Carroll |
| <input type="checkbox"/> Concordia | <input type="checkbox"/> Lincoln | <input type="checkbox"/> St. James | <input type="checkbox"/> West Feliciana |
| <input type="checkbox"/> DeSoto | <input type="checkbox"/> Livingston | <input type="checkbox"/> St. John the Baptist | <input type="checkbox"/> Winn |

SWORN TO AND SUBSCRIBED before me, Notary Public, _____

this _____ day of _____, 20_____.

NOTARY PUBLIC NAME & NUMBER

BY: _____
Signature and Title

Name of Company

Affiant’s Email Address

Affiant’s Telephone Number

**ATTACHMENT B-INDUSTRY AFFIDAVIT
LOUISIANA PUBLIC SERVICE COMMISSION**

_____, **EX PARTE**

AFFIDAVIT

BEFORE ME, the undersigned Notary, duly commissioned and qualified in and for the State of _____
and the Parish/County of _____, personally came and appeared _____ (“Affiant”),
whose title and company are _____.

After being duly sworn, did depose and state that:

1. Affiant represents _____, which is domiciled in _____, with the following address _____.
2. Affiant has personal knowledge of an increase in the generation of the following types of regulated waste (select all that apply):

- Non-hazardous oilfield waste.
- Non-hazardous industrial solid waste.
- Hazardous waste.

3. Further, Affiant has personal knowledge that the increase in the generation of regulated waste referenced above will occur or has occurred in the following (select all that apply):

- | | | | |
|-------------------------------------|---|---|---|
| <input type="checkbox"/> Acadia | <input type="checkbox"/> East Baton Rouge | <input type="checkbox"/> Madison | <input type="checkbox"/> St. Landry |
| <input type="checkbox"/> Allen | <input type="checkbox"/> East Carroll | <input type="checkbox"/> Morehouse | <input type="checkbox"/> St. Martin |
| <input type="checkbox"/> Ascension | <input type="checkbox"/> East Feliciana | <input type="checkbox"/> Natchitoches | <input type="checkbox"/> St. Mary |
| <input type="checkbox"/> Assumption | <input type="checkbox"/> Evangeline | <input type="checkbox"/> Orleans | <input type="checkbox"/> St. Tammany |
| <input type="checkbox"/> Avoyelles | <input type="checkbox"/> Franklin | <input type="checkbox"/> Ouachita | <input type="checkbox"/> Tangipahoa |
| <input type="checkbox"/> Beauregard | <input type="checkbox"/> Grant | <input type="checkbox"/> Plaquemines | <input type="checkbox"/> Tensas |
| <input type="checkbox"/> Bienville | <input type="checkbox"/> Iberia | <input type="checkbox"/> Pointe Coupee | <input type="checkbox"/> Terrebonne |
| <input type="checkbox"/> Bossier | <input type="checkbox"/> Iberville | <input type="checkbox"/> Rapides | <input type="checkbox"/> Union |
| <input type="checkbox"/> Caddo | <input type="checkbox"/> Jackson | <input type="checkbox"/> Red River | <input type="checkbox"/> Vermilion |
| <input type="checkbox"/> Calcasieu | <input type="checkbox"/> Jefferson | <input type="checkbox"/> Richland | <input type="checkbox"/> Vernon |
| <input type="checkbox"/> Caldwell | <input type="checkbox"/> Jefferson Davis | <input type="checkbox"/> Sabine | <input type="checkbox"/> Washington |
| <input type="checkbox"/> Cameron | <input type="checkbox"/> Lafayette | <input type="checkbox"/> St. Bernard | <input type="checkbox"/> Webster |
| <input type="checkbox"/> Catahoula | <input type="checkbox"/> Lafourche | <input type="checkbox"/> St. Charles | <input type="checkbox"/> West Baton Rouge |
| <input type="checkbox"/> Claiborne | <input type="checkbox"/> LaSalle | <input type="checkbox"/> St. Helena | <input type="checkbox"/> West Carroll |
| <input type="checkbox"/> Concordia | <input type="checkbox"/> Lincoln | <input type="checkbox"/> St. James | <input type="checkbox"/> West Feliciana |
| <input type="checkbox"/> DeSoto | <input type="checkbox"/> Livingston | <input type="checkbox"/> St. John the Baptist | <input type="checkbox"/> Winn |

4. Attached to this Affidavit as Exhibit(s) _____ is a/are document(s), report(s), publication(s), etc., evidencing Affiant’s knowledge of the increase in the generation of regulated waste referenced above.

SWORN TO AND SUBSCRIBED before me, Notary Public, _____
this _____ day of _____, 20_____.

NOTARY PUBLIC NAME & NUMBER

BY: _____
Signature and Title

Name of Company

Affiant’s Email Address

Affiant’s Telephone Number