

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

**LOUISIANA PUBLIC SERVICE COMMISSION,
EX PARTE**

Docket No. R-35298, In re: Amendments to the General Order dated March 26, 2019 regarding Commission approval required for sales, mergers, stock or asset transfers, and other changes of ownership or control of motor carriers.

(Decided at the September 11, 2019 Business and Executive Session)

This General Order supersedes General Order dated March 26, 2019 (R-33967).

BACKGROUND

The Louisiana Public Service Commission (“LPSC” or “Commission”) Staff opened this rulemaking to amend the requirements stated in the General Order dated March 26, 2019 (“the Current Transfer Order”). The requirements in this order apply to Motor Carriers regulated by the LPSC, namely, carriers of non-hazardous oilfield waste, non-hazardous industrial solid waste, and hazardous waste (collectively, “Waste Carriers”) and household goods carriers, passenger and taxicab carriers, charter buses, and towing companies (collectively “Non-waste Carriers”), and carriers of saltwater utilized in oil well exploration and production (“Saltwater Carriers”).

The Current Transfer Order was drafted in LPSC Docket No. R-33967, which was opened as a result of a Commission directive. After the adoption of the Current Transfer Order, Commission Staff discovered additional changes necessary to foster greater efficiency in reviewing and approving sales, mergers, stock or asset transfers, and other changes of ownership or control of Motor Carriers.

Notice of this rulemaking docket was published in the Commission’s Official Bulletin # 1196. This publication provided interested parties 25 days within which to intervene in this matter. No parties intervened in this matter.

JURISDICTION

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

“The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.”

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

STAFF REVIEW

The Current Transfer Order provides that an administrative law judge or hearing officer shall be assigned to consider whether the Waste Carrier's application seeking Commission approval to sell, lease, or otherwise transfer a certificate or permit to another legal entity, or for a stock transfer or change in the ownership of the carrier greater than 50%, is in the public interest. Commission Staff recommends maintaining the requirement that an administrative law judge or hearing officer be assigned to applications by Waste Carriers seeking Commission approval to sell, lease, or otherwise transfer a certificate or permit to another legal entity.

For the purpose of increasing the efficiency of Commission approval of applications for the change in the ownership of the carrier greater than 50%, Commission Staff recommends that such applications be approved at a Staff level. However, Staff also recommends that, should a timely intervention or protest be filed in response to such an application, or should Commission Staff determine that such an application is not in the public interest, an administrative law judge or hearing officer shall be assigned to determine if the stock transfer or change in the ownership of the carrier greater 50% is in the public interest.

The Current Transfer Order also provides the procedures for applications by Non-waste Carriers and Saltwater Carriers seeking Commission approval to sell, lease, or otherwise transfer a certificate or permit to another legal entity, or for a stock transfer or change in the ownership of the carrier greater than 50%, which do not require the assignment of an administrative law judge or hearing officer.

However, Motor Carriers frequently hold authority as both a Waste Carrier and a Non-Waste Carrier and/or Saltwater Carrier. Under the Current Transfer Order, Motor Carriers that hold multiple types of authority and are seeking Commission approval sell, lease, or otherwise transfer such authority to another legal entity, or for a stock transfer or change in the ownership of

the carrier greater than 50%, such approvals require both a determination from an administrative law judge or hearing officer, and Commission Staff. This bifurcated process hinders the Commission's ability to efficiently approve transfer applications. As a result, Commission Staff recommends that the Current Transfer Order be amended to provide for a single proceeding when a Motor Carrier is seeking to transfer a combination of Waste Carrier authority and Non-Waste Carrier and/or Saltwater Carrier authority.

In addition, the Current Transfer Order requires Non-waste Carriers and Saltwater Carriers to cancel their authority when a change in ownership of greater than 50% occurs, with exceptions for Motor Carriers that are transferring ownership involving a Non-waste Carrier or Saltwater Carrier certificate or permit for reasons such as estate planning or inheritance. This requirement could create an interruption in business continuity for Motor Carriers that wish to maintain the certificate or permit number associated with their Non-waste Carrier or Saltwater Carrier authority. As a result, Commission Staff recommends amending the Current Transfer Order to clarify when the change of ownership of a Non-waste Carrier or Saltwater Carrier will require cancellation or transfer of the certificate or permit.

STAFF RECOMMENDATION

Staff filed its Final Recommendation in this matter on August 16, 2019. Staff recommended that the Commission adopt the following requirements for Motor Carriers:

I. Waste Carrier Certificate or Permit Transfer

A. Waste Carriers shall obtain Commission approval prior to selling, leasing, or otherwise transferring a certificate or permit to another legal entity. Notice of the application for such approval shall be published in the Commission's Bulletin and an administrative law judge or hearing officer shall be assigned to consider whether the transfer is in the public interest by considering the factors listed below.

Factors for Consideration of Certificate or Permit Transfer

1. the acquiring entity's fitness to operate, as stated in the LPSC's Rules of Practice and Procedure Rule 33,
2. the acquiring entity's history of compliance with regulatory authorities in the state or any other jurisdiction,
3. whether the transfer or change in control is fair and reasonable to the employees of both the transferor and transferee,

4. the impact of the transfer or change in control on the management and operations of the transferee, and

5. whether the certificate or permit is dormant. The Commission will not approve the sale, lease, transfer of a dormant certificate or permit. A dormant certificate/permit is a certificate or permit that has not been substantially operated for the six months prior to the sale, lease, transfer or change in control, other than due to bankruptcy, receivership, or other legal proceedings, or to other causes beyond the carrier's control. Whether a carrier substantially operated a certificate or permit is determined on a case-by-case basis by the administrative law judge, hearing officer, or Commission.

B. In the event that a Waste Carrier does not obtain the prior approval as required in Section (I)(A) above, the acquiring entity may provide evidence at a hearing, by testimony or otherwise, of good faith in failing to obtain prior Commission approval. If the administrative law judge or hearing officer finds that the carrier's failure to obtain the prior approval of the Commission was done in "good faith," the administrative law judge or hearing officer shall find that the carrier is excused from obtaining the prior approval. "Good faith" shall be defined as a state of mind consisting in 1) honesty in belief or purpose, 2) faithfulness to one's duty or obligation, 3) observance of reasonable commercial standards of fair dealing in a given trade or business, and 4) absence of intent to defraud or to seek unconscionable advantage.

C. In the event that a Motor Carrier that holds certificates and/or permits as both a Waste Carrier and a Non-waste Carrier and/or Saltwater Carrier applies to the Commission for the approval to sell, lease, or otherwise transfer both its Waste Carrier certificate or permit and its Non-waste Carrier and/or Saltwater Carrier certificates or permits to another legal entity, such application shall be published in the Commission's Bulletin and an administrative law judge or hearing officer shall be assigned to consider whether the transfer or change in control is in the public interest by considering the factors listed Section (I)(A).

D. In the event that a Motor Carrier files an application pursuant to Section (I)(C), and when such Motor Carrier does not obtain prior approval from the Commission to sell, lease, or otherwise transfer both its Waste Carrier certificate and/or permit and its Non-waste Carrier and/or Saltwater certificates or permits, the acquiring entity may provide evidence at a hearing, by testimony or otherwise, of good faith in failing to obtain prior Commission approval. If the administrative law judge or hearing officer finds that the carrier's failure to obtain the prior

approval of the Commission was done in “good faith,” the administrative law judge or hearing officer shall find that the carrier is excused from obtaining the prior approval. For the purposes of this Section, “good faith” shall have the same definition as set forth in Section (I)(B).

E. In the event that a Waste Carrier satisfies the requirements set forth in Section (I)(A), and Section (I)(B) when applicable, or a Motor Carrier that holds certificates and/or permits as both a Waste Carrier and a Non-waste Carrier and/or Saltwater Carrier seeking approval of an application pursuant to Section (I)(C) satisfies the requirements set forth in Section (I)(A), and Section (I)(D) when applicable, the administrative law judge or hearing officer shall approve the sale, lease, or transfer of the certificate or permit to another legal entity

F. Waste Carriers and Motor Carriers that hold certificates and/or permits as both a Waste Carrier and a Non-waste Carrier and/or Saltwater Carrier shall obtain a letter of non-opposition from Commission Staff prior to selling, leasing, or otherwise transferring a certificate or permit to another legal entity when the ownership of both the Waste Carrier and the acquiring entity are the same. In determining whether such a transfer is in the public interest, Commission Staff shall utilize the ‘*Factors for Consideration of Certificate or Permit Transfer*’ set forth in Section (I)(A) above.

G. Non-waste Carriers and Saltwater Carriers shall request cancellation of their authority upon transferring all assets, including a certificate or permit, to another legal entity. The acquiring entity shall apply to the Transportation Division for authority to operate as a Non-waste Carrier or a Saltwater Carrier. Notwithstanding the foregoing, the Transportation Division Staff may approve an application to transfer a Non-waste Carrier or Saltwater Carrier certificate or permit for reasons such as estate planning, inheritance, or business continuity. The provisions of this Section shall not apply to Non-waste Carriers or Saltwater Carriers that apply to the Commission for the approval to sell, lease, or otherwise transfer both a Waste Carrier certificate or permit and a Non-waste Carrier or Saltwater Carrier certificate or permit to another legal entity pursuant to Section (I)(C).

II. Change in Control for Waste Carriers and Motor Carriers that hold certificates and/or permits as both a Waste Carrier and a Non-waste Carrier and/or Saltwater Carrier

A. Waste Carriers and Motor Carriers that hold certificates and/or permits as both a Waste Carrier and a Non-waste Carrier and/or Saltwater Carrier shall obtain Commission approval prior to a stock transfer or change in the ownership of the carrier of greater than 50%. Notice of

the application for such approval shall be published in the Commission's Bulletin. If no intervention or protest is filed by a party in interest, Commission Staff shall consider if the change in control is in the public interest by considering the factors listed below.

Factors for Consideration of Certificate or Permit Change in Control

1. the acquiring entity's fitness to operate, as stated in the LPSC's Rules of Practice and Procedure Rule 33,
2. the acquiring entity's history of compliance with regulatory authorities in the state or any other jurisdiction,
3. whether the transfer or change in control is fair and reasonable to the employees of both the transferor and transferee,
4. the impact of the transfer or change in control on the management and operations of the transferee, and
5. whether the certificate or permit is dormant. The Commission will not approve the change in control of a dormant certificate or permit. A dormant certificate/permit is a certificate or permit that has not been substantially operated for the six months prior to the sale, lease, transfer or change in control, other than due to bankruptcy, receivership, or other legal proceedings, or to other causes beyond the carrier's control. Whether a carrier substantially operated a certificate or permit is determined on a case-by-case basis by the administrative law judge, hearing officer, Commission Staff, or Commission.

B. In the event that a Waste Carrier or Motor Carrier that holds certificates and/or permits as both a Waste Carrier and a Non-waste Carrier and/or Saltwater Carrier does not obtain the prior approval as required in Section (II)(A) above, the acquiring entity may provide evidence, by a sworn statement or otherwise, of good faith in failing to obtain prior Commission approval. If Commission Staff finds that the carrier's failure to obtain the prior approval of the Commission was done in "good faith," Commission Staff shall find that the carrier is excused from obtaining the prior approval. For the purposes of this Section, "good faith" shall have the same definition as set forth in Section (I)(B).

C. In the event that a Waste Carrier satisfies the requirements set forth in Section (II)(A), and Section (II)(B) when applicable, Commission Staff shall issue a letter of non-opposition approving the stock transfer or change in the ownership of the carrier of greater than 50%.

D. If a timely intervention or protest is filed by a party in interest in response to an application filed pursuant to Section (II)(A), or if Commission Staff determines that an application submitted pursuant to Section (II)(A) is not in the public interest, an administrative law judge or hearing officer shall be assigned to consider whether the change in control is in the public interest by considering the factors listed in Section (II)(A).

E. In the event that a Waste Carrier or Motor Carrier that holds certificates and/or permits as both a Waste Carrier and a Non-waste Carrier and/or Saltwater Carrier does not obtain the prior approval as required in Section (II)(A) above, and such application is assigned to an administrative law judge or hearing officer pursuant to Section (II)(D), the acquiring entity may provide evidence at a hearing, by testimony or otherwise, of good faith in failing to obtain prior Commission approval. If the administrative law judge or hearing officer finds that the carrier's failure to obtain the prior approval of the Commission was done in "good faith," the administrative law judge or hearing officer shall find that the carrier is excused from obtaining the prior approval. For the purposes of this Section, "good faith" shall have the same definition as set forth in Section (I)(B).

F. In the event that an application is assigned to an administrative law judge or hearing officer pursuant to Section (II)(D), and a Waste Carrier or Motor Carrier that holds certificates and/or permits as both a Waste Carrier and a Non-waste Carrier and/or Saltwater Carrier satisfies the requirements set forth in Section (II)(A), and Section (II)(E) when applicable, the administrative law judge or hearing officer shall approve the stock transfer or change in the ownership of the carrier of greater than 50%.

G. Waste Carriers that have two or more stock transfers or changes of ownership at any time after the issuance by the Commission of new or expanded waste hauling authority, which, if combined, result in a change in the ownership of the carrier of greater than 50%, shall be required to satisfy the requirements set forth in Section (II)(A), and Section (II)(B) or Section (II)(E), when applicable.

H. Non-waste Carriers and Saltwater Carriers who have a stock transfer or change in ownership of greater than 50%, where the business name and operations remain the same, shall make a written application to the Transportation Division Staff seeking approval transfer of the stock transfer or change in ownership. The provisions of this Section shall not apply to Non-waste

Carriers or Saltwater Carriers that apply to the Commission for the approval of a stock transfer or change in ownership of greater than 50%, pursuant to Section (II)(G).

I. Waste Carriers shall obtain a letter of non-opposition from Commission Staff when a stock transfer or change in the ownership of the carrier occurs as the result of succession proceedings. In determining whether such a stock transfer or change in the ownership of the carrier is in the public interest, Commission Staff shall utilize the '*Factors for Consideration of Certificate or Permit Change in Control*' set forth in Section (II)(A) above.

J. Waste Carriers shall obtain a letter of non-opposition from Commission Staff prior to the indirect transfer of ownership of greater than 50%. For the purposes of this General Order, the indirect transfer of ownership is defined as the transfer of ownership at any level above the direct ownership of the certificated or permitted entity.

III. Name Changes.

A. All Motor Carriers shall make changes in name only by written notification to the Transportation Division. The carrier shall submit a Name Change Form prior to or no later than 45 days after the change in the name. This form may be found on the LPSC's website.

B. The Transportation Division Staff will review the Name Change Form for consistency with the Secretary of State records, check for compliance, and issue a certificate or permit in the new name.

IV. Stock Transfer or Change In Ownership of Less than 50%

All Motor Carriers shall notify the Transportation Division of stock transfers or changes in ownership of less than 50%, including indirect transfer of ownership of less than 50%. The carrier shall submit a Stock Transfer/Change in Ownership Form prior to or no later than 45 days after the effective date of the change. This form may be found on the LPSC's website.

V. Notice of Name Change or Stock Transfers for Change In Ownership of Less than 50%

In the event that any Motor Carrier does not give notice within 45 days as required in Sections II.A and III.A above, the carrier may provide evidence of good faith in failing to give notice. If Staff finds that the carrier's failure to give notice was done in "good faith," Staff shall find that the carrier is excused from giving the 45 day notice after the effective date of the change.

VI. Applicability

The provisions of this General Order are applicable to all Motor Carriers. Further, the provisions of this General Order are applicable to all applications for approval of the sale, lease or transfer of a certificate or permit, and to all applications for the approval of a stock transfer or change in the ownership of a Motor Carrier presently pending before the Commission.

COMMISSION ACTION

This matter was brought before the Commission for consideration at the September 11, 2019 Business and Executive Session. On motion of Chairman Francis, seconded by Commissioner Skrmetta, and unanimously adopted, the Commission voted to accept Staff's Final Recommendation filed into the record on August 16, 2019.

IT IS THEREFORE ORDERED THAT:

The Commission, by way of this Order, adopts Staff's Final Recommendation filed into the record on August 16, 2019. This General Order supersedes General Order dated March 26, 2019 (R-33967).

This General Order is effective immediately.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
October 8, 2019**

/S/ MIKE FRANCIS
DISTRICT IV
CHAIRMAN MIKE FRANCIS

/S/ FOSTER L. CAMPBELL
DISTRICT V
VICE CHAIRMAN FOSTER L. CAMPBELL

/S/ LAMBERT C. BOISSIERE, III
DISTRICT III
COMMISSIONER LAMBERT C. BOISSIERE, III

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