

LOUISIANA PUBLIC SERVICE COMMISSION

SPECIAL ORDER NUMBER 72-2021

LOUISIANA PUBLIC SERVICE COMMISSION, EX PARTE, EX PARTE

In re: Possible implementation of Interim Rule 7 of the Commission's Rules of Practice and Procedure (Service of Process) and possible revision to the Commission's Rules.

(Decided at the November 17, 2021 Business and Executive Session.)

I. Background

Rule 7 of the Commission's Rules of Practice and Procedure currently provides procedural rules regarding proper service for Commission proceedings. Under the existing Rule 7, there are two methods by which service can be had – by Publication or by Mail or Sheriff. Rule 7 also provides for service of pleadings filed in a Commission proceeding and the requirement that a certificate by the party filing such pleading be included as prima facie evidence of such service. The current format of Rule 7 can be traced back to at least the 1976 version of the Commission's Rules of Practice and Procedure ("Rules").

While the current Rule 7 allows for service of process via publication in the Commission's Official Bulletin, and the majority of Commission dockets are noticed in this manner, citations issued by the Transportation division have historically been additionally served under Rule 7(B), which is by certified or registered mail. While this has been the historic practice, there is no explanation as to why this additional service by certified or registered mail was started. This historic practice has worked fairly well until a few years ago when Transportation Staff began experiencing an increase in service issues while serving citations by certified or registered mail.

Historically, the Commission, through its Administrative Hearings Division, has accepted certified mail as proof of service when the citation is issued to the Carrier's address on file with the Commission and either: 1) the green card receipt is returned to the Commission; 2) the green card receipt is not returned, but the United States Post Office certified tracking website indicates that the citation was delivered; or 3) the citation was not claimed by the Carrier. If the citation is to an unregistered carrier, the same process applies, except that Staff uses the address of the registered agent of the company as recorded with the Louisiana Secretary of State.

Delays have occurred in processing violations due to Staff not receiving the returned green card receipt and the US Post Office's certified mail tracking website indefinitely indicating that the item(s) were "awaiting delivery scan" or "in route to next facility." Staff reached out to the USPS, and Staff's understanding is that the USPS website can reflect these descriptions for a number of reasons, such as the certified item not being scanned by the USPS Mail Carrier, the green card receipt being left on the attached citation envelope, or simply that the green cards are lost in route back to the Commission. When Staff does not receive the green card back, and the USPS website tracking does not indicate receipt or unclaimed status, Staff is required to request the hearing be continued to another date and start the proof of service process over again, which causes undue delays in proceeding to hearings.

In an attempt to address these concerns, and avoid continued undue delay in processing violations of the Commission's rules and Orders, Staff drafted interim modifications to the existing Rule 7 which expand the methods by which service can be had via mail, while at the same time preserving the requirement that service be had and proven by Staff at any violation hearing where the Carrier does not appear. Staff believes this proposed interim Rule would save the Commission time and resources, advance proceedings and result in a resolution to these delays, while at the same time preserving service and Staff's burden of proof at any violation hearing where the Carrier does not appear.

II. Jurisdiction

Art. 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. (emphasis added).

Consistent with the above authority, the Commission has adopted the Commission's Rules of Practice and Procedure, in which Rule 7 is included.

III. Proposed Interim Rule and Commission Consideration

Staff's proposed Rule 7 was placed on the Commission's November 17, 2021 Business and Executive Session for consideration as an interim rule pending formal adoption of revisions to Rule 7 through a rulemaking process that includes a review of the entirety of the Commission's Rules of Practice and Procedure. The proposed interim Rule 7 provides as follows:

RULE 7: SERVICE

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B. BY MAIL OR SHERIFF:

Where service other than by publication is permitted or required under these Rules, or where published notice is unofficial and so noted in the publication, the Secretary shall ~~mail~~ deliver the same through any means whereby proof of receipt or unclaimed status can be shown, including but not limited to, certified or registered mail, to the last known place of address of the person entitled to receive such notice or to the registered agent of the person as recorded with the Louisiana Secretary of State's office; in proceedings wherein criminal penalties may be assessed, a duly authorized employee of the Commission or the Sheriff of the parish of the domicile of the party served may be directed to make personal service and file a return thereon; provided that any party shown to have received actual notice which is timely through any of the above methods of service shall not be permitted to rely upon lack of service as a defense or as grounds for continuance to any proceedings, unless it be shown that such request for continuance is not due to the fault of the applicant.

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Staff's proposed interim Rule 7 was considered by the Commission at its November 17, 2021 Business and Executive Session. On Motion of Chairman Greene, seconded by Vice Chairman Skrmetta, with Commissioners Campbell and Boissiere concurring, and Commissioner Francis temporarily absent, the Commission voted to accept the Staff Recommendation and adopt an Interim Rule 7 allowing for additional delivery methods for Transportation citations wherein proof of service can be shown. Further, the Commission directs Staff to open a rulemaking to review Rule 7 and the entirety of the Commission's Rules of Practice and Procedure.

IT IS HEREBY ORDERED THAT:

Rule 7 of the Commission's Rules of Practice and Procedure is modified and superseded by Staff's Proposed Interim Rule 7, as modified herein, pending the outcome of the Commission's upcoming rulemaking.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
November 22, 2021**



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

**BRANDON M. FREY
SECRETARY**

/S/ CRAIG GREENE
**DISTRICT II
CHAIRMAN CRAIG GREENE**

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

/S/ FOSTER L. CAMPBELL
**DISTRICT V
COMMISSIONER FOSTER L. CAMPBELL**

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

TEMPORARILY ABSENT
**DISTRICT IV
COMMISSIONER MIKE FRANCIS**