

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER T-37310

LOUISIANA PUBLIC SERVICE COMMISSION

VERSUS

TOUCHDOWN TOWING LLC

Docket No. T-37310, In re: Cancellation of Common Carrier Certificate No. 8436 for failure to file an Annual Report for 2023 and/or pay a late filing fee of \$500.00 and a citation fee of \$25.00 as required by General Order 2 dated July 01, 1921 and General Order dated March 18, 2021.

(Decided September 20, 2024.)

ORDER

Background

The Louisiana Public Service Commission (“Commission”) issued a citation to Touchdown Towing LLC (“Carrier”) dated July 1, 2024, directing the Carrier to appear at a hearing on August 22, 2024 to show cause why its Common Carrier Certificate No. 8436 should not be canceled due to failure to file an Annual Report (as defined *infra*) for 2023 and/or pay a late filing fee of \$500.00 and a citation fee of \$25.00 as required by *General Order No. 2* dated July 1, 1921 (“General Order No. 2”) and the *General Order* dated March 18, 2021 (“2021 General Order”).¹ Notice of the proceeding was published in the Commission’s *Official Bulletin* on July 3, 2024. When the hearing was convened on August 22, 2024, the Commission Staff appeared and presented testimonial and documentary evidence in support of its allegations. The Carrier failed to appear and present a defense.

Applicable Law

The Commission’s jurisdiction over common carriers and public utilities is established by Article 4, Section 21 of the Louisiana Constitution of 1974, which provides in pertinent part:

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.

Louisiana statutes more specifically describe the powers of the Commission over motor carriers operating intrastate for hire in the transportation of persons, household goods, and waste over the public highways and bridges of Louisiana. The business of operating motor vehicles for hire is a

¹ LPSC *General Order 3-18-2021 (R-35348)*, Louisiana Public Service Commission, ex parte (*Docket No. R-35348, In re: Possible modification to General Order dated June 19, 2012 to clarify the deadline for filing the Annual Reports by motor carriers.*).

“business affected with a public interest”;² and “[t]he [C]ommission has the power and authority necessary to supervise, govern, regulate, and control motor carriers . . . which transport household goods, passengers, or waste intrastate and to fix reasonable and just rates, fares, tolls, or charges for the commodities furnished or services rendered by such motor carriers.”³ Tow trucks are included in the definition of “motor carriers” subject to the Commission’s regulation.⁴ Companies engaged in the intrastate business of transporting household goods, passengers, or certain kinds of waste intrastate – non-hazardous oilfield wastes, non-hazardous industrial solid wastes, and hazardous wastes – are classified as “common carriers” subject to the Commission’s regulation.⁵

The Commission has a long-established requirement that jurisdictional entities file annually with the Commission reports of their financial and operating conditions. General Order No. 2 was the first to require every jurisdictional entity to annually submit a sworn statement of its operating expenses, operating revenues, and income amounts (hereinafter referred to as an “Annual Report”). The Commission’s most recent General Order addressing Annual Reports is the 2021 General Order, which reiterates that all entities regulated by the Commission shall file an Annual Report with the Commission. Furthermore, it establishes the deadlines for filing Annual Reports: entities that close their financial reporting on a calendar year-end are required to file their Annual Reports on or before the 30th day of April following the end of the applicable calendar year, and entities that close their financial reporting on a fiscal year-end shall file their Annual Reports on or before 120 days from the end of the applicable fiscal year.

Commission orders and statutes specify the penalties if an entity fails to timely file an Annual Report. The 2021 General Order reiterates that the fee for failure to timely file an Annual Report is \$500.00. The Commission’s *General Order* dated June 7, 2006 (“2006 General Order”)⁶ authorizes the imposition of a \$25.00 citation fee when a citation is issued to a Commission-jurisdictional motor carrier. La. R.S. 45:166(A) permits the Commission to amend, suspend, or revoke a certificate, in whole or in part, if, after notice and hearing, it is determined that the motor carrier has failed to comply with relevant statutory requirements or any lawful Commission order, rule, or regulation.

² La. R.S. 45:161.

³ La. R.S. 45:163(A).

⁴ La. R.S. 45:162(12).

⁵ See, La. R.S. 45:162(5)(a).

⁶ LPSC *General Order* dated June 7, 2006, Louisiana Public Service Commission, ex parte (*In re: Revisions to the Transportation Bond Schedule and Transportation Fee Schedule*).

The Commission Staff's Case

The Commission Staff alleges that the Carrier failed to file its 2023 Annual Report and seeks an order from this Commission: 1) finding that the Carrier is guilty of violating General Order No. 2 and the 2021 General Order for failing to file its 2023 Annual Report; 2) canceling the Carrier's Common Carrier Certificate No. 8436; and, 3) requiring the Carrier to pay a \$500.00 late fee and a \$25.00 citation fee. In support of its allegations, the Commission Staff presented the testimony of Tammy Burl.

Testimony of Tammy Burl

Ms. Burl is the Transportation Administrator in the Commission's Transportation Division who oversees the personnel and day-to-day operations of the Transportation Division, including Annual Report filing compliance for regulated motor carriers. Ms. Burl explained the Commission's annual reporting process for motor carriers, including the requirement that carriers operating on a calendar year-end basis must file an Annual Report with the Commission on or before April 30th each year. Ms. Burl testified that a regulated motor carrier is notified of the annual reporting requirements when the Commission initially issues its certificate and via a courtesy mailing of the Commission's annual reporting requirements every November.

Ms. Burl stated that General Order No. 2 and the 2021 General Order require all regulated motor carriers to file an Annual Report and the 2021 General Order authorizes assessment of a \$500.00 late fee if a carrier's Annual Report is not timely filed. Ms. Burl noted that the \$25.00 citation fee is authorized by the 2006 General Order, and La. R.S. 45:166 authorizes cancellation of a carrier's LPSC authority.

According to Ms. Burl, the Carrier is regulated by the LPSC and was required to submit its Annual Report for 2023 on or before April 30, 2024; however, the Carrier did not timely file its 2023 Annual Report. Ms. Burl testified that Transportation Division staff, under her supervision, printed a tentative hearing letter bearing her signature and mailed it to the Carrier on May 15, 2024, via United States Postal Service ("USPS") mail to the Carrier's address on file with the Commission. Ms. Burl explained that the letter advised the Carrier that the Commission had not received its 2023 Annual Report, and if the Carrier did not submit its 2023 Annual Report and pay the \$500.00 late fee on or before June 14, 2024, the Commission would issue a citation. Ms. Burl stated that the tentative hearing letter was not returned to the Commission by the USPS as undeliverable.

Ms. Burl testified that the Commission did not receive the Carrier's 2023 Annual Report after mailing the tentative hearing letter. Thus, Transportation Division staff, under Ms. Burl's supervision, prepared a citation for her signature and mailed it to the Carrier on July 3, 2024. Per Ms. Burl, the citation was mailed via USPS regular mail and certified mail return receipt requested to the Carrier's address on file with the Commission. Attached to the citation was a copy of the tentative hearing letter mailed previously. Ms. Burl stated that the citation directs the Carrier to appear at a hearing at the Commission on August 22, 2024, and advises that a \$25.00 citation fee has been assessed to its account and that an order may be issued canceling its authority. Ms. Burl confirmed that notice of this proceeding was published in the Commission's *Official Bulletin* dated.

Ms. Burl testified that the citation sent via regular mail was not returned to the Commission for any reason and the citation sent by certified mail was returned to the Commission as unclaimed on August 5, 2024. Ms. Burl identified the returned certified mail envelope, testifying that the USPS had affixed a label stating "Return to Sender", "Unclaimed", and "Unable to Forward." Additionally, Ms. Burl testified further that the envelope had handwritten notations stating "7/10/24 TD", "7/15", and "7/25" with what appear to be initials by "7/25". Ms. Burl testified further that her understanding was that these notations were placed by the USPS indicating that it had provided notice to the recipient of the certified mail on these dates.

According to Ms. Burl, as of the date of the hearing, the Carrier had not submitted its 2023 Annual Report, the \$500.00 late fee, appropriate documentation to change its address on file with the Commission, or appropriate documentation to close its authority with the Commission. Ms. Burl reiterated the Commission Staff's requested relief in this matter.

In connection with her testimony, Ms. Burl identified the following documents, which were admitted:

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| Staff Exhibit 1 | A copy of correspondence on Commission Transportation Division letterhead dated May 15, 2024, bearing the electronic signature of Tammy Burl, Transportation Administrator, Louisiana Public Service Commission, to Touchdown Towing LLC, "Re: FAILURE TO FILE 2023 MOTOR CARRIER ANNUAL REPORT." |
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| Staff Exhibit 2, <i>in globo</i> | A copy of the citation issued to Touchdown Towing LLC with a mailout date of July 3, 2024, marked with certified mail receipt number 7022 3330 0001 8583 0348 along with a copy of the May 15, 2024 letter (Staff Exhibit 1). And, |
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| Staff Exhibit 3, <i>in globo</i> | Copies of the following: |
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- The front of an envelope addressed to Touchdown Towing LLC with the return address of the LPSC with USPS certified mail tracking number 7022 3330 0001 8583 0348; a USPS label bearing the words “Return to Sender”, “Unclaimed”, and “Unable to Forward”; handwritten notations stating “7/10/24 TD”, “7/15”, and [illegible] “7/25”; and, stamped received by the Commission on August 5, 2024.
- The back of the envelope with the attached unsigned certified mail return receipt bearing tracking number 7022 3330 0001 8583 0348.

The Commission Staff requests, in light of the Carrier’s failure to file its 2023 Annual Report, that the Commission cancel the Carrier’s Common Carrier Certificate No. 8436 and order the Carrier to pay a \$500.00 late fee and a \$25.00 citation fee.

Findings of Fact and Conclusions of Law

From the testimony and evidence presented at hearing, we make the following findings of fact and conclusions of law:

Findings of Fact

1. The Carrier is a regulated motor carrier, currently holds Common Carrier Certificate No. 8436, and operates on a calendar year-end basis.
2. On May 15, 2024, the Commission Staff sent a letter to the Carrier via USPS mail to its address on file with the Commission advising that it did not file its 2023 Annual Report and that a \$500.00 late fee was assessed to its account. This letter further advises that the Carrier had been tentatively scheduled to appear at a hearing on August 21 or August 22, 2024, and instructs the Carrier to file its 2023 Annual Report and pay the \$500.00 late fee by June 14, 2024. Otherwise, the Carrier would be issued a citation requiring it to appear at a hearing and be assessed a \$25.00 citation fee. The letter was not returned as undeliverable.
3. On July 3, 2024, the Commission Staff mailed a citation to the Carrier directing the Carrier to appear at a hearing on August 22, 2024, to defend against the cancellation of its certificate and the requirement to pay a \$500.00 late filing fee and a \$25.00 citation fee. A copy of the May 15, 2024 letter was attached to the citation. Notice of the citation was published in the Commission’s *Official Bulletin* dated July 3, 2024.
4. The citation was sent by USPS certified mail (receipt number 7022 3330 0001 8583 0348) return receipt requested and regular mail to the Carrier’s address on file with the Commission.
5. The citation sent by USPS regular mail was not returned to the Commission as undeliverable. The complete certified mailing was returned to the Commission on August 5, 2024, with the unsigned receipt attached and with the front of the envelope marked by the USPS with a label bearing the words “Return to Sender”, “Unclaimed”, and “Unable to Forward.”
6. The Carrier did not appear at the August 22, 2024 hearing. As of the date of the hearing, the Carrier had not submitted its 2023 Annual Report, the \$500.00 late filing fee, appropriate documentation to change its address on file with the Commission, or appropriate documentation to relinquish the authority granted by its common carrier certificate.

Conclusions of Law

1. At the hearing, the Commission Staff had the burden of proving its allegations against the Carrier. Because the Carrier did not appear at the hearing, the Commission Staff also had the burden of demonstrating that the Carrier was provided fair notice of the hearing and the opportunity to present a defense. La. R.S. 45:166 provides that a certificate may be revoked “after *notice and hearing* for failure to comply with any provision of R.S. 45:161 through 45:172, or with any lawful order, rule or regulation of the commission.” (Emphasis added).
2. Pursuant to its constitutional and statutory authority, the Commission has adopted the *Rules of Practice and Procedure*. Pertinent to this proceeding, Commission Rules 7 and 19 provide for notice of non-criminal proceedings through publication in the Commission’s *Official Bulletin*, as well as through service “through any means whereby proof of receipt or unclaimed status can be shown” to “the last known place of address of the person entitled to receive such notice”⁷
3. Pursuant to constitutional and legislative mandate, and Commission Orders adopted pursuant thereto, the Commission has the authority to regulate motor carriers. The Commission has directed through its General Order No. 2 and the 2021 General Order that regulated motor carriers file Annual Reports with the Commission, and that a carrier be assessed a \$500.00 late fee if its Annual Report is not timely filed. La. R.S. 45:166 permits the Commission to amend, suspend, or revoke a certificate, in whole or in part, if it is determined that the carrier has failed to comply with the statutory requirements or Commission rules and regulations.
4. The Commission’s Transportation Division issued the citation to the Carrier by USPS regular mail and certified mail return receipt requested to the Carrier’s address on file with the Commission. The citation (as well as the May 15, 2024 tentative hearing letter) sent via regular mail was not returned to the Commission. The Commission Staff demonstrated through testimonial and documentary evidence that the citation sent via certified mail was not claimed by the Carrier. Interim Rule 7 adopted in *Special Order No. 72-2021* permits service where proof of receipt or unclaimed status can be shown. Furthermore, this Commission has ruled consistent with Louisiana courts that a carrier cannot defeat service by refusing certified mail, finding that “[w]hen a plaintiff sends certified mail to a defendant at the correct address, and the defendant simply refuses to accept the package this is still sufficient service.”⁸ This Commission and Louisiana courts have repeatedly held that a litigant may not defeat service by failing to claim a certified mailing.⁹ We find that the record, taken as a whole, demonstrates that the Commission Staff provided fair notice to the Carrier of the hearing date and that the Carrier was provided a fair opportunity to present a defense at the hearing.
5. In this proceeding, the Commission Staff has established through testimonial and documentary evidence that the Carrier failed to file an Annual Report for 2023 and pay the \$500.00 late fee.
6. We conclude that the Carrier’s failure to file an Annual Report for 2023 and pay the \$500.00 late fee constitutes a failure to comply with General Order No. 2 and the 2021 General Order. Thus, cancellation of the Carrier’s Common Carrier Certificate is appropriate pursuant to La. R.S. 45:166.
7. The 2006 General Order allows the Commission to impose a \$25.00 fee for the issuance of a citation. Therefore, it is appropriate to require the Carrier to pay the \$25.00 citation fee.

⁷ LPSC *Special Order No. 72-2021*, dated November 22, 2021, Louisiana Public Service Commission, 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*.

⁸ *Order No. T-35045* dated February 14, 2019 at 5; Louisiana Public Service Commission v. Luxury Limousines of New Orleans, LLC (Metairie, Louisiana) citing *Thomas Organ Co. v. Universal Music Co.*, 261 So. 2d 323 (La. App. 1 Cir. 1972).

⁹ E.g. *Order No. T-35220* dated August 28, 2019, Louisiana Public Service Commission vs. American Integrated Services, Inc. (Robert, LA) citing *Thomas Organ Co. v. Universal Music Co.*, 261 So. 2d 323 (La. App. 1 Cir. 1972); *Hardy v. Dowe Company, Inc.*, 674 So. 2d 452 (La. App. 4 Cir. 5/8/96).

Conclusion

In accordance with the findings of fact and conclusions of law stated above,

IT IS ORDERED that Common Carrier Certificate No. 8436, currently issued to Touchdown Towing LLC, is CANCELED due to the failure of Touchdown Towing LLC to file its Annual Report for the 2023 calendar year; and

IT IS FURTHER ORDERED that Touchdown Towing LLC pay a \$500.00 late fee and a \$25.00 citation fee to the Commission.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
September 23, 2024**



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

**BRANDON M. FREY
SECRETARY**

/S/ MIKE FRANCIS

**DISTRICT IV
CHAIRMAN MIKE FRANCIS**

/S/ DAVANTE LEWIS

**DISTRICT III
VICE CHAIRMAN DAVANTE LEWIS**

/S/ FOSTER L. CAMPBELL

**DISTRICT V
COMMISSIONER FOSTER L. CAMPBELL**

/S/ ERIC F. SKRMETTA

**DISTRICT I
COMMISSIONER ERIC F. SKRMETTA**

/S/ CRAIG GREENE

**DISTRICT II
COMMISSIONER CRAIG GREENE**