

**LOUISIANA PUBLIC SERVICE COMMISSION
ADMINISTRATIVE HEARINGS DIVISION**

DOCKET NUMBER T-36270

**LOUISIANA PUBLIC SERVICE COMMISSION
VERSUS
IAN NELSON DBA IAN'S AUTO BODY & TOWING**

In re: Alleged violation of Louisiana Revised Statutes Title 45:1177 for failure to pay to the state a fee for the years 2015, 2016, 2017 2018, 2019, and 2020 for the inspection, control, and supervision of its business service and rates authorized in Common Carrier Certificate Number 7783.

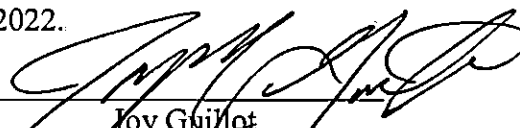
**RECOMMENDATION
OF THE ADMINISTRATIVE LAW JUDGE**

The findings and conclusions recommended by the administrative law judge in this proceeding are contained within the attached Draft Order. This Recommendation is being issued and forwarded to the Commissioners pursuant to Rule 56 of the Rules of Practice and Procedure of the Louisiana Public Service Commission and will be considered and voted on by the Commissioners at an upcoming monthly Commission meeting.

All parties are advised to familiarize themselves with the Commission's Rules of Practice and Procedure, including provisions within Rule 56 which permit parties to request (within five working days of issuance of the Final Recommendation) the opportunity to present oral argument at the Commission meeting at which this Recommendation will be considered. Copies of the Rules of Practice and Procedure of the Louisiana Public Service Commission are available at the Commission's web page: <http://www.lpsc.louisiana.gov>.

Parties may ascertain whether this recommendation will be considered at the Commission's next monthly meeting by accessing the Commission's web page at <http://lpsc.louisiana.gov/> and clicking on **Open Session** to view the Agenda for the Commission's upcoming monthly meeting, or by contacting the Commission's Administrative Hearings Division at one of the following numbers: (225) 219-9417 or (800) 256-2397.

Baton Rouge, Louisiana, this 25th day of May, 2022.


Joy Guillot
Administrative Law Judge

cc: Official Service List

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**RECOMMENDATION
OF THE ADMINISTRATIVE LAW JUDGE**

DRAFT ORDER

Overview

On February 11, 2022, the Louisiana Public Service Commission (“LPSC” or “Commission”) issued a citation to Ian Nelson DBA Ian’s Auto Body & Towing (“Ian Nelson” or the “Carrier”), directing the Carrier to appear at a hearing on April 1, 2022, to show cause why Ian Nelson should not be found guilty of violating La. R.S. 45:1177 for failure to pay inspection, control and supervision fees for the years 2015, 2016, 2017, 2017, 2019 and 2020, and be ordered to pay said fees together with a fine not greater than \$10,000.00 pursuant to the Commission’s General Order dated November 22, 2011. The fee is commonly referred to as an inspection and supervision fee (“ISF”). At the request of the Commission Staff, the hearing was continued to May 5, 2022.

A hearing was convened on May 5, 2022, at which time the Commission Staff appeared through counsel who presented testimony in support of its allegations. The Carrier failed to appear and present a defense.

Applicable Law

Article IV, Section 21 of the Louisiana Constitution of 1974 mandates that the Commission:

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

In addition, La. R.S. 45:163 provides that “[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.” La. R.S. 45:162(12) provides, in pertinent part, that “motor carriers” includes tow trucks.

The Louisiana legislature has established a source of funding for the inspection, control, and supervision of Commission-regulated motor carriers. Specifically, La. R.S. 45:1177 requires that each Commission-regulated motor carrier pay to the state, through the Louisiana Department of Revenue (“LDR” or “Department of Revenue”), a fee for the inspection, control, and supervision of the carrier’s business service and rates. These inspection and supervision fees are paid quarterly and are measured by the carrier’s gross receipts derived from activities that are subject to the control and jurisdiction of the Commission. The carrier reports its gross receipts to LDR through the quarterly filing of the Quarterly Report of Inspection and Supervision Fee form (the “ISF Form”).

La. R.S. 45:1179 authorizes the state’s collector of revenue to supervise and enforce the collection of inspection and supervision fees and directs that sworn annual statements filed with the Commission are to be used to determine the amount of a carrier’s gross receipts upon which the inspection and supervision fees are based. The Commission requires all regulated carriers to

render a report of its financial and operating conditions and results annually (the “Annual Report”) pursuant to the Commission’s General Order No. 2 dated July 1, 1921. The Commission’s General Order dated November 22, 2011¹ (“2011 General Order”) provides that the Annual Reports shall form the basis for the assessment of the inspection and supervision fees provided for in La. R.S. 45:1179 and the Annual Reports shall be sworn to before a notary public.

In addition, the Commission, through the 2011 General Order, authorized the Commission Staff to audit Commission-regulated motor carriers to determine whether they are accurately reporting regulated revenues to the Department of Revenue for purposes of paying inspection and supervision fees. If the Commission Staff determines from such audits that a regulated carrier has failed to pay its required inspection and supervision fees, the Commission Staff is authorized to issue a citation to the regulated carrier, directing the carrier to show cause at a public hearing why it should not be ordered to pay such fees, together with a fine not to exceed \$10,000.00. Moreover, the Commission’s General Order dated June 7, 2006 (“2006 General Order”) authorizes the imposition of a \$25.00 citation fee when a citation is issued to a Commission-jurisdictional motor carrier and that carrier is determined to have violated a Commission order.

The Commission Staff’s Case

At the hearing, the Commission Staff alleged that the Carrier failed to properly pay its inspection and supervision fees for the years 2015, 2017, and 2018, and improperly reported its inspection and supervision fees for the years 2019 and 2020. The Commission Staff is requesting

¹ Commission Order No. R-31953, Louisiana Public Service Commission, ex parte. In re: Discussion on formulating and adopting a General Order establishing procedures for the enforcement of the payment of accurate Inspection and Supervision fees by motor carriers and public utilities, including audit procedures, a hearing process and the establishment of fines and fees for the failure to properly report and pay said fees.

that the Carrier (1) be found guilty of violating La. R.S. 45:1177 for improperly paying its inspection and supervision fees for the years 2015, 2017, and 2018; (2) be ordered to amend its LDR Quarterly Report of Inspection and Supervision Fee forms for the years 2015, 2017, 2018, 2019 and 2020;² (3) be ordered to submit additional, appropriate payments to the Department of Revenue within sixty (60) days of the issuance of an order in the instant proceeding; (4) submit proofs of aforementioned payments directly to the Commission within ten (10) days of submitting such payments to LDR; (5) pay a \$25.00 citation fee, pursuant to the Commission's General Order dated June 7, 2006; and (6) be fined \$500.00, to be paid to the Commission in certified funds, within sixty (60) days of the issuance of an order in the instant docket. In support of its allegations, the Commission Staff presented the testimony of Audit Director Robin Pendergrass and Transportation Division Administrator Tammy Burl.

Testimony of Robin Pendergrass

Robin Pendergrass is the Audit Director of the Commission's Auditing Division, and her duties include examination, review, and analysis of accounting records, reports, financial statements, and other documents of companies under the Commission's jurisdiction in order to verify the accuracy, authenticity, and/or existence of information provided by these companies. Ms. Pendergrass testified that the Auditing Division also reviews inspection and supervision fee payment data provided by the Department of Revenue, to ensure that Commission-regulated companies are filing correct ISF Forms and making the correct payments. According to Ms. Pendergrass, the Auditing Division compares the revenues a carrier reports to LDR to the revenues reported in the Annual Reports, and determines if the amounts match.

² See Tr. Hr'g, pg. 44, lns. 7-8.

Ms. Pendergrass became familiar with the Carrier in 2016, when the Commission's Auditing Division initiated an audit of the Carrier. According to Ms. Pendergrass, from November 2016 through February 2022, the Commission's Auditing Division continued its audit of the Carrier. Through the duration of the audit, the Commission's Auditing Division communicated with different staff members of the Carrier and the audit eventually expanded to include the years 2015 through 2020. Ms. Pendergrass testified that at the conclusion of the audit, she issued an Audit Memorandum that she forwarded to Ms. Tammy Burl of the Commission's Transportation Division. Ms. Pendergrass concluded in her Audit Memorandum that, as of February 8, 2022, the Carrier "has yet to comply with the outstanding ISF audit for the years 2015, 2017, 2018, 2019, and 2020."

Ms. Pendergrass further testified that after the issuance of the citation in this matter, the Commission requested further inspection and supervision fee payment information from LDR. Ms. Pendergrass stated that she reviewed the additional LDR information, and concluded: 1) that the Carrier's revenue amount reported to LDR for 2017 did not match the Carrier's revenue amount in its 2017 Annual Report; 2) the Carrier's revenue amounts reported to LDR for 2018 were not cumulative; 3) the Carrier's revenue amount reported to LDR for the fourth quarter of 2018 did not match the Carrier's revenue amount in its 2018 Annual Report; and 4) although estimated payments were made to LDR for 2019, the Carrier never filed ISF Forms for the first quarter of 2019. Ms. Pendergrass stated that after receipt of the information from LDR, the hearing in this matter was continued for one month and she again emailed the Carrier. Ms. Pendergrass explained that the Carrier did not respond to her email nor come into compliance with its filings.

In conjunction with her testimony, Ms. Pendergrass identified the following documents for submission into evidence:

Staff Exhibit A A copy of a letter dated November 3, 2016, bearing the signature of Lloyd Johnson, Auditor, to Ian Nelson dba Ian's Auto Body & Towing, "Re: LPSC Cert. No. 7783. ISF – Notice of Incorrect Payments";

Staff Exhibit B,
in globo A copy of an Audit Memorandum, prepared by Robin Pendergrass, Audit Director, with the following attachments (**admitted confidentially under seal**):

- A copy of a letter dated November 3, 2016, bearing the signature of Lloyd Johnson, Auditor, to Ian Nelson dba Ian's Auto Body & Towing, "Re: LPSC Cert. No. 7783. ISF – Notice of Incorrect Payments (Exh. A);
- A copy of a printout of email correspondence to iansautobody1437@yahoo.com, from Robin Pendergrass, dated February 12, 2019, "Subject: Ian's Auto Body & Towing – ISF Audit";
- A copy of a printout of email correspondence between Robin Pendergrass and Maurice Nelson, beginning February 12, 2019, "Subject: Ian's Auto Body & Towing – ISF Audit";
- A copy of a Louisiana Department of Revenue, Quarterly Report of Inspection and Supervision Fee for Certificate and/or Permit Number 7783, for filing period 0615;
- A copy of a Louisiana Department of Revenue, Quarterly Report of Inspection and Supervision Fee for Certificate and/or Permit Number 7783, for filing period 0915;
- A copy of a Louisiana Department of Revenue, Quarterly Report of Inspection and Supervision Fee for Certificate and/or Permit Number 7783, for filing period 1215;
- A copy of a printout of email correspondence to Donna Nelson, from Robin Pendergrass, dated September 29, 2021, "Subject: Ian's Auto Body & Towing (7783) ISF Audit";
- A copy of a printout of email correspondence to Donna Nelson, from Robin Pendergrass, dated December 10, 2021, "FW: Subject: Ian's Auto Body & Towing (7783) ISF Audit"; and
- A copy of a chart, prepared by Robin Pendergrass, showing revenue and ISF payment data for Ian Nelson DBA Ian's Auto Body & Towing, updated September 28, 2021.

Staff Exhibit C A copy of a printout of email correspondence to Donna Nelson, from Robin Pendergrass, dated March 25, 2022, “FW: Ian’s Auto Body & Towing (7783) ISF Audit.”

Testimony of Tammy Burl

Tammy Burl is employed by the Commission as the Administrator for the Commission’s Transportation Division. Ms. Burl testified that her duties include the overseeing of the Transportation Division’s day-to-day operations, which includes ensuring compliance of Commission-regulated motor carriers with the requirements of the Commission’s orders, such as requirements pertaining to Annual Reports and inspection and supervision fees.

Ms. Burl confirmed that the Carrier is a nonconsensual tow company, operating under Common Carrier Certificate No. 7783. According to Ms. Burl, she received Ms. Pendergrass’ Audit Memorandum and reviewed it. Ms. Burl outlined the revenues reported by the Carrier through its Annual Report filings with the Commission, and compared these to the Carrier’s revenues reported to LDR. According to Ms. Burl, the Commission Staff determined that the Carrier’s reported revenues were not consistent for the years 2015, 2017, 2018, 2019, and 2020; however, the reported revenues were consistent for 2016. After this review, the Commission issued a citation against the Carrier.

The Commission cited the Carrier for violations in the years 2015, 2016, 2017, 2018, 2019 and 2020. According to Ms. Burl, while the revenues were consistent for 2016, the Commission cited the Carrier for 2016 to ensure that no changes were made to it after the citation was issued.³ According to Ms. Burl, the citation was mailed on February 11, 2022 to the Carrier, at its address on file with the Commission, via regular and certified mail. Ms. Burl testified that the regular mailing was not returned, and the Commission Staff received a certified

³ Tr. Hr’g, pg. 35, lns. 21-23.

mail return receipt marked “CV19” with initials. Ms. Burl testified that the return receipt was most likely signed by a postal employee as part of the United States Postal Service’s (“USPS”) COVID-19 policy. Ms. Burl also provided a brief explanation on the USPS’ COVID-19 policy.

According to Ms. Burl, after the issuance of the citation, Commission Executive Secretary Brandon Frey sent a letter to the LDR, requesting information about the Carrier’s total intrastate gross receipts reported and total inspection and supervision fee payments for years 2015 through 2020. Subsequently, LDR provided the requested information. Ms. Burl testified that the information from LDR confirmed that while the Carrier was not responding to Commission Staff, they were making some LDR filings and payments. Ms. Burl outlined the information provided by LDR, and explained that the amounts reported by the Carrier to LDR did not match the amounts the Carrier reported to the Commission in their Annual Reports for the years 2015, 2017, 2018, and that the Carrier overpaid to LDR in 2019 and 2020. According to Ms. Burl, she forwarded the LDR information to Ms. Pendergrass for review. Ms. Burl testified that she received no communication from the Carrier afterwards.

After receipt of the LDR information, according to Ms. Burl, the Commission Staff requested a continuance of the April 1, 2022 hearing, which was granted, and the hearing was rescheduled to May 5, 2022. Ms. Burl testified that the Commission’s Transportation Division mailed the ruling continuing the hearing by regular and certified mail to the Carrier’s address on file with the Commission. Ms. Burl further testified that the regular mailing was not returned, and the Commission Staff received a signed return receipt for the certified mailing, indicating that the mailing was delivered.

Ms. Burl testified that, as of the date of the hearing, the Carrier did not submit the required documents to come into compliance with the Commission, and that she did not have any contact with the Carrier since the notice of the rescheduled hearing date was issued.

In conjunction with her testimony, Ms. Burl identified the following documents for submission into evidence:

Staff Exhibit D, *in globo* Copies of the following documents (**admitted confidentially under seal**):

- The 2015 Motor Carrier Annual Report submitted to the Louisiana Public Service Commission by Ian Nelson dba Ian's Auto Body & Towing, for LPSC Certificate No. 7783;
- The 2016 Motor Carrier Annual Report submitted to the Louisiana Public Service Commission by Ian Nelson dba Ian's Auto Body & Towing, for LPSC Certificate No. 7783;
- The 2017 Motor Carrier Annual Report submitted to the Louisiana Public Service Commission by Ian Nelson dba Ian's Auto Body & Towing, for LPSC Certificate No. 7783;
- The 2018 Motor Carrier Annual Report submitted to the Louisiana Public Service Commission by Ian Nelson dba Ian's Auto Body & Towing, for LPSC Certificate No. 7783;
- The 2019 Motor Carrier Annual Report submitted to the Louisiana Public Service Commission by Ian Nelson dba Ian's Auto Body & Towing, for LPSC Certificate No. 7783; and
- The 2020 Motor Carrier Annual Report submitted to the Louisiana Public Service Commission by Ian Nelson dba Ian's Auto Body & Towing, for LPSC Certificate No. 7783;

Staff Exhibit E, *in globo* A copy of the citation issued on February 11, 2022 to Ian Nelson DBA Ian's Auto Body & Towing in Docket Number T-36270, with the following attachments:

- A copy of an audit memorandum, prepared by Robin Pendergrass, Audit Director (Exh. B);
- A copy of a letter dated November 3, 2016, bearing the signature of Lloyd Johnson, Auditor, to Ian Nelson dba Ian's Auto Body & Towing, "Re: LPSC Cert. No. 7783. ISF – Notice of Incorrect Payments (Exh. A);

- A copy of a printout of email correspondence to Donna Nelson, from Robin Pendergrass, dated December 10, 2021, “FW: Subject: Ian’s Auto Body & Towing (7783) ISF Audit”; and
- A copy of a chart, prepared by Robin Pendergrass, showing revenue and ISF payment data for Ian Nelson DBA Ian’s Auto Body & Towing, updated September 28, 2021;

Staff Exhibit F A copy of the signed certified mail return receipt for the citation issued via certified mail, bearing tracking number 7002 2030 0002 6571 4966;

Staff Exhibit G, *in globo* A copy of a letter dated February 11, 2022 to Kevin Richard, Secretary of Revenue, Louisiana Department of Revenue, from Brandon M. Frey, Executive Secretary, Louisiana Public Service Commission, “Re: Louisiana Revised Statutes 45:1177, Inspection and Supervision Fee; Utility and Carrier Inspection and Supervision Fund”, with the following attachment (**admitted confidentially under seal**):

- A copy of a letter dated March 22, 2022 to Brandon M. Frey, Executive Secretary, Louisiana Public Service Commission, from Kelli Jumper, Director, Taxpayer Compliance SSEW Division, Louisiana Department of Revenue, “Re: Inspection & Supervision Fee, Ian Nelson dba Ian’s Auto Body & Towing;

Staff Exhibit H A copy of the Ruling on Motion to Continue and Notice of Rescheduled Hearing Date, issued on March 25, 2022 by the Administrative Hearings Division of the Louisiana Public Service Commission, modified with notation “3/28/2022 Mailed to Respondent by US Postal First Class & Certified Mail # 7002 2030 0002 6571 4768”; and

Staff Exhibit I A copy of the signed certified mail return receipt for the Ruling on Motion to Continue and Notice of Rescheduled Hearing Date issued via certified mail, bearing tracking number 7002 2030 0002 6571 4768.

Commission Staff’s Post-Hearing Brief

At the conclusion of the hearing on May 5, 2022, the Commission Staff was provided an opportunity to file a post-hearing brief to address what law the Carrier may have violated by failing to properly report its revenues to the LDR for the years 2019 and 2020 (the years for

which payments to LDR exceeded the amounts reported in the Annual Reports). On May 13, 2022, the Commission Staff filed its Post-Hearing Brief.

The Commission Staff argued that the Commission's ability to cite the Carrier for failure to properly report intrastate income on its Annual Report is both inherent to its authority to cite for failure to properly pay inspection and supervision fees to LDR, and is authorized under the Commission's authority as provided for in La. R.S. 45:171. The Commission Staff further argued that, pursuant to its constitutional and legislative authority, the Commission has "the responsibility of ascertaining whether regulated motor carriers are paying the proper ISF to LDR."

The Commission Staff explained that, in order to determine whether the revenue reported to LDR is accurate, the Commission conducts audits of regulated carriers, and this relies on the carrier's Annual Report. The Commission Staff pointed out that regulated carriers are required to submit Annual Reports and these Annual Reports "shall contain full and complete information ... and shall be sworn to by the officer or officers having personal knowledge of the facts set forth therein." Therefore, the Commission Staff argues that if it determines that an Annual Report is incomplete or incorrect, the carrier would be in violation of La. R.S. 45:1179 and the Commission's General Order 2 dated July 1, 1921.

Findings of Fact and Conclusions of Law:

Having considered applicable law and the evidence presented in this case, the Commission makes the following findings of fact and conclusions of law:

Findings of Fact

- (1) The Carrier is a motor carrier subject to the jurisdiction of the Commission, operating under Common Carrier Certificate Number 7783.

- (2) In 2016, the Commission's Auditing Division investigated the Carrier's inspection and supervision fee payment history. The Auditing Division concluded that the Carrier was not compliant with its 2015 Inspection and Supervision Fee payments.
- (3) On November 3, 2016, Commission Auditor Lloyd Johnson sent a letter to a representative of the Carrier, stating that the Carrier failed to pay the correct inspection and supervision fees to LDR for 2015, and that the yearly totals listed on the LDR inspection and supervision fee data do not match the amounts reported to the Commission in the Carrier's Annual Report. Finally, the letter provided that the Carrier had until December 3, 2016 to provide documentation supporting the amount of revenue the Carrier reported to LDR.
- (4) On February 12, 2019, the Commission's Auditing Division resumed communication with the Carrier, informing the Carrier that it was not in ISF compliance for the year 2017. From February 2019 to December 2021, the Commission's Auditing Division communicated with the Carrier regarding its open ISF audit. During these communications, the Auditing Division informed the Carrier that the audit expanded to include the years 2018, 2019, and 2020.
- (5) On February 8, 2022, Commission Audit Director Robin Pendergrass prepared an Audit Memorandum for the Commission's Transportation Division. In the Audit Memorandum, Ms. Pendergrass provided a history of the docket, and concluded that the Carrier had not yet complied with the outstanding inspection and supervision fee audit for the years 2015, 2017, 2018, 2019 and 2020. Attached to the memorandum were copies of the Audit Division's correspondences with the Carrier, the Carrier's Annual Reports for the years 2015, 2017, 2018, 2019, and 2020, and a chart prepared by Ms. Pendergrass outlining the Carrier's reported revenues with the LDR.
- (6) On February 11, 2022, Commission Executive Secretary Brandon Frey sent a letter to Kevin Richard, Secretary of Revenue of the Department of Revenue, requesting the total intrastate gross receipts and the total inspection and supervision fee payments reported by the Carrier for the years 2015, 2016, 2017, 2018, 2019 and 2020.
- (7) On February 11, 2022, the Commission's Transportation Division issued a citation against the Carrier, alleging that the Carrier was guilty of violating La. R.S. 45:1177 for failure to pay inspection, control and supervision fees for the years 2015, 2016, 2017, 2017, 2019 and 2020, and should be ordered to pay said fees together with a fine not greater than \$10,000.00 pursuant to the Commission's 2011 General Order. The citation directed the Carrier to appear at a hearing on April 1, 2022.
- (8) The citation was issued to the Carrier via certified and regular mail at the address provided for the Carrier's domicile address on file with the Commission.
- (9) The Commission received a return receipt for the citation, marked "CV19" in the "Signature" section. The citation sent via regular mail was not returned.

- (10) On March 22, 2022, LDR responded to Secretary Frey's February 11, 2022 letter with the total intrastate gross receipts and the total inspection and supervision fee payments reported by the Carrier for the years 2015, 2016, 2017, 2018, 2019 and 2020.
- (11) On April 1, 2022, the Commission Staff requested that the April 1, 2022 hearing be rescheduled to May 5, 2022. The Tribunal granted the motion in a Ruling on Motion to Continue and Notice of Rescheduled Hearing Date that was issued on April 1, 2022.
- (12) The Commission's Transportation Division mailed the April 1, 2022 Ruling on Motion to Continue and Notice of Rescheduled Hearing Date to the Carrier via regular and certified mail.
- (13) The Commission's Transportation Division received a signed certified mail return receipt, indicating that a person at the Carrier's address had received the mailing. The citation sent via regular mail was not returned.
- (14) During the May 5, 2022 hearing, the Commission Staff did not pursue its allegation that the Carrier was guilty of violating La. R.S. 45:1177 for the year 2016.
- (15) The Carrier did not appear at the May 5, 2022 hearing.
- (16) The Carrier's revenues reported to LDR do not match the revenues reported in its Annual Reports for the years 2015, 2017, 2018, 2019 and 2020, as outlined below:

| Year | Total Regulated Intrastate Operating Revenue, as Reported by Carrier in its Annual Reports file with the LPSC (Exh. D) | Total Intrastate Gross Receipts, as filed by the Carrier with the LDR (Exh. G) |
|-------------|---|---|
| 2015 | \$144,798.00 | \$40,151.334 |
| 2016 | \$54,002.30 | \$54,002.30 |
| 2017 | \$122,262.00 | \$22,432.25 |
| 2018 | \$43,005.00 | \$20,000.00 |
| 2019 | \$46,011.46 | \$57,870.67 |
| 2020 | \$38,015.15 | \$45,065.66 |

Conclusions of Law

- (1) At the hearing in this matter, 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.

Pursuant to its constitutional and statutory authority, the Commission has adopted Rules of Practice and Procedure. Commission Rules 7 and 19 provide for notice through publication in the Commission's Official Bulletin, as well as through service by certified

mail. On November 17, 2021, the Commission issued Commission Special Order No. 72-2021, which modifies Rule 7 and provides, in pertinent part, that

[w]here 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.

The Commission's Transportation Division issued a citation to the Carrier by certified mail, return receipt requested, to the Carrier's address on file with the Commission. The certified mail return receipt was returned to the Commission indicating delivery to the Carrier's address on file with the Commission. This receipt was marked "CV19" in the "Signature" section.

Per USPS' COVID-19 policy, a postal service employee is allowed to sign a certified mail receipt at the time of delivery in order to avoid physical contact with the recipient. The Commission has previously found that return receipts signed by postal employees pursuant to this policy are sufficient to provide notice of a hearing to the Carrier.⁴

When the hearing was rescheduled for May 5, 2022, the Tribunal issued a Ruling on Motion to Continue and Notice of Rescheduled Hearing Date. The Commission's Transportation Division mailed this document to the Carrier's address on file with the Commission via regular and certified mail. The Commission Staff received a signed return receipt for the copy of the Ruling on Motion to Continue and Notice of Rescheduled Hearing Date sent via certified mail, indicating that a person at the Carrier's address received notice of the May 5, 2022 hearing date.

Accordingly, 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. The Carrier, despite having received sufficient notice of the hearing and the Commission Staff's allegations against it, did not attend the hearing and present a defense.

- (2) The Carrier is a nonconsensual tow company operating under Commission Common Carrier Certificate Number 7783. Accordingly, we find that the Carrier is a motor carrier regulated by the Commission.

⁴ See, e.g. Commission Order No. T-36184, *Louisiana Public Service Commission v. Supermovers, LLC*; Commission Order No. T-35975, *BACCVAC, LLC, ex parte*; Commission Order No. Order No. T-35943, *Louisiana Public Service Commission vs. Powercore Energy Group, LLC*.

- (3) La. R.S. 45:1177 requires that each Commission-regulated motor carrier pay to the state, through the Louisiana Department of Revenue, a fee for the inspection, control, and supervision of the carrier's business service and rates. These inspection and supervision fees are paid quarterly and are measured by the carrier's gross receipts derived from activities that are subject to the control and jurisdiction of the Commission. LDR provides Quarterly Report of Inspection and Supervision Fee forms, which are filled out by a carrier and submitted to LDR. These forms require carriers to provide total intrastate gross receipts for the calendar year, and further requires carriers to compute the total inspection and supervision fee using a schedule on the reverse side of the same form.

The 2011 General Order provides that the Commission Staff is authorized to audit Commission-regulated motor carriers to determine whether the motor carriers are accurately reporting regulated income to LDR for the purposes of paying inspection and supervision fees to the Commission. La. R.S. 45:1179 provides that the sworn annual statements (the Annual Reports) filed with the Commission shall be used to ascertain the amount of gross revenues upon which the fee is to be computed. Therefore, failure to pay the state the fee calculated based on the Annual Reports filed with the Commission constitutes a violation of La. R.S. 45:1177.

- (4) The Commission Staff alleged that the Carrier was guilty of violating La. R.S. 45:1177 for the year 2015. The regulated intrastate revenue reported by the Carrier to the Commission in its 2015 Annual Report of \$144,798.00 is different than the total yearly gross receipts of \$40,151.334 reported by the Carrier to LDR. In computing its 2015 Inspection and Supervision Fees, it appears the Carrier used the revenues reported to LDR, and not the revenues reported in its 2015 Annual Report. As there is a discrepancy between the amount reported to LDR and the amount reported in the 2015 Annual Report, the Carrier did not pay a properly calculated fee to the state. Accordingly, we find that, for the year 2015, the Carrier is not in compliance with La. R.S. 45:1177.
- (5) In the citation, the Commission Staff alleged that the Carrier was guilty of violating La. R.S. 45:1177 for the year 2016. The Commission Staff did not pursue this allegation during the May 5, 2022 hearing.
- (6) The Commission Staff alleged that the Carrier was guilty of violating La. R.S. 45:1177 for the year 2017. The regulated intrastate revenue reported by the Carrier to the Commission in its 2017 Annual Report of \$122,262.00 is different than the total yearly gross receipts of \$22,432.25 reported by the Carrier to LDR. In computing its 2017 Inspection and Supervision Fees, it appears the Carrier used the revenues reported to LDR, and not the revenues reported in its 2017 Annual Report. As there is a discrepancy between the amount reported to LDR and the amount reported in the 2017 Annual Report, the Carrier did not pay a properly calculated fee to the state. Accordingly, we find that, for the year 2017, the Carrier is not in compliance with La. R.S. 45:1177.
- (7) The Commission Staff alleged that the Carrier was guilty of violating La. R.S. 45:1177 for the year 2018. The regulated intrastate revenue reported by the Carrier to the Commission in its 2018 Annual Report of \$43,005.00 is different than the total yearly

gross receipts of \$20,000.00 reported by the Carrier to LDR. In computing its 2018 Inspection and Supervision Fees, it appears the Carrier used the revenues reported to LDR, and not the revenues reported in its 2018 Annual Report. As there is a discrepancy between the amount reported to LDR and the amount reported in the 2018 Annual Report, the Carrier did not pay a properly calculated fee to the state. Accordingly, we find that, for the year 2018, the Carrier is not in compliance with La. R.S. 45:1177.

- (8) The Commission Staff alleged that the Carrier was guilty of violating La. R.S. 45:1177 for the year 2019. The regulated intrastate revenue reported by the Carrier to the Commission in its 2019 Annual Report of \$46,011.46 is different than the total yearly gross receipts of \$57,870.67 reported by the Carrier to LDR. In computing its 2019 Inspection and Supervision Fees, it appears the Carrier used the revenues reported to LDR, and not the revenues reported in its 2019 Annual Report. As there is a discrepancy between the amount reported to LDR and the amount reported in the 2019 Annual Report, the Carrier did not pay a properly calculated fee to the state. Accordingly, we find that, for the year 2019, the Carrier is not in compliance with La. R.S. 45:1177.
- (9) The Commission Staff alleged that the Carrier was guilty of violating La. R.S. 45:1177 for the year 2020. The regulated intrastate revenue reported by the Carrier to the Commission in its 2020 Annual Report of \$38,015.15 is different than the total yearly gross receipts of \$45,065.66 reported by the Carrier to LDR. In computing its 2020 Inspection and Supervision Fees, it appears the Carrier used the revenues reported to LDR, and not the revenues reported in its 2020 Annual Report. As there is a discrepancy between the amount reported to LDR and the amount reported in the 2020 Annual Report, the Carrier did not pay a properly calculated fee to the state. Accordingly, we find that, for the year 2020, the Carrier is not in compliance with La. R.S. 45:1177.
- (10) La. R.S. 45:1179 provides that sworn annual statements filed with the Commission “shall be used to ascertain the amount of the gross revenues upon which the fee is to be computed.” As the reported gross receipts of the Carrier do not match for the years 2015, 2017, 2018, 2019 and 2020, we find it appropriate to require the Carrier to ascertain the correct gross revenues so that the correct fee may be computed.
- (11) The Commission Staff requests that the Carrier be ordered to amend its Quarterly Report of Inspection and Supervision Fee forms for the years 2015, 2017, 2018, 2019 and 2020.⁵ La. R.S. 45:1177 provides that the “amount of the fees ... shall be measured by the gross receipts of such carrier derived from those activities that are subject to the control and jurisdiction of the [C]ommission.” As the reported gross receipts of the Carrier do not match for the years 2015, 2017, 2018, 2019 and 2020, we find it appropriate to require the Carrier to report the correct gross receipts and amend any associated filings (i.e. Annual Reports and/or Quarterly Report of Inspection and Supervision Fee forms) to show the correct gross receipts.

⁵ At the hearing, counsel for the Commission Staff stated “Staff is seeking that the carrier be found guilty of not properly paying their inspection and supervision fees for the years 2015, 2017, and 2018; that the carrier be ordered to amend their ISF reports fees for those years including 2019 and 2020 [...]” Tr. Hr’g, pg. 44, lns. 5-8.

- (12) The Commission Staff is requesting that the Carrier be required to submit additional, appropriate payments to LDR, to submit such payments within sixty (60) days of issuance of this order, and to submit proofs of aforementioned payments directly to the Commission within ten (10) days of submitting such payments to LDR. It is appropriate that the Carrier ascertain the correct gross revenues, report the correct gross receipts and amend any associated filings within sixty (60) days. Thereafter, the Carrier should submit proof of the correct filings to the Commission at least ten (10) days after making the corrections.

The Commission's 2011 General Order permits the Commission Staff to pursue the payment of all inspection and supervision fees due to the Commission by forwarding the results of its audit findings to LDR for assessment and collection of said fee. If the Carrier has submitted corrected gross revenue amounts for 2015, 2017, 2018, 2019 and 2020 to the Commission via any corrected Annual Reports, we find it appropriate that the Commission forward those corrected gross revenue amounts to LDR for assessment and collection of the proper inspection and supervision fees.

- (13) The Commission's 2011 General Order permits the assessment of a fine not greater than \$10,000.00, if it is determined that a regulated company has failed to pay its inspection and supervision fees. The Commission's practice in establishing penalties has been to consider each case on its own merits, taking into consideration the magnitude of the offense, the carrier's history of compliance, the carrier's cooperation in the investigation, the impact of the offense on regulated carriers, the impact of the offense on the public, and the existence of any reasonable defense.

In the instant case, the Commission Staff is requesting a fine of \$500.00 be assessed against the Carrier for failure to file proper returns and make proper payments with the LDR. The Commission Staff further requests that payment of the fine be made to the Commission in certified funds within sixty (60) days of the issuance of an order in the instant docket. We find that a \$500.00 fine is reasonable.

- (14) The Commission Staff is requesting that the Carrier be required to pay a \$25.00 citation fee, in accordance with the Commission's General Order dated June 7, 2006. We find that imposition of a \$25.00 citation fee is appropriate in this case.

Conclusion

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

IT IS HEREBY ORDERED that Ian Nelson DBA Ian's Auto Body & Towing be found **GUILTY** of violating the La. R.S. 45:1177 by failing to pay the properly calculated inspection and supervision fees to the state for the year 2015, 2017, 2018, 2019 and 2020.

IT IS FURTHER ORDERED that Ian Nelson DBA Ian's Auto Body & Towing is hereby required to ascertain the correct gross revenues for the years 2015, 2017, 2018, 2019 and 2020, report the correct gross receipts for the years 2015, 2017, 2018, 2019 and 2020 and amend any associated filings within sixty (60) days of the date of the issuance of this Order.

IT IS FURTHER ORDERED that Ian Nelson DBA Ian's Auto Body & Towing is hereby required to provide proof to the Commission that it reported the correct gross receipts and amended any associated filings within ten (10) days of such corrections being made.

IT IS FURTHER ORDERED that, pursuant to the Commission's General Order dated November 22, 2011, a fine of \$500.00 is hereby imposed upon Ian Nelson DBA Ian's Auto Body & Towing for its failure to pay the appropriate inspection and supervision fees for the years 2015, 2017, 2018, 2019 and 2020, and that this amount must be paid to the Commission, in certified funds, within sixty (60) days of the date of issuance of this Order.

IT IS FURTHER ORDERED that, pursuant to the Commission's General Order dated June 7, 2006, a citation fee of \$25.00 is hereby imposed upon Ian Nelson DBA Ian's Auto Body & Towing, and that this amount must be paid to the Commission, in certified funds, within sixty (60) days of the date of issuance of this Order.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
«Form.SignatureDate»

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

/S/ MIKE FRANCIS
DISTRICT IV
VICE CHAIRMAN MIKE FRANCIS

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

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

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BRANDON M. FREY
SECRETARY

/S/ CRAIG GREENE
DISTRICT II
COMMISSIONER CRAIG GREENE

**Service List for T-36270
as of 5/25/2022**

Commissioner(s)

Foster L. Campbell

LPSC Staff Counsel

Tanika Starks, LPSC Staff Attorney

LPSC Staff

Robin Pendergrass, LPSC Auditing Division

Tammy Burl, LPSC Transportation Division

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