

19th Judicial District Court for the Parish of East Baton Rouge

State of Louisiana

No. 765932

Sec. 23

Rosefield Fourchon Operating, LLC

v.

Louisiana Public Service Commission

AMICUS BRIEF OF ATTORNEY GENERAL LIZ MURRILL
IN SUPPORT OF ROSEFIELD FOURCHON OPERATING, LLC'S
MOTION FOR EXPEDITED STAY OF LPSC PROCEEDINGS

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CONCISE STATEMENT OF THE CASE

In the 2025 legislative session, the Louisiana Legislature amended La. R.S. 45:251 to correct statutory definitions that had previously led to absurd results in their application. That amendment, as relevant here, clarified the terms “pipe line” and “common carrier” to make clear that certain *de minimis* movement of oil wholly within a tank facility or storage terminal does not rise to the level of “the transportation of petroleum” sufficient to trigger application of La. R.S. 45:252, *et seq.* That change, however, was wholly ignored by the Louisiana Public Service Commission (“LPSC”), who interpreted La. R.S. 45:251’s definitions in such a way that permitted the exercise of its jurisdiction over a small, self-enclosed storage facility in the Port Fourchon complex. That was error warranting this Court’s correction.

Based on a flawed understanding of Louisiana law, an administrative law judge (“ALJ”) determined that Rosefield Fourchon Operating, LLC’s (“Rosefield”) so-called “Terminal Assets” at Port Fourchon are a “pipe line” and that Rosefield is thus a “common carrier” subject to LPSC’s jurisdiction. In a rushed decision that ignored the impending change in the controlling state law, LPSC then affirmed the ALJ’s holding and pursued enforcement of its June 2025 Order against Rosefield, threatening investigation and sanctions to boot. As Rosefield has explained at length, that exercise of jurisdiction is improper—but LPSC is proceeding with its action against Rosefield as if this appeal does not exist. A stay is thus necessary to give this Court the time it needs to address the statutory and constitutional questions raised in the appeal in the first instance.

Because the petition and the motion to stay raise serious issues of state law, and because LPSC continues to act in violation of that state law while this appeal is pending, the Attorney General urges this Court to grant the motion for expedited stay and engage in much needed statutory interpretation to correct the errors below.

BACKGROUND

A. Louisiana Revised Statutes 45:251 *et seq.* and the LPSC

Chapter 5 of Title 45 of the Louisiana Revised Statutes regulates Pipe Lines, including Petroleum Pipe Lines, located across the State. *See* La. R.S. 45:251–265. That statutory scheme directs that “[a]ll pipe lines through which petroleum is conveyed from one point in this state to another point in the state are declared to be common carriers as defined in R.S. 45:251 and are placed under the control of and subject to regulation by the Louisiana Public Service Commission.” La. R.S. 45:252. La. R.S. 45:251(1) in turn defines a “common carrier” to include “all persons engaged in the transportation of petroleum as public utilities and common carriers for hire; or which on proper showing may be legally held a common carrier from the nature of the business conducted, or from the manner in which such business is carried on.” If the statutory definitions in La. R.S. 45:251 are satisfied, the LPSC, pursuant to the power laid out in La. R.S. 45:253, may regulate that pipe line and the common carrier under Louisiana law by, *inter alia*, “establish[ing] and enforce[ing] reasonable rates and regulations for gathering, transporting, loading and delivering petroleum, by any common carrier.” La. R.S. 45:255.

The statutory definitions under the previous formulation of La. R.S. 45:251 and the corresponding regulatory language in section 252 created some problems. Simply put, the language in section 252 cannot be read literally because it would lead to absurd results. *See* La. Civ. Code art. 9 (requiring the law to be “applied as written” so long as “its application does not lead to absurd results”). For example, it would deem every ordinary business that depends on petroleum-based products (such as gas stations)—and thus necessarily moves such products across their premises—a common carrier simply because they literally move petroleum “from one point in this state to another point in the state.” La. R.S. 45:252. That cannot be the result the legislature intended.

To address these problems, in the 2025 legislative session, the legislature amended La. R.S. 45:251 and other surrounding provisions. As relevant here, it changed the definition of “pipe line” under section 251(3)(a) to include:

- (i) The real estate, rights or way, pipe in line, telephone and telegraph lines or other communications systems, tank facilities as herein designated, necessary or integral to the pipe line transportation function and necessary for the proper conduct of it's the subject common carrier's business as a common carrier.
- (ii) All fixtures, equipment and personal property of every kind owned, controlled, operated, used or managed, in connection with, or to facilitate the transportation, distribution and delivery of petroleum through lines constructed of pipe.

2025 La. Sess. Law Serv. Act 458 (S.B. 244). The legislature also clarified what is “not include[d]” in the definition of “pipe line” under 3(b):

- (i) Pipes designed and used solely within a terminal facility for terminaling services, including pipes delivering petroleum into or extracting petroleum from tanks used for terminaling services, intra-terminal transfer lines, metering facilities associated with such terminaling services, tanks designed and used for terminaling services, and truck unloading facilities.
- (ii) Any property of an entity that does not otherwise meet the definition of common carrier.

Id. Those changes went into effect on October 1, 2025.

B. Rosefield’s operations at Port Fourchon

Port Fourchon is a major 1,300-acre hub for domestic and foreign oil, gas, and energy production.¹ The Port is composed of a vast array of docks and facilities that in turn allow the fruits of that production to be transported to the rest of America and the world. But Rosefield does not handle that sort of transportation. Rather, it owns a comparatively small terminal with two operating storage tanks, a few small pipelines that allow those tanks to receive oil, and one pipeline (the LAL 1490) that releases stored oil to a nearby pump station for a major pipeline not owned by Rosefield.² As Rosefield has explained repeatedly, the “purpose of these tanks and

¹ See *About Port Fourchon*, Fourchon, <https://www.portfourchon.com/about-glpc/port-facts> (last visited Oct. 6, 2025).

² See, e.g., Mem. in support of Mot. to Stay, at pp.3–4.

the transfer lines connected to them is to provide merchant storage for the convenience of shoppers, not to serve a transportation function.”³ To be clear, the extent of Rosefield’s terminal is a couple of tanks and the 1,300-foot LAL 1490 (shorter than the walk from LPSC’s building to the Capitol in downtown Baton Rouge), embedded within the vast expanse of Port Fourchon.⁴

Notwithstanding Rosefield’s small profile and its purely intra-terminal operations, the ALJ ruling below concluded that Rosefield is “engaged in the transportation of petroleum as ... [a] common carrier[] for hire,” La. R.S. 45:251(a), subject to LPSC’s jurisdiction. As the Attorney General explained to the LPSC Commissioners in a letter on April 15, 2025, that conclusion was profoundly wrong. The Attorney General went on to note, however, the anticipated legislative changes in the 2025 session that would clarify the definitions of “pipeline,” “tank facilities,” “common carrier,” and others contained in La. R.S. 45:251. *See supra* p.3. Considering the impending change in the law, the Attorney General urged LPSC to defer action in the underlying matter until the legislative process was complete. The LPSC declined to do so, instead upholding the ALJ’s ruling in June of 2025, before the legislative changes went into effect.

Rosefield appealed, bringing the matter before this Court and arguing that threshold jurisdictional issues prevent LPSC from pursuing action against Rosefield under the June 2025 Order. Because Rosefield is correct in its interpretation of the newly amended state law, and because LPSC is acting outside the scope of its jurisdiction, the Attorney General respectfully urges this Court to grant the motion for an expedited stay and prevent LPSC from prolonging the above errors at Rosefield’s—and the law’s—expense.

³ *Id.* at p.4.

⁴ As the Federal Energy Regulatory Commission (“FERC”) already correctly held, Rosefield’s facilities consist only of “tanks, metering facilities, and terminal transfer lines.” *See* FERC Docket No. OR-24-5-000, *Cantium, LLC v. Rosefield Fourchon Operating, LLC*. FERC analyzed whether the service provided by Rosefield was “necessary or integral to the pipeline transportation function” and held, in a final judgment following the expiration of all rehearing or appeal deadlines, that Rosefield’s services were not. *See* Ex. A to Mot. to Stay (FERC order dismissing complaint, pp.7–9).

ARGUMENT

I. THE COURT SHOULD GRANT ROSEFIELD’S MOTION FOR EXPEDITED STAY.

In the June 2025 Order, LPSC acted outside the scope of its statutorily defined jurisdiction, as recently clarified in the 2025 legislative session. Worse still, LPSC *knew* that changes to its operating statute were certainly impending, yet it acted anyway, assuming its authority and regulating Rosefield under an incorrect interpretation of the law. And to pile on, LPSC continues to act under its flawed interpretation, subjecting Rosefield to regulation where it is not warranted. Those errors call for this Court’s correction, and a stay of further extra-statutory and unconstitutional action in the meantime. Two points reinforce that conclusion.

One, the recent change in the law, as Rosefield points out in its motion (at p.14), simply clarified what the law had been all along. In other words, LPSC’s decision was wrong from the jump—and the 2025 amendments to La. R.S. 45:251 only make that error more obvious. As the Attorney General explained to LPSC *before* its June 2025 decision, the best reading of Louisiana law at the time was that Rosefield’s *de minimis* movement of oil wholly within a tank facility or storage terminal does not rise to the level of “the transportation of petroleum.” La. R.S. 45:251(1). That reading is supported by longstanding industry practice—*i.e.*, the transportation of oil through national and transnational pipelines. *Cf. S.J. Groves & Sons Co. v. Occupational Safety & Health Rev. Comm’n*, 648 F.2d 95, 97 (2d Cir. 1981) (“Principles of statutory interpretation, industry practice and common sense require reversal of the Commission’s order.”). Rosefield’s business is nothing of the sort. That reading is also just common sense, consistent with LPSC’s longstanding practice—which (it appears) has *never* regulated operations like Rosefield’s. *Cf. Util. Air Regul. Grp. v. E.P.A.*, 573 U.S. 302, 324 (2014) (“When an agency claims to discover in a long-extant statute an unheralded power to regulate ‘a significant portion of the American economy,’ we typically greet its announcement with a measure of skepticism.”). Lastly, that reading also avoids the absurd results presented by

ordinary-business scenarios described above, and remedied by the 2025 amendments to the law.

Two, in any event, the 2025 amendments cement that LPSC reached the wrong result. As Rosefield explains in its motion (at pp.13–14) and as FERC already concluded in its analysis of the matter (*supra* n.4), Rosefield’s Terminal Assets do not meet the statutory definition of a “pipe line” or trigger “common carrier” status. If the Court exercises its jurisdiction and analyzes those terms in the first instance, it will likely come to the same conclusion. *Cf. City of Plaquemine, City Light & Water Plant v. La. Pub. Serv. Comm’n*, 1996-1417 (La. 1/14/97), 685 So. 2d 1074, 1078 (“Although the Cities argue that the Commission has jurisdiction to interpret La. R.S. 45:123, this is clearly a matter of statutory interpretation and the district courts have original jurisdiction.”); *Cent. La. Elec. Co. v. La. Pub. Serv. Comm’n*, 601 So. 2d 1383, 1387 (La. 1992) (“[T]he interpretation of statutes and municipal charters are generally civil matters over which the district courts have original jurisdiction.”). This Court should therefore stay the proceedings below and exercise its original jurisdiction in due course, to correct the erroneous decisions by the ALJ and LPSC here.

Rather than belabor the point and dive into the merits of Rosefield’s jurisdictional argument and LPSC’s flawed legal analysis, the Attorney General urges this Court to simply act on the motion for expedited stay—granting such motion will halt any error below and give this Court breathing room to address the problem in the first instance.

CONCLUSION

The Attorney General respectfully requests the Court grant Rosefield’s motion for an expedited stay.

Dated: October 6, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above and foregoing has this date been served upon all parties to this proceeding by email or by mailing same to each by First Class United States mail, properly addressed and postage paid, on this 6th day of October, 2025.

/s/ Caitlin Huettemann
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