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Via email to kathryn.bowman@la.gov

August 18, 2026

Re: Constitutionality of the PSC's Lightning Directive

Dear Ms. Bowman,

On behalf of the Alliance for Affordable Energy, this letter is to ask the Louisiana Public Service Commission (LPSC) to withdraw its Lightning Directive because the Directive was adopted pursuant to an unconstitutional procedure.

In short: before the LPSC changes its rules, the Louisiana Constitution requires the LPSC to provide “notice of the proposed rule change” and “a reasonable opportunity for interested persons to submit data or views addressed to that issue.” Neither occurred for the Lightning Directive, because there was no public indication of what the proposed rule change was until a few minutes before the LPSC voted to adopt it.

I. Factual Background

For rulemaking, the LPSC commissioners typically direct staff to open a rulemaking docket to solicit stakeholder input over the course of a number of months or years. Eventually the LPSC commissioners will have a final rule or policy they wish to enact, and they put it on the agenda as an order to vote on. Once approved, the order is filed in the docket, so that the LPSC's rulemaking is a transparent, searchable regulatory decision.

The process with the “Lightning Directive,” however, was different. A document reflecting the proposed directive was circulated among commissioners and staff, but not made public. An item was added to the agenda for the December 17, 2025 meeting, with only the following description: “Directive on Commission's Lightning Initiative. At the request of Commissioner Coussan.”¹

Then, at the December 17, 2025 PSC meeting, Commissioner Coussan cited Governor Landry's Louisiana Lightning Speed Initiative and said he would “would like to implement an initiative designed for speed-to-market and economic-development-driven power needs while also ensuring protections for existing ratepayers. This LPSC Lightning initiative will set the standard for public policy and be the model that other states seek to emulate.”²

Commissioner Coussan proposed a “LPSC Lightning Amendment to the General Order” that would “adopt [a] regulatory pathway” by waiving the requirements of General Order 10-14-2024 (R-34247) when certain criteria are met.³ (Commissioner Coussan's proposal

¹ December 17, 2025 Agenda.

² December 17, 2025 Transcript at pg. 6.

³ *Id.*

was variously called a “directive,” or an “amendment” to a general order, or an “initiative.”⁴) Commissioner Coussan noted that some “conciliatory changes” were made to the language of the Lightning Directive for unspecified “stakeholders.”⁵

On the record that day, Ms. Burke asked “if there was any additional process that is allowed after this directive? Meaning any rulemaking or any kind of a process apart from the directive?”⁶ You said that “there will be the actual certification proceeding should a utility want to -- to come in and seek Commission approval, but no additional ruling.” You also said that “we talked about procedurally, actually on the way up here, that, with this, we would memorialize it in a special order. So yes, it would be in perpetuity unless the Commission wanted to vote to undo it at some point.”

Thereafter, the directive was voted on, and the minutes reflect that the “directive passed 4:1.”⁷ After the vote, the PSC chairman said that “the directive is in the books.”⁸ But although the Commission is treating it as a new procedural rule, the Lightning Directive does not appear to be “in the books” in any meaningful way. The directive does not appear among the LPSC’s General Rules and Regulations.⁹ It also does not appear among the LPSC’s Rules of Practice and Procedure, Amendments, or Special Orders.¹⁰ As a result, if one searches the PSC’s orders, R-34247 is visible – but the Lightning Directive amendment to it is not. The only record of this new rule is in the December meeting minutes.

At the following B/E meeting in January, Logan Burke of the Alliance for Affordable Energy approached you and asked when the Lightning Amendment Order would be released. You explained to her that there “there won’t be one” because it was “a directive” rather than an amendment.

II. The Lightning Directive was adopted without the constitutional minimum of notice and an opportunity for public input.

The Louisiana Public Service Commission (LPSC) is an independent regulatory agency created in 1921 by Article IV, Section 21 of the Louisiana Constitution.¹¹ That section requires the PSC to “adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties.”

While the LPSC appears to have no written procedures for how it changes its own rules and general orders,¹² the Louisiana Constitution establishes minimum requirements for the

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ December 17, 2025 Minutes.

⁸ Dec. 17, 2025 Transcript at 84.

⁹ https://www.lpsc.louisiana.gov/Regs_General

¹⁰ <https://www.lpsc.louisiana.gov/Rules>

¹¹ <https://www.lpsc.louisiana.gov/About>

¹² According to the Commission, the Rules of Practice and Procedures are the “reasonable rules, regulations, and procedures” described in the constitution. Special Order No. 72-2021 at 2. But the Rules of Practice and Procedures are almost entirely focused on the PSC’s adjudications of matters before it, rather than the process of making its

LPSC's rulemaking. In *La. Consumers' League, Inc. v. La. Pub. Serv. Com.*, 351 So. 2d 128 (La. 1977), the Louisiana Supreme Court explained that "the power of the Commission extends to the adoption and enforcement of 'reasonable' rules, regulations, and procedures." The Court explained that:

Not only the rule itself but the procedures employed by the Commission, including the method by which a rule is adopted, amended, or repealed, must be reasonable. To be considered reasonable, the procedure by which a rule change is effected must provide for **notice of the proposed rule change** and a **reasonable opportunity for interested persons to submit data or views addressed to that issue**. Should the procedure fail to comport with the standard of reasonableness mandated by the constitution, any rule change would be invalid and of no effect.

For example, the Court has held that LPSC rulemaking provided sufficient notice when a proposed rule was published in the LPSC's Official Bulletin prior to a meeting.¹³

Here, however, there was no notice of any rule change prior to the December 2025 meeting. There was no reference to the proposed rule change in the Official Bulletin. And there were only five words in the agenda describing the item: "Directive on Commission's Lightning Initiative." Notably, the LPSC did not *have* a "Lightning Initiative" prior to December 17, 2025, and so it was completely unclear what the agenda item was referring to. The agenda item gave no indication that a rule change was proposed, what the content of the rule change was, or what processes it would be amending. As a result, no member of the public had any meaningful opportunity to "submit data or views" about the proposed rule change, because it was completely opaque what was actually being proposed until minutes before the LPSC voted.

The Commission has since begun a process to address various concerns related to interconnections of "large loads," but that process is still not complete, and has not resulted in an order from the Commission. In the meantime, utilities are using policy that was created without any process at all. As a result, we respectfully request that the LPSC withdraw the Lightning Directive given that it is "invalid and of no effect."

Also, given that the LPSC has not adopted any rules for running its meetings, voting, or changing its rules and procedures, we ask that the LPSC do so pursuant to the Louisiana Constitution's mandate that the LPSC "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."

Sincerely,

William Most

own rules. Indeed, PSC has determined certain sections of the Rules of Practices and Procedures only apply to adjudications, and not to the PSC's legislative functions. See G.O. 11/6/95. The LPSC's secretary has said that the LPSC has not "formally adopted Robert's Rules of Order" but "loosely follows" them. Transcript of June 19, 2024 Meeting. The secretary has also said that the LPSC has its "own rules of practice and procedure used for voting purposes typically follow Robert's [Rules], but we haven't formally adopted it." Transcript of April 2023 Meeting.

¹³ *Cameron Tel. Co. v. La. Pub. Serv. Com.*, 440 So. 2d 694, 704 (La. 1983)