

Karen O. Moury
717 237 4820
karen.moury@bipc.com

409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
T 717 237 4800
F 717 233 0852
www.buchananingersoll.com

June 23, 2014

VIA UPS OVERNIGHT DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement
v. Uber Technologies, Inc.
Docket No. P-2014-2426846

Dear Secretary Chiavetta:

On behalf of Uber Technologies, Inc., I have enclosed for filing the Answer of Uber Technologies, Inc. to Petition for Interim Emergency Relief in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Sincerely,

Karen O. Moury /AMS

Karen O. Moury

KOM/tlg
Enclosure
cc: Certificate of Service

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JUN 23 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT, Petitioner	:	
	:	
	:	
	:	Docket No. P-2014-2426846
v.	:	
	:	
UBER TECHNOLOGIES, INC., Respondent	:	

**ANSWER OF UBER TECHNOLOGIES, INC.
TO PETITION FOR INTERIM EMERGENCY RELIEF**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Uber Technologies, Inc. (“UTI”), by and through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, files this Answer opposing the Petition for Interim Emergency Relief (“Petition”) filed by the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), pursuant to the Commission’s regulations at 52 Pa. Code § 3.6, and in connection therewith avers as follows:

I. Introduction

1. UTI opposes the Petition on the grounds that I&E’s allegations fail to meet the Commission’s legal standards governing interim emergency relief. Specifically, as will be discussed in more detail below, I&E has failed to establish the existence of an emergency as required by the Commission’s regulations. In addition, I&E has failed to demonstrate that its right to relief on the claims set forth in the underlying complaint proceeding is clear, that the need for relief is immediate, that the injury would be irreparable if relief is not granted, and that the relief requested is not injurious to the public interest.

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2. More importantly, I&E has failed to acknowledge the numerous steps that UTI has taken to work with the Commission to fit the technology-enabled ridesharing network services of its subsidiaries within an existing regulatory framework that was clearly not designed for this type of innovative product. Those efforts include subsidiaries obtaining a statewide brokerage license¹ and filing applications for certificates of public convenience to operate an experimental ridesharing network service in Allegheny County and other parts of the Commonwealth.² Additionally, as part of those pending applications, the applicants have made commitments to comply with or exceed the Commission's existing requirements relating to driver integrity, vehicle safety and liability insurance.

3. On a more fundamental level, the Petition should be denied in its entirety because I&E has misrepresented UTI's business. UTI is not a broker. Instead, UTI is a software company that licenses a smartphone application. In Pennsylvania, UTI licensed its smartphone application to, *inter alia*, Gegen. A licensed broker in Pennsylvania, Gegen uses UTI's software to arrange transportation. It is telling that I&E has failed to provide any evidence of a single trip brokered by UTI in Pennsylvania.

4. In short, I&E has not alleged sufficient facts to meet its burden of fulfilling the requirements in the Commission's regulations to warrant interim emergency relief. Moreover, the draconian relief requested in the Petition, *i.e.*, the preclusion of a needed service that is highly

¹ On January 24, 2013, the Commission granted the license application filed by Gegen, LLC ("Gegen"), evidencing approval of the right and privilege to operate as a broker to arrange for the transportation of persons between points in Pennsylvania. *Application of Gegen, LLC for a Brokerage License*, Docket No. A-2012-2317300 (Order adopted on January 24, 2013).

² On April 14, 2014, Rasier-PA, LLC ("Rasier-PA"), a wholly owned subsidiary of UTI, filed an application ("Rasier-PA Application") at Docket No. A-2014-2416127, requesting a certificate of public convenience to operate an experimental ride-sharing network service between points in Allegheny County, Pennsylvania. On June 2, 2014, Rasier-PA filed an application at Docket No. A-2014-2424608 requesting a certificate of public convenience to operate an experimental ride-sharing network service throughout the Commonwealth, excluding certain counties.

valued by consumers in the Pittsburgh area, requires a compelling set of facts and circumstances that are simply not present here.

II. Applicable Legal Standards

5. The Commission's regulations at 52 Pa. Code § 3.6 governing petitions for emergency relief require the petitioner to establish the existence of an emergency. "Emergency" is defined in the Commission's regulations as "[a] situation which presents a clear and present danger to life or property or which is uncontested and requires action prior the next scheduled meeting." 52 Pa. Code § 3.1. *See Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light & Power Company*, Docket No. P-00062205 (Order entered April 20, 2006) (while retail electric rates rose to an unexpectedly high level, there was no clear and present danger to life or property warranting emergency relief); and *Petition of Natural Fuel Gas for Emergency Order Granting a Temporary Waiver of Certain Tariff Rules Related to Transportation Service*, Docket Nos. P-961022 and P-961021 (Order entered March 19, 1996) (the threat of depletion of natural gas in unusually cold conditions presented a clear and present danger to life or property warranting emergency relief in the form of a waiver of tariff charges for over-deliveries).

6. To prevail in a petition for emergency relief it is also necessary for the petitioner to demonstrate that:

1. The right to relief is clear.
2. The need for relief is immediate.
3. The injury would be irreparable if relief is not granted.
4. The relief is not injurious to the public interest.

52 Pa. Code § 3.6(b). Interim emergency relief may be granted only when all of the foregoing elements exist. *Glade Park East Home Owners Association v. Pa. Public Utility Commission*, 628 A.2d 468, 473 (Pa. Cmwlth. 1993).

III. Argument

A. The Petition Fails to Allege the Existence of an Emergency

7. While I&E alleges that UTI's "unlicensed operation poses substantial threats to public safety" (Petition at ¶ 24), the Petition does not describe a situation that presents and clear and present danger to life or property. I&E has failed to establish how the mere licensing of a software product poses any threat, let alone a substantial threat, to public safety. The Petition offers no specific examples of any UTI operations that have jeopardized or are jeopardizing public safety. Further, the Petition contains no allegations about the use of unsafe vehicles or negligent driving practices. I&E's allegations about threats to public safety are merely speculative, which cannot support a grant of interim emergency relief. *See Norfolk and Western Railway v. Pa. Public Utility Commission*, 489 Pa. 109, 413 A.2d 1037 (1980). Any concerns that I&E has about the lawful nature of UTI operations should be fully vetted through the normal course of the underlying complaint proceeding and do not require the use of an emergency petition, which is reserved for situations that involve true emergencies, such as in *National Fuel Gas* where consumers would have been deprived of natural gas during extremely cold weather.

B. I&E's Right to Relief is Not Clear

8. In claiming its right to relief is clear, I&E argues that UTI is engaged in unlawful brokering of transportation services under Section 2505 of the Pennsylvania Public Utility Code ("Code"), 66 Pa.C.S. § 2505. Petition at ¶¶ 12-16. These assertions fail to recognize the unique services offered by UTI, a software company that has used modern technology to develop an

Internet or mobile-based application (“App”) enabling the riding public to efficiently and economically connect with available drivers. Through the UTI App, consumers have an alternative to traditionally regulated transportation options. When the definition of “broker” was included in the Code, the General Assembly could not have envisioned that alternatives like the App might eventually be possible due to advancements in technology. I&E’s suggestion that the definition of “broker” clearly encompasses innovative technology-driven solutions such as that developed by UTI does not render its right to relief as clear. On the contrary, the UTI App is a game-changing technology, the use of which has challenged traditional notions of Pennsylvania regulation of motor carriers. Rather than debate the applicability of the Code, the filing of the Rasier-PA experimental service applications were intended to address questions that had been raised as a result of a grey area or ambiguity in Pennsylvania law.

9. I&E’s assertions also ignore the fact that after receiving the warning letter dated July 6, 2012 (Petition, Exhibit 1) from Commission staff about the need for Commission authority to engage in any services using the App, UTI’s wholly-owned subsidiary, Gegen, applied for a statewide brokerage license to arrange for transportation of person between points in Pennsylvania on August 2, 2012. On January 24, 2013, the Commission granted Gegen’s license application, evidencing approval of the right and privilege to operate as a broker to arrange for the transportation of persons between points in Pennsylvania. *Application of Gegen, LLC for a Brokerage License*, Docket No. A-2012-2317300 (Order adopted on January 24, 2013). The Commission’s order granting Gegen’s license noted that requests for service are received via proprietary dispatch software, and carriers are contracted by Gegen to provide service. The application listed UTI as Gegen’s *sole* member. This brokerage license clearly

allows the economic and efficient connection of passengers and carriers using the App developed by UTI.

10. Following further discussions with Commission staff after issuance of the Gegen license about whether a certificate of public convenience may be necessary to support the use of UTI technology services, Rasier-PA, a wholly owned subsidiary of UTI, filed the pending experimental service application on April 14, 2014 to provide ridesharing network services within Allegheny County, Pennsylvania.³ Rasier-PA explained in the application that it would license the UTI technology to generate leads from riders who need transportation services. Rasier-PA Application at ¶ 14. Recognizing the potential for expansion to other areas in Pennsylvania and again in deference to views previously expressed by Commission staff, Rasier-PA filed a second application on June 2, 2014 to provide these services throughout the Commonwealth, excluding certain counties, explaining an identical business model.

11. As support for its contention that its right to relief is clear, I&E cites media reports about continued operations since the issuance by I&E of citations to drivers and the filing of formal Commission complaints against drivers associated with UTI. Petition at ¶ 17. Such reports are not an indication that any unlawful activity is actually occurring, and cannot possibly support any finding that I&E's right to relief is "clear."

C. I&E Has Not Demonstrated Need for Immediate Relief

12. I&E alleges that its need for relief is immediate and ongoing, referring to recent enforcement actions it has taken and suggesting that those actions have not resulted in the immediate cessation of activities they view to be illegal. Alleging that UTI has been brokering transportation services in Pittsburgh since March 2014, I&E claims that its enforcement efforts

³ See, footnote No. 1 above.

two months ago and two weeks ago have been unsuccessful, rendering the requested emergency relief immediate. Petition at ¶¶ 19-23.

13. Specifically, I&E refers to non-traffic citations filed before Magisterial District Judge Eugene Ricciardi, which allege that eleven drivers associated with UTI operated as a motor carrier without possessing a certificate of public convenience. Petition at ¶ 19. Other than another reference to a news article, I&E offers no basis for its allegation that UTI provided unlawful brokering services in Pittsburgh after the non-traffic citations were filed. More importantly, as those non-traffic citations are still pending before the district magistrate, no determination has been made as to whether those activities violated Code Section 3310, 66 Pa.C.S. § 3310.

14. I&E also alleges that it has filed complaints against the same eleven drivers and a complaint against UTI with the Commission on the basis of the same incidents. Petition at ¶ 21. Since those proceedings are still pending, no determination has been made as to whether those activities violated Code Section 2505 or Section 3310, 66 Pa.C.S. §§ 2505 and 3310. Additionally, I&E again relies on news articles to allege that UTI is unlawfully brokering transportation. Petition at ¶ 23.

15. The fact that I&E has issued non-traffic citations with the district magistrate and filed complaints with the Commission, which are still pending, does not render the relief sought by the complaints as immediate. Indeed, I&E has cited no authority in support its requested relief. Rather than accept I&E's invitation to address the complicated and novel regulatory issues raised by use of the UTI App in a compressed time period and in an expedited fashion that would be antithetical to the type of evidentiary record that needs to be developed to consider

whether UTI has violated the Code, the Commission should permit the factual and legal issues raised by those pleadings to be addressed through the normal course of the proceedings.

16. UTI submits that the more pressing matter is Commission adjudication of Rasier-PA's Allegheny County application to provide experimental ridesharing network services. Unfortunately, that application has been protested by existing limousine and taxicab carriers under an antiquated process that discourages the introduction of competition into areas that are already served by such carriers. Those protests have delayed the Commission's review of the application and are currently awaiting the disposition of preliminary objections aimed at eliminating the need for a lengthy hearing process.

17. Relevant to the considerations to be addressed in these several UTI-related proceedings is that the Commission recently recognized the importance of allowing the market to decide whether new household goods movers are needed in Pennsylvania and permitting new movers to avoid a lengthy application process that considers the effect of new businesses on existing carriers. In a rulemaking order amending regulations applicable the household goods industry, the Commission noted increased competition in the household goods industry, and concluded there is no reason to protect existing carriers from the introduction of new services. By eliminating the outdated barriers to entering into the market, the Commission emphasized the value of increased competition, consumer choice and job creation. *Final Rulemaking Order Amending Regulations Applicable to Household Goods in Use Carriers and Property Carriers*, Docket No. L-2013-2376902 (Order adopted June 19, 2014).

18. Similarly, UTI urges the Commission to expedite the process to review Rasier-PA's experimental service application for Allegheny County without regard for any potential adverse effects on existing taxicab and limousine carriers who have protested the application.

Rather, the Commission's priority should be the immediate need of consumers – residents and visitors to Allegheny County – for access to innovative technology-enabled ridesharing network services. Increased competition, consumer choice and job creation are laudable goals in this arena as well.

D. I&E Has Not Demonstrated Irreparable Harm

19. I&E claims that if emergency relief is not granted, irreparable harm will result because the Commission cannot be certain that its regulations pertaining to driver integrity and vehicle safety and liability insurance are being met. Petition at ¶ 27. In making these claims, I&E does not allege any instances of departures from specific regulations governing driver integrity, vehicle safety or liability insurance. Particularly with respect to vehicle safety, Pennsylvania law requires all drivers to comply with annual comprehensive inspection requirements. 75 Pa. C.S. Chapter 47. Moreover, I&E dismisses the commitments that have been made as part of the pending Rasier-PA applications to comply with or exceed the Commission's existing requirements relating to driver integrity, vehicle safety and liability insurance. Those requirements mirror the standards that apply to entities similar to Rasier-PA in other jurisdictions and reflect good business practices. In fact, Rasier-PA has committed to exceeding those regulatory requirements because good business practices dictate even higher standards to avoid compromising the safety of passengers and pedestrians and exposing the company to possible civil liability. As a wholly-owned subsidiary of UTI, Rasier-PA's corporate philosophy is to take all possible measures to keep the public safe.

20. For instance, Rasier-PA explained its zero tolerance policy on the use of drugs or alcohol while an operator is providing ridesharing services. Notice of this zero tolerance policy is on the company's website, along with procedures to report a complaint, and Rasier-PA intends

to immediately suspend an operator upon receipt of a passenger complaint alleging a violation of the policy, with the suspension lasting the duration of Rasier-PA investigation. Similarly, Rasier-PA will does not permit any drivers who have a conviction within the past seven years for aggravated reckless driving, driving under the influence of drugs or alcohol, hit and run, attempting to evade the police or the use of a motor vehicle to commit a crime. Drivers with a conviction in the past three years for driving with a suspended or revoked license will be automatically disqualified. Rasier-PA Application at ¶ 24.

21. As to I&E's concerns about liability insurance (Petition at ¶ 30), Rasier-PA is preparing amendments to the pending Rasier-PA applications to clarify that it intends to fully comply with and exceed the Commission's requirements set forth in 52 Pa. Code §§ 32.11. Moreover, to the extent any passenger or pedestrian is harmed and insurance coverage is not adequate, other avenues exist for reimbursement of monetary losses. Provided that monetary losses can be compensated by an award of monetary damages, they generally do not support a finding of irreparable harm. *Sameric Corporation v. Gross*, 448 Pa. 497, 295 A.2d 277 (1972).

22. With regard to I&E's assertion that a violation of law constitutes irreparable harm *per se* (Petition at ¶ 25), that argument presumes that UTI is violating the Code, a determination that has not been made. In the case cited by I&E, *Pa. PUC v. Israel*, 52 A.2d 347 (1947), the Supreme Court based its conclusion on a prior declaration that the conduct was unlawful. No such finding has been made here.

E. The Requested Relief Is Injurious to the Public Interest

23. I&E argues that the relief requested is not injurious to the public interest because UTI has "no lawful right to broker transportation for compensation between points within the

Commonwealth.” Petition at ¶ 32. As no determination has been made about whether UTI is violating any provision of the Public Utility Code, I&E’s argument fails.

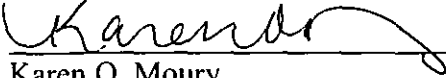
24. Moreover, if the Commission grants the requested relief, it will be taking the unprecedented act of ordering a software company to stop operating, without a comprehensive review of whether any activities violate the Code. Such relief, on balance, would be injurious to the public interest by depriving the public access to an innovative, economic and reliable service that is not available from traditional transportation providers. This is particularly true in Allegheny County where existing transportation options fail to adequately meet the needs of riders. Indeed, the City of Pittsburgh’s Mayor William Peduto has requested the Commission to permit innovative App-based ridesharing services to help fill the void that has not been met by existing taxicab and limousine companies operating in Pittsburgh. See: <http://www.post-gazette.com/business/2014/02/18/Peduto-asks-for-rule-change-on-ride-sharing-operations/stories/201402180175>. Likewise, if the requested relief is granted, drivers will be deprived to start and grow their own small businesses, adversely affecting their ability to contribute to the economy.

IV. Conclusion

WHEREFORE, for the foregoing reasons, Uber Technologies, Inc. respectfully requests that the Commission deny the Petition for an Interim Emergency Order filed by the Bureau of Investigation and Enforcement on the basis that the Petition fails to allege the existence of an emergency and further because the Petition fails to demonstrate that I&E’s right to relief is clear, that the need for relief is immediate and that the requested relief is not injurious to the public interest.

Respectfully submitted,

Dated: June 23, 2014



Karen O. Moury
BUCHANAN INGERSOLL & ROONEY PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
(717) 237-4820

Attorneys for Uber Technologies, Inc.

Verification of Answer

I hereby verify that the statements made in this application are true and correct to the best of my knowledge and belief. The undersigned understands that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

Uber Technologies, Inc.
Krishna K. Juvvadi, Senior Counsel



June 23, 2014

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION, BUREAU OF
INVESTIGATION AND ENFORCEMENT**

v.

UBER TECHNOLOGIES, INC.

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Docket No. P-2014-2426846

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via Email and First Class Mail

Mary D. Long
Administrative Law Judge
Pennsylvania Public Utility Commission
301 5th Avenue
Suite 220
Pittsburgh, Pennsylvania 15222
malong@pa.gov

Jeffrey A. Watson
Administrative Law Judge
Pennsylvania Public Utility Commission
301 5th Avenue
Suite 220
Pittsburgh, Pennsylvania 15222
jeffwatson@pa.gov

Michael L. Swindler, Esquire
Stephanie M. Wimer, Esquire
Wayne T. Scott, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265
mwindler@pa.gov
stwimer@pa.gov
wascott@pa.gov

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PA PUBLIC UTILITY COMMISSION
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Dated this 23rd day of June, 2014.

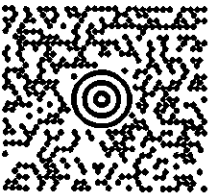

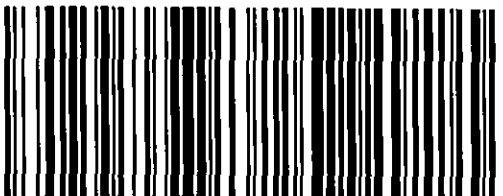



Alan M. Seltzer, Esq.

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