



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE
P-2014-2426847

July 8, 2014

Via E-filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Petition of the Bureau of Investigation and Enforcement of the
Pennsylvania Public Utility Commission for an Interim Emergency Order
Requiring Lyft, Inc. to Immediately Cease and Desist from Brokering
Transportation Service for Compensation Between Points within the
Commonwealth of Pennsylvania
Docket No. P-2014-2426847

Dear Secretary Chiavetta:

Enclosed please find the Brief of the Bureau of Investigation and Enforcement on the
Material Question in the above-referenced proceeding. Copies have been served on the parties
of record in accordance with the Certificate of Service.

Sincerely,

Stephanie M. Wimer
PA Attorney ID No. 207522

Michael L. Swindler
PA Attorney ID No. 43319

Wayne T. Scott
PA Attorney ID No. 29133

Enclosure

cc: As per certificate of service
Chairman Robert F. Powelson
Vice Chairman John F. Coleman
Commissioner Pamela A. Witmer
Commissioner Gladys M. Brown
Commissioner James H. Cawley
Cheryl Walker Davis, Director, OSA
ALJ Mary D. Long
ALJ Jeffrey A. Watson

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of the Bureau of Investigation	:	
and Enforcement of the Pennsylvania	:	
Public Utility Commission for an Interim	:	
Emergency Order Requiring Lyft, Inc. to	:	Docket No. P-2014-2426847
Immediately Cease and Desist from	:	
Brokering Transportation Service for	:	
Compensation between Points within the	:	
Commonwealth of Pennsylvania	:	

**BRIEF ON MATERIAL QUESTION OF
THE BUREAU OF INVESTIGATION AND ENFORCEMENT
IN SUPPORT OF THE CEASE AND DESIST ORDER
AGAINST LYFT, INC.**

Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Michael L. Swindler
Prosecutor
PA Attorney ID No. 43319

Wayne T. Scott
First Deputy Chief Prosecutor
PA Attorney ID No. 29133

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-5000
stwimer@pa.gov
mwindler@pa.gov
wascott@pa.gov

Dated: July 8, 2014

Pursuant to Sections 3.10 and 5.305 of the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code §§ 3.10 and 5.305, the Bureau of Investigation and Enforcement ("I&E") files this brief addressing the material question of whether the July 1, 2014 Order of Administrative Law Judges ("ALJs") Mary D. Long and Jeffery A. Watson granting relief by interim emergency order was merited (hereinafter referred to as the "July 1, 2014 Order"). I&E asserts that ALJs Long and Watson appropriately granted I&E's Petition for Interim Emergency Relief in this proceeding, and therefore, requests that the Commission answer this material question in the affirmative and adopt the July 1, 2014 Order.

I. BACKGROUND AND SUMMARY OF ARGUMENT

The Commission regulates the transportation of passengers for compensation between points within the Commonwealth, pursuant to Sections 102 and 2501 of the Public Utility Code, 66 Pa.C.S. §§ 102 (relating to the definitions of "common carrier" and "common carrier by motor vehicle") and 2501 (declaring the necessity of regulating the service of contract carriers by motor vehicle and brokers).

Lyft, Inc. ("Lyft") provides internet and mobile application software ("the Lyft app") that connects passengers with individuals who have registered with Lyft as drivers or driver operators ("Lyft driver"). The Lyft app permits a passenger's mobile phone to locate the nearest available Lyft driver, and then alerts the Lyft driver of the passenger's ride request. Lyft drivers use their personal, non-commercially licensed and non-commercially insured vehicles for the purposes of providing transportation services to the public for compensation.

On or about February 7, 2014, Lyft launched the Lyft app in Pittsburgh, thus permitting passengers in Pittsburgh to obtain rides from Lyft drivers, which are facilitated by Lyft through the use of its app. (Tr. 9).

Almost two months after it commenced operating in Pittsburgh, Lyft filed an Application with the Commission on April 3, 2014 seeking authority to operate an experimental transportation network service in Allegheny County, Pennsylvania.¹ Several protests were filed to Lyft's Application. Some protests questioned whether the personal automobile insurance policies of Lyft drivers would cover injuries and damages to persons and property because the vehicles of Lyft drivers are used to transport passengers for profit.² Lyft's Application is pending before the Commission.

Despite the fact that Lyft's Application has *not* been acted on by the Commission and thus, Lyft does *not* yet possess a certificate or license to legally operate as a broker, motor carrier or Transportation Network Company within the Commonwealth of Pennsylvania, Lyft continues to facilitate transportation in Pittsburgh through the use of its app. (Tr. 17-18).

On April 22, 2014, Motor Carrier Enforcement Manager for I&E's Western Region, Officer Charles S. Bowser ("Officer Bowser"), filed non-traffic citations before Magisterial District Judge Eugene Ricciardi against twelve (12) Lyft drivers for operating

¹ *Application of Lyft, Inc., a corporation of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of Transportation Network Company for passenger trips between points in Allegheny County*, Docket No. A-2014-2415045.

² *See the Protests of Black Tie Star Limousine, Inc., Concord Limousine, Executive Transportation, Inc. t/a Luxury Sedan, Pennsylvania Association for Justice and the Insurance Federation of Pennsylvania, Inc. at Docket No. A-2014-2415045.*

as a motor carrier without possessing a Certificate of Public Convenience, pursuant to 66 Pa.C.S. § 3310.³ These matters have been scheduled for hearing on September 10, 2014.

In addition, on June 5, 2014, I&E filed complaints before the Commission against the same twelve (12) Lyft drivers for transporting passengers for compensation between points in Pennsylvania while not holding Certificates of Public Convenience, which is a violation of 66 Pa.C.S. § 1101.⁴ Answers to I&E's complaints were filed by counsel on July 7, 2014, and these matters remain pending before the Commission.

Also on June 5, 2014, I&E filed a Formal Complaint⁵ before the Commission against Lyft alleging, *inter alia*, that Lyft acts as an unlicensed broker of transportation for compensation between points within the Commonwealth. I&E's Complaint further alleges that Lyft drivers do not possess Certificates of Public Convenience issued by the Commission authorizing them to provide motor carrier passenger service. I&E requested a civil penalty in the amount of \$130,000,⁶ and an order requiring Lyft to cease and desist

³ These proceedings are docketed as follows: MJ-05227-NT-0000291-2014, MJ-05227-NT-0000305-2014, MJ-05227-NT-0000289-2014, MJ-05227-NT-0000294-2014, MJ-05227-NT-0000309-2014, MJ-05227-NT-0000287-2014, MJ-05227-NT-0000308-2014, MJ-05227-NT-0000315-2014, MJ-05227-NT-0000306-2014, MJ-05227-NT-0000313-2014, MJ-05227-NT-0000298-2014 and MJ-05227-NT-0000296-2014.

⁴ These proceedings are docketed at the Commission as follows: C-2014-2418173, C-2014-2418174, C-2014-2418175, C-2014-2418176, C-2014-2418177, C-2014-2418178, C-2014-2418179, C-2014-2418180, C-2014-2418281, C-2014-2418282, C-2014-2418283 and C-2014-2418284.

⁵ *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Lyft, Inc.*, Docket No. C-2014-2422713.

⁶ The civil penalty is based on the following: (1) \$118,000 for brokering the transportation of persons for compensation without holding authority to do so. This amount constitutes \$1,000 per day between the time that Lyft launched its service on February 7, 2014 and June 5, 2014, the date the Complaint was filed; and (2) \$12,000 for brokering transportation to Regional Motor Carrier Enforcement Manager Charles S. Bowser ("Officer Bowser") during twelve (12) trips that he took using the Lyft app between March 31, 2014 and April 21, 2014. I&E avers that both infractions are violations of Section 1101 of the Public Utility Code, 66 Pa.C.S. § 1101.

from providing transportation services until it has secured appropriate authority from the Commission. This Complaint proceeding is pending before the Commission.

After each of the above enforcement actions, Lyft defiantly released statements to the media indicating that it would continue to operate in Pittsburgh despite I&E's repeated efforts to enforce compliance with the Public Utility Code and Commission regulations.⁷

Given Lyft's blatant recalcitrance in response to I&E's concerns for public safety, I&E, as the bureau within the Commission that is charged with the duty of enforcing the Public Utility Code and the Commission's regulations,⁸ was left with no choice but to seek interim emergency relief from the Commission. Accordingly, on June 16, 2014, I&E filed with the Commission a Petition for Interim Emergency Relief to request that Lyft be ordered to immediately cease and desist from unlawfully brokering transportation for compensation.

An emergency hearing was held regarding I&E's Petition for Interim Emergency Relief on June 26, 2014 before ALJs Long and Watson. As the facts taken from the record demonstrate, the presiding ALJs correctly determined that the standard for emergency relief was met, granted I&E's Petition and directed Lyft to immediately cease

⁷ See Bobby Kerlick, Lyft, *Uber Not Going Anywhere Despite Fines*, Pittsburgh Tribune Review, June 10, 2014, <http://triblive.com/news/alleggheny/6260482-74/puc-uber-drivers#axzz34QiG9COc> and Kim Lyons, Pennsylvania PUC Cracks Down on Lyft, Uber drivers, Pittsburgh Post-Gazette, April 25, 2014, <http://www.post-gazette.com/business/2014/04/26/PUC-cracks-down-on-Lyft-Uber-drivers/stories/201404250181>.

⁸ I&E is the entity established to initiate proceedings that are prosecutory in nature for violations of the Public Utility Code and Commission regulations. See *Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11).

and desist from utilizing its digital platform to facilitate transportation to passengers using non-certificated drivers, until Lyft secures appropriate authority from the Commission. *See* July 1, 2014 Order at Ordering Paragraph 2. Specifically, I&E met its burden in showing that Lyft is brokering transportation for compensation without being licensed or certificated, and that Lyft is using non-certificated drivers to provide the transportation. July 1, 2014 Order at 6. Moreover, I&E demonstrated that substantial safety risks are posed to the public by Lyft's continued unlawful and unregulated operation. *Id.* Notably, the ALJs stated:

... [T]he rules and regulations of the Commission are in place to ensure that harm to individuals is prevented and empowers the Commission with recourse on behalf of the public should a public utility fail to comply with public safety requirements. Because Lyft has chosen to attempt to avoid Commission jurisdiction and has failed to comply with the law, the Commission and the public it serves have been deprived of the ability to protect the traveling public.

July 1, 2014 Order at 12-13.

Accordingly, I&E seeks an Order from the Commission that adopts the July 1, 2014 Order of ALJs Long and Watson, grants I&E's petition for emergency relief and directs Lyft to immediately cease and desist from utilizing its app to broker transportation to passengers using non-certificated drivers until Lyft secures appropriate authority from the Commission.

II. ARGUMENT

Section 3.6 of the Commission's regulations, 52 Pa. Code § 3.6, permits a party to petition the Commission for an interim emergency order during the course of a proceeding. The petition must be supported by a verified statement of facts to establish the need for interim emergency relief, including facts to support the following:

1. The Petitioner's 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).

The party seeking emergency relief bears the burden of proving that the facts and circumstances meet all four of the above requirements. 66 Pa.C.S. § 332; 52 Pa. Code § 3.6(b). Moreover, the burden of proof must be carried by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). The petitioner's evidence must be more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (1950).

a. I&E's Right to Relief is Clear

In considering whether a petition for interim emergency relief meets the "right to relief is clear" standard, the Commission has found that it is "not required to determine the merits of the [underlying] controversy, only that, in addition to satisfying the other criteria, the claim raises substantial legal questions." *Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company*, Docket No. C-2002811 (Order entered

August 8, 2002) at 8. The petition meets this standard if it “raises a substantial legal claim on the merits.” *Id.* I&E has more than met this standard.

The Public Utility Code defines a common carrier by motor vehicle as one “who or which holds out or undertakes the transportation of passengers or property, or both, . . . between points within this Commonwealth by motor vehicle for compensation” 66 Pa.C.S. § 102. Common carriers by motor vehicle are required to obtain a Certificate of Public Convenience issued by the Commission prior to offering, rendering, furnishing or supplying transportation service within the Commonwealth. 66 Pa.C.S. § 1101.

Further, the Public Utility Code defines broker as “[a]ny person or corporation not included in the term ‘motor common carrier’ . . . who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, . . . or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation” 66 Pa.C.S. § 2501. The Commission requires brokers to be licensed prior to engaging in the business of a broker. 66 Pa.C.S. § 2505(a). Further, brokers are prohibited from arranging transportation with motor carriers who do not hold a Certificate of Public Convenience or permit. *Id.*

At the hearing, I&E presented a certification from the Secretary of the Commission dated June 24, 2014, certifying that Lyft, Inc. has not been issued a Certificate of Public Convenience to operate as a motor carrier of passengers between points within the Commonwealth of Pennsylvania for compensation and has not been issued a license to broker transportation in the Commonwealth. This exhibit was admitted into the record as I&E Exhibit 1.

Also at the hearing, I&E's witness, Officer Bowser, presented his unrebutted testimony which described in detail the process he followed to utilize the Lyft app and personally obtain numerous rides that were provided by non-certificated Lyft drivers in their personal vehicles. (Tr. 10-13). Officer Bowser was charged for each ride that he took and the invoices that he received after taking each Lyft trip were admitted into evidence as I&E Exhibit 2.

Lyft argues that since it collects donations for its service, it does not provide transportation for compensation and thus is not bound by the Public Utility Code. This argument is factually and legally flawed. I&E Exhibit 2, which is a compilation of invoices that Officer Bowser received after being charged for using Lyft's service, shows that Lyft routinely offers discounts, including a happy hour discount, a free ride credit and a 50% reduction of fares during slow hours. (Tr. 14-16; I&E Exhibit 2). Lyft presented no witness to explain how special promotions and discounts are applicable to "donations." Common sense would indicate that special promotions and discounts are offered because there is a cost involved.

Further, I&E Exhibit 3 consists of a page from Lyft's own website that is entitled "Donations vs. Charges." Officer Bowser obtained this web page on June 25, 2014, which shows that Pittsburgh is a city where Lyft charges a set amount for rides. (Tr. 17; I&E Exhibit 3). Lyft presented no witness to explain why Pittsburgh does not appear in the listing of cities where Lyft collects donations for its service.

Even if Lyft had shown that it collects donations, which it did not, the Commission has found that donations can constitute compensation. If there is clear and

uncontradicted testimony of an indiscriminate holding out to the general public to provide transportation service, then whether a fixed charge was demanded is irrelevant.

Commonwealth v. Babb, 70 A.2d 660 (Pa. Super. 1950). (Finding that it was not necessary for defendant to charge a specific fee or even ask for compensation in order to conclude that he operated as a taxi without a Certificate of Public Convenience.) “Such an arrangement is only an artifice or subterfuge.” *Id.* at 668. *See also Pa. PUC v. Israel*, 52 A.2d 317 (Pa. 1947) (affirming a lower court order enjoining drivers from providing transportation service when the funds received for the transportation are obtained as a “donation or tip” and not by a fixed charge).

Therefore, I&E raised a substantial legal claim on the merits and has demonstrated that its right to relief is clear.

b. I&E’s Need for Relief is Immediate

As ALJs Long and Watson correctly found, Lyft has not suspended its operations in Pittsburgh since I&E filed its Complaint on June 5, 2014. In fact, Officer Bowser testified that as recently as June 24, 2014, he or someone under his supervision secured passenger transportation for compensation using the Lyft app. (Tr. 18).

Officer Bowser testified at length about public safety concerns due to the fact that the Commission does not inspect the vehicles of Lyft drivers or review records pertaining to Lyft drivers’ driving history or criminal background. (Tr. 18-26). Officer Bowser also testified that there is currently no way to verify whether the rides taken from Lyft drivers are covered by liability insurance (Tr. 20).

I&E submits that there are numerous Lyft drivers providing multiple trips per day without Commission oversight. Each and every day that Lyft operates without a brokerage license or as a certificated transportation network company, and with each and every trip conducted by an uncertificated Lyft driver, Lyft subjects the public to potential injury or even death. Lyft's failure to submit to regulation by the Commission prior to initiating its service has left the Commission unable to prevent injury to people or damage to property through an inspection of vehicles and a review of records pertaining to Lyft drivers. Further, should an accident occur, it is not clear that there would be sufficient insurance coverage, or even any insurance coverage, for injury and damages to persons or property caused by Lyft drivers.

Officer Bowser's un rebutted testimony demonstrates that a lack of Commission oversight adversely impacts public safety. "With the sheer number of vehicles and drivers out there, I think it's a recipe for disaster. We have no idea how many there are, who they are or where they are located." (Tr. 24). Thus, I&E has demonstrated that the need for relief is immediate.

c. The Injury from Lyft's Actions is Irreparable

It is well established that a violation of law constitutes irreparable harm *per se*. *Pa. PUC v. Israel*, 52 A.2d 347 (1947). The record shows that Lyft is operating unlawfully by brokering transportation service for compensation using non-certificated drivers. Lyft presented no evidence or testimony to the contrary. Therefore, I&E established, and the presiding ALJs properly found, that Lyft's illegal actions constitute irreparable harm as a matter of law.

d. The Relief Requested is Not Injurious to the Public Interest

Not only is the relief requested here not injurious to the public interest, relief is absolutely necessitated by it. Certificates of Public Convenience are only granted to utilities if the Commission has determined that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or **safety of the public.**” 66 Pa.C.S. § 1103(a) (emphasis added).

Currently, Lyft has no lawful right to broker transportation for compensation in the Commonwealth and it has no lawful right to use non-certificated drivers to provide transportation. Until Lyft receives appropriate authority from the Commission to operate, the Commission is unable to guarantee that Lyft is abiding by the Commission’s motor carrier safety regulations, 52 Pa. Code §§ 29.501-08 and 29.401-07, and insurance regulations, 52 Pa. Code §§ 32.2 and 32.11, all of which were designed to safeguard the public. Moreover, Officer Bowser testified that the Commission’s ability to ensure vehicle safety, driver integrity and that Lyft drivers have some form of insurance coverage is integral to the Commission’s duty to protect the public. (Tr. 24).

The presiding ALJs correctly held that “the public relies on this Commission to ensure that the travelling public is transported safely. The public has a compelling interest in compliance with the law and the Commission has an unassailable duty to ensure compliance with the Public Utility Code.” July 1, 2014 Order at 12. Therefore, a cease and desist requiring Lyft to stop facilitating transportation using non-certificated drivers is not injurious to the public interest.

III. CONCLUSION

For all reasons described above, I&E requests that the Commission adopt the presiding ALJs' July 1, 2014 Order granting I&E's Petition for Interim Emergency Relief.

Respectfully submitted,



Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Michael L. Swindler
Prosecutor
PA Attorney ID No. 43319

Wayne T. Scott
First Deputy Chief Prosecutor
PA Attorney ID No. 29133

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-5000

Dated: July 8, 2014

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 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail and Electronic Mail:

James P. Dougherty, Esq.
Adeolu A. Bakare, Esq.
Barbara A. Darkes, Esq.
McNees, Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108
jdougherty@mwn.com
abakare@mwn.com
bdarkes@mwn.com



Stephanie M. Wimer
Prosecutor
PA Attorney No. 207522

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Phone: (717) 787-5000

Dated: July 8, 2014