



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

IN REPLY PLEASE
REFER TO OUR FILE

P-2014-2426846

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 Uber Technologies, Inc. to Immediately Cease and
Desist from Brokering Transportation Service for Compensation
Between Points within the Commonwealth of Pennsylvania
Docket No. P-2014-2426846

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,

Michael L. Swindler
PA Attorney ID No. 43319

Prosecutor
Bureau of Investigation and Enforcement

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 Uber Technologies, Inc. to Immediately Cease and Desist from Brokering Transportation Service for Compensation between Points within the Commonwealth of Pennsylvania :
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: Docket No. P-2014-2426846
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**BRIEF ON MATERIAL QUESTION OF
THE BUREAU OF INVESTIGATION AND ENFORCEMENT
IN SUPPORT OF THE CEASE AND DESIST ORDER
AGAINST UBER TECHNOLOGIES, INC.**

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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).

Uber Technologies, Inc. ("Uber") provides internet and mobile application software ("the Uber app") that connects passengers with individuals who have registered with Uber as drivers or driver operators ("Uber driver"). The Uber app permits a passenger's mobile phone to locate the nearest available Uber driver and then alerts the Uber driver of the passenger's ride request. Uber 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 March 13, 2014, Uber launched a ride-sharing passenger transportation service in Pittsburgh called UberX, enabling passengers in Pittsburgh to obtain rides from Uber drivers, which are facilitated by Uber through the use of the Uber app.

Approximately one month after Uber commenced its ride sharing operations in Pittsburgh, Rasier-PA, LLC (“Rasier”), a wholly-owned subsidiary of Uber, filed an Application with the Commission seeking authority to operate as an experimental transportation network service in Allegheny County, Pennsylvania.¹ Several protests were filed to Rasier’s Application.² Similar to I&E’s concerns raised regarding Uber drivers, some protests questioned whether the personal automobile insurance policies of the drivers who provide transportation services for Rasier would cover injuries and damages to persons and property, since the vehicles of those drivers would be used to transport passengers for profit. Rasier’s Application is pending before the Commission.

Despite the fact that Uber has never, at any point, applied for a license or certificate of public convenience and, thus, does not yet possess the authority to legally operate as a licensed broker or a certificated motor carrier within the Commonwealth of

¹ *Application of Rasier-PA, LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc. for a Certificate of Public Convenience to Operate an Experimental Ride-Sharing Network Service*, Docket No. A-2014-2416127 (hereinafter referred to as “Rasier’s Application”).

² See the Protests of Concord Limousine, Inc., Executive Transportation, Inc. t/a Luxury Sedan, JB Taxi LLC, the Pennsylvania Association for Justice and Insurance Federation of Pennsylvania, Inc.

Pennsylvania, Uber continues to facilitate transportation in Pittsburgh through the use of its app by Uber drivers. (Tr. 22).

On April 22, 2014, Motor Carrier Enforcement Manager for the Bureau of Investigation and Enforcement's Western Region, Officer Charles Bowser ("Officer Bowser"), filed non-traffic citations before Pittsburgh Magisterial District Judge Eugene Ricciardi against eleven (11) Uber drivers for operating as a motor carrier without possessing a Certificate of Public Convenience, pursuant to 66 Pa.C.S. § 3310.³ Those matters have been scheduled for hearing in September 2014.

On June 5, 2014, I&E filed a Commission Formal Complaint⁴ against Uber alleging, *inter alia*, that Uber acts as an unlicensed broker of transportation for compensation between points within the Commonwealth. I&E's Complaint further alleges that Uber 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 \$95,000,⁵ and an order requiring Uber to cease and desist from providing transportation services until it has secured appropriate authority from the Commission. This Complaint matter remains pending before the Commission.

³ These proceedings are docketed as follows: MJ-05227-NT-0000301-2014, MJ-05227-NT-0000314-2014, MJ-05227-NT-0000299-2014, MJ-05227-NT-0000318-2014, MJ-05227-NT-0000304-2014, MJ-05227-NT-0000302-2014, MJ-05227-NT-0000286-2014, MJ-05227-NT-0000311-2014, MJ-05227-NT-0000303-2014, MJ-05227-NT-0000297-2014, and MJ-05227-NT-0000319-2014.

⁴ *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Uber Technologies, Inc.*, Docket No. C-2014-2422723.

⁵ The civil penalty is based on the following: (1) \$84,000 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 Uber launched its service, UberX, on March 13, 2014 and June 5, 2014, the date the Complaint was filed; and (2) \$11,000 for brokering transportation to Regional Motor Carrier Enforcement Manager Charles S. Bowser ("Officer Bowser") during eleven (11) trips that he took using the Uber 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.

In addition, on June 5, 2014, I&E filed Commission Complaints against the same eleven (11) Uber 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. § 1101.⁶ Answers to I&E's Complaints were filed by counsel on July 3, 2014 and those matters remain pending before the Commission.

After each of the above enforcement actions, Uber defiantly released a statement 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 Uber'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 Uber be ordered to immediately cease and desist from unlawfully brokering transportation for compensation.

On June 26, 2014, an emergency hearing was held before ALJs Long and Watson on I&E's Petition for Interim Emergency Relief. As the record from that hearing reflects,

⁶ These proceedings are docketed at the Commission as follows: C-2014-2418285, C-2014-2418593, C-2014-2418594, C-2014-2418595, C-2014-2418597, C-2014-2418598, C-2014-2418599, C-2014-2418600, C-2014-2418701, C-2014-2418702, and C-2014-2418703.

⁷ See Bobby Kerlick, *Lyft, Uber Not Going Anywhere Despite Fines*, Pittsburgh Tribune Review, June 10, 2014, <http://triblive.com/news/allegheeny/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 prosecutor 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).

the presiding ALJs correctly determined that the standard for emergency relief was met, granted I&E's Petition, and directed Uber to immediately cease and desist from utilizing its digital platform to facilitate transportation to passengers utilizing non-certificated drivers in their personal vehicles until such time as it secures appropriate authority from the Commission. *See* July 1, 2014 Order at Ordering Paragraph 2. Specifically, I&E met its burden in showing that Uber is brokering transportation for compensation without being licensed or certificated and that Uber is using non-certificated drivers to provide the transportation. July 1, 2014 Order at 6-7. Moreover, I&E demonstrated that substantial safety risks are posed to the public by Uber's continued unlawful and unregulated operation of Uber without Commission oversight. *Id.* Notably, the ALJs stated:

It is not in the public interest for the Commission to ignore its statutory mandate to oversee brokers and motor carriers through the enforcement of its rules and regulations in order to safeguard the public and to protect against preventable accidents and injuries to the public.

July 1, 2014 Order at 15.

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 Uber to immediately cease and desist from utilizing its digital platform to broker transportation to passengers using non-certificated drivers until Uber secures proper authority from the Commission.

II. ARGUMENT

Pursuant to Section 3.6 of the Commission’s regulations, 52 Pa. Code § 3.6, a party may 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:

- a. The Petitioner’s right to relief is clear;
- b. The need for relief is immediate;
- c. The injury would be irreparable if relief is not granted; and
- d. 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 satisfy 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. Commw. Ct. 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 (Pa. 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*, Pa. PUC 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 Uber Technologies, 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 certification 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 Uber app and personally obtain numerous rides that were provided by non-certificated Uber drivers in their personal vehicles. (Tr. 15-21). Officer Bowser was charged for each ride that he took and the compilation of printed invoices that he received via email after taking each Uber trip were admitted into evidence as I&E Exhibit 2. Officer Bowser testified:

Q. Is it your testimony that Uber has been and continues to be providing this transportation service without approval of the Commission?

A. Yes.

(Tr.22).

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

I&E posited that the public's safety is threatened and the need for [cease and desist] action is immediate. (Tr. 54). As ALJs Long and Watson correctly found, Uber 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 Uber app. (Tr. 22).

Officer Bowser testified at length about public safety concerns due to the fact that the Commission does not inspect the vehicles of Uber drivers or review records pertaining to the driving history or criminal background of Uber drivers. (Tr. 23-33).

Officer Bowser also testified that, with regard to insurance coverage, it was not sufficient for a motor carrier to simply say, "Trust me, we have more than adequate coverage." (Tr. 25).

One of the main roles of the Commission is to protect the public interest. I&E submits that there are numerous Uber drivers providing multiple trips per day without Commission oversight. Each and every day that Uber operates without a brokerage license or as a certificated transportation network company, and with each and every trip conducted by an un-certificated Uber driver, Uber subjects the public to potential injury or even death. Uber'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 Uber drivers. Further, should an accident occur, it is not clear that there would be sufficient, adequate or even any insurance coverage for injury and damages to persons or property caused by Uber drivers.

Officer Bowser's unrebutted testimony demonstrates that a lack of Commission oversight adversely impacts public safety. Officer Bowser testified:

Q. In your opinion, and based on your experience, does the fact that Uber does not submit to Commission oversight have any impact on public safety?

A. Yes. We don't know how many there are, who they are or where they are currently located.

Q. And, what is the impact on public safety?

A. I think it's a recipe for disaster.

(Tr.31).

Thus, I&E has demonstrated that the need for relief is immediate.

c. The Injury from Uber'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 (Pa. 1947). The record shows that Uber is operating unlawfully by brokering transportation service for compensation using non-certificated drivers. Uber presented no evidence or testimony to the contrary. Therefore, I&E established, and the presiding ALJs properly found, that Uber'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, Uber has no lawful right to broker transportation for compensation in the Commonwealth. Similarly, Uber has no lawful right to use non-certificated drivers to provide such transportation. Until Uber is granted appropriate authority from the Commission to operate, the Commission is unable to guarantee that Uber 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. Therefore, the presiding ALJs correctly held, "[I]t is

not in the public interest for the Commission to ignore its statutory mandate to oversee brokers and motor carriers through the enforcement of its rules and regulations in order to safeguard the public and to protect against preventable accidents and injuries to the public.” July 1, 2014 Order at 15.

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 against Uber Technologies, Inc.

Respectfully submitted,



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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).

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