



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Adeolu A. Bakare
Direct Dial: 717.237.5290
Direct Fax: 717.260.1744
abakare@mwn.com

July 8, 2014

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

VIA ELECTRONIC FILING

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:

Attached for filing with the Pennsylvania Public Utility Commission ("Commission") is the Brief to Commission on Material Question of Lyft, Inc. in the above-captioned proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By 
Adeolu A. Bakare

Counsel to Lyft, Inc.

Imc
Enclosure

c: Administrative Law Judge Mary D. Long (via e-mail and First-Class Mail)
Administrative Law Judge Jeffrey Watson (via e-mail and First-Class Mail)
Certificate of Service

www.mwn.com

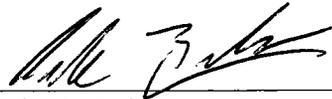
HARRISBURG, PA • LANCASTER, PA • SCRANTON, PA • STATE COLLEGE, PA • COLUMBUS, OH • WASHINGTON, DC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST-CLASS MAIL

Michael L. Swindler, Esq.
Stephanie M. Wimer, Esq.
Wayne T. Scott, Esq.
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



Adeolu A. Bakare
Counsel to Lyft, Inc.

Dated this 8th day of July, 2014, in Harrisburg, Pennsylvania.

**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 immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania. :
: P-2014-2426847
:

LYFT, INC. BRIEF TO COMMISSION ON MATERIAL QUESTION

Pursuant to Sections 3.10 and 5.305 of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Regulations, 52 Pa. Code §§ 3.10, 5.305, Lyft, Inc. ("Lyft" or "Respondent") submits this Brief on the Material Question certified by Administrative Law Judges ("ALJs") Mary D. Long and Jeffrey A. Watson to the Commission through the Order on Interim Emergency Relief issued in the above-captioned docket on July 1, 2014 ("Interim Order"). The ALJs granted emergency relief requested by the Bureau of Investigation and Enforcement ("I&E" or "Petitioner") in the above-captioned proceeding and certified the Material Question to the Commission.¹ However, the ALJs overlooked evidence provided by Lyft and committed an error of law in granting interim emergency relief without evidence of a clear and present danger to life or property. *See* 52 Pa. Code § 3.1; *Peoples Independent Producers Group v. Peoples Natural Gas Co.*, 2005 WL 2931830 (Pa. P.U.C.), p. 8 (hereinafter "*Peoples*").²

SUMMARY

The Commission should answer the Material Question and reverse the ALJs' Interim Order because the ALJs considered only evidence offered in support of I&E's Petition, consistently failed to

¹ I&E previously filed a Petition for Interim Emergency Order at the above-captioned docket on June 16, 2014 ("Petition"). The Petition requested issuance of a cease-and-desist Order pending investigation of the Complaint filed by I&E on July 5, 2014, at Docket No. C-2014-2422713 ("Complaint").

² In *Peoples*, the Commission reviewed the question of immediacy of a request for interim emergency relief and found that "[t]o issue and ratify an emergency order, the Commission must find that a situation exists that 'presents a clear and present danger to life or property.'" *Id.*

weigh available evidence offered by Lyft, and committed errors of law in granting emergency relief without a finding of an "emergency" and failing to appropriately balance public interest considerations. The Interim Order quotes at length from the direct-examination conducted by counsel for I&E at the evidentiary hearing held on June 26, 2014, but fails to address issues raised on cross-examination by counsel for Lyft or consider publicly available and probative information furnished in the Answer to I&E's Petition filed on June 23, 2014 ("Answer to Petition"), the Answer to I&E's Complaint filed on June 26, 2014 ("Answer to Complaint"), or the Applications for Experimental Service filed on April 3, 2014.³

Taken as a whole, the Interim Order omits evidence establishing that I&E failed to meet the lofty burden of proving, by a preponderance of the evidence, that: (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; and (4) the relief requested is not injurious to the public interest. 52 Pa. Code § 3.2. Additionally, the ALJs committed an error of law in granting interim emergency relief without evidence of a clear and present danger to life or property, as required for a showing of immediacy, or appropriately balancing public interest considerations. *See* 52 Pa. Code §§ 3.1, 3.2; *see also Peoples*, at 8. Accordingly, the Commission should reverse the Interim Order and dismiss I&E's Petition.

ARGUMENT

1. Record Evidence Demonstrates that Petitioner's Right to Relief is not Clear.

In finding that I&E established a clear right to relief, the ALJs failed to consider key record evidence to the contrary. Even if I&E established a prima facie case that Lyft offers public utility service for compensation, the record evidence offered by Lyft is sufficient to rebut I&E's case. At

³ Lyft previously filed Applications with the Commission requesting authority to offer experimental service for compensation in Allegheny County and throughout the Commonwealth. *See Lyft, Inc. Application for Motor Common Carrier of Persons in Experimental Service in Allegheny County*, Docket No. A-2014-2415045 (April 3, 2014) (hereinafter "*Lyft Allegheny County Application*"); *Lyft, Inc. Application for Motor Common Carrier of Persons in Experimental Service within the Commonwealth of Pennsylvania*, Docket No. A-2014-2415047 (April 3, 2014) (hereinafter "*Lyft Statewide Application*").

the very least, particularly in consideration of Commission precedent establishing that "[t]he issue of compensation for purposes of defining whether a firm is providing public utility service is a fact intensive one and must be examined on a case-by-case basis," Lyft provided evidence sufficient to establish that I&E had not met its burden of establishing, by a preponderance of the evidence, that Lyft offered service to the public for compensation. *See* Answer to Petition, p. 4 *citing In re: Hopkins & Reedy Water Company*, 2011 WL 5121079 (Penn. P.U.C. 2011), p. 1 (hereinafter "*Hopkins*"). Accordingly, as the party bearing the burden of proof, I&E has not established a clear right to relief.

a. The ALJs Ignored Evidence Suggesting that I&E's Right to Relief is not Clear.

The ALJs found in favor of a clear right to relief based primarily on testimony from I&E Witness Charles Bowser, but failed to consider evidence set forth in Lyft's Answer or elicited through cross-examination of Mr. Bowser. The ALJs repeatedly cited to the direct examination of Mr. Bowser and relied heavily on his testimonial allegations that Lyft offers public utility service for compensation. Interim Order, pp. 6. Conversely, the ALJs acknowledged that Lyft denied offering public utility service for compensation, but determined that "[n]o evidence was offered in support of this contention, and the facts presented at the hearing clearly suggest otherwise." *Id.* at 9. This statement indicates that the ALJs excluded cross-examination conducted by counsel for Lyft from the evidence considered in this proceeding, in contravention with Commission precedent and the Pennsylvania Rules of Evidence. *See Pennsylvania Public Utility Com'n v. West Penn Power Co.*, 77 P.U.R.4th 220, 236, 61 Pa.P.U.C. 711, 727 (Pa.P.U.C. 1986) (citing cross-examination of a witness as a major source of evidence); *see also* Pa.R.E., Rule 611 (permitting cross-examination in civil cases). As described below, Lyft offered extensive evidence through cross-examination and further submitted publicly available documents to support Lyft's assertion that its service is not presently offered to the public for compensation in Pennsylvania.

First, the Answer filed by Lyft in response to the Petition included an excerpt from the terms and conditions applicable to all drivers and passengers using Lyft's platform. Answer to Petition, pp. 5-6. The Answer also included a hyperlink to the full document. *Id.* As set forth in the Answer, the legally binding terms and conditions state that "[e]ach Driver acknowledges that the decision to provide such Donation and the amount of the Donation is at the Rider's sole discretion, and that the Driver will not request from Rider or receive any compensation or consideration for providing a ride to the Rider other than the amount (if any) of the Donation." *Id.* Further, on cross-examination, Mr. Bowser confirmed that he remembers agreeing to the terms and conditions. Tr. 31. Finally, Mr. Bowser also specifically recounted the details of his rides obtained through the Lyft platform, confirming that, each of the "charges" shown on the email confirmations compiled in I&E's Exhibit No. 3 were fully adjustable at the discretion of the rider, as referenced in the Lyft terms and conditions. Tr. 44. Specifically, in response to cross-examination, Mr. Bowser stated that "the compensation was adjustable, and it could have been – it could be added to or subtracted from the listed amount." *Id.*

The ALJs also placed undue weight on articles downloaded by I&E enforcement staff from the Lyft website. The ALJs referenced articles describing discounted rides and an article identifying Pittsburgh as a city in which Lyft charges a set amount for rides and excluding Pittsburgh from the cities in which Lyft collects donations. Interim Order, p. 6. While there may have been unfortunate misinformation in Lyft advertisements, these documents do not change the fact that, under the legally binding terms and conditions agreed to by users of the Lyft mobile applications in Pennsylvania, including Officer Bowser, passengers riding with drivers using Lyft's platform have a legally binding right to use the service without payment and the drivers have a legally-binding obligation to accept unpaid rides. *See* Answer to Petition, pp. 5-6. More importantly, the information in the advertisements is flatly contradicted by the actual experience of I&E enforcement officers, as Officer Bowser confirmed that each passenger was afforded an opportunity to voluntarily set a donation

amount and was not compelled to offer any compensation for the service. Tr. 44. The ALJs erred in placing undue weight on circumstantial inferences gleaned from online advertisements, where Officer Bowser's actual experience as a passenger clarified that drivers using Lyft's platform accept only donations and do not demand compensation from passengers.

b. The ALJs' Conclusion that I&E Met its Burden of Establishing a Clear Right to Relief Relies on a Misapplication of Case Law.

The ALJs committed an error in law in finding that I&E had established a reasonable likelihood of success on the merits sufficient to overcome any evidence that donations received for Lyft's service were not compensation. The ALJs evaluated I&E's likelihood of success on the merits based on a line of case law allegedly establishing that the issue of compensation is irrelevant to the question of whether public utility service is offered when there has been an "indiscriminate holding out to the general public." *See* Interim Order, p. 9 *citing Application of Moselle Morris*, PUC Docket No. A-2009-2098317 (Initial decision dated October 22, 2009, Final Order issued December 3, 2009), slip op. at 13 (hereinafter "*Moselle*"). This reasoning originates from a 1950 proceeding where the Superior Court of Pennsylvania upheld a conviction for operating as a common carrier without a certificate of public convenience. *See Id. citing Commonwealth v. Babb*, 70 A.2d 660 (Pa. Super 1950) (hereinafter "*Com. v. Babb*").

In *Com. v. Babb*, the court observed that a car owned by the defendant was "equipped with a dome light bearing the word 'Taxi'" and used to transport passengers. *Com. v. Babb*, A.2d 660. In addressing the questions of whether defendant offered public utility service for compensation, the court observed as follows:

There was clear and uncontradicted testimony of an indiscriminate holding out to the general public. That the passenger was under no legal obligation to pay and no fixed charge was demanded is irrelevant. Such an arrangement is only an artifice or subterfuge.

Id. at 662. This language became the foundation for the Initial Decision in *Moselle*, where the presiding ALJ cited to *Com. v. Babb* for the proposition that the issue of whether a utility demands

compensation is irrelevant to the question of whether public utility service is provided where there has been an indiscriminate holding out to the general public. Order, p. 9 *citing Moselle*. Notably, although the ALJ's decision in *Moselle* became final, no parties filed Exceptions to the decision and the Commission did not specifically address the ALJ's interpretation of *Com. v. Babb*.

As applied to the present case, *Com v. Babb* must be reconciled with the plain language of the Public Utility Code and the facts then before the Superior Court. Both Section 102 of the current Public Utility Code and the former Section 1311 of the Public Utility Law effective at the time of *Com v. Babb* clearly define a common carrier as "any common carrier *who or which holds out or undertakes the transportation of passengers or property*, or both, or any class of passengers or property, between points within this Commonwealth by motor vehicle *for compensation... .*" 66 Pa. C.S. § 102 (Emphasis added); the Public Utility Law of May 28, 1937, P.L. 1053, § 1(6), 66 P.S. § 1102(6). As Pennsylvania statutes must be interpreted to give effect to each word, the "holding out to the public" and "for compensation" elements of public utility service must be viewed separately.⁴ In consideration of the plain language of the statutory definition of "common carrier" under the Public Utility Code, the only reasonable interpretation of *Com. v. Babb*, based on the totality of the language in the opinion and the facts then before the court, is that the issue of compensation may become irrelevant *where the lack of compensation is determined to be a subterfuge* to avoid the duties and responsibilities of a common carrier. *See Com. v. Babb*, A.2d 660.

The facts of the present case are distinguishable from the facts before the court in *Com. v. Babb*. Unlike the drivers in *Com. v. Babb*, drivers using Lyft's platform are not impersonating taxicabs by styling their vehicles to mimic the recognizable features of a taxicab. *See Id.* To the contrary, Lyft has gone to extremes to differentiate its service from taxicabs by attaching the

⁴ Under Pennsylvania's Rules of Statutory Construction, "[e]very statute shall be construed, if possible, to give effect to all its provisions." 1 Pa. C.S. § 1921.

conspicuous "pink moustache" to each car and limiting service to passengers requesting rides specifically through the Lyft mobile application as opposed to traditional call or demand solicitations accepted by traditional taxicabs. Tr. 10-11. Moreover, Lyft has used the innovative mobile technology to affirmatively grant each passenger using the service an explicit and legally binding right to use the service without payment. Answer to Petition, pp. 5-6; Tr. 44. Therefore, unlike prior cases evaluated by the Commission and the courts, Lyft has taken steps to ensure that any donations received by passengers are voluntary and genuine, as opposed to a subterfuge for mandatory compensation.

2. Record Evidence Demonstrates that any Right to Relief is Not Immediate.

The ALJs also improperly found that I&E demonstrated an immediate need for relief. Similar to the analysis of the first question, the ALJs again failed to consider significant evidence offered by Lyft to support its claim that any need for relief is not immediate. Finally, the ALJs overlooked the correct legal standard for the question of immediacy, which requires a showing of immediacy sufficient to establish an emergency situation under Section 3.1 of the Commission's Regulations. 52 Pa. Code § 3.1; *see Peoples*, at 8.

a. The ALJs Overlooked Evidence Clarifying that I&E's Prior Enforcement Actions have not been Adjudicated and Cannot be Considered Violations of the Public Utility Code.

The ALJs unreasonably indicated that Lyft's continuation of service following I&E's filing of a Complaint and subsequent issuance of non-traffic citations support I&E's claim for immediate relief. Interim Order, p. 10. Neither imposes an obligation on Lyft to suspend its service. Following receipt of I&E's Complaint, Lyft filed an Answer denying many of the allegations therein and requesting dismissal of the Complaint. *See Answer to Complaint*. The ALJs cited liberally to the Complaint, but took no notice of the Answer filed by Lyft at the same docket. Similarly, the ALJs observed that Lyft has not suspended operations despite the fact that "[e]vidence at the hearing also establishes that non-traffic citations were issued to 12 Lyft drivers," but completely overlooked Mr.

Bowser's cross-examination testimony where he clarified that the non-traffic citations are contested criminal citations scheduled for adjudication before a Magisterial Judge. Tr. 29. As such, Mr. Bowser further testified that he does not know if the citations would result in any actual violations of the Public Utility Code, because the defendants have not been proven guilty of the alleged acts. Tr. 28-29.

b. The ALJs Further Neglected to Consider Evidence Indicating that I&E's Safety Concerns Are Unsupported.

The ALJs also emphasized Officer Bowser's concerns for the safety and integrity of drivers or vehicles used in conjunction with Lyft's platform, but failed to consider evidence showing Officer Bowser's fears to be unfounded. First, on cross-examination, Mr. Bowser confirmed that he had no evidence of any actual safety violations committed by a driver using Lyft's platform. Tr. 30. Mr. Bowser went on to agree that there are no concerns regarding uninspected vehicles since the personal vehicles used by Lyft drivers are required to obtain annual inspections performed under authority of the Pennsylvania Department of Transportation ("PennDot"). *Id.* at 38. Mr. Bowser also testified that the annual inspections required by PennDot for personal vehicles follow the same procedures as the same annual inspections required for commercial taxicabs. *Id.* at 38-39.

When asked how the use of personal vehicles in conjunction with Lyft's platform could raise safety concerns despite submission to annual PennDOT inspections, Mr. Bowser testified that inspection requirements for personal vehicles are designed for vehicles driven, on average, ten to twelve thousand miles per-year. *Id.* at 38. Mr. Bowser then clarified that the Commission's powers to conduct additional inspections are intended to address commercial vehicles that greatly exceed the mileage of personal vehicles, affirming that "in the [commercial transportation] industry overall, on average, vehicles are driven many more miles than the average personal car, which would necessitate greater care to be taken in vehicle maintenance." *Id.* However, Mr. Bowser agreed that Lyft operates under a different business model than traditional commercial motor carriers, which relies on

non-professional drivers as opposed to full-time professional drivers, and further admitted that he made no investigation as to whether vehicles used in conjunction with Lyft's platform greatly exceed the average annual mileage of a personal vehicle. *Id.* It is unreasonable to attribute speculative safety concerns related to the high mileage rates accrued by full-time commercial drivers to Lyft's service, without any evidence to support such assumptions.

Moreover, while the ALJs cited liberally to the Complaint filed by I&E, the ALJs included only a cursory reference to the Answer filed by Lyft at the same docket, which specifically stated that Lyft carries insurance exceeding the requirements of Section 32.11 of the Commission's Regulations. 52 Pa. Code § 32.11. In support of this statement, the Answer attached a copy of the public record testimonial statement submitted by Lyft to the Pennsylvania House of Representatives Committee on Insurance on June 23, 2014. *See* Answer, Exhibit A. The June 23 Statement described Lyft's insurance policies, including additional coverage obtained specifically for Pennsylvania to meet the First Party Medical and Wage Loss coverage requirements of Section 32.11. *See* Answer, Exhibit A, pp. 3-4. Further, the June 23 Statement and the publicly available Applications for Experimental Service also show that Lyft requires all drivers using Lyft's platform to submit to criminal background and driver history checks. *Id.* at 2; Allegheny County Application, Attachment A, pp. 4-5.

c. The ALJs Applied an Incorrect Legal Standard for Immediacy and Inappropriately Granted Interim Emergency Relief Without Evidence of an Emergency.

In addition to omitting consideration of evidence, the ALJs also failed to state the appropriate standard for immediacy, which requires a showing of an emergency under Section 3.1 of the Commission's Regulations. 52 Pa. Code § 3.1. In assessing the immediacy of I&E's requested relief, the ALJs referenced Officer Bowser's "concerns for public safety" and found that "BIE [I&E] successfully demonstrated that the need for relief in the form of an order for injunctive relief is immediate." Interim Order, p. 10. This finding overlooked the fact that a finding of immediacy for

interim emergency relief must rise beyond "concerns." The immediacy must be supported by evidence of an "emergency," defined in Section 3.1 of 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 to the next scheduled public meeting."⁵ This language limits the scope of interim emergency orders, consistent with prior findings that the Commission must grant emergency relief sparingly. *Re West Penn Power Co.*, 69 Pa.P.U.C. 343, 347 (Pa.P.U.C. 1989). For example, Section 3301 of the Public Utility Code empowers the Commission to issue civil fines for *any* violation of its regulations or Orders. 66 Pa. C.S. § 3301. By contrast, the Commission may only grant emergency relief under Section 3.10 of its Regulations where to do otherwise would create a clear and present danger to life or property.

In this case, while the ALJs granted the requested interim emergency relief, the ALJs agreed that I&E had not established a clear and present danger, stating that:

In closing argument, counsel for Lyft emphasized that no present danger to the public has been established. *This may be true so far.* However, the 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.

Tr. 12. (Emphasis added). The ALJs are correct that the Commission is empowered to prevent harm to individuals. However, the Commission's general authority to prevent harm lies in its broad enforcement authority under Section 3301 of the Public Utility Code, which authorizes the Commission to levy civil fines for failures to comply with its Regulations, Laws, or Orders. 66 Pa. C.S. § 3301. The authority to issue Interim Emergency Orders remains confined to situations where the need for relief is immediate, such that failure to grant the relief presents a clear and present danger to life or property.

Similarly, the legal standard applicable to interim emergency orders under the Commission's Regulations is more stringent than that for traditional preliminary injunctions. The Supreme Court of

⁵ 52 Pa. Code § 3.1; *Peoples*, at 8.

Pennsylvania's review of a court of common pleas decision, which granted a preliminary injunction enjoining defendants from operating taxicabs without a certificate of public convenience from the Commission, evidences the lower burden for preliminary injunctions. *Pennsylvania Public Utility Commission v. Israel*, 356 Pa. 400, 406, 52 A.2d 317, 321 (Pa. 1947) (hereinafter "*Israel*") Importantly, the court in *Israel*, proceeded under Section 1343 of the former Public Utility Law, which authorized the Commission to petition a court of common pleas for injunctive relief where "any person... is violating or is about to violate *any* provision of this act... ." *Id.* at 320 (Emphasis added). This standard is clearly more expansive than the more limited emergency authority erroneously invoked by the ALJs in the Interim Order. Under *Israel*, the requested injunctive relief granted by a court of common pleas and upheld by the Supreme Court of Pennsylvania was not predicated on a finding of an emergency situation, but on the court's general power to issue preliminary injunctions.⁶ *Id.* Further, in *Israel*, the courts addressed the issue of whether a carrier was providing public utility service for compensation following a Commission determination, not on a petition from Commission enforcement staff. *Id.*

Here, where the ALJs and the Commission must address I&E's request for emergency interim relief, the standard is more stringent and limited. While the ALJs cite to *Israel* for the proposition that any violation of the law justifies injunctive relief, Section 3.1 requires that the purported violation must further give rise to an immediate need for relief. *See* Interim Order pp. 12-13; *but see* 52 Pa. Code § 3.1; *see also Peoples*, at 8. Therefore, while Lyft avers that no violation of the Public Utility Code has occurred, even assuming *arguendo* that a violation had occurred, I&E would be required to proceed under the Commission's general enforcement authority by filing a Complaint and

⁶ Under Pennsylvania law, courts may grant preliminary injunctions if the moving party establishes that: (1) there is a reasonable probability of success on the merits, (2) irreparable injury will result without injunctive relief, (3) granting the injunction will not result in even greater harm to the nonmovant, and (4) the injunction is in the public interest. *Stilp v. Contino*, 629 F.Supp.2d 449, 457 (M.D.Pa.,2009). Notably, preliminary injunctions are not limited to emergency situations, whereas interim emergency relief under the Commission's Regulations must be confined to emergencies. *See* 52 Pa. Code §§ 3.1, 3.2; *see also Peoples*, at 8.

conducting full investigative hearings. There is no immediacy at issue because the Public Utility Code authorizes I&E to prosecute violations up to 3 years from the offending act. 66 Pa. C.S. § 3314. The emergency relief unjustifiably sought in this proceeding would be available only if I&E could show that the alleged violation presents a clear and present danger to life or property. *Id.*

As discussed in detail, *supra*, I&E provided evidence that Mr. Bowser is concerned about the safety of Lyft's service, but furnished no evidence of actual safety violations or any evidence indicating that any vehicle or driver associated with Lyft's service was operating in a manner endangering life or property. Tr. 30. Although I&E enforcement officers used Lyft's service on twelve occasions, I&E provided no evidence of unsafe driving or unsafe vehicles observed during the rides. *Id.* To the contrary, the Answer filed in response to I&E's Complaint included public record testimony stating that Lyft performs criminal and driver history checks for all drivers using Lyft's platform and complies with the Commission's insurance requirements under Section 32.11. Answer to Complaint, Exhibit A, p. 2; *see also* Allegheny County Application, pp. 4-5. Cross-examination testimony from Mr. Bowser further confirmed that vehicles used in conjunction with Lyft's platform remain subject to PennDOT inspections that mirror the requirements for commercial vehicles under 67 Pa. Code § 175. At the most, I&E has raised questions of law that can be addressed in the underlying Complaint proceedings. Lyft has provided sufficient record evidence to rebut I&E's allegations that the existing circumstances pose an immediate need for relief necessary that unaddressed would result in a clear and present danger to life or property.

3. The ALJs' Finding that Irreparable Injury Would Result Absent Emergency Relief Should Be Reversed Due to a Misapplication of Case Law.

The ALJs improperly relied on *Israel*, which presented different circumstances than the present case. As described in Section 1 of this brief, *supra*, I&E has not met its burden of showing that a violation of law occurred based on evidence adduced by I&E and contrary evidence set forth by Lyft. In *Israel*, the court found a violation of law based on facts that were *undisputed* between the

parties. *Israel*, 52 A.2d at 320. Therefore, for purposes of interim relief in this proceeding, I&E has not established that the requested relief is irreparable.

Further, in *Israel*, the court addressed a fact pattern identical to cases previously adjudicated by the courts, all of which involved traditional taxicabs. Because the facts did not differ, the court found that the Commission compiled a clear prima facie case unrebutted by the defendants. *Id.* at 320. Even if the Commission agrees with the ALJs that I&E has established a prima facie case to support its position, Lyft has responded with evidence rebutting the prima facie case. *See supra*, Argument – Sections 1-2. As I&E has not met its burden of showing that a violation of law has occurred, there is no *per se* evidence of irreparable harm as observed in *Israel*.

4. The Emergency Relief Granted by the Interim Order is Injurious to the Public Interest and Should be Reversed.

The ALJs' disposition of the public interest element should also be reversed. Here, the ALJs acknowledged the clear need for Lyft's platform in Pittsburgh, where the inability of existing transportation services to meet the city's demand is well documented. Interim Order, p. 11. However, the ALJs ultimately determined the public benefits from Lyft's platform to be outweighed by their finding that Lyft violated the Public Utility Code. As extensively addressed in Section 1 of this brief, *supra*, I&E has not met its burden of showing that Lyft violated the Public Utility Code. Further, even if a violation of the Public Utility Code had occurred, the Commission should still reverse the Interim Order because the ALJs inappropriately failed to properly weigh the public interest considerations due to a misapplication of *Israel*. Interim Order, p. 12.

Unlike, the court in *Israel*, the Commission is not limited to deciding errors of law on appeal and can make appropriate legal and policy decisions based on the public interest and within the confines of the Public Utility Code. Indeed, this would seem to be the clear purpose of including a public interest determination as an independent criteria for emergency relief. *See* 52 Pa. Code § 3.2.

In finding that I&E's request is not injurious to the public interest, the ALJs analogized the present situation to that in *Israel*, where the court enjoined the defendant taxicab companies from transporting passengers as common carriers without a certificate of public convenience. *See Israel* 52 A.2d at 322 *citing Yellow Cab Co. v. Cab Drivers Local No. 294A*, 1931, 79 P.L.J. 242 (hereinafter "*Yellow Cab*"). The ALJs entirely overlooked the fact that the courts in *Israel* and *Yellow Cab* addressed the same familiar taxicab services, while the company at issue in this proceeding uses a different model designed to meet the demands of today's consumer. *See Answer to Petition*, p. 7; *Answer to Complaint*, Exhibit A, pp. 1-2. Essentially, the courts in *Israel* and *Yellow Cab* observed that the defendants were providing a service that had previously been identified by the Commission as public utility service for compensation and enjoined the defendants from providing the service without a certificate of public convenience.

By contrast, the instant proceeding is before the Commission itself, not before courts applying the Commission's prior decisions. The Commission can consider public interest matters not properly before higher courts. The following excerpt from *Israel* illustrates the difference between the court's application of public utility law and the Commission's broader discretion:

The defendants also argue, and apparently with considerable merit, that taxicabs are badly needed in Philadelphia and that the public there is, at least during the present time, benefitting from their service. But again, our opinion on this is of no importance for here again it is not this Court which is to determine such matters. *The Public Utility Commission is charged with the responsibility of determining the need of such public service and how and by whom the need can best be met.*

Israel, 52 A.2d at 322 (Emphasis added). Considering that the authority governing emergency orders arises from the Commission's Regulations and is not directly authorized by any language in the Public Utility Code, the Commission reserves broad authority to dispose of requests for emergency relief. *See* 52 Pa. Code §§ 3.1-3.12. Accordingly, while the ALJs recommend that the Commission turn a blind eye to the clear public need for the service provided by Lyft, the public interest would be better served by a resolution that appropriately recognizes the efforts of Lyft to ensure public safety

by voluntarily adopting insurance and transportation safety precautions set forth in the Commission's Regulations and the detrimental effects of reversing the transportation renaissance presently benefitting the citizens of Pittsburgh.

Consistent with the Commission's authority to resolve this proceeding in a manner best suited to the public interest and in consideration of the evidence overlooked by the ALJs, Lyft respectfully requests that the Commission grant a waiver of Section 3.10(a) of the Commission's Regulations and order a stay of the Order on Interim Emergency Relief effective July 1, 2014. *See* 52 Pa. Code § 5.43; *see also Buffalo-Lake Erie Wireless Systems Co., LLC Petition for Emergency Order*, 2010 WL 237779 (Penn.P.U.C.,2010) (approving a request for waiver of the regulation 52 Pa. Code § 3.10(a), which provides that an order granting or denying interim emergency relief is immediately effective upon issuance of the presiding officer).

Accordingly, Lyft respectfully requests that the Commission reverse the Interim Order and allow Lyft to address the claims raised by I&E in the underlying Complaint proceeding.

WHEREFORE, Lyft, Inc. respectfully requests that the Pennsylvania Public Utility Commission reverse the Order on Interim Emergency Relief, dismiss the Bureau of Investigation and Enforcement's Petition for Interim Emergency Relief, approve the requested waiver of 52 Pa. Code § 3.10(a), and grant any additional relief deemed appropriate and in the public interest.

Respectfully submitted,
McNEES WALLACE & NURICK LLC
By 
James P. Dougherty (Pa. I.D. 59454)
Adeolu A. Bakare (Pa. I.D. 208541)
Barbara A. Darkes (I.D. No. 77419)
McNees Wallace & Nurick LLC
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: 717.232.8000
Fax: 717.237.5300

Dated: July 8, 2014