



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

IN REPLY PLEASE
REFER TO OUR FILE
A-2014-
2432304

PA PUC
SECRETARY'S BUREAU

2014 JUL 22 AM 10:16

RECEIVED

July 22, 2014

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

Re: Application of Lyft, Inc. for Emergency Temporary Authority to
Offer Experimental Transportation Network Service Between Points
in Allegheny County, PA
Docket No. A-2014-2432304

Dear Secretary Chiavetta:

The Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission") files this letter-response to the Application of Lyft, Inc. ("Lyft") for Emergency Temporary Authority ("Application for ETA") in the above-captioned matter.

I&E offers its response as the Commission has considered information contained in protests to applications for emergency temporary authority as an aid in determining whether the criteria for emergency temporary authority has been established.¹ Similarly, I&E respectfully requests that the Commission consider the information set forth herein.

I&E serves as the Commission's prosecutory bureau and, among other duties, is responsible for enforcing compliance with state and federal motor carrier safety laws and regulations.² I&E has standing and authority to participate in all Commission proceedings. *Id.* at 5.

On July 16, 2014, Lyft filed the above-captioned Application for ETA. The criteria for emergency temporary authority are set forth in Section 3.384 of the Commission's regulations, 52 Pa. Code § 3.384. Specifically, grants of emergency temporary authority are made upon the establishment of an immediate need for the transportation of passengers. 52 Pa. Code § 3.384(b)(1). An immediate need will not be found to exist when there are other carriers capable of rendering the service. 52 Pa. Code § 3.384(b)(2). Further, emergency temporary authority may be denied if the Commission has evidence that the carrier

¹ *Application of Time Enterprises, Inc., for emergency temporary authority, to transport, as a common carrier, asphalt, from the county of Philadelphia to the township of Pittston, Luzerne County*, Docket No. A-00108160, F. 600 (Order entered July 7, 1988).

² See 66 Pa.C.S. § 308.2(a)(11) and *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

applicant has a history of willful or flagrant violations of the Public Utility Code or Commission regulations. 52 Pa. Code § 3.384(c)(2).

I&E respectfully requests that the Commission deny Lyft's Application for ETA. Lyft has been operating in defiance of a cease and desist order issued on July 1, 2014, which became immediately effective upon issuance. Due to Lyft's continued willful and flagrant violations of the Public Utility Code and Commission regulations, the fact that Lyft has not, as a matter of law, presented evidence of an immediate need for its service and that other call and demand carriers in Pittsburgh are authorized to provide service, Lyft's Application for ETA should be denied.

**Lyft Lacks A Propensity To Operate Lawfully And The Issue of Its Fitness
Should Be Fully Adjudicated In Its Original Application Proceeding**

Pursuant to Section 3.384(c)(2) of the Commission's regulations, if the Commission has evidence that the applicant has a history of willful or flagrant violations of the statute or regulations, then there are grounds to deny the application for emergency temporary authority. 52 Pa. Code § 3.384(c)(2).

On or about February 7, 2014, Lyft launched digital software ("the Lyft app"), which enables passengers to obtain transportation for compensation from non-certificated drivers ("Lyft drivers"). Lyft had not obtained authority from the Commission to operate nor had it applied for such operating authority at the time of its launch.

I&E has multiple on-going enforcement proceedings against Lyft and its partner drivers. On April 22, 2014, I&E filed non-traffic citations before Pittsburgh Magisterial District Judge Eugene Ricciardi against twelve (12) Lyft drivers for operating as a motor carrier without possessing a Certificate of Public Convenience, pursuant to 66 Pa.C.S. § 3310.³ 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 Also on June 5, 2014, I&E filed a complaint against Lyft before the Commission alleging that Lyft acts as an unlicensed broker of transportation for compensation between points within the Commonwealth by utilizing the Lyft app, which

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.

connects passengers to non-certificated Lyft drivers.⁵ Despite I&E's repeated efforts to enforce compliance with the Public Utility Code and Commission regulations, Lyft continues to operate in Pittsburgh.

On June 16, 2014, I&E filed a Petition for Interim Emergency Relief which sought an immediate order directing Lyft to cease and desist from offering transportation services for compensation.⁶ On June 26, 2014, a hearing was held wherein I&E presented the testimony of one witness, Western Regional Manager Charles S. Bowser, and proffered three exhibits, all which were admitted into the record. Lyft did not offer any testimony or exhibits.

I&E's unrebutted evidence demonstrated that Lyft offers passenger transportation service *for compensation* through the Lyft app, which connects drivers using their personal, non-commercially licensed or insured vehicles with the public. Lyft provides this service without having authority from the Commission. I&E also offered a substantial amount of evidence showing the risks posed to the public by the continued operation of Lyft without Commission oversight.

On July 1, 2014, the presiding administrative law judges ("ALJs") granted I&E's Petition and directed Lyft 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.⁷ The presiding ALJs found the following:

Lyft began operating in Pennsylvania long before it filed an application for authority from the Commission. Although the digital platform used to connect passengers with transportation is new and innovative, the proscription against using private vehicles for transportation without Commission authority is hardly new.

July 1, 2014 Order at 12. The presiding ALJs further concluded that "because Lyft has chosen to attempt to avoid Commission jurisdiction and has failed to comply with the law, the Commission and the public it services have been deprived of the ability to protect the travelling public." *Id.* at 12-13.

⁵ This complaint proceeding is docketed with the Commission at C-2014-2422713.

⁶ *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.

⁷ *Id.* (Order entered July 1, 2014) (hereinafter referred to as the July 1, 2014 Order).

Pursuant to Section 3.10(a) of the Commission's regulations, an order granting or denying interim emergency relief is *immediately effective* upon issuance by the presiding officer. 52 Pa. Code § 3.10(a) (emphasis added). Therefore, Lyft is well aware that it is prohibited from operating its service in Pennsylvania. Despite being ordered to immediately cease brokering transportation through its app, Lyft defiantly continues to operate.⁸ Lyft's actions demonstrate that it lacks a propensity to operate lawfully and thus I&E maintains serious doubt regarding Lyft's fitness.

It is well settled law that evidence of illegal operations create a negative inference regarding an applicant's propensity to operate lawfully. *See Application of Dart, Inc.*, Docket No. A-00108987 (Order entered October 22, 1991); *Re: Application of Colonel C. Heeter*, 56 Pa. PUC 279, 281-282 (1982). The Commission has stated that "[w]hile we may, under appropriate circumstances, excuse instances of inadvertent or incidental illegal service, **we cannot ignore such illegal service.**" *See Application of Harrisburg Taxicab and Baggage Co., t/a Yellow Cab*, Docket No. A-000791431, F0008, Am-E (Order entered June 13, 1997), slip op. at 14, Footnote 4 (emphasis added). The Commission has also found that an applicant failed to meet its burden in proving that it is fit to operate lawfully when it ignored a cease and desist order and continued to provide unauthorized and unlawful transportation service. *Application of F.L. Shaffer Co.*, Docket No. A-00108897, 1992 Pa. PUC LEXIS 77 (Order entered July 22, 1992).

Lyft cites *Hercik v. Pa. Pub. Util. Comm'n*, 586 A.2d 492 (Pa. Cmwlth. 1991) for the proposition that past unlawful operations do not preclude a carrier-applicant from obtaining authority. In *Hercik*, the ALJ found that the applicant began leasing limousines and was unaware that Commission authority was required to operate such a business until it was notified by the Commission. The instant case is clearly distinguishable. Lyft has been knowingly and flagrantly ignoring enforcement actions by actively operating subsequent to the issuance of the July 1, 2014 Order, which clearly directed it to immediately cease and desist. Its current operations are widespread throughout Allegheny County and cannot be construed to be "inadvertent" or "incidental." Unlike the applicant in *Hercik*, Lyft is willfully disregarding the Commission's authority by continuing to operate without the proper authority to do so.

Lyft asserts in its Application for ETA that it is "not currently engaged in unauthorized intrastate transportation for compensation between points in Pennsylvania." Application for ETA, p. 14, ¶ 37. This statement is at the very least disingenuous, if not

⁸ See Kim Lyons, *Lyft, Uber Determined to Continue in High Gear*, Pittsburgh Post-Gazette, July 3, 2014; Bob Bauder, *Uber, Lyft to Give Lift to Busy Weekend; Ride-sharing Companies to Operate, Shrug-off PUC Cease and Desist Order*, Pittsburgh Tribune Review, July 4, 2014.

outrageous.⁹ In the Petition for Emergency Relief proceeding, Lyft presented no evidence to refute the testimony of I&E's witness that he secured transportation through Lyft's app for compensation numerous times, that he received e-mails pertaining to discounts on the services that Lyft provides and that Lyft's own website indicated that it charged a set amount for trips offered in Pittsburgh. The presiding ALJs concluded that passenger transportation service for compensation occurred. July 1, 2014 Order at 9. Further, Lyft admits in its own Application for ETA that its service provides Lyft drivers with "an opportunity to grow businesses." Application for ETA at 9. A reasonable interpretation of this statement leads to the conclusion that Lyft drivers grow businesses because they are earning money from the trips they provide.

It is difficult to imagine a clearer case of willful defiance of the Public Utility Code and Commission regulations. A long line of established precedent demonstrates that illegal operations adversely affect an applicant's fitness. Thus, the Commission should not grant Lyft's Application for ETA at least until the significant issue of fitness is fully adjudicated in Lyft's original application proceeding, in which protestants are actively participating.¹⁰

If the Commission were to grant this application for ETA, despite the clear and un rebutted evidence of Lyft's illegal operations, then the Commission's action would be inherently unfair to other public utilities that must wait to receive approval before engaging in business. Lyft should not be granted such a competitive advantage over other regulated entities.

Lyft Cannot Sustain Its Burden Of Showing An Immediate Need For Its Service By Evidencing Illegal Operations

In support of its request for emergency temporary authority, Lyft presents the verified statements of passengers who received unauthorized service utilizing the Lyft app. See Application for ETA, p. 5-6, Exhibit A.

Lyft offers the statements of its customers to evidence a public need for its service. However, evidence of the provision of unauthorized service cannot, as a matter of law, sustain an applicant's burden of proving need for the service. *Nat'l Retail Transp. v. Pa. Pub. Util. Comm'n*, 530 A.2d 987 (1987) (holding that an applicant for common carrier authority, who has provided unauthorized services in the past, cannot sustain its burden of proving the need for service through evidence of an illegal course of conduct if such

⁹ It is unclear to I&E who verified Lyft's Application for ETA as the signature is illegible and no printed name appears. The verification attached to Lyft's Application for ETA fails to properly identify the individual who verified Lyft's pleading, in violation of the Commission's regulation at 1.36(b), which provides a sample verification form that includes space for a printed name. 52 Pa. Code § 1.36(b).

¹⁰ *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.

conduct represents a bad faith violation of the Code or the Commission's regulations or orders). *See also Armored Motor Serv. Corp. v. Pa. Pub. Util. Comm'n*, 411 A.2d 900 (Pa. Cmwlth. 1980) (finding that evidence of illegal activity deliberately rendered by the applicant is improper for consideration by the Commission and must be excluded).

All but one of the verified statements from individuals who used Lyft's service are dated July 10, 2014, well after the cease and desist order was entered. *See* Application for ETA, Exhibit A. Such statements evidence Lyft's illegal operations and that Lyft knowingly and deliberately continues to provide unauthorized service subsequent to the issuance of the July 1, 2014 Order. Consequently, the verified statements cannot be used to establish a finding of need to support Lyft's request for emergency temporary authority.

Lyft Has Not Established The Existence Of An Emergency Situation To Merit The Granting Of Its Application For ETA

In order to be granted emergency temporary authority to operate, an applicant must demonstrate that an emergency situation exists and that no other service is available as required.¹¹

In its Application for ETA, Lyft has not demonstrated the existence of any emergent circumstance. While passengers may enjoy the unauthorized service that Lyft provides, this does not constitute an emergency situation that warrants granting Lyft's Application for ETA in order to immediately operate. It is public desire, rather than public need, that is prevalent here.

Further, other call and demand alternatives are available. Other passenger motor carriers in Allegheny County are authorized by the Commission to provide call and demand service, thus satisfying this particular transportation need. Consistent with Section 3.384(b)(2) of the Commission's regulations, an immediate need does not exist to warrant the granting of Lyft's Application for ETA because other carriers are capable of rendering the service. 52 Pa. Code § 3.384(b)(2).

Additionally, in the July 1, 2014 Order that granted I&E's petition for emergency interim relief, the presiding ALJs found that the requested relief, directing Lyft to cease and desist from unlawfully operating, is not injurious to the public interest. The presiding ALJs held that:

¹¹ *Application of South Shore Limousine, LLC, for emergency temporary authority, to begin to transport, as a common carrier, by motor vehicle, persons in Group and Party eleven (11) to fifteen (15) persons including the driver, from points in the counties of Erie and Crawford, to points in Pennsylvania and return*, Docket Nos. A-2012-2297115, A-2012-2297105 (Order entered August 2, 2012).

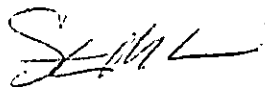
Indeed, the public relies on this Commission to ensure that the travelling public is transported safely. The public has a compelling interest in compliance with the law and the Commission has an unassailable duty to ensure compliance with the Public Utility Code.

July 1, 2014 Order at 12.

Similarly, denying Lyft's Application for ETA is not harmful to the public. Rather, such a denial protects the public because it allows all the questions that were raised in the protests to Lyft's original application, especially those that questioned Lyft's ability to comply with Commission regulations, to be fully vetted.

Wherefore, for all of the foregoing reasons, I&E respectfully requests that the Commission deny Lyft's Application for Emergency Temporary Authority.

Sincerely,



Stephanie M. Wimer
PA Attorney ID No. 207522
Prosecutor

Michael L. Swindler
PA Attorney ID No. 43319
Prosecutor

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

cc: Paul Diskin, Director of Bureau of Technical Utility Services
Bohdan R. Pankiw, Chief Counsel of Law Bureau
James P. Dougherty, Counsel for Lyft, Inc.
Barbara A. Darkes, Counsel for Lyft, Inc.
Adcolu A. Bakare, Counsel for Lyft, Inc.