**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held July 24, 2014

Commissioners Present:

 Robert F. Powelson, Chairman

 John F. Coleman, Jr., Vice Chairman, Statement

 James H. Cawley, Statement

 Pamela A. Witmer, Concurring in result only

 Gladys M. Brown

Petition of the Bureau of Investigation and

Enforcement of the Pennsylvania Public Utility

Commission for an Interim Emergency Order

requiring Lyft, Inc. to immediately P-2014-2426847

cease and desist from brokering transportation

service for compensation between points within

the Commonwealth of Pennsylvania

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the *Order on Interim Emergency Relief* (*July 1st Order*) issued by Administrative Law Judges (ALJs) Mary D. Long and Jeffrey A. Watson on July 1, 2014, in the above-captioned proceeding. As authorized by the Commission’s Regulations governing the interlocutory review of a material question submitted by a presiding officer, 52 Pa. Code § 5.305, the Bureau of Investigation and Enforcement (I&E or Complainant) and Lyft, Inc. (Lyft or Respondent) each filed a Brief on Material Question addressing the merits of the material question on July 8, 2014.

The material question certified to the Commission by the ALJs is whether I&E has met the requirements for obtaining interim emergency relief set forth at 52 Pa. Code § 3.6(b). For the reasons stated herein, we determine that I&E has met the requirements for obtaining interim emergency relief. Therefore, we answer the material question in the affirmative.

**I. History of the Proceeding**

On June 5, 2014, I&E filed a Formal Complaint (Complaint) against Lyft, alleging that the Respondent is acting as a broker of transportation services for compensation through digital software (Lyft app) by connecting passengers with individuals who have registered with Lyft as drivers.[[1]](#footnote-1) According to the Complaint, the Lyft app permits a passenger’s phone to locate the nearest available Lyft driver, and then alerts the Lyft driver of the ride request. Complaint at 1.

I&E alleged that Lyft drivers use their personal vehicles to respond to ride requests and that, through the use of the Lyft app, the Respondent is acting as a broker of transportation services in Pennsylvania without proper Commission authority.[[2]](#footnote-2) I&E averred that brokers of transportation services must obtain a Commission-issued brokerage license before engaging in the business of being a broker, and that Lyft does not hold a brokerage license. Complaint at 1-2.

In addition, I&E alleged that, on February 7, 2014, the Respondent announced the “kick-off” of Lyft in Pittsburgh and that passengers could use the Lyft app to obtain “outrageously affordable rides on demand all around Pittsburgh.” *Id.* at 2.

According to the Complaint, I&E’s Motor Carrier Enforcement Manager Charles Bowser (Officer Bowser) downloaded the Lyft app to his mobile phone and requested passenger transportation service in Pittsburgh on twelve separate occasions between March 31, 2014, and April 21, 2014. Lyft drivers transported Officer Bowser using their personal vehicles and charged fares for each trip ranging from $5 to $9. In its Complaint, I&E averred that the Lyft drivers responding to Officer Bowser’s requests provided transportation without proper Commission authority to transport persons for compensation within Pennsylvania. Additionally, I&E alleged that Lyft violated Section 1101 of the Public Utility Code (Code), 66 Pa. C.S. § 1101, by offering to broker transportation services for persons for compensation without authority when it announced the launch of its ride-sharing program and initiated the Lyft app. Complaint at 2-3.

For the allegations related to the offering of broker services without authority and the initiation of the Lyft app, I&E proposed a civil penalty of $118,000. I&E requested an additional civil penalty of $12,000 for the twelve trips in which Lyft allegedly brokered transportation for compensation without authority to do so. *Id.* at 3.

On June 16, 2014, I&E filed a Petition for Interim Emergency Order (Petition) that sought a Commission Order requiring Lyft to immediately cease and desist from brokering transportation service for compensation between points within Pennsylvania. In its Petition, I&E incorporated the averments of its Complaint and contended that, pursuant to 52 Pa. Code § 3.6, it is entitled to emergency relief.

I&E asserted that the need for relief is immediate and ongoing as it has attempted, without success, to stop Lyft from unlawfully brokering transportation services using non-certificated drivers. Additionally, I&E alleged that injury would be irreparable if relief is not granted and that, by using uncertificated drivers, Lyft has unilaterally deprived the Commission of its obligation to ensure driver integrity, vehicle safety and the maintenance of sufficient insurance coverage. Further, I&E asserted that the Commission cannot be certain that its regulations pertaining to driver safety are being met because Lyft drivers are not certificated motor carriers. Additionally, I&E contended that the Commission cannot verify that vehicles of the Lyft drivers comply with its vehicle safety requirements, which include equipment standards and compliance with inspection requirements of the Pennsylvania Department of Transportation (PennDOT) and the Commission and evidence of insurance coverage. Petition at 7-11.

Lastly, I&E averred that its requested relief is not injurious to the public interest because Lyft has no lawful right to broker transportation services for compensation. Until Lyft becomes licensed and its drivers certificated, I&E argued it will be unable to guarantee that Lyft is brokering transportation using drivers who adhere to the Commission’s safety and insurance regulations, which were designed to safeguard the public. *Id.* at 11-12.

On June 23, 2014, Lyft filed an Answer to I&E’s Petition (Answer) averring that it does not offer transportation services for compensation and, therefore, is not a motor carrier as defined in the Code. According to Lyft, its service is distinct from traditional brokerage or motor vehicle services and payment is not required for the transportation service arranged through the Lyft app, but donations are accepted. Therefore, Lyft argued that it is not violating the law and no cease and desist order is necessary. Answer at 3-8.

On June 26, 2014, Lyft filed an Answer to the Complaint denying the material allegations in the Complaint and arguing, in part, that its service is distinct and that payment is not required for its transportation services. Answer to the Complaint at 2-6.

 In accordance with 52 Pa. Code § 3.6a, which requires a hearing to be held within ten days of the filing of a petition for interim emergency relief, a hearing on the Petition was held before ALJs Long and Watson on June 26, 2014. I&E presented the testimony of one witness and sponsored three exhibits. The following exhibits were admitted into the record: (1) a certification from the Secretary of the Commission dated June 24, 2014, certifying that Lyft does not hold a certificate of public convenience to operate as a motor carrier of passengers and has not been issued a license to broker transportation services in Pennsylvania; (2) a twenty-eight page document consisting of email communications and receipts for payment between Lyft and Officer Bowser; and (3) a Lyft website article titled “Donations vs. Charges.” Exhs. 1-3.

 Lyft was represented by counsel, but did not present any witnesses or exhibits.

 On July 1, 2014, ALJs Long and Watson issued the *July 1st Order* granting I&E’s Petition, and certifying the granting of relief by interim emergency order to the Commission as a material question, in accordance with 52 Pa. Code § 3.10(b). The ALJs determined that I&E demonstrated the requisite need to order Lyft to immediately cease and desist from utilizing its digital platform to facilitate transportation for compensation to passengers using non-certificated drivers in their personal vehicles within Pennsylvania. *July 1st Order* at 7-13.[[3]](#footnote-3) As stated above, on July 8, 2014, I&E and Lyft each filed a Brief on Material Question (Brief) addressing the merits of the material question pursuant to 52 Pa. Code § 5.305.

**II. Discussion**

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. [Consolidated Rail Corporation v. Pa. PUC*,* 625 A.2d 741 (Pa. Cmwlth. 1993)*;*](file:///C%3A%5CDocuments%20and%20Settings%5Ctfarrar%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5Cresearch%5CbuttonTFLink) *also* see, generally, [University of Pennsylvania v. Pa. PUC*,* 485 A.2d 1217 (Pa. Cmwlth. 1984).](file:///C%3A%5CDocuments%20and%20Settings%5Ctfarrar%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5Cresearch%5CbuttonTFLink)

**A. Legal Standards Governing Emergency Relief**

 The purpose of an interim emergency order is to grant or deny injunctive relief during the pendency of a proceeding. 52 Pa. Code § 3.1. The standards that govern the issuance of interim emergency orders are set forth at 52 Pa. Code § 3.6. Section 3.6 requires that a petition for interim emergency relief be supported by a verified statement of facts that establishes the existence of the need for 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 requested is not injurious to the public interest.

52 Pa. Code § 3.6(b).

 The Commission may grant interim emergency relief only when all of the foregoing elements exist. *Glade Park East Home Owners Association v. Pa. PUC*, 628 A.2d 468, 473 (Pa. Cmwlth. 1993).

As to the first element, the Commission has determined that it is not necessary to determine the merits of a controversy in order to find that a petitioner’s right to relief is clear; rather, the basis for determining whether this standard has been met is whether a petitioner has raised “substantial legal questions.” *Core Communications, Inc. v. Verizon Pennsylvania, Inc. and Verizon North LLC*, Docket No. P-2011-2253650 (Order entered September 23, 2011) (*Core*); *Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company*, Docket No. C-20028114 (Order entered August 8, 2002) (*Level 3*); *cf.* *T.W. Phillips Gas and Oil Company v. The Peoples Natural Gas Company*, 492 A.2d 776 (Pa. Cmwlth. 1985) (*T.W. Phillips*).[[4]](#footnote-4)

For example, in *Core*, the Commission held that the ALJ’s conclusion that this prong requires a finding that a petitioner will prevail in the underlying complaint is an “unreasonably strict” interpretation of Section 3.6(b). The Commission stated:

The basis for determining whether a petitioner has met this standard [a clear right to emergency relief] is whether the petitioner has raised “substantial legal questions.” *T.W. Phillips Gas and Oil v. Peoples Natural Gas*, *supra*. The inquiry into whether this standard has been met does not require a determination of the merits of the underlying controversy.

As stated above, the ALJ based her conclusion on a finding that it is “wholly uncertain” whether Core will prevail in the underlying Complaint. In our view, this interpretation of the “right to relief” standard is unreasonably strict. The outcome of litigation by its nature is nearly always uncertain. Requiring a petitioner seeking emergency relief to demonstrate, with certainty, that litigation will be resolved in its favor would be an impossible burden to meet.

*Core* at 12 (record citation omitted).

“Emergency” is defined in the Commission’s Regulations as “[a] situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.” 52 Pa. Code § 3.1. *Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light & Power Company,* Docket No. P‑00062205 (Order entered April 20, 2006) (large rate increases did not constitute a clear and present danger to life or property); *Petition of National Fuel Gas Distribution Corp. for Emergency Order Granting a Temporary Waiver of Certain Tariff Rules Related to Transportation Service,* Docket Nos. P-961022 and P-961021 (Order entered March 19, 1996) (threat of depletion of gas stores in unusually cold conditions constituted a clear and present danger to life or property).

 The party seeking relief bears the burden of proving that the facts and circumstances meet all four of the requirements of 52 Pa. Code § 3.6(b). 66 Pa. C.S. § 332. 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), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the petitioner’s evidence must be more convincing, by even the smallest amount, than that presented by the other party. *Se‑Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission’s decision must be based upon substantial evidence. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC,* 623 A.2d 6 (Pa. Cmwlth. 1993). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

An order granting or denying interim emergency relief is effective immediately upon issuance by the presiding officer. A presiding officer is required to certify the grant or denial of relief to the Commission as a material question. 52 Pa. Code § 3.10(b). No stay of an order granting or denying interim emergency relief is permitted while the matter is being reviewed by the Commission. 52 Pa. Code § 3.10(a).

Within thirty days of the receipt of a certified question, the Commission is required to do one of the following:

1. Continue, revoke or grant a stay of proceedings.
2. Determine that the certification was improper and return the matter to the presiding officer for resolution.
3. Answer the certified question..

52 Pa. Code § 5.305(e). If the Commission does not act upon a certified question within thirty days of its receipt, the decision of the presiding officer will be deemed to have been affirmed. 52 Pa. Code § 5.305(f).

**B. I&E’s Petition for Emergency Relief**

**1. 52 Pa. Code § 3.6(b)(1)**

**a. ALJs’ Recommendation**

 The first requirement to receive interim emergency relief requires the petitioner to demonstrate that its right to relief is clear. 52 Pa. Code § 3.6(b)(1). As noted above, the Commission has interpreted this provision as requiring only a determination that a petition raises a substantial legal question, rather than a determination of the merits of a controversy in order to find that a petitioner’s right to relief is clear. *Core* at 8, 12; *Level 3* at 8.

 The ALJs concluded that I&E’s Petition raised a substantial legal question and adduced sufficient evidence to conclude there is a reasonable expectation of success on the merits on the underlying Complaint. *July 1st Order* at 8. According to the record evidence, neither Lyft nor its drivers, who provided rides to Officer Bowser after he initiated service requests using the Lyft app, hold authority from the Commission to provide transportation services. *Id.* at 8-9.

 The ALJs rejected Lyft’s contention that Lyft drivers do not receive compensation in exchange for transportation, noting that Lyft offered no evidence in support of this contention. To the contrary, the ALJs found that the following evidence supported a determination that Lyft received compensation for its services to Officer Bowser:

 From late March into early April [Officer Bowser] procured 12 rides using the Lyft app. On each occasion he opened the app on his phone and selected the button labelled “service request.” He testified that each ride cost money. In support of this testimony he sponsored [Exhibit 2], which was a packet of emails and invoices that he had received from Lyft in connection with his Lyft account and rides. The emails include advertisements from Lyft which described “discounts” for rides during “slow hours” introduced as a “Happy Hour” discount. Another email advertised “lower prices in all markets.” Each invoice included a ride charge, which noted the mileage and duration of the ride. Some of the invoices indicated a credit for a “Happy Hour” discount. Each noted a charge made to a Discover card which Officer Bowser indicated was his credit card. Officer Bowser also testified that he visited the Lyft website on June 25, 2014, and downloaded an article entitled “Donations v. Charges.” This article included a list of cities where Lyft advertises that it collects donations and a list of cities where Lyft advertises that it “charges a set amount for rides.” Pittsburgh, Pennsylvania was included among the cities where Lyft advertises that it charges a set amount for rides. Finally, Officer Bowser testified that he or someone under his supervision had secured transportation through the Lyft app as recently as June 24, 2014.

*July 1st Order* at 5-6, 8-9.

 In addition, the ALJs determined that the issue of whether a passenger is required to pay for transportation is not dispositive of the question whether a transaction is considered “transportation for compensation” within the meaning of the Code. *Id.* at 9 (citing to *Application of Moselle Morris*, Docket No. A-2009-2098317 (Final Order entered December 3, 2009) (*Morris*); and *Pa. PUC v. Israel*, 356 Pa. 400, 52 A.2d 317 (1947) (*Israel*)). Rather, even if there is no demand for a fixed charge from passengers, a transportation provider, which indiscriminately holds itself out to the public, would be providing common carrier service that requires a certificate of public convenience. *July 1st Order* at 9.

 The ALJs concluded that, even if Lyft had provided evidence to support its contention that donations are not compensation, I&E established a reasonable likelihood of success on the merits. As a result, the ALJs concluded that I&E satisfied its burden of proving that its right to relief is clear.

**b. Positions of the Parties**

 **(1) I&E**

In its Brief, I&E asserts that it has raised a substantial legal claim on the merits and demonstrated that its right to relief is clear. Specifically, I&E contends that it presented sufficient evidence at the hearing that Lyft has not been issued a certificate of public convenience to operate as a motor carrier of passengers as required by Section 1101 of the Code, 66 Pa. C.S. § 1101, and has not been issued a license to broker transportation services within Pennsylvania as required by Section 2505 of the Code, 66 Pa. C.S. § 2505. Moreover, I&E argues that its witness presented unrebutted testimony describing his utilization of the Lyft app and how he personally obtained numerous rides provided by non-certificated Lyft drivers in their personal vehicles. Further, the witness testified to being charged for each ride and his compilation of invoices for each trip was admitted into the record. Finally, the witness testified that Lyft has been providing, and continues to provide, brokerage service without approval of the Commission. I&E Brief at 7-8.

With regard to Lyft’s claims that it does not charge compensation but accepts donations, I&E argues that Lyft routinely offers discounts, including “Happy Hour” discounts, free ride credits, and fifty percent reductions of fares during slow hours. I&E states that Lyft presented no witnesses to explain how such special promotions and discounts are applicable to donations. According to I&E, common sense indicates that special promotions and discounts are offered because there is a cost involved with Lyft’s service. *Id.* at 8.

I&E also argues that, even if Lyft could show that it collects donations, the Commission has found that donations can constitute compensation. According to I&E, if there is clear and uncontradicted testimony of an indiscriminate holding out to the general public to provide transportation services, the issue of whether a fixed charge is demanded becomes irrelevant. *Id.* at 8-9 (citing to *Commonwealth v. Babb*, 70 A.2d 660 (Pa. Super. 1950) (*Babb*); and *Israel*, *supra*). I&E essentially argues that Lyft is holding itself out as a provider of transportation services and its stated funding option of receiving a donation or tip is only an artifice or a subterfuge, which Pennsylvania appellate courts have rejected in similar cases. I&E Brief at 9.

In conclusion, I&E argues that the Commission should affirm the ALJs’ finding that the right to relief is clear.

(**2) Lyft**

 In its Brief, Lyft argues that the ALJs ignored evidence suggesting that I&E’s right to relief is not clear. Lyft claims that the ALJs failed to consider evidence set forth in its Answer, Answer to Complaint, and Applications for Experimental Service[[5]](#footnote-5) or elicited through cross-examination of Officer Bowser. In its Answer, Lyft included an excerpt from the terms and conditions applicable to all drivers and passengers using the Lyft app as follows: “[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.” Lyft Brief at 4. It states that the Answer contains a hyperlink to the full document. Lyft contends that on cross-examination Officer Bowser remembered agreeing to the terms and conditions and cited to his testimony in which he stated that “the compensation was adjustable, and it could have been – it could be added to or subtracted from the listed amount.” *Id.* (quoting Tr. at 44).

 Lyft also claims the ALJs placed undue weight on its website article titled “Donations vs. Charges” (Exh. 3), identifying Pittsburgh as a city in which Lyft charges amounts for rides and excluding Pittsburgh from the cities in which Lyft collects donations. Lyft Brief at 4. Lyft describes the article as containing “unfortunate misinformation.” Additionally, Lyft argues that the website article does not alter the legally binding terms and conditions of the Lyft app, which gives passengers the right to use the Lyft service without payment and imposes the obligation on drivers to accept unpaid rides. Lyft states that the ALJs committed error in giving weight to circumstantial inferences from the online advertisement rather than giving weight to Officer Bowser’s experience as a passenger, which it claims confirmed that Lyft drivers accept only donations and do not demand compensation from passengers. *Id.* at 4-5.

 Furthermore, Lyft argues that the ALJs misapplied caselaw by finding that the issue of compensation is irrelevant to the question of whether public utility service is provided when there has been indiscriminate holding out of service to the public. According to Lyft, the proper application of the Superior Court’s decision in *Babb* is that the issue of compensation may become irrelevant if the lack of compensation is determined to be a subterfuge to avoid the duties and responsibilities of a common carrier. *Id.* at 6. Lyft claims that, unlike the drivers in *Babb*, the Lyft drivers are not impersonating taxicabs by styling their vehicles to mimic the recognizable features of a taxi. To the contrary, Lyft states it differentiates from taxis by attaching a “pink mustache” to each car, limiting service to passengers requesting rides through the Lyft app rather than traditional call or demand solicitations, and establishing the binding right to use the service without payments. Thus, unlike prior cases evaluated by the Commission such as *Morris, supra*, Lyft argues that it has taken steps to ensure donations received from passengers are voluntary and genuine and not a subterfuge for mandatory compensation. Lyft Brief at 6-7.

 **c. Disposition**

On review, we find that I&E has demonstrated a clear right to relief under Section 3.6(b)(1) of our Regulations, based on the evidence adduced at the hearing. Historically, the Commission’s basis for determining whether a petitioner has met this standard is whether the petitioner has raised “substantial legal questions.” *T.W. Phillips*, *supra*. The inquiry into whether this standard has been met does not require a determination of the merits of the underlying controversy.

In this case, I&E has raised substantial legal questions that Lyft: (1) meets the definition of “broker” under Section 2501(b) of the Code; (2) has not been issued a broker license but is engaging in the business of a broker in violation of Section 2505(a) of the Code; and (3) is arranging transportation with motor carriers who do not hold a certificate of public convenience in violation of Section 2505(a).

I&E’s witness provided sufficient testimony and documentary evidence to support the allegations that Lyft arranged the transportation of passengers to drivers for compensation through its software. Officer Bowser testified as to downloading the Lyft app and being required to register his credit card information with Lyft. He also received email communications and invoices from Lyft that were arranged through the Lyft app. Tr. at 10-11; Exh. 2.

Additionally, Officer Bowser testified that none of the Lyft drivers who provided the rides hold certificates of public convenience from the Commission to operate as a motor carrier of passengers. Tr. at 11.

Lyft claims that its drivers do not receive compensation and, therefore, do not meet the definition of motor carriers. In support, Lyft cites to excerpts from its Answer, Answer to Complaint, and its Applications for experimental service for evidentiary support of the notion that its service does not require payment by a rider. Lyft Brief at 4. Under 52 Pa. Code § 5.405(b), a pleading or any part of one does not constitute evidence of a fact without the pleading and answer being offered into evidence. At the hearing, Lyft failed to present evidence of Lyft’s terms and conditions to support its contention that Lyft drivers may accept donations or are otherwise prohibited from demanding charges for transportation services. It did not offer any witness testimony or proffer any exhibits to support this contention. Thus, Lyft’s attempt to rely on assertions in its pleadings as evidentiary support for its position is impermissible. Accordingly, we reject Lyft’s argument that the ALJs committed error by not giving weight to statements in its pleadings.

Additionally, Lyft claims that the ALJs ignored the cross-examination testimony of Officer Bowser in which he agreed that the charges for compensation were adjustable. Upon review of the record, Officer Bowser testified to his understanding that compensation was adjustable and could be added to or subtracted from the listed charge. Tr. at 44. We could locate no testimony or record evidence pertaining to the option for passengers to make donations as opposed to paying charges or that Lyft drivers are prohibited from requiring any compensation for their services. Further, there is no record evidence that passengers could ride for free if they so chose. Accordingly, we conclude that Lyft’s arguments that the ALJs ignored testimony is without merit.[[6]](#footnote-6)

We next address Lyft’s argument that the ALJs misapplied caselaw by finding that the relevant question pertaining to transportation for compensation is whether a provider indiscriminately holds itself out the public. In the *July 1st Order*, the ALJs quoted from the Commission decision in *Morris, supra*, which involved an application to provide paratransit service for free. The ALJ in *Morris* found that, if there is indiscriminate holding out to the general public, the fact that a passenger is under no legal obligation to pay is irrelevant citing to the appellate decisions in *Babb* and *Israel, supra.* The ALJ concluded that, even if the applicant did not demand a fixed charge from her passengers, she would be holding out service to the general public and providing common carrier service which requires a certificate of public convenience. *Morris* at 13.[[7]](#footnote-7)

Lyft argues that *Morris* misapplied the Superior Court decision in *Babb*, in which the Superior Court upheld a conviction for operating as a common carrier without a certificate of public convenience. According to Lyft, *Babb*, read in conjunction with the definition of common carrier in the Code, stands for the proposition thatthe issue of compensation is irrelevant only if the lack of demand for charges would be considered a subterfuge to avoid the duties of a common carrier. As discussed above, Lyft argues that its service is distinguishable from the taxicab service at issue in *Babb* and that any donations by passengers are voluntary and genuine as opposed to a subterfuge for mandatory compensation.

 Here, Lyft has provided no evidence to support its contention that the charges paid by Officer Bowser were voluntary donations or that its drivers were prohibited from demanding any payment from him. At most, there was simply a showing that Officer Bowser could have paid somewhat more or less than the charges listed in his Lyft invoices. Thus, this case is distinguishable from the situation in which there is no demand for payment. Additionally, even if Lyft had presented evidence that the charges paid by were entirely voluntary and there was no demand for any payment, I&E has raised a substantial legal question as to whether Lyft’s payment arrangement is a subterfuge for its drivers to avoid the requirements of a motor carrier.

For example, the record evidence shows that Lyft routinely offers discounts, such as “Happy Hour” discounts, free ride credits, and fifty percent reductions of fares during slow hours. However, Lyft did not explain how such discounts could be applicable to donations. Rather, such special promotions and discounts strongly indicate that there is a cost involved with Lyft’s services. Accordingly, we agree with the ALJs that the record evidence supported a determination that Lyft received compensation for its services to Officer Bowser.

As a result, we find that the first prong of Section 3.6(b) is satisfied in this proceeding.

  **2. 52 Pa. Code § 3.6(b)(2)**

 **a. ALJs’ Recommendation**

 The second requirement for obtaining interim emergency relief is a demonstration by the petitioner that its need for relief is immediate. 52 Pa. Code § 3.6(b)(2). The ALJs noted that I&E filed its Complaint on June 5, 2014, but Lyft has not suspended its transportation service. Additionally, the ALJs stated that there have been twelve non-traffic citations issued to Lyft drivers and Lyft has not suspended its operation. Although Lyft has filed Applications for experimental service, it has not been granted Commission authority to operate. *July 1st Order* at 10.

 The ALJs referenced Officer Bowser’s testimony about his concerns for public safety because of the lack of information about the safety and integrity of drivers and vehicles used by Lyft in its operation. According to Officer Bowser, the public is at risk if Lyft continues to operate under the current circumstances. *Id.*

 For these reasons, the ALJs found that I&E satisfied its burden of proving by a preponderance of the evidence that its need for relief is immediate.

**b. Positions of the Parties**

 **(1) I&E**

I&E argues that the safety of the public is being threatened and its need for relief is immediate. In addition to the testimony referenced by the ALJs, I&E emphasized the record evidence that the Commission does not inspect the vehicles of Lyft drivers or review the driving history or criminal background records of the Lyft drivers. I&E also contends that certificates of insurance are not being filed with the Commission and there is no verification of whether there are lapses in coverage by Lyft drivers. I&E Brief at 9.

I&E claims that there are numerous Lyft drivers providing multiple trips per day without Commission oversight. According to I&E, Lyft is subjecting the public to potential injury or death each day that it operates without a broker license or each trip that it arranges with an un-certificated Lyft driver. Because of Lyft’s failure to submit to regulation prior to initiating its service, I&E argues that the Commission has been unable to prevent injuries to people or damage to property through an inspection of vehicles and a review of Lyft driver records. Moreover, I&E avers that, should an accident occur, it is not clear that there would be sufficient, or even any, insurance coverage for injury and damages to persons or property caused by Lyft drivers. Finally, it highlights Officer Bowser’s testimony regarding Lyft’s failure to submit to Commission oversight and the impact on 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 are out there, who they are and where they are located.” *Id.* at 10; Tr. at 24.

(**2) Lyft**

Lyft submits that I&E has not demonstrated an immediate need for relief. Lyft claims that the ALJs overlooked evidence clarifying that I&E’s prior enforcement actions have not been adjudicated and cannot be considered violations of the Code. Lyft argues that the ALJs’ citation to I&E’s Complaint, the twelve non-traffic citations and Lyft’s continuation of its operations, was improper. According to Lyft, it had no obligation to alter its operations because there was no adjudication by the Commission on the Complaint or a finding of guilt by a Magisterial Judge on the criminal citations. Lyft Brief at 7-8.

Next, Lyft argues that the ALJs neglected to consider evidence indicating that I&E’s safety concerns are unsupported. Lyft states that Officer Bowser confirmed there have been no actual safety violations committed by a driver using the Lyft platform. Moreover, Lyft claims that Officer Bowser agreed that there are no concerns regarding uninspected vehicles because the personal vehicles used by Lyft drivers are required to have annual inspections by PennDOT.[[8]](#footnote-8) According to Lyft, Officer Bowser also admitted that he made no investigation as to whether the vehicles of Lyft drivers greatly exceed the average annual mileage of a personal vehicle. Lyft claims that it is unreasonable to attribute speculative safety concerns related to high mileage rates accrued by commercial drivers to Lyft’s service without any evidence to support such assumptions. Additionally, Lyft contends that the ALJs improperly neglected to consider evidence included in its Answer to the Complaint. *Id.* at 8-9.

Finally, Lyft argues that the ALJs applied the incorrect legal standard for immediacy and inappropriately granted interim emergency relief without evidence of an emergency. Lyft believes that the emergency relief sought in this proceeding is unjustifiable because it has not been shown that the alleged violations present a clear and present danger to life or property. Although there have been expressions of concern about Lyft’s safety, Lyft contends that there has been no evidence of actual safety violations or that any vehicle or driver associated with Lyft was operating in a manner endangering life or property. According to Lyft, I&E, at most, has raised concerns that can be addressed in the underlying Complaint proceeding. *Id.* at 9-12.

 **c. Disposition**

Upon review, we shall adopt the ALJs’ finding that I&E demonstrated that its need for emergency relief is immediate, as required by 52 Pa. Code § 3.6(b)(2).

Section 501 of the Code, 66 Pa. C.S. § 501, gives the Commission broad authority to enforce the Code, to supervise public utilities doing business in Pennsylvania, and to promulgate regulations necessary to perform these duties. *Keystone Cab Service, Inc. v. Pa. PUC*, 54 A.3d 126, 128 (Pa. Cmwlth. 2012). In enacting Section 501, the General Assembly expressed the Commission’s authority as both an authorization to act and as a duty to enforce, execute and carry out the provisions of the Code.[[9]](#footnote-9) Section 1501 of the Code also requires every public utility to “maintain adequate, efficient, safe, and reasonable service and facilities” and to “make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” 66 Pa. C.S. § 1501. Pursuant to this authority and duty to protect the public interest, the Commission promulgated regulations for motor carriers of passengers. *See* 52 Pa. Code Ch. 29.

As discussed above, there is substantial evidence that Lyft engages in the brokerage business without a broker license and, in doing so, arranges for the transportation of passengers with un-certificated motor carriers. Based on the evidence adduced at the hearing, Lyft has not complied with the Code. As such, the Commission has no information related to vehicle safety inspections, driver histories, criminal background checks of drivers, or insurance certifications on vehicles. We believe that failure to submit to the Commission’s oversight and the lack of information related to the Lyft drivers and their vehicles constitutes an immediate safety risk for the general public. Lyft’s refusal to submit to the Commission’s oversight is preventing the Commission from enforcing the safety regulations pertaining to motor carriers and from helping to prevent possibly catastrophic accidents involving injury or death.

Accordingly, we conclude that the second prong to obtaining emergency relief has been met in this case.[[10]](#footnote-10)

 **3. 52 Pa. Code § 3.6(b)(3)**

 **a. ALJs’ Recommendation**

The third requirement for obtaining interim emergency relief is a demonstration by a petitioner that the injury would be irreparable if relief is not granted. 52 Pa. Code § 3.6(b)(3). The ALJs explained that I&E set forth sufficient facts to conclude, that for purposes of interim relief, Lyft is operating unlawfully. Additionally, the ALJs noted that Lyft did not contest those facts with any testimony or other evidence. Accordingly, the ALJs concluded that I&E established irreparable harm as a matter of law, citing to *Israel*, *supra*, in which the Pennsylvania Supreme Court determined that a violation of law constitutes irreparable harm *per se*. *July 1st Order* at 10-11.

 **b. Positions of the Parties**

 **(1) I&E**

I&E agrees with the ALJs’ finding that a violation of law constitutes irreparable harm *per se* under *Israel*, *supra*. It argues that the record shows Lyft as operating unlawfully by brokering transportation service for compensation using non-certificated drivers. Because Lyft presented no evidence or testimony to the contrary, I&E claims that it has established that Lyft’s actions constitute irreparable harm as a matter of law. I&E Brief at 10.

 (**2) Lyft**

Lyft argues that the finding of irreparable injury should be reversed because the ALJs misapplied *Israel*, *supra*. According to Lyft, the court in *Israel* found a violation of law based on undisputed facts. Here, Lyft claims, in part, that I&E has not met its burden of showing that a violation of law has occurred and the facts in *Israel* are distinguishable from this proceeding. Lyft Brief at 12-13.

 **c. Disposition**

 Upon review, we find that I&E has met its burden under Section 3.6(b)(3) of our Regulations that there would be irreparable harm unless emergency relief is granted. I&E has established that the Commission cannot currently determine that the vehicles arranged by Lyft comply with regulatory safety requirements nor that the drivers possess the requisite qualifications to maintain the public safety. Additionally, we have no measure of determining whether riders using the Lyft service are protected by adequate insurance coverage. Lyft’s refusal to submit to the Commission’s oversight is preventing the Commission from enforcing the safety regulations pertaining to motor carriers and from helping to prevent possibly catastrophic accidents involving injury or death.

 The Commission is not charged with the impossible task of preventing all motor carrier accidents or injuries. Rather, our responsibilities and duties under Sections 501 and 1501 of the Code are to help protect the public interest. We have broad authority to act in this regard and have promulgated Chapter 29 of our Regulations to carry out this mandate. Lyft has refused to submit to our Regulations which we believe would be injurious to the public and potentially compromise the safety of passengers and pedestrians if permitted to continue during the pendency of the Complaint proceeding.

For the above reasons, the third prong to obtain emergency relief has been met in this case.[[11]](#footnote-11)

 **4. 52 Pa. Code § 3.6(b)(4)**

 **a. ALJs’ Recommendation**

 The fourth requirement for obtaining interim emergency relief is a demonstration by a petitioner that the relief requested would not be injurious to the public interest. 52 Pa. Code § 3.6(b)(4).

The ALJs noted the presence of strong support for services such as those provided by Lyft, at least in the Pittsburgh area. However, the ALJs recognized that the Commission is charged with a higher duty than just public convenience. According to the ALJs, the Commission is charged with ensuring the public safety.

The General Assembly determined that before transportation can be provided to the public for compensation, a certificate of public convenience issued by the Commission is necessary. It delegated authority to the Commission to determine how and by whom those services should be rendered by determining that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 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 … Code.

*July 1st Order* at 11-12 (internal footnotes omitted).

The ALJs found that Officer Bowser testified convincingly that the Commission’s ability to ensure vehicle safety, driver integrity and the presence of adequate insurance coverage is integral to the Commission’s mission of protecting public safety. In addressing the claims of Lyft that no present danger to the public has been established, the ALJs explained that the rules and regulations of the Commission are in place to ensure that harm to individuals is prevented and empowers the Commission with recourse to require a utility’s compliance with public safety requirements on behalf of the public. The ALJs concluded that Lyft’s attempts to avoid Commission jurisdiction has deprived the Commission of the ability to protect the travelling public. *Id.* at 12-13.

 **b. Positions of the Parties**

1. **I&E**

I&E argues that the safety of the public requires the requested relief. According to I&E, Lyft has no lawful right to broker transportation service for compensation in Pennsylvania. Additionally, Lyft has no lawful right to use non-certificated drivers to provide such transportation service. I&E asserts that, until Lyft is granted the appropriate authority to operate, the Commission is unable to guarantee that Lyft is abiding by the Commission’s motor carrier and insurance regulations which were designed to safeguard the public. Thus, I&E agrees with the ALJs’ finding that it is not in the public interest for the Commission to ignore the Commission’s statutory mandate pertaining to motor carrier safety. I&E Brief at 11.

 **(2) Lyft**

Lyft argues that the emergency relief is injurious to the public interest and should be reversed. According to Lyft, the ALJs improperly found that I&E met its burden of showing that Lyft violated the Code. Additionally, Lyft claims the ALJs erred when they determined that this alleged violation outweighs the admitted public benefit of Lyft’s service. Lyft argues that the Commission should reverse the ALJs’ finding because they inappropriately failed to weigh the public interest considerations due to a misapplication of *Israel, supra*. Lyft Brief at 13-14.

Additionally, Lyft requests that the Commission grant a waiver of Section 3.10(a) of the Regulations and order a stay of the *July 1st Order* pursuant to 52 Pa. Code

§ 5.43. Lyft Brief at 15.

 **c. Disposition**

 We find that I&E has met its burden under Section 3.6(b)(4) of our Regulations that the emergency relief will not be injurious to the public interest.

As we have previously discussed, the public interest is an amorphous concept that may be applied where public policy is clearly better served by one course of action than another. *See Petition of Service Electric Company, LLC for Interim Emergency Order*, Docket No. P-2013-2349801 (Order entered April 4, 2013) at 37. Here, we conclude that the public interest is better served by enforcing the Code and helping to ensure the safety of the public. Although the granting of emergency relief during the pendency of the proceeding may result in the limitation of options for some riders in Allegheny County and may impact the business interests of Lyft and its drivers, such considerations do not outweigh the higher goal of public safety. Under the delegated authority of the General Assembly, we have the responsibility, and the public expects, that we will work to ensure that the travelling public is transported safely. As the ALJs correctly noted, the “public has a compelling interest in compliance with the law and the Commission has an unassailable duty to ensure compliance with the … Code.”

For these reasons, the fourth prong to obtain emergency relief has been met in this case. Further, we deny Lyft’s request for a waiver of 52 Pa. Code § 3.10(a) and for a stay of the *July 1st Order*.

**C. Remedy**

The ALJs ordered Lyft to “immediately cease and desist from utilizing its digital platform to facilitate transportation of passengers utilizing non-certificated drivers in their personal vehicles *until such time as it secures appropriate authority from the Commission*.” *July 1st Order* at 16 (emphasis added). We recognize the possibility that, after a full hearing in the underlying Complaint proceeding, Lyft might prevail and the Complaint against it could be dismissed. Therefore, the time qualifier for the cease and desist order should be clarified to account for this possibility. Accordingly, the cease and desist order will be lifted by operation of law if the allegations in the underlying Complaint are not proven.

 We are mindful that the *Lyft Allegheny County Application,* the *Lyft Statewide Application*, and the *Lyft ETA* are pending before the Commission. In the event any Lyft Application is approved, the cease and desist Order herein will be lifted upon full compliance with the requirements set forth in any Order approving such Application, with respect to (a) the parties or entities permitted to operate in that Order, and (b) the geographic scope of the authority to operate set forth in that Order. Any determination approving any Lyft Application will have no bearing on the pending enforcement actions in this proceeding. In the event any Lyft Application is rejected, the cease and desist Order herein shall remain in force consistent with this Opinion and Order.

**IV. Conclusion**

 Consistent with the foregoing discussion, we conclude that I&E has met the requirements set forth at 52 Pa. Code § 3.6(b), and carried its burden of demonstrating its right to interim emergency relief; **THEREFORE,**

 **IT IS ORDERED:**

 1. That the Material Question certified to the Commission on July 1, 2014, by Order of Administrative Law Judges Mary D. Long and Jeffrey A. Watson as to whether the Bureau of Investigation and Enforcement has met the requirements for obtaining interim emergency relief set forth at 52 Pa. Code § 3.6(b) is answered in the affirmative.

 2. That the Petition for Interim Emergency Order filed by the Bureau of Investigation and Enforcement is granted consistent with this Opinion and Order.

3. That Lyft, Inc., shall immediately cease and desist from utilizing its digital platform to facilitate transportation of passengers utilizing non-certificated drivers in their personal vehicles until such time that: (a) it secures appropriate authority from the Commission and Lyft, Inc., has satisfied the compliance requirements of such authorization; or (b) the Complaint at Docket No. C-2014-2422713 is dismissed by a final and unappealable Order.

4. That if the Commission approves any application of Lyft, Inc., including the Application for Motor Common Carrier of Persons in Experimental Service in Allegheny County, Docket No. A-2014-2415045, the Application for Motor Common Carrier of Persons in Experimental Service within the Commonwealth of Pennsylvania, Docket No. A-2014-2415047, or the Application for Emergency Temporary Authority, Docket No. A-2014-2432304, the cease and desist Order herein will be lifted upon full compliance with the requirements set forth in any Order approving such application, with respect to (a) the parties or entities permitted to operate in that Order, and (b) the geographic scope of the authority to operate set forth in that Order.

 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: July 24, 2014

ORDER ENTERED: July 24, 2014

1. The Commission docketed the Complaint at C-2014-2422713. [↑](#footnote-ref-1)
2. A “broker” is defined as:

Any person or corporation not included in the term “motor carrier” and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, or the furnishing, providing, or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing or procuring of facilities therefor, other than as a motor carrier directly or jointly, or by arrangement with another motor carrier, and who does not assume custody as a carrier.

66 Pa. C.S. § 2501(b). [↑](#footnote-ref-2)
3. Pursuant to 52 Pa. Code § 3.10(a), the *July 1st Order* became effective upon issuance and remains in effect at this time. [↑](#footnote-ref-3)
4. In reviewing the issuance of an injunction, the Commonwealth Court held that the moving party was not required to demonstrate its absolute right to relief on the underlying claim where the other elements for injunctive relief were satisfied. The Court held that “. . . *if the other elements of a preliminary injunction are present*, and the underlying claim raises important legal questions, the plaintiff’s right to relief is clear.” *T.W. Phillips* at 781 (emphasis supplied). [↑](#footnote-ref-4)
5. On April 3, 2014, Lyft filed Applications requesting authority to offer experimental service for compensation in Allegheny County and throughout the Commonwealth. *See Application for Motor Common Carrier of Persons in Experimental Service in Allegheny County*, Docket No. A-2014-2415045 (*Lyft Allegheny County Application*); and *Application for Motor Common Carrier of Persons in Experimental Service within the Commonwealth of Pennsylvania*, Docket No. A-2014-2415047 (*Lyft Statewide Application*). On July 16, 2014, Lyft filed an Application for Emergency Temporary Authority (ETA) to operate in Allegheny County. *Application for Emergency Temporary Authority of Lyft, Inc.*, Docket No. A-2014-2432304 (*Lyft ETA*). [↑](#footnote-ref-5)
6. We also reject Lyft’s claims that the ALJs gave undue weight to Exhibit 3, Lyft’s website article listing Pittsburgh as a city in which it charges for rides as opposed to accepting donations. Lyft simply states that the article contains “unfortunate misinformation.” Lyft Brief at 4. However, it did not object to the admission of the exhibit into evidence nor present any witnesses or evidence to attempt to rebut its contents. [↑](#footnote-ref-6)
7. The decision in *Morris* became final without further Commission action pursuant to 66 Pa. C.S. § 332(h). [↑](#footnote-ref-7)
8. Lyft’s claim about safety inspections appears to be a mischaracterization of Officer Bowser’s testimony. Upon review of the transcript, Officer Bowser did not appear to agree, as Lyft suggests, that there are *no concerns* regarding uninspected vehicles. Rather, the transcript shows the following:

 Q. So, you would agree that the [Lyft] vehicles that are the subject of this proceeding are not un-inspected?

 A. I would agree to that. One thing I would add, though, inspection requirements for personal cars being every year, that is designed for vehicles that are, on average, probably driven ten to twelve thousand miles.

 In a commercial situation where the number of miles annually could be many times that, then there is a legitimate concern for safety inspections that go above and beyond the general requirements for a noncommercial vehicle.

 Tr. at 38. [↑](#footnote-ref-8)
9. Section 501 provides in relevant part: “In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders or otherwise, all and singular, the provisions of this part, and the full intent thereof….” 66 Pa. C.S. § 501. [↑](#footnote-ref-9)
10. With regard to Lyft’s claims that the ALJs disregarded evidence submitted in its Answer, we conclude that such an argument is without merit. As discussed in the prior disposition section, a pleading or any part of one does not constitute evidence of a fact without the pleading and answer being offered into evidence. 52 Pa. Code

§ 5.405(b). Lyft did not present any testimony or evidence at hearing to support the contentions in its Answer and such averments do not constitute evidence. [↑](#footnote-ref-10)
11. As this proceeding involves a petition for an interim emergency order, we do not conclude that Lyft has committed a violation of the Code. Such a determination would require I&E to successfully prove its Complaint in the underlying proceeding at

C-2014-2422713. Accordingly, we make no finding that Lyft’s actions constitute irreparable harm *per se*. Thus, we distinguish our analysis of this prong from the ALJs’ disposition in the *July 1st Order*. [↑](#footnote-ref-11)