



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

October 7, 2014

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

VIA ELECTRONIC FILING

Re: Application of Lyft, Inc. (Experimental Service in Allegheny County); A-2014-2415045

Kim Lyons and PG Publishing, Inc. d/b/a The Pittsburgh Post-Gazette v. Lyft, Inc.;
Docket No. P-2014-2442001

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the Reply to New Matter 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

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', written over a horizontal line.

Adeolu A. Bakare

Counsel to Lyft, Inc.

/lmc
Enclosure

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

David William Donley, Esq.
JB Taxi LLC t/a County Taxi Cab
3361 Stafford Street
Pittsburgh, PA 15204
dwdonley@chasdonley.com

Michael S Henry, Esq.
Michael S. Henry LLC
Executive Transportation Inc
2336 S. Broad Street
Philadelphia, PA 19145
mshenry@ix.netcom.com

Samuel R. Marshall
CEO and President
Insurance Federation of Pennsylvania
1600 Market Street, Suite 1720
Philadelphia, PA 19103
smarshall@ifpenn.org
dwatson@ifpenn.org

Ellis W. Kunka, Esq.
Frederick N. Frank, Esq.
Frank, Gale, Bails, Murcko & Pocrass, P.C.
707 Grant Street, Suite 3300
Pittsburgh, PA 15219
kunka@fbmagg.com
frank@fbmagg.com



Adeolu A. Bakare

Counsel to Lyft, Inc.

Dated this 7th day of October, 2014, in Harrisburg, Pennsylvania.

On July 31, 2014, Administrative Law Judges ("ALJs") Mary D. Long and Jeffrey A. Watson issued an Interim Order directing Lyft to provide information regarding rides offered in Pennsylvania in conjunction with Lyft's mobile software application or "platform."

At the ALJs' request, parties cancelled hearings scheduled for August 7-8, 2014. Following numerous scheduling discussions, the ALJs issued a revised Hearing Notice scheduling hearings for August 27, 2014, and September 3, 2014.

Prior to the September 3, 2014, hearing, on August 29, 2014, Lyft filed a Petition for Protective Order seeking to protect certain trip data and Lyft's insurance policies. On September 2, 2014, ALJs Long and Watson issued an Order ("September 2 Protective Order") partially granting and partially denying the Protective Order. Due to extended cross-examination of Lyft Witness Joseph Okpaku at the September 3, 2014, hearing, additional hearings were scheduled for September 10, 2014.

During the September 3, 2014, hearing, the number of rides provided through Lyft's platform, which is proprietary information and/or a trade secret, was determined to be protected for the purpose of preserving Lyft's right to seek review of the ALJs' denial of Lyft's Petition for Protective Order. Therefore, the ALJs removed the public from the September 3, 2014, hearing for a few minutes while the information was presented by Mr. Okpaku.

On September 10, 2014, the ALJs issued an Interim Order on Temporary Protective Order ("September 10 Temporary Protective Order") memorializing their September 3, 2014, decision to protect Lyft's ride information for the purpose of preserving Lyft's right to seek review of the ALJs' denial of Lyft's Petition for Protective Order.

Also on September 10, 2014, after the conclusion of the hearings, the Petitioners filed a Petition for an Interim Emergency Order ("Emergency Petition") "directing the unsealing of the

record of the September 3, 2014 hearing in its entirety, including the hearing transcript and all exhibits in the application of Lyft, Inc. at PUC Docket No. A-2014-2415045." Petition, p. 1.

In response to the Emergency Petition, Lyft filed an Answer on September 15, 2014, demonstrating that the Petitioners failed to meet their burden for an interim emergency order. On September 18, 2014, the Petitioners filed their Response to Lyft's Answer ("Response"). In their Response, the Petitioners raised a New Matter that is beyond the scope of their initial Petition. Lyft hereby replies to the New Matter.

II. REPLY TO NEW MATTER

In their Response, the Petitioners state that "Lyft's Answer does not articulate any basis as to why its insurance policies are proprietary." Response, p. 8. Lyft avers that its insurance policies are beyond the scope of the Emergency Petition and should be treated as a new matter. In their Petition, the only reference that the Petitioners make to Lyft's insurance policies is a statement that "[o]n September 10, 2014, the Lyft Application hearing is continuing. It is anticipated that there will be similar efforts to those on September 3, 2014 to remove the press from the proceeding or to seal portions of the record, specifically with respect to Lyft's insurance coverage." Petition, p. 5. Petitioners fail to recognize that the insurance documents produced for the record were not sealed, but redacted pursuant to the September 2 Protective Order.

While Petitioners' Response does not specifically reference redacted data, Lyft recognizes that rate data was redacted from the insurance policies entered into the record. As such, it appears that Petitioners are alleging that the redaction was not proper and that Lyft should be directed to produce unredacted copies of its insurance policies. As such, Petitioners have raised a New Matter. As with the original request to unseal the trip data furnished in response to the July 31 Interim Order, Petitioners fail to meet their burden for interim emergency relief as

disclosure of the rate information redacted from Lyft's insurance policies for the reasons set forth below.

A. Petitioners Failed to Meet Their Burden for Interim Emergency Relief.

There is no dispute between Lyft and the Petitioners regarding the standards that must be met for an interim emergency order. 52 Pa. Code § 3.6 lays out the standards that govern the issuance of interim emergency orders. 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.

"The [C]ommission may issue an interim emergency order only when [the Commission] finds that *all* of the ... [above] elements exist." *Glade Park East Home Owners Association v. Pa. PUC*, 628 A.2d 468, 473 (Pa. Cmwlth. 1993) (emphasis in original).

The Petitioners fail to recognize that the entity requesting emergency relief "bears the burden of proving that the facts and circumstances meet all four of the requirements of 52 Pa. Code § 3.6." *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for an Interim Emergency Order Requiring Uber Technologies, Inc. to Immediately Cease and Desist from Brokering Transportation Service for Compensation Between Points within the Commonwealth of Pennsylvania*, Docket No. P-2014-2426846, at *5 (Order entered July 24, 2014) ("*Uber Order*"). This 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.*, 602 A.2d 863 (1992). Nowhere in their Petition or Response do the

Petitioners explain how they have met this burden through specific facts or binding precedent. Therefore, as explained in detail below, the Petitioners fail to meet their burden for an interim emergency order.

1. *The Petitioners' Fail To Demonstrate That Their Right to Relief Is Clear.*

The Petitioners allege that Lyft bears the burden of showing that redaction of the insurance policies was proper. *See* Response, p. 6. In making this allegation, the Petitioners fail to recognize that Lyft already met this burden. The ALJs reviewed Lyft's Motion for Protective Order, which stated that:

Lyft is engaged in a highly competitive industry. To ensure public safety, the Company has worked with its insurer to develop a policy specifically tailored to its unique service. Public disclosure of the insurance policy would provide a competitive advantage to competitors interested in duplicating the Company's efforts.

Petition for Protective Order, p. 2. Lyft further argued that the insurance policies should be deemed proprietary because the information therein is irrelevant to the proceeding because the insurer would be bound to honor a Form E filed with the Commission evidencing coverage consistent with the Commission's Regulations. Petition for Protective Order, p. 3. Although the ALJs disagreed with Lyft as to the terms and conditions in the insurance policies, the ALJs agreed that "the dollar amounts paid for the [insurance] policy is irrelevant to the Commission's review of the proposed application and whether the Applicant is fit to render transportation services to the public." September 2 Protective Order, p. 5. Accordingly, the ALJs "granted the Petition for Protective Order filed by Lyft, Inc. as it relates to dollar amounts paid for insurance coverages" and accepted the insurance policies into the record with redacted rate information. *See* September 2, Interim Order, p. 5; *see also* Tr. 442-443. Therefore, the ALJs weighed the public interest in disclosure of unredacted insurance policies against both the irrelevance of the

rate information and Lyft's request for proprietary treatment before granting Lyft's request to redact the insurance policies.¹ September 2, Interim Order, p. 5; *see also* 52 Pa Code § 5.423(a).

The ALJs' decision was consistent with 52 Pa. Code § 5.423 because the Regulation authorizes the ALJs to consider the specifically enumerated factors set forth therein and "other relevant factors," including the relevance of the requested information. *See* 52 Pa. Code § 5.423; *see* Section A.1.iii. *infra*. Following the ALJs' weighing of parties' pleadings and approval of Lyft's proposal to submit redacted insurance policies, the burden of proof as to why redaction of the insurance policies was improper falls appropriately on the Petitioners, who wholly fail to provide any facts or binding precedent to demonstrate that their right to relief is clear.

i. Common Law Right to Access.

The Petitioners contend that the common law right of access demonstrates that their right to relief is clear. Again, the Petitioners attempt to shift the burden of proof onto Lyft and argue that the common law right of access requires that "the party seeking closure [or the redaction of information] must show that his or her interest in secrecy outweighs the presumption of openness." *Id. citing PA ChildCare v. Flood*, 887 A.2d 309, 312 (Pa. Super. 2005). Again, the ALJs already weighed the interests in disclosure against the averments in Lyft's Petition for Protective Order and determined that the rate data contained in Lyft's insurance policies should be redacted.

In support of their attempt to make Lyft's proprietary rate information public, the Petitioners rely on two cases that are irrelevant to the instant proceeding. Specifically, the Petitioners rely on *R.W. v. Hampe* and *Storms ex rel. Storms v. O'Malley* to support their argument that the common law right of access demonstrates that their right to relief is clear. 626 A.2d 1218, 1223-24 (Pa. Super. 1993); 779 A.2d 548, 569-70 (Pa. Super. 2001). In *Hampe*,

¹ Although not explicitly stated in the September 2 Protective Order, the ALJs' acceptance of the redacted insurance policies would also be a proper exercise of the ALJs' authority to control the admission of evidence under 52 Pa. Code § 5.403.

the Superior Court found that embarrassment to a party caused by the sexual nature of information in a medical malpractice suit was insufficient to outweigh the public's right to access. 626 A.2d at 1223-24. Similarly, in *Storms*, the Superior Court determined that the possibility that a minor would receive solicitation to purchase her structured settlement and embarrassment and harm to the defendant in the case were insufficient reasons to restrict public access. These cases are inapposite to the instant proceeding. The instant proceeding deals with a PUC transportation application in which: (1) parties propounded discovery requesting copies of the Applicant's insurance policies; (2) the insurance policies include proprietary and trade secret insurance rate information; and (3) the insurance rate information was found to be entirely irrelevant to the subject matter of the proceeding by the presiding ALJs. See September 2 Protective Order, p. 5. Under such circumstances, the ALJs' review of the pleadings and approval of Lyft's proposal to redact rate information from the insurance policies was proper.

ii. First Amendment Right to Access.

The Petitioners also argue that they have the right to access under the First Amendment. In making this argument, the Petitioners attempt to equate the release of jurors' names with the release of insurance rate information. Response, p. 9. Specifically, the Petitioners state that the First Amendment right of access attaches to the release of jurors' names because "jurors' names are commonly disclosed information during trial." *Id. citing Commonwealth v. Long*, 922 A.2d 892, 903-04 (Pa. 2007). Despite attempting to cite precedent, nowhere do the Petitioners explain how the release of jurors' names is even remotely related to the release of proprietary information such as the rate data redacted from the insurance policies. Unlike jurors' names, insurance rate information is not commonly disclosed during the Commission's review of applications for certificates of public convenience, particularly where, as noted in the September 2 Protective Order, "the Commission does not typically review insurance policies held by motor carriers."

September 2 Protective Order, p. 2. Again, the Petitioners fail to support their argument with any reliable precedent or evidence to demonstrate that they have met their burden of demonstrating that their right to relief is clear.

The Petitioners cite to *PA ChildCare* to demonstrate "the First Amendment burden." *Id.* In doing so, the Petitioners do not present the entire analysis and stop at the requirement that "only a *compelling* government interest justifies closure and then only by a means narrowly tailored to serve that interest." *Id.* at 10 citing *PA ChildCare*, 887 A.2d at 312. Of particular importance, the Petitioners fail to explain what constitutes a "compelling government interest." Specifically, to meet the First Amendment burden to protect the release of information, "it must be established 'that the material is the kind of information that courts will protect and that there is good cause.'" *Storms*, 779 A.2d at 569 citing *Publiker Industries, Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984).

As previously referenced, the General Assembly specifically authorized the Commission to restrict publication if a "document contains trade secrets or proprietary information and has been determined by the commission that harm to the person claiming privilege would be substantial." *See* 66 Pa. CS. § 335(d). Further, good cause exists to redact the insurance rate information because, as concluded by the ALJ, the information deemed proprietary by Lyft is also irrelevant to the subject of the proceeding. *See* September 2 Protective Order, p. 5.

iii. Commission Standards for Granting Proprietary Treatment.

To exercise its authority to protect proprietary and trade secret information under Section 335 of the Public Utility Code, the Commission has developed a five-step analysis to determine whether proprietary treatment should be afforded to information submitted to the Commission. The factors are as follows:

- (1) The extent to which the disclosure would cause unfair economic or competitive damage;
- (2) The extent to which the information is known by others and used in similar activities;
- (3) The worth or value of the information to the participant and to the participant's competitors;
- (4) The degree of difficulty and cost of developing the information; and
- (5) Other statutes or regulations dealing specifically with disclosure of the information.

See 52 Pa. Code § 5.423(a). In addition to the specifically enumerated factors, the Commission may consider any "other relevant factors." *Id.*

Petitioners allege that Lyft has not provided any supportive averments showing why the insurance rates are proprietary. *See* Response, p. 9. Petitioners again misunderstand the posture of this proceeding. Lyft requested to redact insurance rates from any insurance policies produced for purposes of this proceeding in a pleading before the ALJs and this relief was granted. *See* September 2 Protective Order. Further, each of the above factors was addressed in Lyft's Petition for Protective Order to support redaction of the insurance rate information. *See* Petition for Protective Order, p. 2. With regards to factors (1) and (3), Lyft averred that the company is "engaged in a highly competitive industry," and stated that "public disclosure of the insurance policy would "provide a competitive advantage to competitors interested in duplicating the Company's efforts." *See* Petition for Protective Order, p. 2. With regard to factors (2) and (4), Lyft averred that "the Company has worked with its insurer to develop a policy specifically tailored to its unique service" *See id.* As for factor (5), Lyft confirmed that the Commission's Regulations require only submission of a Form E Certificate of Insurance and do not necessitate submission of insurance policies. *See id;* *see also* 52 Pa. Code § 3.381. Additionally, Lyft argued that a balance of the interests in openness versus the competitive harm to Lyft favors

protecting the insurance information because the information is irrelevant to the Commission's investigation. *See* Petition for Protective Order, p. 3 (stating that review of the insurance policies is unnecessary because the Form E binds the insurer).

Although Petitioners appear to disagree that redacting of the insurance policies is permissible under Pennsylvania law, Petitioners offer no authority establishing that any public right of access entitles Petitioners to insurance rate information that was not deemed necessary for review by the ALJs and not requested for submission to the record by any party to the proceeding. Accordingly, Petitioners have not shown that their right to relief is clear.

2. *The Petitioners Fail To Demonstrate That Their Need for Relief Is Immediate.*

The Petitioners' Response fails to demonstrate any immediate need for relief. As Lyft has already demonstrated, any alleged need for relief is not immediate in this proceeding "because the time constraints present in this proceeding are not consistent with the time constraints present in prior cases where the Commission determined that an immediate need for relief was present." *Petition of Service Electric Telephone Company, LLC for Interim Emergency Order or, in the Alternative, a Motion to Expedite the Schedule for Decision of Complaint*, Docket Nos. P-2013-2349801 (Order issued April 4, 2013) ("*Service Electric*"). The Commission tends to conclude that the need for relief is immediate only under compressed time constraints. *Americus Centre, Inc. v. PPL Electric Utilities Corporation*, Docket No. C-20077427 (Order entered May 15, 2007). The Petitioners wholly fail to demonstrate that their need for relief is immediate.

First, the Petitioners incorrectly characterize arguments made in Lyft's Answer. Specifically, the Petitioners state that "Lyft asserts that because dangerous wiring or impending cessation of electric service is not present in this case, The Post-Gazette's need for relief is not immediate." Response, p. 12. Lyft did not state that these conditions need to be present to show that the need for relief is immediate. Rather, the cases cited by Lyft reveal that a demonstration

of compressed time constraints is needed to show the need for immediate relief. The Petitioners have failed to demonstrate how time constraints apply to their Petition and, therefore, they have not met their burden for interim emergency relief.

The only "evidence" that the Petitioners provide is a naked assertion that "[i]f immediate relief is not granted, there is a *de facto* denial of the common law and First Amendment right of access." *Id.* The Petitioners attempt to support this assertion by claiming that "[f]or the public to learn of the judicial proceedings long after they take place defeats 'the principle of openness of all judicial proceeding [sic]' supported by the common law, First Amendment and the Pennsylvania Constitutional provision that all courts shall be open." *Id.* at 12-13 *citing* Pa. Const. Art. I, § 11; *PA ChildCare*, 887 A.2d at 312. Contrary to the Petitioners' claims, the public was able to "learn of the judicial proceedings," as only limited sections of Lyft's insurance policies were redacted to protect against the public disclosure of proprietary information. Similar to the limited *in camera* review of the trip data, this extremely limited restriction of information hardly forecloses the public from the opportunity to learn of the proceeding and is entirely consistent with the Commission's authority to restrict publication of proprietary and trade secret information under Section 335(d) of the Public Utility Code. *See* Lyft Answer, p. 10; *see also* 66 Pa. C.S. § 335(d). Therefore, the Petitioners' claims are meritless and, again, the Petitioners fail to provide evidence that their need to relief is immediate.

The Petitioners further cite to *Mills v. Alabama* in claiming that "The Post-Gazette's ability to inform the public when the information 'can be most effective' justifies immediate relief." *Id.* at 13 *citing* *Mills v. Alabama*, 384 U.S. 214, 219 (1966). However, the facts of *Mills* are distinguishable from the facts in the instant proceeding. *Mills* involved a situation in which the press could be criminally charged for publishing an editorial on election day urging people to vote a particular way. 384 U.S. at 218. That is wholly different than the instant proceeding,

where the fact that the parties to the proceeding accepted redacted copies of the insurance policies does not entitle Petition to information beyond what was entered into the record. The precedent relied on by the Petitioners does not support their assertions, and the Petitioners continue to provide no evidence to meet their burden of demonstrating that their right to relief, assuming any such right exists, is immediate.

Additionally, the Commission should consider that Petitioners also misconstrued the procedures for intervening in Commission proceedings. While Petitioners allege that the "the Post-Gazette's unassailable due process rights were violated in the September 3, 2014 hearing" this statement is not supported by the record. *See* Tr. 420-421. Petitioners claim that "its counsel was denied the right to speak and was told the Post-Gazette was 'extraneous.'" Response, p. 15. ALJ Long did not bar Petitioners from intervening, but simply advised Petitioners that extraneous requests from non-parties would not be addressed at the hearing, consistent with Commission's Regulations granting a right to participate in hearings to parties. *See id.*; 52 Pa. Code § 5.243. Importantly, under Commission Regulations, Petitions to Intervene can be entertained by the ALJs prior to conclusion of evidentiary hearings. 52 Pa. Code § 5.74(c). As such, Petitioners could have filed a Petition to Intervene with the Commission following the September 3 hearing and addressed their concerns before the ALJ at the September 10 hearing. At this point, with hearings concluded, there is no immediacy before the Commission and Petitioners can seek any desired relief through the Commission's normal procedures.

3. *The Petitioners' Response Fails To Demonstrate that the Petitioners' Injury Would Be Irreparable If Relief Is Not Granted.*

In an attempt to demonstrate that their injury will be irreparable if they are not granted access to proprietary information, the Petitioners rely on the Commission's assertion in *Core Communications, Inc. v. Verizon Pennsylvania, Inc.* that "a violation of law constitutes

irreparable harm *per se*." Response, p. 13 *citing Core Communications, Inc. v. Verizon Pennsylvania, Inc.*, Docket No. P-2011-2253650 (Order entered September 23, 2011) ("*Core Communications*") *citing Israel*, 52 A.2d at 321. Again, however, the Petitioners fail to show that a violation of the law has occurred. As demonstrated above and in Lyft's Answer, the ALJs appropriately approved submission of redacted insurance policies under the authority bestowed on the Commission by the General Assembly. 66 Pa. C.S. § 335(d); *see also* 52 Pa. Code § 5.423. Because proprietary information is appropriately protected from public disclosure and the ALJs determined that the rate data contained in Lyft's insurance policies should be treated as proprietary and be redacted, no violation of the law has occurred and there is no irreparable harm *per se*.

The Petitioners continue to rely on 66 Pa. C.S. § 703 to support their claim that "[t]he proceedings before the PUC are presumed public by statute." Response p, 13. Again, however, the Petitioners fail to recognize that proprietary information is also protected by statute from public release. *See* 66 Pa. C.S. § 335(d). Because the rate data contained in Lyft's insurance policies is proprietary and because the ALJs determined that the information should be treated as proprietary, the information was lawfully protected from public relief. The Petitioners have provided no valid evidence or precedent to the contrary and, therefore, have not met their burden of demonstrating that they will suffer irreparable harm if their requested relief is not granted.

In evaluating requests for interim emergency relief, the Commission has traditionally focused on the harm to a petitioner. *See Core Communications*. However, the Commission has also focused on the irreparable harm to the respondent and will balance the harm to the respondent with any harm to the petitioner when deciding whether the petitioner will suffer irreparable harm. *See id.*

In this instance, it is Lyft that faces irreparable harm. The rate data that were redacted from Lyft's insurance policies is proprietary and their release would cause prejudice and great harm to Lyft as public disclosure would reveal information that would not otherwise be provided to the public and could be used by Lyft's competitors to duplicate Lyft's business model, including Lyft's negotiation of insurance rates. *See* Petition for Protective Order, p. 2. Therefore, Lyft and not the Petitioners, faces irreparable harm.

Because the Petitioners have provided no evidence that they would be irreparably harmed if the Petitioners' request for relief is not granted, the Petitioners fail to meet their burden by a preponderance of the evidence. As a result, the Commission should deny the Petitioners' request for interim emergency relief.

4. *The Petitioners' Fail To Demonstrate that the Relief Requested Is Not Injurious to the Public Interest.*

The Petitioners fail to demonstrate that the release of the rate data contained in Lyft's insurance policies is not injurious to the public interest. In their Response, the Petitioners rely on the argument that "the General Assembly explicitly set forth that PUC hearings, and the related record, are to be open to the public." Response, p. 14 *citing* 66 Pa. C.S. § 703. The Petitioners further argue that "[w]hen the Legislature declares certain conduct unlawful it is tantamount in law in calling it injurious to the public." *Id. citing Israel*, 52 A.2d at 321. Despite these claims, the Petitioners fail to demonstrate that protection of the proprietary information was unlawful. As explained in detail above, 66 Pa. C.S. § 335(d) specifically and affirmatively allows the Commission to protect trade secrets and proprietary information from public disclosure based on its findings, and does not limit the information on which the Commission must base such findings. Therefore, pursuant the Petitioners' logic, the Legislature declared that the protection of proprietary information based on a Commission finding is *legal* and would not be injurious to the public.

Additionally, the Petitioners' Response fails to recognize that "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." *Uber* at *14. Business interests are considered when determining injury to the public interest. *See id.* In the instant proceeding, the public interest would be harmed by the Petitioners' requested relief because Lyft's proprietary information would be disclosed. As such, the Petitioners have not met their burden of demonstrating that their requested relief would not harm the public interest, and the Petitioners' Petition should be rejected.

Moreover, the ALJs reviewed Lyft's Motion for Protective Order and parties' responses before determining that the insurance rate information can be redacted. *See* September 2 Protective Order, p. 5. The Petitioners are not parties to the above-captioned docket. Permitting a non-party to reverse an ALJ ruling by filing a Petition for Emergency Relief would create a unprecedented procedural anomaly that would shatter the integrity of this proceeding and future adjudications before the Commission's ALJs. Therefore, as a matter of public interest, the Emergency Petition must be denied and Petitioners should be directed to seek any desired relief through the Commission's normal process.

Additionally, it is not at all clear whether Petitioners meet the Commission's standards for intervention in this proceeding, even assuming a timely Petition to Intervene was filed by Petitioners. *See* Pa. Code § 5.72. Petitioners request intervention to oppose sealing of a record in order to protect the public interest. These grounds could be asserted in any docket by any member of the press or member of the public. Such unintended consequences are not in the public interest.

Finally, Petitioners request to unseal the entire record is contrary to the public interest. When a party claims that documents contain proprietary or trade secret information,

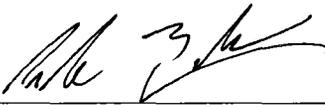
Pennsylvania law supports protection of the information until the party has exhausted all rights to argue for protection. Courts have recognized the importance of protecting a party's right to appeal before ordering the release of records. *See Com., Office of Open Records v. Center Tp.*, 95 A.3d 354, 364 (Com. 2014) (finding that parties have the right to appeal a final determination of the Office of Open Records ("OOR") and the release of records is stayed until the OOR's determination is reviewed and decided by a court of common pleas). Reserving the right to appeal in the instant proceeding is analogous to the findings in *Com., Office of Open Records*. Petitioners have been unable to cite any precedent that demonstrates that the public's interest in open access supersedes a party's right to appeal. Therefore, even assuming that Petitioners have raised any valid arguments rebutting Lyft's arguments for proprietary treatment of any information, such arguments would not support the request to unseal the record through a Petition for Emergency Relief.

III. CONCLUSION

WHEREFORE, Lyft, Inc. respectfully requests that the Pennsylvania Public Utility Commission deny the Petition for an Interim Emergency Order of Kim Lyons and PG Publishing, Inc. d/b/a The Pittsburgh Post-Gazette because the Petitioners failed to carry their burden of proving that the facts and circumstances meet *all* four of the requirements for interim emergency relief.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

James P. Dougherty (Pa. I.D. 59454)
Adeolu A. Bakare (Pa. I.D. 208541)
Barbara A. Darkes (Pa. I.D. 77419)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300

Counsel to Lyft, Inc.

Dated: October 7, 2014