



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

IN REPLY PLEASE
REFER TO OUR FILE

October 10, 2014

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. Lyft, Inc.
Docket No. C-2014- 2422713
Motion to Strike

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's Motion to Strike the Petition of Lyft, Inc. for Interlocutory Review and Answer to a Material Question in the above-captioned matter.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephanie M. Wimer".

Stephanie M. Wimer
Prosecutor
PA Attorney I.D. No. 207522

Enclosure

cc: ALJ Mary D. Long and ALJ Jeffrey Watson
As per certificate of service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2014-2422713
	:	
Lyft, Inc.,	:	
Respondent	:	

NOTICE TO PLEAD

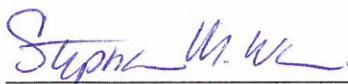
*To: James P. Dougherty, Esq., Barbara A. Darkes, Esq., and Adeolu A. Bakare, Esq.,
Counsel for Lyft, Inc.*

You are hereby notified to file a written response to the attached Motion to Strike of the Bureau of Investigation and Enforcement (I&E) within twenty (20) days from the date of service of this notice. If you do not file a written response denying the enclosed Motion to Strike within twenty (20) days of service, the presiding officers may rule in favor of I&E on the attached Motion without a hearing.

All pleadings, such as answers to motions, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

You must also serve a copy of your response on the undersigned prosecutors.



Stephanie M. Wimer, Prosecutor
PA Attorney ID No. 207522

Michael L. Swindler, Prosecutor
PA Attorney ID No. 43319

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Dated: October 10, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant,	:	
	:	
v.	:	C-2014-2422713
	:	
Lyft, Inc.,	:	
Respondent	:	

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT'S
MOTION TO STRIKE THE
PETITION OF LYFT, INC.
FOR INTERLOCUTORY REVIEW AND
ANSWER TO A MATERIAL QUESTION**

TO ADMINISTRATIVE LAW JUDGES MARY D. LONG AND JEFFREY A.

WATSON:

The Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission), through its prosecuting attorneys, files this Motion to Strike, pursuant to Section 5.103(a) of the Commission's regulations, 52 Pa. Code § 5.103(a), and avers as follows:

Introduction

1. On October 3, 2014, Administrative Law Judges Mary D. Long and Jeffrey A. Watson (ALJs) issued an Interim Order in this proceeding, which granted I&E's Motion to Compel responses and documents related to I&E's Interrogatories and Requests for Production of Documents- Set I directed to Lyft, Inc. (Lyft).

2. On October 10, 2014, one week after issuance of the ALJs' Interim Order, Lyft filed a Petition for Interlocutory Review and Answer to Material Question allegedly directed to the Commission pursuant to Section 5.302 of the Commission's regulations, 52 Pa. Code § 5.302, seeking a response to its question of whether Lyft should be required to furnish the information requested in Interrogatory No. 2 of I&E's Interrogatories and Requests for Production of Documents- Set I.

3. The entirety of Lyft's Petition for Interlocutory Review and its Material Question pertains to discovery matters.

4. Lyft failed to properly seek certification from the presiding ALJs regarding whether the ALJs' discovery ruling is appropriate for interlocutory review prior to directly seeking interlocutory review before the Commission.

Legal Standard

5. Pursuant to Section 5.304(a) of the Commission's regulations, interlocutory review of discovery rulings of presiding ALJs is not permitted unless one or more of the following apply:

- (1) Interlocutory review is ordered by the Commission.
- (2) Interlocutory review is certified by the presiding officer.
- (3) The ruling has as its subject matter the deposing of a Commissioner or Commission employee.

52 Pa. Code § 5.304(a).

6. A party must first petition the presiding officer for certification for interlocutory review of the discovery ruling. 52 Pa. Code § 5.304(c).

7. Section 5.304(c) of the Commission’s regulations specifically addresses the time period within which a petition for certification must be filed: “A petition for interlocutory review of a presiding officer’s ruling on discovery must: (1) [b]e filed within 3 days of the ruling. . . .” 52 Pa. Code § 5.304(c)(1).

8. Subsequent to a petition for certification, the parties have seven (7) days to file a responsive brief supporting or opposing the certification. 52 Pa. Code § 5.304(d). Thereafter, the presiding officer rules on the certification. 52 Pa. Code § 5.304(e).

Argument

9. Lyft’s Petition for Interlocutory Review and Answer to Material Question is inappropriate, not permitted under the Commission’s regulations and must be stricken for three reasons.

10. First, Lyft’s Petition for Interlocutory Review constitutes an impermissible pleading in that it fails to first seek that the presiding ALJs certify the appropriateness of interlocutory review and instead, proceeds directly to the Commission to seek interlocutory review of a discovery matter. The Commission’s regulation at Section 5.304 is clear that a ruling of a presiding officer on discovery is not subject to interlocutory review absent certification by a presiding officer.

11. Secondly, Lyft failed to timely file a petition for certification, which had to be filed on or before October 6, 2014, pursuant to 52 Pa. Code § 5.304(c)(1). Lyft should not be permitted to directly seek interlocutory review now, in an impermissible pleading, when it failed to file a petition for certification within three (3) days of the ALJs’ Interim Order.

12. Lastly, Lyft provides no persuasive legal authority to support its impermissible pleading. Lyft cites to *Keystone Alliance v. Philadelphia Electric Co.*, 45 P.U.R. 4th 156, 157 (1981) for the proposition that Section 5.304 of the Commission's regulations (regarding interlocutory review of discovery matters) may be waived by the parties and that direct interlocutory review may be taken because "the extreme breadth of the subject response merits consideration by the Commission." Lyft Petition at p. 2, FN 1. However, in *Keystone Alliance*, unlike in this proceeding, the parties did in fact file a petition for certification of a discovery matter, which was subsequently denied by the presiding ALJ. The Commission, in *Keystone Alliance*, waived the certification requirement only after issuance of the ALJ's denial for certification. Thus, Lyft presented no legal authority to support bypassing the clear procedure set forth in Section 5.304 of the Commission's regulations.

13. Even if Lyft had attempted to certify its discovery question for interlocutory review, interlocutory review is not automatic. A discovery order will not be certified for interlocutory review unless the ruling involves "an important question of law or policy that should be resolved immediately by the Commission." 52 Pa. Code § 5.304(b). This standard is not met unless the discovery ruling involves compelling circumstances that cannot be remedied in the normal course of Commission review after an initial decision is issued. *Re Structural Separation of Bell Atlantic-Pa., Inc.*, 94 Pa. P.U.C. 375, 2000 WL 1336490 at *3 (Pa. P.U.C. 2000) ("[w]e do not routinely grant interlocutory review except upon a showing by the petitioner of extraordinary

circumstances of ‘compelling reasons’”) (citing *Application of Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985)).

WHEREFORE, for the reasons set forth above, I&E respectfully requests that its Motion to Strike the Petition of Lyft, Inc. for Interlocutory Review and Answer to a Material Question be granted.

Respectfully submitted,



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Prosecutor
PA Attorney ID No. 207522

Michael L. Swindler
Prosecutor
PA Attorney ID No. 43319

Wayne T. Scott
First Deputy Chief Prosecutor
PA Attorney ID No. 29133

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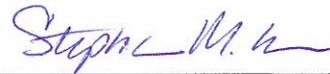
Dated: October 10, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail and Email:

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Barbara A. Darkes, Esq.
Adeolu A. Bakare, Esq.
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Dated: October 10, 2014