



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

IN REPLY PLEASE
REFER TO OUR FILE

October 20, 2014

Via E-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
I&E's Brief in Opposition to Petition for Interlocutory Review

Dear Secretary Chiavetta:

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

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

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

Sincerely,

A handwritten signature in blue ink that reads "Stephanie M. Wimer".

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

Enclosure

cc: Honorable Mary D. Long
Honorable Jeffrey A. Watson
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**BRIEF OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT
IN OPPOSITION TO
THE PETITION FOR INTERLOCUTORY REVIEW
AND ANSWER TO MATERIAL QUESTION OF
LYFT, INC.**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW COMES the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission), by and through its prosecuting attorneys, pursuant to 52 Pa. Code § 5.302(b), and files this Brief in Opposition to the Petition for Interlocutory Review and Answer to a Material Question (Petition or Petition for Interlocutory Review) filed on October 10, 2014 by Lyft, Inc. (Lyft or Petitioner) in the above-captioned proceeding. In opposition to Lyft’s Petition, I&E argues as follows:

I. STATEMENT OF THE CASE

On June 5, 2014, I&E filed a Formal Complaint (Complaint) against Lyft, Inc. alleging, *inter alia*, that Lyft acts as a broker of transportation for compensation between points within the Commonwealth through its internet and mobile application software (the Lyft app), which connects passengers to individuals who have registered with Lyft as independent ride-sharing operators (Lyft driver). I&E sought a civil penalty in the amount of \$130,000, as well as an additional \$1,000 per day for each day that Lyft continued to operate without authority after the date of filing of I&E's Complaint. In addition, I&E requested that the Commission direct Lyft to cease offering its ride-sharing passenger transportation service until the service conforms to the laws and regulations of the Commonwealth. On June 26, 2014, Lyft answered the Complaint and denied the allegations set forth therein.

During the pendency of the above-captioned Complaint proceeding, I&E sought and obtained injunctive relief against Lyft. On June 16, 2014, I&E filed a Petition for Interim Emergency Relief seeking an order from the Commission directing Lyft to immediately cease and desist from brokering passenger transportation service until it receives the requisite authority to do so.¹ After a hearing on June 26, 2014, the presiding Administrative Law Judges (ALJs) granted I&E's interim emergency relief and directed

¹ *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for an Interim Emergency Order requiring Lyft, Inc. to immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania*, Docket No. P-2014-2426847.

Lyft to immediately cease and desist from utilizing its digital platform to facilitate transportation to passengers using non-certificated drivers in their personal vehicles until Lyft secures appropriate authority from the Commission.² The Cease and Desist Order also certified as a material question to the Commission the issue of granting or denying I&E's requested relief by an interim emergency order.

By Order entered on July 24, 2014, the Commission determined that I&E met the requirements for obtaining interim emergency relief.³ The Commission directed Lyft to immediately cease and desist from facilitating transportation through its digital platform until it secures appropriate authority from the Commission or I&E's Complaint is dismissed by a final and unappealable order.

Also on July 24, 2014, Commissioner James H. Cawley issued a Combined Statement in the Petition for Interim Emergency Relief proceeding at Docket No. P-2014-2426847, which also applies to I&E's Complaint proceeding at the instant docket.

Commissioner Cawley stated as follows:

In order to aid in the formulation of a final order in these proceedings, I will request by subsequent Secretarial Letter that . . . Lyft provide the number of transactions/rides provided to passengers in Pennsylvania via the connections made to drivers through Internet, mobile application, or digital software during the following periods:

² *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for an Interim Emergency Order requiring Lyft, Inc. to immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania*, Docket No. P-2014-2426847 (Order on Interim Emergency Relief entered July 1, 2014) (hereinafter referred to as "Cease and Desist Order").

³ *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for an Interim Emergency Order requiring Lyft, Inc. to immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania*, Docket No. P-2014-2426847 (Opinion and Order entered July 24, 2014).

- a. From the initiation of such service in Pennsylvania to the date on which complaints were first filed by the Commission's Bureau of Investigation and Enforcement against . . . Lyft drivers.
- b. From the date that the same complaints were filed to the date on which a cease and desist order was entered against . . . Lyft.
- c. From the date of entry of the cease and desist order to the date on which the record in these proceedings are closed.

Petition of Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for Interim Emergency Orders requiring Lyft, Inc. and Uber Technologies, Inc. to Immediately Cease and Desist from Brokering Transportation Service for Compensation Between Points within the Commonwealth of PA, Docket Nos. P-2014-2426846 and P-2014-2426847 (Combined Statement of Commissioner James H. Cawley at the July 24, 2014 Public Meeting). On July 28, 2014, a Secretarial Letter was issued that incorporated Commissioner Cawley's Combined Statement.⁴

Consistent with the directive set forth in the Secretarial Letter, on August 8, 2014, I&E propounded Interrogatories and Requests for Production of Documents – Set I upon Lyft in this proceeding. I&E's Interrogatories largely mirrored the information that was requested in the Secretarial Letter in that it asked Lyft to identify the number of trips provided using its digital software between certain points in time in which Lyft lacked authority to facilitate or provide passenger transportation service for compensation. I&E's Interrogatories and Requests for Production of Documents – Set I also requested documents that Lyft sent to passengers in relation to rides they received between points

⁴ *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for an Interim Emergency Order requiring Lyft, Inc. to immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania*. Docket Nos. C-2014-2422713 and P-2014-2426847 (Secretarial Letter issued July 28, 2014).

within the Commonwealth of Pennsylvania via connections made with drivers through Lyft's digital software during certain points in time in which Lyft lacked authority to facilitate or provide passenger transportation service for compensation.

On August 18, 2014, Lyft filed Objections to I&E's Interrogatories and Requests for Production of Documents – Set I. Lyft objected to I&E's request for documents to support the number of rides Lyft facilitated or provided when it lacked authority to do so.

On August 28, 2014, I&E filed a Motion to Compel requesting that the presiding ALJs dismiss the objection to discovery by Lyft and direct Lyft to provide the information sought by I&E. I&E amended its Motion to Compel on August 29, 2014 to reflect that I&E unsuccessfully attempted to resolve the discovery dispute with counsel for Lyft prior to seeking judicial resolution of the dispute.

Lyft filed an Answer to I&E's Amended Motion to Compel on September 3, 2014.

On October 3, 2014, the presiding ALJs entered an Interim Order granting I&E's Motion to Compel (Discovery Order). Of significance to the instant Petition, the ALJs concluded that Lyft did not adequately demonstrate that it is unduly burdensome for it to redact confidential information in the documents requested by I&E. Discovery Order at 3. The ALJs also found that the fact that some information may be deemed confidential does not absolve Lyft from providing the information in discovery pursuant to a protective order. *Id.* Lyft has not sought a protective order in this proceeding.

Lyft filed the instant Petition on October 10, 2014, which seeks an Order from the Commission determining that the documents requested by I&E pertaining to the trip information is burdensome, privileged and irrelevant to the Complaint proceeding.

Contrary to Section 5.304 of the Commission's regulations, 52 Pa. Code § 5.304, Lyft is directly seeking interlocutory review by the Commission of the ALJs' ruling on this discovery matter without first having obtained certification from the presiding officers. Therefore, on October 10, 2014, I&E filed a Motion to Strike Lyft's Petition.

Also of significance to this case, I&E filed an Amended Complaint in the above docket on October 8, 2014, which recalculates the proposed civil penalty to include a "per ride" component, rather than a completely "per day" component, for rides that occurred subsequent to the Cease and Desist Order, when Lyft was expressly directed to refrain from facilitating passenger transportation through the Lyft App until receiving operating authority from the Commission. The ride information that is the subject of the Amended Complaint was provided to I&E by Lyft on a confidential basis on September 11, 2014.

The Initial Hearing that was scheduled for October 23, 2014 will be continued.

II. COUNTER-STATEMENT OF MATERIAL QUESTION

A. Should Lyft's Petition for Interlocutory Review be stricken because Lyft directly sought interlocutory review of a discovery ruling without first obtaining certification of the matter?

Suggested Answer: Yes.

B. Assuming, *arguendo*, that the Commission considers Lyft's Petition for Interlocutory Review, which involves a non-certified discovery ruling, does

Lyft's Material Question constitute an extraordinary circumstance such that interlocutory review should be granted?

Suggested Answer: No.

- C. Should Lyft be required to furnish the trip information requested in Question No. 2 of I&E's Interrogatories and Requests for Production of Documents – Set I?

Suggested Answer: Yes.

III. SUMMARY OF ARGUMENT

The Commission should strike Lyft's Petition for Interlocutory Review as an impermissible pleading. In direct violation of the Commission's regulations, Lyft has proceeded directly to the Commission for interlocutory review without first seeking certification from the presiding ALJs regarding interlocutory review of a discovery matter. Accordingly, Lyft's Petition should be stricken.

In the event that the Commission entertains Lyft's Petition for Interlocutory Review, which involves a non-certified discovery ruling, Lyft nevertheless fails to meet the stringent standard for granting such petitions. Lyft's Material Question pertains to a routine discovery matter and does not present an extraordinary circumstance or significant legal issue that suggests a basis for interlocutory review.

The presiding ALJs properly concluded that I&E's requested documentation is discoverable. I&E seeks data related to the passenger trips that were facilitated by connections made through the Lyft app during certain periods of time when Lyft lacked

authority to broker passenger transportation service. Such trip information is required to be provided by any common carrier under the Commission's jurisdiction.

IV. ARGUMENT

A. Lyft Impermissibly Seeks Interlocutory Review of a Discovery Ruling

Lyft's Petition for Interlocutory Review and Answer to Material Question is not permitted under the Commission's regulations and must be stricken.⁵ First, Lyft's Petition 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 for interlocutory review of a discovery matter.

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).

A party must first petition the presiding officer for certification for interlocutory review of the discovery ruling. 52 Pa. Code § 5.304(c). "[R]ulings of presiding officers on discovery are not subject to interlocutory review unless ordered by the Commission in exceptional situations, or absent certification by the presiding officer that the ruling

⁵ I&E filed a Motion to Strike on October 10, 2014.

involves an important question of law or policy that should be resolved immediately by the Commission.” *Joint Application of Bell Atlantic Corp. and GTE Corp.*, 1999 Pa. PUC LEXIS 56 at *11, Docket Nos. A-310200F0002; A-310222F0002; A-310291F0003; A-311350F0002 (Order entered June 10, 1999). The subject matter of Lyft’s Petition consists entirely of discovery issues. As such, the Commission’s regulations dictate that Lyft obtain certification of the discovery ruling from the presiding ALJs before seeking interlocutory review by the Commission. By failing to first obtain the necessary certification, Lyft’s Petition for Interlocutory Review should be stricken.

Secondly, Lyft failed to timely file a petition for certification. Pursuant to Section 5.304(c)(1) of the Commission’s regulations, 52 Pa. Code § 5.304(c)(1), such a petition is required to be filed within three (3) days of the presiding ALJs’ ruling on I&E’s Motion to Compel. The ALJs’ Discovery Order was entered on October 3, 2014. Therefore, Lyft’s petition for certification was due on or before October 6, 2014. Lyft should not be permitted to directly seek interlocutory review now, in an impermissible pleading, when it failed to timely file a petition for certification.

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, 52 Pa. Code § 5.304, (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.

Because Lyft failed to obtain certification of the ALJs' discovery ruling for interlocutory review, its Petition should not be entertained and should be stricken as an impermissible pleading.

B. In the Alternative, Lyft Fails to Meet the Stringent Criteria for Interlocutory Review

Assuming, *arguendo*, that the Commission elects to entertain Lyft's Petition for Interlocutory Review, which involves a non-certified discovery ruling, Lyft's Material Question does not present an extraordinary circumstance or compelling reason such that interlocutory review should be granted.

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. Retail and Wholesale Operations*, 2000 Pa. PUC LEXIS 49, Docket No. M-00001353 (Order entered July 20, 2000).

Interlocutory review should not be used to “second-guess” the rulings of an administrative law judge. *Application of Academy Bus Tours, Inc.*, 1995 Pa. PUC LEXIS 51 at *5, Docket No. A-00111330 (Order entered May 5, 1995). The Commission has stated that:

[T]he correctness or erroneousess of the ALJ’s ruling on admissibility is not a relevant consideration, either initially in considering a request for certification of a question (except to the extent that such arguments might persuade the ALJ to reverse his or her ruling), or later in considering whether interlocutory review is warranted. The pertinent consideration in both instances is whether *interlocutory review is necessary*, in order to prevent substantial prejudice, that is that the error and any prejudice flowing therefrom, could not be satisfactorily cured during the normal Commission review process.

In re: Application of Knights Limousine Service, Inc., 1985 Pa. PUC LEXIS 46 at *4, Docket No. A-00105973 (Order entered July 22, 1985) (Citing *Shea v. Freeport Telephone & Telegraph Co.*, Docket No. C-812580 (Order entered Feb. 15, 1984)).

Lyft fails to identify any compelling circumstance that warrants interlocutory review. Lyft’s Petition consists of nothing more than a mere attempt to second guess the ALJs’ interim order regarding a routine discovery matter. I&E seeks documentation related to the passenger trips, which were facilitated by connections made through the Lyft app, during specific periods of time in which Lyft was without authority to broker passenger transportation service. In its Petition, Lyft reiterates the grounds for its objections. Namely, Lyft argues that production of the trip information would cause an unreasonable burden and expense, would require the making of an unreasonable investigation and would disclose “privileged” material, although Lyft fails to indicate how such material is privileged in the Petition. No significant questions of law or policy

are present. While production of the trip information may be inconvenient, this does not constitute a compelling reason or present an extraordinary circumstance that would result in irreparable harm or prejudice necessary for the Commission to grant interlocutory review. Moreover, Lyft's position has already been addressed and overruled by the Discovery Order.

C. Production of the Requested Trip Information Pursuant to a Protective Order is Appropriate

The Discovery Order carefully considers each one of the arguments that Lyft presents again in its Petition. There is no extraordinary circumstance or novel or important legal issue that suggests a basis for interlocutory review.

Lyft first argues that producing the requested trip information would constitute an unreasonable burden and expense in that it would be voluminous and would unnecessarily require Lyft to commit significant resources to compile the information. In a separate but nearly identical argument, Lyft contends that producing the trip information would require an unreasonable investigation in that Lyft would have to expend significant time and resources compiling the discovery responses requested by I&E. Lyft argues that such responses have little probative value because it is duplicative of information that was already furnished in I&E's Interrogatories and Requests for Production of Documents – Set I, Question No. 1, which requested the number of trips for the time periods consistent with those requested by the Commission in the July 28, 2014 Secretarial Letter.

In the Discovery Order, the ALJs concluded that Lyft failed to adequately demonstrate that it is unduly burdensome for it to produce the requested trip information and redact the personal identifying information contained in the documents. This information is necessary for I&E to properly evaluate the extent of Lyft's transportation activities that occurred prior to the granting of its application for emergency temporary authority.⁶ The information sought is entirely relevant to I&E's Amended Complaint, which pertains to Lyft's unlawful operations. Production of the requested documents in I&E Interrogatory No. 2 is an important step for I&E to advance its case.

Further, this very same information is required to be provided by any common carrier under the Commission's jurisdiction, if requested. The Commission has a duty to know who is offering or furnishing transportation for compensation, and when and where such transportation is being provided. For example, call and demand carriers are required to complete daily log sheets that provide information specific to each trip, including the places of origin and destination, the name of the driver and the meter reading at the beginning and end of each trip. *See* 52 Pa. Code § 29.313(c). Trip sheet requirements also pertain to limousine service and the sheets contain similar information, such as the rate being charged, and the origin and intended destination of each trip. *See* 52 Pa. Code § 29.335. Therefore, a contention that Lyft may have to expend time and resources to compile the trip information does not constitute a sufficient reason to prevent its production, especially when the information that I&E seeks in discovery is of the sort that

⁶ *Application of Lyft, Inc. for Emergency Temporary Authority to Offer Experimental Transportation Network Service Between Points in Allegheny County, PA*, Docket No. A-2014-2432304.

all certificated motor carriers are directed to submit to the Commission on a routine basis and that Lyft will be required to provide in the future if it is ever properly certificated. This is simply the price a company must pay for doing business under the Commission's regulations.

In its Petition, Lyft also argues that the information sought in I&E's Interrogatories is "privileged" without identifying the applicable privilege. In its Objection, Lyft articulated that the trip information is privileged because it would reveal confidential information pertaining to customer names, e-mail addresses and payment information. Lyft's concern regarding the disclosure of confidential information can be simply resolved by producing it pursuant to a protective order, as the ALJs correctly observed in the Discovery Order. Documents that contain confidential information are routinely discovered by and shared between the parties in a litigated proceeding. Here, Lyft has not even sought a protective order. Therefore, the fact that the information sought may be confidential is not a valid basis for precluding its disclosure.

V. CONCLUSION

WHEREFORE, for the above listed reasons, the Bureau of Investigation and Enforcement respectfully requests that the Commission strike, or in the alternative, deny the Petition of Lyft, Inc. for Interlocutory Review and Answer to Material Question.

Respectfully submitted,



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Date: October 20, 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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