**0.BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :

Bureau of Investigation and Enforcement :

:

v. :C-2014-2422713

:

Lyft, Inc. :

**INTERIM ORDER**

**ON MOTION TO COMPEL**

On June 6, 2014, the Commission’s Bureau of Investigation and Enforcement (BIE), filed a complaint against Lyft, Inc. (Lyft). The complaint alleges, among other things, that Lyft is acting as a broker of transportation without a certificate of public convenience and that its actions constitute a violation of the Public Utility Code. The complaint seeks civil penalties in the amount of $130,000 and an additional $1,000 per day for each day that Lyft continues to operate after the date of filing. Lyft filed an answer to the complaint on June 26, 2014. BIE filed an amended complaint on October 8, 2014, in order to update and quantify the alleged violations by including a “per ride” violation component and to recalculate civil penalty as the relief requested. On October 28, 2014, Lyft filed an answer as well as preliminary objections to the amended complaint.

On June 16, 2014, BIE also filed a petition for emergency relief at Docket No. P-2014-2426847. Following an evidentiary hearing, the petition was granted by order dated July 1, 2014, and Lyft was ordered to cease and desist its operations in Pennsylvania utilizing its digital platform to facilitate transportation for compensation to passengers utilizing non-certificated drivers in their personal vehicles. By order entered July 24, 2014, the Commission approved that order. Further, the Commission determined that additional information would aid in the formulation of a final order in this complaint proceeding. Accordingly, by Secretarial Letter dated July 28, 2014, Lyft was directed to address the following questions:

1. The number of transactions/rides provided to passengers in Pennsylvania via the connections made with drivers through Internet, mobile application, or digital software during the following periods:
2. From the initiation of Lyft’s service in Pennsylvania to June 5, 2014 (the date I&E filed the Complaint against Lyft);
3. From June 5, 2014, to July 1, 2014 (the date the *Cease and Desist Order* became effective); and
4. From July 1, 2014, to the date on which the record in this Complaint proceeding is closed.
5. Should there be a finding that Lyft’s conduct in any one or all of the periods in question (1), above, was a violation of the Public Utility Code, whether refunds or credits to customers would be an appropriate remedy.
6. Whether either evidence of prior unlawful operations or contumacious refusal to obey Commission orders negates the need for the proposed service and/or the fitness of the Applicant as a common carrier such that no certificate of public convenience can be issued by the Commission.

On August 8, 2014, BIE served interrogatories upon Lyft, intended to elicit the information directed by the July 28 Secretarial Letter. On August 18, 2014, Lyft objected to the interrogatories on the basis of privilege and unreasonable burden. After attempts to resolve the dispute were unsuccessful, on August 28, 2014, BIE filed a motion to compel the response of Lyft to BIE’s interrogatories and request for production of Documents-Set 1. BIE filed an amended motion to compel on August 29, 2014. BIE amended its motion to aver that it unsuccessfully attempted to resolve the discovery dispute with Lyft prior to seeking judicial resolution of the dispute. Lyft filed a timely response.

BIE’s Interrogatory No. 2 in Set-1, the subject of the August 28, 2014 motion to compel, sought the disclosure of “invoices, receipt, e-mails, records and documents” sent by Lyft to individuals in connection with the trips identified in the July 28 Secretarial letter.

We agreed with BIE that the potential confidential status of information is not a basis for objecting to the discovery of the information in the first instance. We further agreed that Lyft did not adequately demonstrate that it was unduly burdensome to redact credit card numbers, social security numbers, e-mail address, telephone numbers or other personal identifying information for the trip-related documents requested by BIE. Alternatively, we concluded that it was well within Lyft’s abilities to negotiate a confidentiality agreement for the purposes of discovery and seek a protective order for the purposes of the evidentiary hearing on this complaint. Accordingly, by Order dated October 3, 2014, we granted the motion to compel an answer to Interrogatory No. 2 and Request for Production of Documents – Set I filed by BIE and ordered that Lyft provide answers within 15 days of entry of the order. We further ordered that Lyft was not precluded from requesting an appropriate protective order for any personal information included in the documents requested or from redacting e-mail addresses, telephone numbers or credit card information for passengers which may be contained in the requested documents.

On October 3, 2014, BIE served upon Lyft, six interrogatories and requests for production of documents – Set II. Interrogatories and production requests one and two reference Lyft’s continued operations while subject to a cease and desist order entered on July 1, 2014. Interrogatories and production requests three through five seek information regarding other jurisdictions. On October 14, 2014, Lyft filed objections to the interrogatories and requests numbered one through five. BIE filed a motion to compel answers to their discovery requests on October 24, 2014.

Lyft filed an answer to the motion to compel on October 29, 2014. Lyft avers that it was preparing to present an agreed-upon protective order when BIE informed Lyft on October 28, 2014, that it was no longer willing to support a protective order as to any documents produced in this matter. Lyft contends it is willing to produce the documents in response to Set- II, request numbers 1 and 2, subject to a protective order consistent with the terms previously agreed to by the parties.

Interrogatory Set-II, Number 1.

The objections to interrogatories one and two concern information regarding the number of transactions or rides between August 8, 2014 and August 13, 2014, and providing documents to substantiate the number of rides between August 8, 2014 and August 13, 2014, while Lyft was subject to the cease and desist order. Lyft objected to these discovery requests.

Lyft objects to providing the number of transactions or rides between August 8, 2014 and August 13, 2014, while it was subject to the cease and desist order, arguing, *inter alia,* that the information requested could be used by BIE to increase the civil penalty, denying Lyft’s due process rights and violating Lyft’s Fifth Amendment rights against self-incrimination. BIE asserts that the information sought constitutes separate and distinct violations and is relevant to properly imposing a “per violation” civil penalty and that the privilege of self-incrimination guaranteed by the Fifth Amendment cannot be used by a corporation.

Lyft also objects to providing documents to substantiate the number of rides between August 8, 2014 and August 13, 2014, while it was subject to the cease and desist order. Lyft argues, *inter alia*, that the information requested constitutes privileged information that would reveal personal information regarding Lyft customers. BIE asserts the requested information is the same information that the Commission routinely receives and examines from other entities that provide transportation for compensation. BIE further asserts Lyft could designate its responses as confidential and provide the information pursuant to a protective order that limits the availability and public disclosure of such information. Lyft further argues that providing responses would cause an unreasonable burden, expense and investigation to Lyft.

Lyft asserts that the Fifth Amendment is applicable to this matter because Section 3310 of the Public Utility Code, 66 Pa.C.S. § 3310, allows for the criminal prosecution of persons or corporations operating as motor carriers or brokers without authority. However, the Fifth Amendment privilege against self-incrimination cannot be used by a corporation. *Bell v. Maryland*, 378 U.S. 226, 263 (U.S. 1964). The Fifth Amendment privilege is personal and protects “an individual from compelled production of his personal papers and effects….” *Bellis v. United States*, 417 U.S. 85, 87 (U.S. 1975). The Fifth Amendment provides, in pertinent part, that “*No person* … shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V(emphasis added). Corporations, such as Lyft, have no self-incrimination privilege pursuant to the Fifth Amendment.

In addition, the Code at 66 Pa.C.S. § 102 defines “person” in pertinent part as “individuals, partnerships, or associations other than corporations”.

Section 312 provides:

No person shall be excused from testifying or from producing any book, document, paper, or account in any investigation or inquiry by, or hearing before, the commission or its representative, when ordered to do so, upon the ground that the testimony or evidence, book, document, paper or account required may tend to incriminate him or subject him to penalty or forfeiture. No person shall be prosecuted, punished, or subjected to any forfeiture or penalty for or on account of any act, transaction, matter or thing concerning which he shall have been compelled, under objection, to testify or produce documentary evidence.

66 Pa.C.S. § 312.

Section 312 of the Code requires natural persons, who are protected by the self-incrimination privilege of the Fifth Amendment, to produce information and documentation requested by the Commission in exchange for personal immunity from prosecution or penalty, in exchange for providing such information. No such protection is provided to corporations by the Code.

Therefore, as a corporation, Lyft is not protected by the privilege against self- incrimination provided by the Fifth Amendment. Accordingly, the number of rides that BIE seeks from Lyft is discoverable under the circumstances.

Interrogatory Set-II, Number 2.

Interrogatory number two requests the production of documents to substantiate the number of rides provided by Lyft between August 8, 2014 and August 13, 2014, and to corroborate Lyft’s response to Interrogatory number 1. Lyft objects to interrogatory number 2, arguing that the material sought constitutes privileged information. Lyft asserts that its responses would reveal personal information about Lyft customers, such as email addresses, telephone numbers and payment information, as well as travel patterns, including transportation routes, destinations, and potentially residential addresses. Lyft asserts that the release of this information poses dangers for the public and liability concerns for Lyft. Lyft further argues that providing responses to Interrogatory number 2 would cause unreasonable burden, expense and investigation because the information is voluminous and would require the Company to compile every communication to passengers regarding rides offered in Pennsylvania.

Section 5.321 (c) of the Commissions regulations states:

Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter.

52 Pa.Code § 5.321(c).

We disagree with Lyft’s position that the information requested constitutes privileged information that would reveal personal information regarding Lyft customers. BIE correctly asserts the requested information is the same information that the Commission routinely receives and examines from other entities that provide transportation for compensation. In addition, Lyft could redact personal information regarding its customers. We also disagree that providing the requested responses, while redacting addresses, telephone numbers or credit card numbers for passengers, would cause an unreasonable burden, expense and investigation to Lyft.

Interrogatory Set-II, Number 3-5.

Interrogatory Set-II, Number three requests the identification of each jurisdiction, agency or authority within the United States that issued an order directing Lyft to cease and desist from using its mobile application or software to facilitate the transportation of persons. Interrogatories four and five seek the effective dates of such orders and a copy of the cease and desist orders.

With regard to Set-II request numbers three through five, Lyft contends that its conduct outside of the Commission’s jurisdiction has no bearing on any question before the Commission in this case, including possible penalties. Lyft further avers that such a burden should be borne by BIE, not Lyft, under the circumstances. BIE asserts that the operation by Lyft in other jurisdictions is relevant to the “reasonableness” of the requested civil penalty, as well as Lyft’s propensity to comply with the regulations of the jurisdiction within which it operates or seeks to operate. Lyft argues that its conduct outside of the Commission’s jurisdiction has no bearing on any question before the Commission in this case, including possible civil penalties. Lyft further asserts that this information is readily available to BIE, and that BIE should bear the burden of obtaining this information.

BIE has provided no legal authority to support its position that the requested information concerning activities in other jurisdictions is discoverable, under the circumstances. The factors and standards for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations are set forth in 52 Pa.Code § 69.1201. The requested information in interrogatory numbers three through five is irrelevant to this inquiry. Accordingly, we agree with Lyft that the information sought by BIE in Interrogatories 3, 4 and 5 is not discoverable in this particular claim. Further, BIE does not aver that records and information concerning Lyft’s conduct outside of the Commission’s jurisdiction are not available to BIE or that it would be unduly burdensome for BIE to obtain such information.

THEREFORE,

IT IS ORDERED:

1. That the motion to compel an answer to Interrogatory Numbers 1 and 2 and Request for Production of Documents – Set II filed by the Bureau of Investigation and Enforcement is GRANTED.

2. That Lyft, Inc. shall provide answers to Interrogatories and production requests 1 and 2 within 15 days of entry of this order.

3. That Lyft, Inc. is not precluded from requesting an appropriate protective order for any personal information included in the documents requested or from redacting e-mail

addresses, telephone numbers or credit card information for passengers which may be contained in the requested documents or in the alternative, Lyft is hereby permitted to redact the addresses, telephone numbers or credit card numbers for passengers which may be contained in the requested documents.

4. That the motion to compel an answer to Interrogatory Numbers 3, 4 and 5 and Request for Production of Documents – Set II filed by the Bureau of Investigation and Enforcement is DENIED.

Date: November 7, 2014

Mary D. Long

Administrative Law Judge

Jeffrey A. Watson

Administrative Law Judge