



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

IN REPLY PLEASE
REFER TO OUR FILE

November 7, 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. Uber Technologies, Inc.
Docket No. C-2014- 2422723
Motion for Sanctions

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Motion for Sanctions of the Bureau of Investigation and Enforcement against Uber Technologies, Inc. for refusing to respond to discovery requests in the above-captioned proceeding.

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 that reads "Step M Wimer".

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

Enclosure

cc: ALJ Mary D. Long and ALJ 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.	:	Docket No. C-2014-2422723
	:	
Uber Technologies, Inc.,	:	
Respondent	:	

NOTICE TO PLEAD

To: Karen O. Moury, Esq. Counsel for Uber Technologies, Inc.

Pursuant to 52 Pa. Code § 5.371, you are hereby notified that if you do not file a written response to the enclosed Motion for Sanctions within five (5) days from service of this notice, the facts set forth in the Motion will be deemed to be admitted and the Pennsylvania Public Utility Commission (Commission) may rule on this Motion without further input.

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: November 7, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant,	:	
	:	
v.	:	C-2014-2422723
	:	
Uber Technologies, Inc.,	:	
Respondent	:	

**MOTION FOR SANCTIONS OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO THE HONORABLE MARY D. LONG AND THE HONORABLE JEFFREY A. WATSON:

The Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission), Complainant in the above-docketed matter, by and through its prosecuting attorneys, and pursuant to 52 Pa. Code §§ 5.371-5.372, hereby files this Motion for Sanctions against Uber Technologies, Inc. (Respondent or Uber), due to Respondent's failure to provide answers to discovery requests pursuant to the presiding Administrative Law Judges' (ALJs) directive in their Interim Order on Motion to Compel and Motion for Continuance that was entered on October 3, 2014. I&E contends that the remedy requested herein is not only just but also necessary in light of Uber's blatant disregard and continued defiance of the orders of the presiding ALJs and the Commission. In support thereof, I&E avers as follows:

BACKGROUND

1. On June 5, 2014, I&E filed a Formal Complaint (Complaint) against Uber alleging, *inter alia*, that Uber acts as a broker of transportation for compensation between points within the Commonwealth through its internet and mobile application software (the Uber app), which connects passengers to individuals who have registered with Uber as independent ride-sharing operators (Uber driver). The Complaint seeks civil penalties in the amount of \$95,000 and an additional \$1,000 per day for each day that Uber continues to operate after the date of filing.

2. Uber filed an Answer to the Complaint on June 23, 2014.

3. On June 16, 2014, I&E filed a Petition for Interim Emergency Relief at Docket No. P-2014-2426846. Following an evidentiary hearing, the petition was granted by Order dated July 1, 2014, and Uber was directed to cease and desist its operations in Pennsylvania utilizing its digital platform to facilitate transportation for compensation to passengers using non-certificated drivers in their personal vehicles. By Order entered July 24, 2014, the Commission approved the July 1, 2014 Order.

4. The Commission's July 24, 2014 Order was accompanied by a Statement of Commissioner James H. Cawley, directing that a Secretarial Letter be issued seeking additional information to aid in the formulation of a Final Order in the Complaint proceeding at the above docket.

5. By Secretarial Letter dated July 28, 2014, and served upon all parties at the above docket, the Commission concluded:

Accordingly, in order to create a complete record in the Complaint proceeding at Docket No. C-2014-2422723, the Parties are 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:
 - (a) From the initiation of Uber's service in Pennsylvania to June 5, 2014 (the date I&E filed the Complaint against Uber);
 - (b) From the receipt of the cease and desist letter from the Commission's Bureau of Technical Utility Services dated July 6, 2012 to June 5, 2014;
 - (c) From June 5, 2014 to July 1, 2014 (the date the *Cease and Desist Order* became effective); and
 - (d) From July 1, 2014 to the date on which the record in this Complaint proceeding is closed.

...

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Uber Technologies, Inc., Docket No. C-2014-2422723 (Secretarial Letter dated July 28, 2014).

6. On August 8, 2014, I&E propounded Interrogatories and Requests for Production of Documents – Set I upon Uber in this proceeding. I&E's Interrogatories largely mirrored the information that was requested in the Secretarial Letter in that it asked Uber to identify the number of trips provided using its digital software between certain points in time in which Uber lacked authority to facilitate or provide passenger transportation service for compensation. Further, I&E requested the production of documents to substantiate the number of rides provided by Uber during these time periods. I&E's Interrogatories and Requests for Production of Documents – Set I also requested that Uber identify the name of the affiliate or entity responsible for providing

rides to persons between points within the Commonwealth of Pennsylvania via connections made with drivers through Uber's digital software, if such transportation was not provided by Uber Technologies, Inc.

7. On August 18, 2014, Uber filed Objections to I&E's Interrogatories and Requests for Production of Documents – Set I. Uber objected to the entirety of I&E's Interrogatories and document requests.

8. On August 28, 2014, I&E filed a Motion to Compel requesting that the presiding ALJs dismiss the objections to discovery by Uber and direct Uber to provide the information sought in I&E's Interrogatories and Requests for Production of Documents – Set I. 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 Uber prior to seeking judicial resolution of the dispute.

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

10. On October 3, 2014, the presiding ALJs entered an Interim Order granting I&E's Motion to Compel (Discovery Order).¹

11. The Discovery Order provided that "Uber Technologies, Inc. shall answer Bureau of Investigation and Enforcement Interrogatories and Requests for Production of Documents, Set I within 10 days of entry of this order." Discovery Order at 4, Ordering Paragraph No. 2.

¹ The Discovery Order also granted I&E's Motion for Continuance of the evidentiary hearing that was scheduled for October 23, 2014.

12. On October 6, 2014, Uber filed a Petition for Certification seeking certification of the Discovery Order for interlocutory review by the Commission.

13. On October 14, 2014, I&E filed a timely response opposing certification.

14. On October 17, 2014, the presiding ALJs entered an order denying Uber's Petition for Certification for interlocutory review. (Order on Petition for Certification). The order specifically directed that "a stay of proceedings has not been granted." Order on Petition for Certification at 3.

15. Therefore, Uber's responses to I&E's Interrogatories and Requests for Production of Documents – Set I were due immediately following entry of the ALJs' Order on Petition for Certification, or by October 17, 2014.

16. As of this date, Uber has failed to provide the requested responses to I&E Set I.

17. Prior to filing this Motion for Sanctions, I&E requested via e-mail to Uber's counsel that Uber provide the past due discovery responses so that I&E would be in a position to offer alternative hearing dates and could avoid filing this Motion. Uber's counsel's curt response in its entirety stated: "Uber will not be serving these discovery responses."²

² At the same time and by separate e-mail, Uber served a Motion for Judgment on the Pleadings seeking dismissal of I&E's Complaint on the grounds that Uber, as a software company, did not engage in the unauthorized transportation of persons. While I&E will respond to Uber's Motion for Judgment on the Pleadings at the appropriate time, it is important to note that I&E specifically requested that Uber identify the name of the affiliate or entity responsible for providing rides to persons between points within the Commonwealth of Pennsylvania via connections made with Uber's software, if it was not Uber. Uber is deliberately withholding this information, despite being court-ordered to disclose it, and then, inappropriately attempts to seek dismissal of I&E's Complaint for naming the incorrect entity.

MOTION FOR SANCTIONS

18. The Commission's regulations at Sections 5.371 and 5.372, 52 Pa. Code §§ 5.371-5.372, address the consequences of a failure to comply with the Commission's regulations regarding discovery. Section 5.371(a) provides:

(a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:

(1) A participant fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests, as required under this subchapter.

52 Pa. Code § 5.371(a)(1).

19. Section 5.372 provides that the Presiding Officer may impose appropriate sanctions upon a party found to be in violation of the obligations set forth in the Commission's regulations.

20. As noted above, Uber has openly refused to comply with the presiding ALJs Discovery Order, as well as the Commission's regulations pertaining to discovery, in that it has not provided *any* responses to I&E's Interrogatories and Requests for Production of Documents – Set I. This information includes trip data, supporting documentation regarding the trips or the name of the Uber affiliate that may have provided the unlawful passenger transportation, if not the Uber parent company. Essentially, Uber has chosen to ignore the Commission's authority and challenged the Commission to do anything about it. Accordingly, pursuant to Sections 5.371 and 5.372, sanctions are appropriate.

21. Section 5.372(a)(2) of the Commission's regulations, 52 Pa. Code

§ 5.372(a)(2), provides that a presiding officer may enter an order “refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing in evidence designated documents, things or testimony.”

22. Section 5.372(a)(4) of the Commission’s regulations, 52 Pa. Code § 5.372(a)(4), provides that a presiding officer may make “an order with regard to the failure to make discovery as is just.” In consideration of this motion, I&E requests that the sanctions imposed be severe because to do otherwise will say to Uber and, for that matter to every other utility, that the Commission’s discovery rules and ALJ orders are no more than suggestions that can be ignored.

23. Accordingly, I&E proposes that the presiding ALJs order the following sanctions:

- (a) The imposition of a civil penalty in the amount of one thousand dollars (\$1,000) per day for each day going forward from October 17, 2014, the date the discovery responses were due to I&E, up to the date that Uber complies with the Discovery Order. As of today, this amount totals twenty-one thousand dollars (\$21,000). This civil penalty only addresses and applies to the proposed sanctions and has no effect on the civil penalty requested in I&E’s Complaint against Uber. I&E submits that this civil penalty requested for sanctions is consistent with Sections 3301(a) and (b) of the Public Utility Code, 66 Pa.C.S. §§ 3301(a)-(b), which permits a civil penalty of \$1,000 per violation and for each and every day’s continuance in the violation of any regulation, determination or order;

- (b) Grant I&E permission to use a proxy number of Uber rides taken while Uber lacked operating authority without objection or cross examination by Uber;
- (c) Prohibit Uber from asserting a defense that Rasier-PA, LLC, Gegen, LLC or some other affiliate under the Uber Technologies, Inc. corporate umbrella is the actual broker or provider of the passenger transportation services in question; and
- (d) any other sanction that the presiding ALJs deem appropriate.

24. I&E also requests that Uber be directed to immediately provide the outstanding responses to I&E's Interrogatories and Requests for Production of Documents – Set I to I&E and report to the presiding ALJs, in writing, when it provides such responses. Because of Uber's defiant refusal to respond to I&E's Set I discovery, I&E has been deprived of information that it is entitled to know regarding the extent of Uber's provision of transportation while it was under an order directing it to cease and desist from utilizing the Uber app to facilitate transportation. Such transportation occurred after the filing of I&E's Complaint and I&E should be permitted to explore this information to determine whether additional violations occurred. Further, Uber has failed to provide the name of the Uber affiliate or entity that it alleges provided the unlawful transportation service, if it was not Uber.

25. As mentioned above, the Discovery Order also granted I&E's Motion for Continuance of the hearing that had been scheduled for October 23, 2014. The Discovery Order directed the parties to meet and confer and by November 7, 2014, provide the presiding ALJs with three alternative hearing dates regarding the rescheduling of the initial hearing.

26. Due to Uber's brazen refusal to respond to I&E's discovery requests, Uber has deprived I&E of a sufficient and reasonable opportunity to prepare its case. Because of Uber's egregious actions in withholding information that is essential to I&E's case, unfortunately, I&E is hard-pressed to offer alternative hearing dates by November 7, 2014, as requested by the presiding ALJs.³

CONCLUSION

WHEREFORE, the Bureau of Investigation and Enforcement respectfully requests, as a result of Respondent's total refusal to respond to I&E's discovery requests, that the presiding ALJs issue an order imposing a sanction of: (a) an additional civil penalty in the amount of one thousand dollars (\$1,000) per day from October 17, 2014 up to the date that discovery responses are served; (b) permit I&E to use a proxy number of Uber rides taken while Uber lacked operating authority without objection or cross examination by Uber; (c) prohibit Uber from asserting a defense that Rasier-PA, LLC, Gegen, LLC or other affiliate under the Uber Technologies, Inc. corporate umbrella is the actual broker or provider of the passenger transportation services in question; and (d)

³ It is important to note that the lack of discovery responses not only hampers the ability of I&E to prepare for an evidentiary hearing, but it also stymies I&E's consideration of the filing of an amended complaint and revised civil penalty that I&E deems would be appropriate if it had the information which has been sought in discovery and withheld by Uber.

impose any other sanction that the presiding ALJs deem appropriate.

Respectfully submitted,



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Dated: November 7, 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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Dated: November 7, 2014