**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA17105-3265**

Public Meeting held November 13, 2014

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

James H. Cawley

Pamela A. Witmer

Gladys M. Brown

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| Pennsylvania Public Utility Commission,Bureau of Investigation and Enforcementv.Lyft, Inc.  |  C-2014-2422713 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Interlocutory Review and Answer to Material Question (Petition) filed by Lyft, Inc. (Lyft) on October 10, 2014, in the above-captioned proceeding. Also before the Commission is the Motion to Strike the Petition (Motion to Strike) filed by the Commission’s Bureau of Investigation and Enforcement (I&E) on October 10, 2014.

In its Petition, Lyft seeks interlocutory Commission review and answer to the following Material Question:

Should Lyft be required to furnish the information requested in Question No. 2 of the Bureau of Investigation and Enforcement’s Interrogatories and Requests for Production of Documents – Set 1, in the above-captioned proceeding where such information is burdensome and irrelevant to the proceeding?

Lyft requests that the Commission answer the Material Question in the negative. Petition at 1.

 By Secretarial Letter issued October 22, 2014, the Commission waived the thirty-day consideration period set forth in Section 5.303 of its Regulations, 52 Pa. Code § 5.303, in order to provide adequate time for a thorough review of the Material Question. *See* 52 Pa. Code § 1.2(c); *see also C.S. Warthman Funeral Home, et al. v. GTE North, Incorporated,* Docket No. C-00924416 (Order entered June 4, 1993).

For the reasons more fully discussed below, we shall grant I&E’s Motion to Strike and remand this matter to the Office of Administrative Law Judge for such further proceedings as may be necessary.

**History of the Proceeding**

On June 6, 2014, I&E filed a Complaint against Lyft, alleging that Lyft violated Section 1101 of the Public Utility Code (Code), 66 Pa. C.S. § 1101. Specifically, I&E averred that Lyft acted as a broker of transportation for compensation between points within Pennsylvania, without the requisite Commission authority, through use of its internet and mobile application software (Lyft app) to connect passengers to individuals who registered with Lyft as independent operators. I&E sought civil penalties in the amount of $130,000 and an additional $1,000 per day for each day that Lyft continued to operate after the date on which the Complaint was filed. *Id*. at 4. On June 26, 2014, Lyft filed an Answer denying the material allegations in the Complaint.

On June 16, 2014, I&E filed a Petition for Interim Emergency Relief, at Docket No. P-2014-2426847, seeking an order from the Commission directing Lyft to immediately cease and desist from operating its passenger transportation service until it received the requisite authority. Following an evidentiary hearing, Administrative Law Judges (ALJs) Mary D. Long and Jeffrey A. Watson granted the Petition for Interim Emergency Relief by Order dated July 1, 2014 (*Cease and Desist Order*). The Commission subsequently determined that I&E met the requirements for obtaining interim emergency relief and directed Lyft to cease and desist from utilizing its digital platform to facilitate transportation of passengers utilizing non-certificated drivers in their personal vehicles until Lyft secured appropriate authority from the Commission or I&E’s Complaint was dismissed by a final and unappealable order. *See*, *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 entered July 24, 2014).

The Commission also determined that additional information would aid in the formulation of a final determination in this Complaint proceeding. Accordingly, by Secretarial Letter dated July 28, 2014 (*July 2014 Secretarial Letter*), 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.

*July 2014 Secretarial Letter* at 2.

On August 8, 2014, I&E served interrogatories upon Lyft, intended to elicit the information directed by the *July 2014 Secretarial Letter*. On August 18, 2014, Lyft objected to the interrogatories on the basis of privilege and unreasonable burden. On August 28, 2014, I&E filed a Motion to Compel the Response of Lyft to I&E’s Interrogatories and Request for Production of Documents – Set I. On August 29, 2014, I&E filed an Amended Motion to Compel the Response of Lyft to I&E’s Interrogatories and Request for Production of Documents – Set I (Motion to Compel).[[1]](#footnote-1) On September 3, 2014, Lyft filed an Answer to the Motion to Compel.

In its Answer to the Motion to Compel, Lyft indicated that it does not object to providing the number of trips sought in the *July 2014 Secretarial Letter* and which I&E requested in Interrogatory No. 1. Lyft stated, however, that it objected to

I&E’s Interrogatory No. 2. Answer at 2.[[2]](#footnote-2) Lyft objected to this discovery on the grounds of privilege because it may disclose personal information of Lyft customers, as well as on the grounds that it would impose an unreasonable burden, expense, and investigation upon Lyft to remove or redact the personal information.

I&E averred that the trip information it sought is similar to that which must be provided by other motor carriers in trip logs which are required by the Commission’s Regulations. I&E stated that, while some of the personal information related to the trips may be deemed confidential, that does not absolve Lyft from providing the information in discovery as such information could be provided pursuant to a protective order limiting the availability and public disclosure of that information. I&E Motion to Compel at 5.

By Interim Order on Motion to Compel, dated October 3, 2014 (*October 2014 Interim Order*), ALJs Long and Watson granted I&E’s Motion to Compel and directed Lyft to provide answers within fifteen days of the entry of the *October 2014 Interim Order*.

On October 8, 2014, I&E filed an Amended Complaint that, *inter alia*, increased the civil penalty amount sought to $6,986,500 based on rides that occurred after the ALJs’ *Cease and Desist Order*. Also on October 8, 2014, I&E filed a Motion to Modify Answer Periods with respect to the Amended Complaint and Interrogatories and Request for Production of Documents – Set II, which were served on Lyft on October 3, 2014. Lyft filed an Answer to Motion to Modify Answer Periods on October 10, 2014.

As previously noted, Lyft filed the instant Petition on October 10, 2014.[[3]](#footnote-3) On the same date, I&E filed a Motion to Strike.

On October 14, 2014, an on-the-record telephone conference was held, during which Lyft made an oral motion to continue the hearing scheduled for October 23, 2014.

On October 20, 2014, I&E filed a Brief in Opposition to the Petition (Brief in Opposition).

By Interim Order dated October 22, 2014, the ALJs denied I&E’s Motion to Modify Answer Periods and granted Lyft’s motion to continue the October 23, 2014 hearing. The Interim Order also scheduled the evidentiary hearing for December 10, 2014.

On October 24, 2014, I&E filed a Motion to Compel the Response of Lyft to I&E’s Request for Production of Documents – Set II, seeking to elict information relating to, among other things, the number of rides Lyft provided in Pennsylvania on certain dates.

On October 28, 2014, Lyft filed an Answer to I&E’s Amended Complaint, denying the material averments in the Amended Complaint. Lyft also filed Preliminary Objections, contending that the Commission lacks jurisdiction to grant the requested relief and that the Amended Complaint fails to state a claim on which relief could be granted.

On October 30, 2014, Lyft filed an Answer to I&E’s Motion to Strike (Answer to Motion to Strike).

 **Discussion**

**Legal Standards**

The Commission’s standards for interlocutory review are found in Section 331(e) of the Code, 66 Pa. C.S. § 331(e), and in Sections 5.302-5.304 of the Commission’s Regulations. 52 Pa. Code §§ 5.302-5.304. Section 331 (e) permits a presiding officer to certify a question for interlocutory review by the Commission when the presiding officer “finds that it is necessary to do so to prevent substantial prejudice to any party or to expedite the conduct of the proceeding.”

Interlocutory review of discovery rulings are specifically addressed in Section 333(h) of the Code, 66 Pa. C.S. § 333(h), which states:

**(h) Certification of interlocutory appeals.**—Except as provided in subsection (b)(6), an interlocutory appeal from a ruling of the presiding officer on discovery shall be allowed only upon certification by the presiding officer that the ruling involves an important question of law or policy which should be resolved at that time. Notwithstanding the presiding officer’s certification, the commission shall have the authority to dismiss summarily the interlocutory appeal if it should appear that the certification was improvident. An inter­locutory appeal shall not result in a stay of the proceedings except upon a finding by the presiding officer and the commission that extraordinary circumstances exist.

Lyft states that its Petition was filed pursuant to the Commission’s Regulation at 52 Pa. Code § 5.302. This provision states, in pertinent part:

**§ 5.302. Petition for interlocutory Commission review and answer to a material question.**

(a) During the course of a proceeding, a party may file a timely petition directed to the Commission requesting review and answer to a material question which has arisen or is likely to arise. The petition must be in writing with copies served on all parties and the presiding officer and state, in not more than three pages, the question to be answered and the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.

Pursuant to 52 Pa. Code § 5.303, the Commission may take one of the following courses of action on such a request for interlocutory review and answer to a material question:

(1) Continue, revoke or grant a stay of proceedings if necessary to protect the substantial rights of the parties.

(2) Determine that the petition was improper and return the matter to the presiding officer.

(3) Decline to answer the question.

(4) Answer the question.

The Commission’s Regulations also contain a provision that establishes specific procedural requirements for interlocutory review of discovery matters. Section 5.304(a) of the Commission’s Regulations states, in pertinent part, that rulings of presiding officers on discovery are generally not subject to interlocutory review unless interlocutory review is ordered by the Commission or certified by the presiding officer. 52 Pa. Code § 5.304(a)(1), (2). A presiding officer may certify that a discovery ruling is appropriate for interlocutory review if “the ruling involves an important question of law or policy that should be resolved immediately by the Commission.” 52 Pa. Code
§ 5.304(b).

Procedurally, a party seeking certification of a petition for interlocutory review of a presiding officer’s ruling regarding a discovery matter must file a Petition for Certification within three days of the ruling in question. 52 Pa. Code § 5.304(c)(1). Such Petition must “state the question to be certified and the reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceedings.” 52 Pa. Code § 5.304(c)(3). If the presiding officer decides to grant a party’s request for certification, the certified question will then be presented to the Commission for consideration. 52 Pa. Code § 5.304(e)(2). The Commission will then (1) continue, revoke or grant a stay of the proceedings, (2) determine that certification was improper and return the matter to the presiding officer for resolution, or (3) answer the certified question. 52 Pa. Code § 5.304(h).

Review of discovery orders are generally disfavored and are only permitted in limited circumstances. *MCI WorldCom Communications, Inc. v. Verizon Pennsylvania* *Inc*., Docket No. C-00015149 (Order entered November 13, 2001). If a petition for interlocutory review of a discovery matter is properly before the Commission for consideration, the same standards that apply to interlocutory review of material questions on non-discovery matters apply to interlocutory review of discovery matters. *MCI WorldCom Communications, supra*, at 15. The standards for interlocutory review are well established. The pertinent consideration is whether interlocutory review is necessary in order to prevent substantial prejudice – that is, the error and any prejudice flowing therefrom could not be satisfactorily cured during the normal Commission review process. *Joint Application of Bell Atlantic Corp. and GTE Corp.,* Docket No.
A-310200F0002, *et al.* (Order entered June 14, 1999); *Pa. PUC v. Frontier Communications of Pa. Inc.,* Docket No. R‑00984411 (Order entered February 11, 1999); *In re: Knights Limousine Service, Inc*., 59 Pa. P.U.C. 538 (1985).

Generally, petitions for interlocutory review are not favored, as the preferred approach is to permit proceedings to move forward in the normal course in order to provide all parties, the presiding officer, and the Commission with a full opportunity to develop the record, brief issues, and present arguments at each stage. *Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021 (Order entered October 23, 2009), at 3. The correctness of the presiding officer’s ruling involved in a request for interlocutory Commission review of a material question is not a determinative issue when we set out to examine whether a petitioner has fulfilled the regulatory requirements. *Saucon Creek Assoc., Inc. v. Borough of Hellertown,* 69 Pa. P.U.C. 467 (1989).

**ALJs’ Interim Order**

In the *October 2014 Interim Order*, the ALJs granted I&E’s Motion to Compel and directed Lyft to provide answers to I&E’s Interrogatory No. 2 within fifteen days of the entry of that Order. In reaching their determination, the ALJs noted that none of the Parties in this proceeding have sought a protective order. The ALJs agreed with I&E that the potential confidential status of information is not a basis for objecting to the discovery of the information. The ALJs additionally found that Lyft did not adequately demonstrate that it was unduly burdensome for it to redact credit card numbers, social security numbers, e-mail addresses, telephone numbers, or other personal identifying information for the trip-related documents I&E requested. The ALJs further indicated that Lyft had the ability to negotiate a confidentiality agreement for the purposes of discovery and to seek a protective order for the purposes of the evidentiary hearing in this proceeding. *October 2014 Interim Order* at 3.

**Positions of the Parties**

In its Petition, Lyft avers that an answer to the Material Question it has presented is necessary to expedite the conduct of this proceeding and prevent irreparable harm and substantial prejudice to Lyft that would otherwise result from the *October 2014 Interim Order* and cannot be cured during the ordinary course of Commission review. Petition at 1-2. Lyft states that, while its Petition relates to discovery matters, it believes that the breadth of the Material Question merits consideration by the Commission and, as such, requests a waiver of 52 Pa. Code § 5.304. Petition at 2 (citing *Keystone Alliance v. Philadelphia Electric Co*., 1981 Pa. PUC Lexis 5)).

Lyft asserts that I&E’s Interrogatories in question are objectionable on three grounds. First, Lyft contends that I&E’s Interrogatory No. 2 would cause an unreasonable burden and expense to Lyft and is, therefore, prohibited under Section 5.361(a)(2) of the Commission’s Regulations, 52 Pa. Code § 5.361(a)(2).[[4]](#footnote-4) Lyft states that the information requested would be voluminous and would unnecessarily require Lyft to commit significant resources to compile the information. Petition at 2. Lyft also states that it would be unduly burdened by removing or redacting privileged information from the requested documents. Second, Lyft avers that Interrogatory No. 2 would require Lyft to make an unreasonable investigation contrary to Section 5.361(a)(4) of the Commission’s Regulations, 52 Pa. Code § 5.361(a)(4).[[5]](#footnote-5) Lyft indicates that it would be required to spend significant time and resources to compile the broad discovery responses sought by I&E. Lyft additionally indicates that the investigation is unreasonable, because any probative value related to the information requested in Interrogatory No. 2 is duplicative of information that Lyft already provided in response to a separate interrogatory from I&E relating to ride information requested by the Commission in the *July 2014 Secretarial Letter*. Petition at 3. Third, Lyft argues that the information is privileged and, thus, undiscoverable in its entirety, because a party may not ask interrogatories relating to “matter which is privileged.” *Id*. (citing 52 Pa. Code

§§ 5.321(c); 5.361(a)(3)).

 In response to the Petition, I&E avers that Lyft’s Petition is not permitted under the Commission’s Regulations and should be stricken for three reasons. First, I&E asserts that Lyft’s Petition is an impermissible pleading because it fails to first request that the presiding ALJs certify the Material Question for interlocutory review and, instead, proceeds directly to the Commission to seek interlocutory review of a discovery matter. I&E indicates that Section 5.304 clearly provides that a ruling by a presiding officer on discovery is not subject to interlocutory review unless it is certified by a presiding officer. Motion to Strike at 3; Brief in Opposition at 8-9. Second, I&E contends that Lyft failed to file a timely Petition for Certification, which was required to be filed by October 6, 2014, pursuant to 52 Pa. Code § 5.304(c)(1), and should not be permitted to seek interlocutory review now through an impermissible pleading. Motion to Strike at 3; Brief in Support at 9.

 Third, I&E states that Lyft has not provided any legal authority that supports its impermissible pleading. I&E distinguishes Lyft’s Petition from the Petition filed in *Keystone Alliance*, *supra*, on the basis that the party in *Keystone Alliance* did, in fact, file a Petition for Certification of a discovery matter, which was subsequently denied by the ALJ in that case. I&E notes that the Commission waived the certification requirement only after the ALJ denied the certification request. Accordingly, I&E asserts that Lyft’s Petition should not be considered and should be stricken as an impermissible pleading. Motion to Strike at 4; Brief in Opposition at 9-10.

 In the alternative, I&E avers that, even if the Commission elects to consider Lyft’s Petition, Lyft fails to meet the stringent requirements for interlocutory review because it does not present an extraordinary circumstance or compelling reason for granting interlocutory review. I&E indicates that a discovery matter 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.” Motion to Strike at 4; Brief in Opposition at 10 (quoting 52 Pa. Code § 5.304(b)). I&E also indicates that this standard is not satisfied unless the discovery ruling involves compelling circumstances which cannot be remedied in the normal course of Commission review after an initial decision is issued. Motion to Strike at 4; Brief in Opposition at 10 (citing *Re Structural Separation of Bell Atlantic-Pa., Inc. Retail and Wholesale Operations*, Docket No.
M-00001353 (Order entered July 20, 2000)). I&E asserts that Lyft’s Petition merely attempts to second-guess the ALJs’ determination regarding a routine discovery matter and does not identify any compelling circumstances justifying interlocutory review. I&E contends that Lyft simply reiterates the arguments it made in its objections to I&E’s interrogatories but does not raise any significant questions of law or policy. Brief in Opposition at 11.

 Additionally, I&E avers that production of the requested trip information pursuant to a protective order is appropriate. I&E states that the requested information is necessary for I&E to evaluate the extent of Lyft’s transportation activities that occurred before Lyft’s application for emergency temporary authority was granted[[6]](#footnote-6) and that the requested information is relevant to the subject matter of I&E’s Amended Complaint. I&E also states that the type of information it requests is required to be provided by any common carrier subject to the Commission’s jurisdiction upon request, as the Commission is responsible for knowing which carriers are offering transportation for compensation and when and where such transportation is provided. Brief in Opposition at 13. For example, I&E notes that call and demand carriers are required to maintain daily log sheets that contain specific trip information, including the places of origin and destination, the name of the driver, and the meter reading at the beginning and end of each trip. *Id*. (citing 52 Pa. Code § 29.313(c)). Furthermore, according to I&E, Lyft’s disclosure of any confidential information relating to customers’ names, e-mail addresses, and payment information can be resolved by producing the information pursuant to a protective order. I&E observes that Lyft has not sought a protective order regarding this information and contends that the fact that the requested information may be confidential is not a valid basis for precluding its disclosure. Brief in Opposition at 14. Based on the above reasons, I&E requests that the Commission strike, or in the alternative, deny Lyft’s Petition.

 In its Answer to Motion to Strike, Lyft states that the Commission can consider an interlocutory appeal without certification in an “exceptional situation” or where “the ruling involves an important question of law or policy that should be resolved at this stage of the proceedings.” Answer to Motion to Strike at 6 (citing *MCI WorldCom Communications, supra*; *Re Structural Separation of Bell Atlantic-Pa., supra*). Lyftavers that an “exceptional situation” exists in this case, because I&E is refusing to enter into a protective order with Lyft regarding the information I&E requested in Interrogatory No. 2. Lyft also avers that I&E informed Lyft on October 28, 2014, that I&E is now refusing to honor an agreement on a protective order that I&E and Lyft entered into on September 9, 2014. Lyft believes that its Petition should be heard by the Commission because it will suffer incurable prejudice due to the ALJs’ decision granting I&E’s Motion to Compel, both from the burden of collecting and producing the documents and the loss of confidentiality. Answer to Motion to Strike at 6. Lyft indicates that the ALJs’ determination was based, in part, on the assumption that Lyft could provide the requested information pursuant to a confidentiality agreement for discovery purposes and a protective order for purposes of the evidentiary hearing. *Id*. at 6-7. According to Lyft, because I&E will not enter into or honor such agreements, Lyft’s discovery responses could be disclosed immediately to its competitors. *Id*. at 7.

 Lyft next addresses the merits of its Petition and asserts that the Petition should be granted for three reasons. First, Lyft states that the ALJs erred by not quashing Interrogatory No. 2 on relevance grounds. Lyft indicates that, because it responded to I&E’s Interrogatory No. 1, I&E is aware of the number of trips that were arranged through the Lyft app in Pennsylvania and was able to amend its Complaint in this proceeding based on that information. As such, Lyft believes that I&E’s statement that it needs the requested information to corroborate Lyft’s response to Interrogatory No. 1 is disingenuous. *Id*.

 Second, Lyft states that the ALJs erred by not quashing Interrogatory No. 2 on the basis of the burden that Lyft would have to undertake to respond. Lyft indicates that, assuming it has one to five documents per ride, the number of responsive documents would quickly reach the hundreds of thousands due to the substantial number of rides at issue. *Id*. Lyft argues that, contrary to I&E’s assertions that cab companies are required to provide the same information I&E is requesting from Lyft, cab companies are not required to provide every document sent to individuals regarding every trip provided, including all communications regarding arranging the trip and all communications regarding past trips. *Id*. at 8. Third, Lyft reiterates its concerns about confidentiality based on its assertions that I&E does not intend to treat the documents Lyft has been requested to produce as confidential documents. As a result, Lyft avers that the Commission should not compel Lyft to respond to Interrogatory No. 2 and should address I&E’s refusal to treat documents produced by Lyft as confidential. *Id*. at 8.

**Disposition**

Upon review, we shall grant I&E’s Motion to Strike. We agree with I&E that Lyft should have complied with our Regulation at 5.304 in seeking interlocutory review of a discovery matter. We will not consider Lyft’s Material Question because Lyft failed to follow the appropriate procedures, as set forth in our Regulations, for seeking interlocutory review of a material question pertaining to a discovery matter. We will therefore remand this matter to the Office of Administrative Law Judge for such further proceedings as may be necessary.

Under the circumstances in this case, Lyft should have filed a Petition for Certification with the ALJs in this proceeding within three days of the issuance of the *October 2014 Interim Order* pursuant to 52 Pa. Code § 5.304(c)(1). Instead, Lyft elected to skip this process and proceed straight to the Commission for a determination on its Material Question.

Although Section 5.304(a)(1) permits interlocutory review of a presiding officer’s ruling on a discovery matter when ordered by the Commission, we decline to issue such an order in this case. Contrary to Lyft’s assertion in its Answer to Motion to Strike, it has not presented an important question of law or policy that requires an immediate resolution. The Material Question at issue, whether Lyft should be required to furnish requested information when it believes such information is burdensome and irrelevant, is a standard discovery issue which does not merit interlocutory review. Additionally, there is no indication in the record that I&E will not honor any confidentiality agreements or protective orders between the Parties. However, if Lyft is concerned about this issue, nothing precludes Lyft from seeking a protective order from the ALJs regarding the requested information. Even if I&E were to object to Lyft’s request for a protective order, the ALJs may, upon Lyft’s motion, grant a protective order pertaining to the discovery matters in this proceeding. *See*, 52 Pa. Code § 5.362. For these reasons, we decline to consider the merits of Lyft’s Petition and grant I&E’s Motion to Strike.

Lyft acknowledges that its Petition relates to discovery matters, but asks the Commission to waive the applicable requirements in Section 5.304 of our Regulations based on its belief that the breadth of the Material Question merits consideration by the Commission. *See*, Petition at 2 (citing *Keystone Alliance v. Philadelphia Electric Co*., 1981 Pa. PUC Lexis 5). Aside from its statement regarding the breadth of the Material Question, Lyft has not provided any compelling reasons for a waiver of our Regulations in this case. The averments in Lyft’s Petition pertain only to discovery matters and reiterate the arguments Lyft made in its Answer to the Motion to Compel. We agree with I&E that the procedural circumstances in the *Keystone Alliance* proceeding are distinguishable from the procedural circumstances in this case, particularly because Philadelphia Electric Company followed the proper procedure for requesting certification of a Material Question pertaining to a discovery matter. Therefore, we will not waive Section 5.304.

Finally, even if this Commission were to waive the requirements of Section 5.304 and consider the Petition pursuant to Section 5.302, Lyft’s Petition still does not meet the requirements for interlocutory review. Lyft has not presented any compelling reasons for our review of a routine discovery matter and has not shown that review is necessary to prevent substantial prejudice that could not be satisfactorily cured during the normal Commission review process. As we previously stated, Lyft’s concerns regarding confidentiality may be alleviated by Lyft seeking a protective order.

**Conclusion**

Based on our review of the instant Petition, the Brief in Opposition thereto, the Motion to Strike and the Answer thereto, we shall grant the Motion to Strike and remand this matter to the Office of Administrative Law Judge for such further proceedings as may be necessary, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

 1. That the Motion to Strike the Petition of Lyft, Inc. for Interlocutory Review and Answer to a Material Question, filed by the Commission’s Bureau of Investigation and Enforcement on October 10, 2014, is granted.

2. That this matter is remanded to the Office of Administrative Law Judge for such further proceedings as may be necessary.

**BY THE COMMISSION**

Rosemary Chiavetta

 Secretary

ORDER ADOPTED: November 13, 2014

ORDER ENTERED: November 13, 2014

(SEAL)

1. I&E indicated that the Motion to Compel was amended to reflect that I&E unsuccessfully attempted to resolve the discovery dispute with Lyft before seeking judicial resolution of the dispute. [↑](#footnote-ref-1)
2. Interrogatory No. 2 is as follows:

2. Identify and produce any and all invoices, receipts, e-mails, records and documents that [Lyft] sent to individuals in relation to rides they received between points within the Commonwealth of Pennsylvania via connections made with drivers through [Lyft]’s website on the Internet, [Lyft]’s mobile application or [Lyft]’s digital software during the following periods:

a. From the initiation of Lyft’s service in Pennsylvania up to and including June 5, 2014;

b. From June 6, 2014 up to and including July 1, 2014;

c. From July 2, 2014 up to and including July 24, 2014;

d. From July 25, 2014 up to and including the date of receipt of I&E’s Interrogatories and Requests for Production of Documents – Set I. [↑](#footnote-ref-2)
3. Our records reflect that Lyft did not file a Brief in Support of its Petition. [↑](#footnote-ref-3)
4. Section 5.361(a)(2) provides that discovery is not permitted if it “[w]ould cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.” [↑](#footnote-ref-4)
5. Section 5.361(a)(4) provides that discovery is not permitted if it [w]ould require the making of an unreasonable investigation by the deponent, a party or witness.” [↑](#footnote-ref-5)
6. *See*, *Application of Lyft, Inc. for Emergency Temporary Authority to Operate an Experimental Transportation Network Service Between Points in Allegheny County, PA*, Docket No. A-2014-2432304 (Order entered July 24, 2014). [↑](#footnote-ref-6)