



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

IN REPLY PLEASE
REFER TO OUR FILE

November 17, 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
**Brief in Opposition to Petition for Certification of a Discovery
Ruling for Interlocutory Review**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's Brief in Opposition to Lyft, Inc.'s Petition for Certification of a discovery ruling for interlocutory review.

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,

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 CERTIFICATION OF A
DISCOVERY RULING FOR INTERLOCUTORY REVIEW
OF LYFT, INC.**

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I. STATEMENT OF THE CASE

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 § 5.304(d), files this Brief in Opposition to the Petition for Certification of a Discovery Ruling for Interlocutory Review (Petition for Certification) filed on November 10, 2014 by Lyft, Inc. (Lyft or Respondent).

A. Procedural History

On June 5, 2014, I&E filed a Formal Complaint (Complaint) against Lyft 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 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**

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.

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).

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:

- 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) (emphasis added). 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 Set I Discovery). I&E's Set I Discovery 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

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).

compensation. I&E's Set I Discovery also requested documents that Lyft sent to passengers in relation to rides they received between points 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 Set I Discovery and 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. Notably, Lyft did not object to disclosing the number of rides provided between the initiation of Lyft's service in Allegheny County and August 8, 2014, when Lyft was not authorized to operate.

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.

On October 8, 2014, I&E filed an Amended Complaint in the above docket, 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 September 11, 2014, on a confidential basis and in response to I&E's Set I Discovery. I&E **honored** the confidentiality of the alleged proprietary information by filing a proprietary version of the Amended Complaint, which included the specific number of rides that Lyft provided during certain points in time.

Because Lyft continued to provide passenger trips via connections made through the Lyft app from August 9, 2014, the day after I&E issued its Set I Discovery Lyft, to August 14, 2014, the date that Lyft was granted emergency temporary operating authority, on October 3, 2014, I&E propounded I&E Interrogatories and Requests for Production of Documents – Set II (I&E Set II Discovery). I&E Set II Discovery consists of six interrogatories and requests for production of documents directed to Lyft, two of which reference Lyft's continued operations during the above time frame and while subject to a cease and desist order.

On October 19, 2014, Lyft objected to five of the six discovery requests.

On October 24, 2014, I&E filed a Motion to Compel requesting that the presiding ALJs dismiss the objections to discovery by Lyft and direct Lyft to provide the information sought by I&E.

On October 29, 2014, Lyft answered the Motion to Compel. Instead of focusing on answering the issues specifically set forth in I&E's Motion, Lyft tangentially engaged in an attack on I&E's credibility, including an accusation that I&E, in a "shocking reversal," elected not to support a protective order regarding the alleged proprietary

nature of Lyft's trip data. Lyft omitted mentioning that I&E's position was based on the Commission's Order Regarding Proprietary Claims at Docket Nos. A-2014-2415045, P-2014-2442001 and A-2014-2415047 that was entered on October 23, 2014, in which the Commission concluded that the aggregate number of trips Lyft provided prior to receiving authority in Pennsylvania does not warrant proprietary treatment (October 23 Order). Lyft also indicated a lack of trust in I&E's propensity to maintain the confidentiality of trip data despite the fact that Lyft never requested a protective order in this proceeding and I&E honored the confidentiality of trip data disclosed in response to I&E Set I Discovery by filing a proprietary version of the Amended Complaint.

On November 7, 2014, I&E filed a Motion to Take Official Notice of the Commission's October 23 Order to cure the erroneous accusations launched against I&E by Lyft in its answer to Motion to Compel.

On November 7, 2014, the presiding ALJs entered an Interim Order granting I&E's Motion to Compel with regard to two discovery requests seeking information about the number of rides that occurred between August 9, 2014 and August 14, 2014, and pertinent supporting documentation (Discovery Order).

On November 10, 2014, Lyft filed the instant Petition for Certification seeking interlocutory review of the Discovery Order.

The Initial Hearing in this matter is scheduled for December 10, 2014.

B. Lyft's Petition for Certification and the Discovery Order

Lyft is pursuing interlocutory review because the presiding ALJs granted I&E's Motion to Compel Lyft to provide the following: (1) the number of transactions or rides

provided to persons in Pennsylvania via connections made with drivers through Lyft's website, mobile application or digital software from August 8, 2014 up to and including August 13, 2014, when Lyft was not authorized to provide passenger transportation service for compensation in Pennsylvania; and (2) supporting documentation including invoices, receipts, e-mails or other documents generated by Lyft for rides that occurred during that period of time.

A purpose of I&E's discovery request was to gather the necessary information in compliance with the express directive of the Commission in its July 28, 2014 Secretarial Letter at this docket. The Secretarial Letter seeks the number of transactions or rides provided by Lyft during specific periods of time in order to create a complete record and aid in the formulation of a final order in the Complaint proceeding.

In the Discovery Order, the ALJs found that the trip data sought by I&E's Set II discovery was not protected from disclosure by the self-incrimination clause of the Fifth Amendment. The ALJs correctly concluded that "as a corporation, Lyft is not protected by the privilege against self-incrimination provided by the Fifth Amendment." Discovery Order at 5. Further, the ALJs disagreed with Lyft that the supporting documentation regarding the transactions or rides performed by Lyft is not privileged information that would reveal personal information regarding Lyft customers. The ALJs found that "the requested information is the same information that the Commission routinely receives and examines from other entities that provide transportation for compensation." Discovery Order at 6. The ALJs noted that Lyft could redact the personal information of its customers. Significantly, the ALJs further concluded that "Lyft, Inc. is not precluded

from requesting an appropriate protective order” Discovery Order at 9, Ordering Paragraph No. 3.

Recognizing the heavy burden imposed on one who seeks interlocutory review of a discovery ruling, Lyft seeks certification of an issue that has been thoroughly considered by the ALJs and its arguments to withhold discovery have been previously rejected. As such, Lyft fails to demonstrate extraordinary circumstances of compelling reasons necessitating interlocutory review.

II. STANDARD OF REVIEW

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)). Interlocutory review should not be used to “second-guess” the rulings of an administrative law judge. *Application of Academy Bus Tours, Inc.*, 1995 WL 945186 (Pa. P.U.C. 1995).

[T]he correctness or erroneousness 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 there from, could not be satisfactorily cured during the normal Commission review process. . . .

We do not routinely grant interlocutory review except upon a showing by petitioner of extraordinary circumstances . . .

Id. at 2-3 (emphasis in original). See *Re Structural Separation of Bell Atlantic-Pa., Inc.*, 94 Pa. P.U.C. 375, 2000 WL 1336490 at 3 (Pa. P.U.C. 2000); *Re Pa. Universal Serv. Fund*, 2005 WL 2170442 at 4 (Pa. P.U.C. 2005) (“correctness or erroneousess of the ALJ’s action is not a relevant consideration in determining whether interlocutory review is appropriate . . . analysis will focus on whether the alleged error, and any prejudice flowing from that issue, could not be satisfactorily cured during the normal course of Commission review . . .”) (Citing *Shea v. Freeport Telephone & Telegraph Co.*, Docket No. C-812580 (order entered Feb. 15, 1984) and *Application of Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985)).

III. SUMMARY OF ARGUMENT

Lyft has not met its heavy burden to justify certification of a discovery ruling for interlocutory review. No extraordinary circumstance, or novel or important issue of law is presented. Providing responses to I&E Set II Discovery will not cause Lyft substantial prejudice, especially if Lyft requests a protective order, which it has not yet sought, and/or redacts e-mail addresses, telephone numbers or credit card information for passengers that may be contained in the requested documents. The ALJs' Discovery Order does not invite extraordinary interlocutory review.

IV. ARGUMENT

The Discovery Order appropriately addresses the arguments that Lyft presents again in its Petition for Certification. There is no extraordinary circumstance or novel or important legal issue that suggests a basis for interlocutory review.

In its Petition for Certification, Lyft, once again, argues that the trip data sought by I&E's Set II Discovery constitutes highly confidential information and, therefore, is not discoverable. Lyft presents two arguments seeking to withhold I&E's legitimate discovery request. Lyft first argues that it should not be required to furnish the allegedly "highly confidential" information in response to I&E's Set II Discovery because it is seeking reconsideration and judicial review of the Commission's October 23 Order. The Commission's October 23 Order directed *the public release* of aggregated trip data, a portion of which I&E requested in the I&E Set II Discovery. *See* October 23 Order. However, reconsideration or judicial review of the Commission's decision to unseal the

record of a separate proceeding to the public does not negate Lyft's obligation to produce discoverable information to I&E in the Complaint proceeding.

In a second but related argument, Lyft accuses I&E of failing to "honor its agreement to keep such answers confidential" and infers that I&E will divulge allegedly highly confidential information to the public if such information were produced in discovery. Lyft Petition at 3. Lyft cites no evidence to support its assertions. To the contrary, I&E maintained the confidentiality of Lyft's trip data that was produced in response to I&E Set I Discovery by filing a proprietary version of the Amended Complaint that redacted the trip data.

I&E merely indicated to Lyft that it would neither support nor oppose a Motion for Protective Order in light of the Commission's October 23 Order regarding proprietary claims. I&E's position does not preclude Lyft from seeking a protective order in this proceeding. Moreover, despite the fact that no motion for protective order has been filed, I&E has maintained the confidentiality of Lyft's information contrary to Lyft's disingenuous assertions.

Lyft's Petition for Certification is a thinly veiled attempt to delay producing information that is discoverable and evade enforcement of its unlawful actions. The fact that the information sought may be confidential or proprietary is not a valid basis to withhold from disclosure when Lyft failed to seek a protective order in this proceeding. In sum, the ALJs' decision to grant, in part, I&E's Motion to Compel was proper. Certification of the question should not be granted.

V. CONCLUSION

There is no compelling circumstance presented by the Discovery Order's grant of I&E's Motion to Compel responses to I&E's Interrogatories and Requests for Production of Documents – Set II that requires certification for immediate Commission review.

Lyft's Petition should be denied.

Respectfully submitted,



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Date: November 17, 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).

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