**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 FOR PROTECTIVE ORDER**

 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.[[1]](#footnote-1)

 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 provide trip data and the parties were directed to consider whether refunds were appropriate and whether Lyft’s conduct, if proven illegal, negates the need for the proposed service and/or the fitness of Lyft 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.

 On October 3, 2014, BIE served upon Lyft, six additional 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 a timely answer. By order dated November 7, 2014, we granted the motion to compel as it related to additional trip data and customer information, but denied the motion as it related to Lyft’s activity in other jurisdictions.

 On November 10, 2014, Lyft sought certification of the November 7 Order for interlocutory review by the Commission. We declined to certify the order, noting that Lyft had not requested a protective order in this proceeding due to the litigation on the question of the confidential nature of the trip data.

 Lyft now seeks a protective order which would designate the raw trip data and customer contact data requested by BIE in discovery as confidential and proprietary pursuant to 52 Pa.Code § 5.365. Lyft’s request is supported by the affidavit of Joseph Okpaku, Director of Public Policy for Lyft. Lyft also presents for our signatures a proposed protective order which permits both parties to designate information as confidential and to prevent disclosure of such designated information to the public. BIE did not object to the proposed protective order and by letter dated November 25, 2014, stated that it takes no position whether Lyft’s motion should be granted.

 The question of whether the trip data requested by the Commission in the July 28, 2014 Secretarial Letter should be considered a “trade secret” and protected from public disclosure, first arose in the proceedings to consider Lyft’s application for authority to operate in Allegheny County at PUC Docket No. A-2014-2415045. By interim order dated July 31, 2014, we directed Lyft to provide the trip data requested by the Secretarial Letter for our consideration in the application proceeding. On the eve of hearing, Lyft presented us with a motion for a protective order. That motion was opposed by a protestant in that proceeding. By order dated September 2, 2014, we denied the request for a protective order because Lyft failed to support its position that the trip data was proprietary for transportation network companies, when similar data was not proprietary for other types of motor carriers. At the hearing on the application, Lyft requested an opportunity to bring a challenge to the September 2 Order to the Commission. In order to permit the hearing to continue in order to meet a Commission-imposed deadline for a recommended decision, we granted Lyft a temporary protective order.

 Lyft thereafter filed a petition for a material question to the Commission for consideration of whether the trip data should be considered a trade secret and protected from public disclosure. By Order entered October 23, 2014, the Commission answered the question in the negative and directed that the trip data presented in the application proceeding be unsealed. Lyft filed, among other things, a petition for reconsideration, which was granted by the Commission on November 13, 2014, pending further review of the merits of Lyft’s claims.[[2]](#footnote-2)

 In its request for a protective order in these enforcement proceedings, Lyft urges us to recognize that the procedural posture of the application proceedings is different than the enforcement proceedings here. Therefore, it is appropriate to take a fresh view of the public policy considerations which must be weighed in our consideration of whether the trip data and customer contact data should be protected from public disclosure.

 First, we agree that the nature of these proceedings as an enforcement action of the Commission is somewhat different in character than the application proceedings. In the application proceedings, the central issue was whether the applicant demonstrated that it could operate safely and whether the grant of authority was in the public interest. In enforcement proceedings, the public interest, while important, is not as integral to our inquiry of whether or not Lyft violated the Public Utility Code. Therefore the public does not have the same level of interest in disclosure.

 Next, we find that Lyft’s position that it will suffer competitive disadvantage, that the information is developed at a cost, and that the information has value to Lyft’s competitors is supported by Mr. Okpaku’s affidavit.[[3]](#footnote-3) Further, it is now clear that the information is not generally shared by transportation network companies.[[4]](#footnote-4) In fact, similar trip data has not been provided to the Commission by Uber Technologies, Inc., or its affiliate Rasier-PA LLC, even though it was also ordered to do so. We further note that in similar enforcement proceedings, Uber Technologies, Inc. has refused to answer similar discovery requests by BIE.

 Finally, although not raised by Lyft in its petition for a protective order, we are further of the view that whether or not the trip data is indeed a trade secret remains controversial and has not been decided by the Commission or the Commonwealth Court. To decline to offer protection, at least in these proceedings, would impose a significant consequence on Lyft and delay these enforcement proceedings. These factors also weigh in favor of granting the protective order.

 Therefore, we will grant Lyft’s petition for protective order for the purposes of this proceeding. Our ruling here is limited solely to this complaint proceeding. In the event that the Commission or the Commonwealth Court determines that the trip data is not a trade secret, we may dissolve this order upon consideration of an appropriate motion.

 THEREFORE,

 IT IS ORDERED:

1. That motion for a protective order by Lyft, Inc. is GRANTED.

 2. This Protective Order is hereby granted with respect to all materials and information produced in this action (“Produced Material”), by any party to the above-captioned action (“Party”) or nonparty thereto (collectively, the “Producing Party”). All persons granted access to Produced Material shall use and disclose such information only in accordance with this Protective Order.

 3. The Producing Party may designate as “Highly Confidential” any Produced Material that the Producing Party in good faith represents not to be in the public domain and either to contain any trade secrets as that term is defined under Pennsylvania law, or to contain other confidential or proprietary information, including, without limitation, financial, strategic, research, development, manufacturing costs or other costs of doing business, technical, personal or commercial information, or any other information not normally revealed to third parties or, if revealed to third parties, is such that the Producing Party would require that the Produced Material be held in confidence.

 4. Nothing in this Protective Order shall be construed to require a Party to produce or disclose documents or information not otherwise required to be produced under applicable rules or orders. Production or disclosure of “Highly Confidential” material under this Protective Order shall not prejudice the right of any Producing Party to maintain the trade secret status or confidentiality of that information in other contexts.

 5. Nothing in this Order shall restrict in any way a Producing Party’s use or disclosure of its own information and material for any purpose, regardless of how such information or material is designated under this Protective Order. Nothing in this Order shall restrict in any way the use or disclosure by the party receiving any Produced Material (the “Receiving Party”) of: (i) any information which is lawfully in the public domain; (ii) any information which lawfully becomes part of the public domain as a result of publication not involving a violation of this Order; (iii) any information that was received by a Receiving Party whether before or after the disclosure, from a source who obtained the information lawfully and under no obligation of confidentiality to the Producing Party; (iv) any information that was independently developed by it after the time of disclosure by personnel who have not had access to the Producing Party’s material; (v) any information used or disclosed with the consent of the Producing Party; or (vi) any information used or disclosed pursuant to a court order or an order of this Commission.

 6. Highly Confidential material shall be made available to the Commission and Commission Staff (including BIE) for use in this proceeding. For purposes of filing, to the extent that Highly Confidential material is placed in the Commission’s report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Highly Confidential material is placed in the Commission’s testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Highly Confidential material shall be permitted or prohibited only as set forth in this Protective Order.

 7. Highly Confidential material shall be made available to counsel of record in this proceeding pursuant to the following procedures:

 a. “Highly Confidential” material shall be produced for inspection by a Party’s counsel of record only, except that the Commission and Commission Staff shall have access to it. No person who may be entitled to receive, or who is afforded access to any Highly Confidential material shall use or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

 b. No other persons may have access to the Highly Confidential material except as authorized by order of the Commission or of the presiding Administrative Law Judges. No person who may be entitled to receive, or who is afforded access to any Highly Confidential material shall use or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

 8. Prior to making Highly Confidential material available to any person as provided in Paragraph 4 of this Protective Order, counsel for the Producing Party must receive a written acknowledgment from that person in the form attached to this Protective Order and designated as Appendix A.

 9. A Producing Party shall designate data or documents as constituting or containing Highly Confidential information by affixing an appropriate “Highly Confidential” or proprietary stamp or typewritten designation on such data or documents. To the extent feasible, where only part of data compilations or multi-page documents constitutes or contains Highly Confidential information, the Producing Party shall designate only the specific data or pages of documents which constitute or contain Highly Confidential information.

 10. Any public reference to Highly Confidential information by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Highly Confidential information to understand fully the reference and not more. The Highly Confidential information shall remain a part of the record, to the extent admitted, for purposes of administrative or judicial review.

 11. Parts of any record in this proceeding containing Highly Confidential Information, including but not limited to all exhibits, writings, testimony, cross examination, argument and responses to discovery, and including reference thereto as mentioned in ordering Paragraph 9 above, shall be sealed for all purposes, including administrative and judicial review, unless such Highly Confidential Information is released from the restrictions of this Order, either through the agreement of the Parties or pursuant to order of the Administrative Law Judges or the Commission. Unresolved challenges arising under Paragraph 9 shall be decided, on motion or petition, by the presiding officers or the Commission as provided by 52 Pa.Code § 5.365(a).

 12. The Parties affected by the terms of this Order shall retain the right to question or challenge the admissibility of Highly Confidential information; to refuse or object to the production of Highly Confidential information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Highly Confidential information beyond that allowed in this Order; and to seek additional measures of protection of Highly Confidential information beyond those provided in this Order.

 13. Upon completion of this proceeding, including any administrative or judicial review, all copies of all documents and other materials, including notes, which contain any Highly Confidential information shall be immediately returned upon request to the Party furnishing such Highly Confidential information. In the alternative, Parties may provide an affidavit of counsel affirming that the materials containing or reflecting Highly Confidential information have been destroyed.

 14. A Party shall use commercially reasonable efforts, including restrictions in engagement letters and employment policies and the filing of appropriate legal actions, to prevent its employees, former employees, counsel, expert witnesses, and consultants who were involved in this proceeding from unlawfully disclosing or otherwise misusing, both during and after this proceeding, Highly Confidential information furnished during the course of this proceeding.

 15. In the event that a Producing Party inadvertently or unintentionally fails to mark qualified Highly Confidential material, the Producing Party shall, promptly upon discovery

of the failure, notify the Receiving Party and take the following corrective action:

 a. The Producing Party promptly shall notify all persons who have received the Highly Confidential material that the materials are designated Highly Confidential, and must be treated as designated in this Protective Order;

 b. The Producing Party shall take all reasonable steps to place the applicable “Highly Confidential” label on the designated material;

 c. The Receiving Party shall treat all copies of the newly designated materials (regardless of the designations they formerly bore) as set out in this Protective Order; and

 d. If the Receiving Party disagrees with the redesignation of the Produced Material it may challenge the confidentiality designation pursuant to and in the manner prescribed in Paragraph 12.

 16. Any violation of this Protective Order will be presumed to result in irreparable harm to the Producing Party.

 17. If any Party (i) is subpoenaed in another action, (ii) is served with a demand in another action to which it is a party, or (iii) is served with any other legal process by one not a party to this litigation, seeking Produced Material that was designated as Highly Confidential (the “Subpoenaed Party”), under this Protective Order, the Subpoenaed Party shall transmit a copy of such subpoena, demand, or legal process within five (5) business days of receipt of such subpoena, demand or legal process, to the Producing Party that produced the Produced Material and shall reasonably cooperate with the Producing Party in maintaining the status of the information, pursuant to the terms of this Protective Order.

 18. Any Party may, on motion or other request to the Court and for good cause shown, seek a modification of this Protective Order, and, by its agreement to this Protective Order, no Party shall be deemed to have waived the right to modifications later sought by such Party.

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 Mary D. Long

 Administrative Law Judge

Date: December 3, 2014 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Jeffrey A. Watson

 Administrative Law Judge

**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

TO WHOM IT MAY CONCERN:

The undersigned is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the retaining Receiving Party) and is not, or has no knowledge or basis for believing that he/she is: (1) an officer, board member, stockholder, partner or owner other than stock of any competitor of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Producing Party”) or an employee of any competitor of the Producing Participant who is primarily involved in the pricing, development, and/or marketing of products or services that are offered in competition with those of the Producing Participant; or (2) an officer, board member, stockholder, partner, or owner other than stock of any affiliate of a Competitor of the Producing Participant.

The undersigned has read and understands the Protective Order that deals with the treatment of Highly Confidential information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order.

|  |  |  |
| --- | --- | --- |
| DATE |  | SIGNATUREPRINT NAMEADDRESSEMPLOYER |

Appendix A

**C-2014-2422713 - PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT v. LYFT, INC.***Revised 11/14/14*

STEPHANIE M WIMER ESQUIREMICHAEL L SWINDLER ESQUIRE

PA PUC BUREAU OF INVESTIGATION AND ENFORCEMENT

PO BOX 3265HARRISBURG PA 17105-3265***Accepts eService***

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**202-639-7700**

1. The preliminary objections were dismissed by interim order dated November 25, 2014. [↑](#footnote-ref-1)
2. There are also proceedings in the Commonwealth Court on the issue of whether the trip data should remain under seal. [↑](#footnote-ref-2)
3. We did not have the benefit of Mr. Okpaku’s affidavit in support of the motion in the application proceeding. [↑](#footnote-ref-3)
4. 52 Pa.Code § 5.365. [↑](#footnote-ref-4)