



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

IN REPLY PLEASE
REFER TO OUR FILE

January 9, 2015

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. *et al.*
Docket No. C-2014- 2422723

Dear Secretary Chiavetta:

Enclosed for filing is the Second Motion for Sanctions of the Bureau of Investigation and Enforcement against Uber Technologies, Inc. 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 contact me at (717) 783-6369.

Sincerely,

Michael L. Swindler
Prosecutor

Stephanie M. Wimer
Prosecutor

Enclosures

cc: Honorable Mary D. Long
Honorable Jeffrey A. Watson
As per Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant,	:	
	:	
v.	:	C-2014-2422723
	:	
Uber Technologies, Inc., <i>et al.</i>	:	
Respondent	:	

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**SECOND 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 Second 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' (presiding ALJs) directive in their Interim Order on Motion to Compel and Motion for Continuance that was entered on October 3, 2014 and Respondent's subsequent failure to comply with the presiding ALJs' Interim Order Motion for Sanctions dated November 26, 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 original Complaint as filed seeks civil penalties in the amount of \$95,000 and an additional \$1,000 per day for each day that Uber continued to operate without authority 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

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

Documents, Set I within 10 days of entry of this order.” Discovery Order at 4, Ordering Paragraph No. 2.

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 presiding ALJs’ Order on Petition for Certification, or by October 17, 2014.

16. On November 7, 2014, I&E filed a Motion for Sanctions due to Uber’s continued refusal to respond to I&E’s discovery as directed by the presiding ALJs’ October 3 Order.

17. On November 26, 2014, the presiding ALJs entered an Order granting I&E’s Motion for Sanctions (November 26 Order). Uber was directed to serve full and complete answers to all outstanding discovery requests on or before December 12, 2014. The November 26 Order further directed that in the event that Uber failed to serve answers to discovery on or before December 12, 2014, Uber shall be assessed a civil penalty in the amount of \$500 per day for each day it fails to answer until the conclusion

of the evidentiary hearing on the above-captioned complaint. The November 26 Order directed that “penalties are due and payable each day.” November 26 Order at 6.

18. As of this date, Uber has failed to serve any of the outstanding responses to I&E’s discovery, in complete defiance of the presiding ALJs’ November 26 Order.

19. As of this date, Uber has failed to pay any of the civil penalty of \$500 per day, which is due and payable for each day it fails to answer until the conclusion of the evidentiary hearing on the above-captioned complaint, in complete defiance of the presiding ALJs’ November 26 Order.

SECOND MOTION FOR SANCTIONS

20. 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).

21. 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.

22. 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. Accordingly, pursuant to Sections 5.371 and 5.372, sanctions are appropriate.

23. Uber has now openly refused to comply with the presiding ALJs' November 26 Order, in that it has ignored a directive to serve full and complete answers to all outstanding discovery requests on or before December 12, 2014, or pay a civil penalty in the amount of \$500 per day, due and payable each day, for each day it fails to serve the required discovery responses until the conclusion of the evidentiary hearing on the above-captioned complaint.

24. Uber has neither served the outstanding discovery, nor paid the daily civil penalty.

25. 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* (emphasis added)." In consideration of Uber's blatant defiance of the presiding ALJs' November 26 Order, I&E avers that new, more severe sanctions be imposed upon Uber.

26. The presiding ALJs' November 26 Order afforded Uber "one more opportunity to comply with the October 3 Order." November 26 Order at 5. Uber has chosen to ignore the presiding ALJs' generous final opportunity.

27. 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."

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

- (a) The imposition of a civil penalty in the amount of one thousand dollars (\$1,000) per day and per outstanding discovery response, from October 17, 2014, the date the discovery responses were due to I&E, to the date that Uber complies with the Discovery Order, or the date of the conclusion of the evidentiary hearing in the above-captioned complaint, whichever is first met. This civil penalty shall be separate from and in addition to any civil penalty imposed upon Uber should I&E successfully prove the allegations set forth in its 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. I&E sought this sanction in its first motion for sanctions. In its November 26 Sanctions Order, the presiding ALJs elected to refrain from granting this request, stating, “we decline to prevent Uber Technologies, Inc. from offering evidence, *at this time* (emphasis added).” November 26 Order at 5. I&E understands the desire of the presiding ALJs to reach a “decision based on substance rather than a decision based upon a procedural default....” November 26 Order at 4. However, there can be no meaningful decision based on substance when Uber has deprived I&E of the very “substance” of I&E’s case that is the lynchpin of the allegations to be proven at hearing;²
- (c) Alternatively, in lieu of permitting I&E to use a proxy number of Uber rides taken while Uber lacked operating authority without

² It is for this reason that I&E will file, concurrently with this Motion, an Amended Complaint which, *inter alia*, revises the civil penalty sought against Uber based on a “proxy” number of rides provided to passengers for the period that Uber, *et al.*, lacked the required Commission authority. The use of such proxy trip data is implemented by I&E as a last resort given Uber’s complete defiance of the orders and directives of the presiding ALJs and Commissioners to address this information in this proceeding. I&E further notes that the November 26 Sanctions Order did not preclude I&E from utilizing proxy trip data, but only that it was not deemed appropriate at that time to allow the use of proxy trip data without an opportunity for objection or cross-examination by Uber. Given Uber’s failure to comply with the November 26 Order, I&E requests that the presiding ALJs reconsider their position regarding the application of 52 Pa. Code § 5.372(a)(2).

objection or cross-examination by Uber, I&E requests that the trip data that was provided, if any, in Attachment B of the Confidential Statewide Compliance Plan filed by Rasier-PA LLC on December 24, 2014 at Docket No. A-2014-2424608 be unsealed solely to the I&E prosecuting attorneys, witnesses and support staff who are assigned to work on this matter should such trip data be the same as that sought by I&E in discovery;

- (d) 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
- (e) any other sanction that the presiding ALJs deem appropriate.

29. 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 that is critical to its case.

30. Due to Uber's ongoing 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, I&E intends to file an Amended Complaint utilizing proxy trip data.

WHEREFORE, as a result of Respondent's ongoing refusal to comply with the directives of this Commission's orders and directives of the presiding ALJs to respond to I&E's discovery requests, the Bureau of Investigation and Enforcement respectfully requests that the presiding ALJs issue a second sanctions order imposing a sanction of: (a) an additional civil penalty in the amount of one thousand dollars (\$1,000) per day per outstanding discovery request until Uber complies with the Discovery Order, or the date of the conclusion of the evidentiary hearing in the above-captioned complaint, whichever is first met; (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 or, alternatively, direct that the trip data provided, if any, in Attachment B of the Confidential Statewide Compliance Plan filed by Rasier-PA LLC on December 24, 2014 at Docket No. A-2014-2424608 be released to I&E personnel working on this matter should such trip data be the same as sought by I&E in discovery; (c) enforce 52 Pa. Code

§ 5.372(a)(2), by “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”; and (d) impose any other sanction that the presiding ALJs deem appropriate.

Respectfully submitted,



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Dated: January 9, 2015

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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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