



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

IN REPLY PLEASE  
REFER TO OUR FILE

February 6, 2015

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation  
and Enforcement v. Uber Technologies, Inc., *et al.*  
Docket No. C-2014- 2422723  
**Answer to Motion for Reconsideration**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's Answer to the Motion of Uber Technologies, Inc. for Reconsideration of the Interim Order Regarding Settlement Conference and Assignment of Settlement Judge in the above-captioned matter.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Stephanie M. Wimer".

Stephanie M. Wimer  
Prosecutor

Enclosure

cc: ALJ Mary D. Long and ALJ Jeffrey A. Watson  
As per certificate of service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT  
TO THE MOTION OF UBER TECHNOLOGIES, INC.  
FOR RECONSIDERATION OF INTERIM ORDER REGARDING  
SETTLEMENT CONFERENCE  
AND ASSIGNMENT OF SETTLEMENT JUDGE**

TO ADMINISTRATIVE LAW JUDGES LONG AND WATSON:

Pursuant to 52 Pa. Code § 5.103(c), 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, hereby files this Answer in Opposition to the Motion of Uber Technologies, Inc. (Uber or Respondent) for Reconsideration of the Interim Order Regarding Scheduling of a Settlement Conference and Assignment of Settlement Judge. For the reasons explained herein, I&E respectfully submits that Uber's Motion should be dismissed, or in the alternative, denied.

1. Pursuant to the presiding Administrative Law Judges' (ALJs) Interim Order Setting Procedural Schedule dated October 2, 2014, the following directive was provided:

Any motions must be served on or before **January 16, 2015**. Responses to any motions filed must be served on or before **January 26, 2015**. No motions filed after that date will be decided before the evidentiary hearing.

*See* Ordering Paragraph 2 of Interim Order Setting Procedural Schedule.

2. On February 4, 2015, Uber filed the instant Motion for Reconsideration of the Interim Order Regarding the Scheduling of a Settlement Conference and Assignment of a Settlement Judge. This Motion was filed well beyond the January 16, 2015 deadline established for filing motions in this proceeding and without leave from the presiding ALJs. Therefore, Uber's Motion for Reconsideration should be dismissed in its entirety for being untimely.

3. Alternatively, should Uber's Motion for Reconsideration be considered, the Motion should be denied because Uber has not offered any new and novel arguments, or identified considerations that appear to have been previously overlooked or not addressed. *See Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 559 (Order entered December 17, 1982) (relating to the standard for reconsideration of Commission orders).

4. I&E hereby incorporates the entirety of its Answer, dated January 15, 2015, to Uber's initial Motion for Scheduling of Settlement Conference and Assignment of Settlement Judge.

5. In its Motion for Reconsideration, Uber again proposes to provide to I&E trip data and other outstanding discovery responses concerning information about the entities involved in Pennsylvania operations prior to August 21, 2014, **only if** I&E is restricted in its use of such information for settlement discussions, which Uber suggests take place

during a structured settlement conference. *See* ¶ 5 of Uber's Motion for Reconsideration.

6. Uber's proposal was previously considered and rejected, and thus does not warrant reconsideration.

7. The terms of Uber's proposal are patently unfair. I&E bears the burden of proof in this case and has sought trip data as well as other discoverable information from Uber for the past eight (8) months. Uber has provided nothing, in defiance of numerous orders directing that it produce such information to I&E. Specifically, Uber has ignored the following directives to provide discoverable information, including trip data, to I&E in this proceeding:

- The Commission's July 28, 2014 Secretarial Letter;
- The Interim Order on Motion to Compel and Motion for Continuance dated October 3, 2014;
- The Interim Order on Petition for Certification dated October 17, 2014;
- The Interim Order on Motion to Compel Set II Interrogatories dated November 25, 2014; and
- The Interim Order on Motion for Sanctions dated November 26, 2014.

8. Uber's averment that it has complied with the Commission's July 28, 2014 Secretarial Letter by providing confidential trip data as part of Rasier-PA LLC's (Rasier-PA) Compliance Plan filed in connection with Rasier-PA's Application proceedings at Docket Nos. A-2014-2416127 and A-2014-2424608 is not correct. Such information was submitted *under seal* solely for the Commissioners and Commission advisory staff assigned to work on the Application proceeding. In fact, the July 28, 2014 Secretarial Letter expressly stated that such trip data was to be addressed in the I&E Complaint proceeding as well. Uber knows very well that filing the trip data under seal in Rasier-

PA's Application proceedings is an attempt to preclude I&E from gaining access to such trip data.

9. Given Uber's conduct to date, Uber should not now be permitted to dictate when and under what conditions I&E receives outstanding discovery responses and how I&E is permitted to utilize such information in this proceeding, especially since Uber has already been ordered to provide this information without conditions.

10. By failing to respond to any discovery, including disclosing trip data to I&E, Uber has violated discovery rules as well as principles of basic fairness in this proceeding and has deprived I&E of due process. The Commission has concluded that a party's refusal to answer reasonable and relevant discovery questions is prejudicial to other parties' due process. *See Application of Walter J. Jackson III t/a Jackson's Moving*, 2014 Pa. PUC LEXIS 299, Docket No. A-2014-2401884 (Order entered June 17, 2014). A failure to comply with the rules of discovery directly affects the due process rights of the promulgating party, and thus prevents orderly and fair litigation. *Nippes v. PECO Energy*, 2013 Pa. PUC LEXIS 573, Docket No. C-2013-2363324 (Initial Decision Issued August 20, 2014; Final Order Entered September 30, 2013).

11. Therefore, I&E cannot agree to Uber's proposal that it provide trip data, and other information that has been requested about the entities involved in Pennsylvania operations prior to August 21, 2014, "with the express understanding and agreement that the information is to be used only to aid in settlement discussions" during the structured settlement conference that Uber suggests occur on February 18, 2015.

12. Uber avers that there is "no downside" to I&E accepting the information under

this unreasonable condition because Uber states that I&E will maintain its procedural right to pursue sanctions. However, Uber has already been sanctioned a civil penalty of \$500 per day for each day that it fails to provide discovery responses to I&E. The \$500 per day civil penalty is due and payable each and every day. At the present time, Uber has not made any civil penalty payment to the Commission for its misconduct and has not responded to any of I&E's discovery requests. Uber has wholly deprived I&E of all procedural rights in this proceeding.

13. Simply stated, there can be no meaningful settlement discussion of this matter until Uber provides I&E with all outstanding discovery responses that it was ordered to provide, without restriction.

WHEREFORE, for the reasons set forth above, the Bureau of Investigation and Enforcement respectfully requests that the Motion of Uber Technologies, Inc. for Reconsideration of the Interim Order Regarding Scheduling Settlement Conference and Assignment of Settlement Judge be dismissed or, alternatively, denied.

Respectfully submitted,



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Dated: February 6, 2015

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

### Service by First Class Mail and Email:

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Dated: February 6, 2015