



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 Protective Order**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's Answer to the Motion of Uber Technologies, Inc. for a Protective Order 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 A PROTECTIVE ORDER**

TO ADMINISTRATIVE LAW JUDGES LONG AND WATSON:

Pursuant to 52 Pa. Code §§ 5.61(a)(1) and 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 to the Motion of Uber Technologies, Inc. (Uber or Respondent) for a Protective Order. 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 a Protective Order, well beyond the January 16, 2015 deadline established for filing motions in this proceeding.

3. Nothing prevented Uber from seeking a Protective Order much earlier. In fact, this proceeding began approximately eight (8) months ago. As early as July 28, 2014, Uber was directed to provide information to I&E, including trip data, which it claims is confidential. It should have sought a Protective Order then. However, once again, Uber elected to ignore all Commission directives, Secretarial Letters, ALJ Orders and even sanctions culminating in the imposition of a civil penalty of \$500 per day for each day that Uber fails to provide trip information, among other information, to I&E.<sup>1</sup>

4. Therefore, Uber's Motion for Protective Order should be dismissed in its entirety for being untimely.

5. Alternatively, should Uber's Motion for Protective Order be considered, the Protective Order should be denied because the terms contained therein are patently unfair.

6. Uber proposes to provide to I&E, by February 13, 2015, trip data and discovery responses concerning information requested about the entities involved in Pennsylvania operations prior to August 21, 2014, **but only if** I&E is restricted in its use of such information for settlement discussions only, which Uber suggests take place

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<sup>1</sup> In addition, Uber has not paid any of the civil penalty imposed as a sanction in this proceeding.

during a structured settlement conference on February 18, 2015.<sup>2</sup>

7. 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

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<sup>2</sup> Uber's request for a settlement conference has already been considered and denied. On January 14, 2015, Uber filed a motion seeking the scheduling of a settlement conference and the assignment of a settlement judge. Uber's motion was denied by Interim Order dated January 23, 2015. In yet another refusal to respect, adhere to or abide by an ALJ Order, on February 4, 2015, Uber filed a motion seeking reconsideration of the January 23, 2015 Interim Order. Interestingly, Uber's terms for the settlement conference in its motion for reconsideration remain unchanged. Specifically, Uber agrees to provide I&E with discoverable information for settlement purposes only, *i.e.* not litigation. This condition is unacceptable and deprives I&E of its right to due process. I&E will respond to Uber's motion for reconsideration by separate filing.

proceeding as well. Uber knows very well that filing the trip data under seal in Rasierra PA's Application proceedings is an attempt to preclude I&E from gaining access to such trip data.

9. Given Uber's dilatory 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 these conditions.

10. The information sought in discovery, including the trip data, is significant and highly relevant to this proceeding. In its Amended Complaint, I&E alleges that Uber, or an affiliate, illegally brokered and provided for the transportation of persons for compensation in the Commonwealth of Pennsylvania, without holding authority, on or before March 13, 2014, and continued to facilitate passenger transportation through the Uber software app up to and including August 21, 2014 without Commission approval and in blatant defiance of the orders directing it to cease and desist. Potentially tens of thousands of trips were unlawfully provided during this time frame and it is nearly impossible for I&E to have first-hand knowledge, or otherwise be cognizant of, each unlawful trip that occurred. This information is solely within the possession of Uber and/or one or more of its affiliates and constitutes the crux of this matter.

11. 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).

12. Therefore, I&E cannot agree to the terms of the proposed Protective Order, which precludes I&E from using trip data and other information produced by Uber “for any purpose other than to aid in settlement discussions.” *See* Paragraph 4 of Uber’s proposed Protective Order.

WHEREFORE, for the reasons set forth above, the Bureau of Investigation and Enforcement respectfully requests that the Motion for a Protective Order of Uber Technologies, Inc. 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