**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :

Bureau of Investigation and Enforcement :

:

v. :C-2014-2422723

:

Uber Technologies, Inc. :

**INTERIM ORDER REGARDING**

**VARIOUS PROCEDURAL MATTERS**

On June 6, 2014, the Commission’s Bureau of Investigation and Enforcement (BIE), filed a complaint against Uber Technologies, Inc. (Uber). The complaint alleged, among other things, that Uber was 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 $95,000 and an additional $1,000 per day for each day that Uber continues to operate after the date of filing. Uber filed an answer on June 23, 2014.

BIE also filed a petition for 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 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, Uber was directed to address the following questions:

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:
2. From the initiation of Uber’s service in Pennsylvania to June 5, 2014 (the date I&E filed the Complaint against Uber);
3. 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;
4. From June 5, 2014, to July 1, 2014 (the date the *Cease and Desist Order* became effective); and
5. From July 1, 2014, to the date on which the record in this Complaint proceeding is closed.
6. Should there be a finding that Uber’s conduct in any one or all of the periods in question (1), above, was a violation of the Public Utility Code, whether refunds or credits to customers would be an appropriate remedy.
7. Whether either evidence of prior unlawful operations or contumacious refusal to obey Commission orders negates the need for the proposed service and/or the fitness of the applicant as a common carrier such that no certificate of public convenience can be issued by the Commission.

On August 8, 2014, BIE served interrogatories and a request for documents upon Uber, intended to elicit the information directed by the July 28 Secretarial Letter.

BIE’s interrogatories sought (1) the number of trips for the time periods consistent with those requested by the July 28 Secretarial Letter; (2) the name of the affiliate that provided the trips if they were not provided by Uber Technologies; and (3) supporting documentation including invoices, receipts, e-mails or other documents generated by Uber Technologies or the affiliate responsible for the distribution of the supporting documentation. Uber objected to each of the interrogatories and document requests on the grounds that the discovery (1) seeks privileged material; (2) calls for irrelevant information; (3) seeks information that is not admissible at hearing and is not reasonably calculated to lead to admissible evidence; and

(4) providing the information would cause unreasonable annoyance and burden to Uber.

Uber objected to the interrogatories on a variety of grounds. After attempts to resolve the dispute were unsuccessful, BIE filed a motion to compel on August 29, 2014. Uber filed a timely response, which repeated the objections. By order dated October 3, 2014

(October 3 Order), we rejected Uber’s arguments and directed it to answer the discovery within 10 days of entry of the order.[[1]](#footnote-1) Uber filed a petition for certification of the order for interlocutory review by the Commission. That petition was denied by order dated October 17, 2014.

On November 7, 2014, BIE filed a motion for sanctions because Uber refused to respond to BIE’s discovery as directed by the October 3 Order. BIE contended that Uber’s continued refusal to provide the trip data and other information sought in discovery, BIE has been unable to discover the scope of Uber’s transportation activities and has not been able to fully prepare its case. Uber filed a response to the motion.

By order dated November 26, 2014 we required that Uber serve full and complete answers to all outstanding discovery requests on or before December 12, 2014. The order further provided that, in the event that Uber would fail to serve answers to discovery on or before December 12, 2014, it 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 penalties were made due and payable each day. We concluded that the assessment of a civil penalty was appropriate pursuant to Section 3301 of the Public Utility Code, which permits the assessment of a civil penalty to “refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the Commission” and Section 5.372(a)(4) of the Commission’s regulations, which permits us to impose any sanction which is just. We indicated that we would provide Uber with one more opportunity to comply with the October 3 Order, however, if it continued to refuse to comply, we shall impose a civil penalty of $500 per day for each day thereafter that it fails to serve discovery responses until the conclusion of the evidentiary hearing on the complaint. The order entered on November 26, 2014 further provided that the $500 per day civil penalty, as a sanction for failing to provide the requested discovery information would be assessed, in addition to any penalties which we may impose if BIE is successful in proving the violations of the Public Utility Code alleged in its complaint.

On January 9, 2015, BIE filed an amended complaint, which replaces its complaint filed on June 5, 2014, in order to identify additional respondents affiliated with Uber Technologies to this proceeding which are averred to be responsible for or involved in facilitating and/or providing unauthorized passenger motor carrier services within the Commonwealth. In addition, the amended complaint updates and quantifies the alleged violations alleged by BIE by removing the “per day” violation component and replacing it with a “per ride” violation component and recalculating the appropriate civil penalty as the relief requested. BIE also calculated a proposed civil penalty based upon a “proxy” number of trips. On February 2, 2015, Uber filed an answer to the amended complaint, and requested that the amended complaint be dismissed with prejudice.

Also, on January 9, 2015, BIE filed its second motion for sanctions. BIE avers that Uber has failed to provide answers to discovery requests pursuant to the interim order on the motion to compel and motion for continuance entered on October 3, 2014 and that Respondent failed to comply with the interim order motion for sanctions entered on November 26, 2014. BIE has averred that Uber has openly refused to comply with the orders and regulations of the Commission and has failed to abide by the November 26, 2014 order requiring Respondent to serve full and complete answers to all outstanding discovery requests on or before December 12, 2014 or pay the civil penalty. BIE avers that Uber has neither served the outstanding discovery, nor paid the daily civil penalty, and requests that new, more severe sanctions be imposed upon Uber.

BIE proposes several possible sanctions for our consideration, including the imposition of civil penalties of $1,000 for each day Uber continues to fail to answer the discovery from October 17, 2014 to the date that Uber complies with the discovery order; grant BIE permission to use a “proxy” number of trips taken while Uber lacked Commission authority without objection or cross-examination; prohibiting Uber from asserting the defense that transportation was provided by an affiliate of Uber Technologies, rather than by Uber itself; as well as any other sanction deemed appropriate.

On January 14, 2015, Uber filed an answer to the motion. In its answer to the second motion for sanctions, Uber reiterated that it opposed the motion for the same reasons set forth in its response filed to the original motion for sanctions on November 12, 2014.

On January 29, 2015, an interim order on the second motion for sanctions was entered. The motion for sanctions was held in abeyance, and scheduled oral argument on the motion for February 18, 2015.

The oral argument on the second motion for sanctions convened as scheduled on February 18, 2015. After initial argument by counsel and prior to adjourning the proceeding, the parties entered into discussions in an attempt to resolve the outstanding issues in this matter. Counsel for the parties expressed a desire to continue their discussions subsequent to the February 18, 2015 proceeding and agreed upon the terms set forth in the ordering paragraphs below.

THEREFORE,

IT IS ORDERED:

1. That the second motion for sanctions filed by the Bureau of Investigation and Enforcement on January 9, 2015 is held in abeyance, subject to the terms set forth below.
2. That the parties shall be permitted to continue their settlement discussions, and shall submit their proposed stipulations to the undersigned presiding officers on or before March 4, 2015. In the event that the parties are unable to enter into any proposed stipulations, on or before March 6, 2015, Respondent shall serve full and complete answers to all outstanding discovery requests. Thereafter, the parties shall promptly provide proposed dates for the scheduling of the evidentiary hearing in this matter.
3. That nothing herein shall modify or stay any provision, order or obligation imposed upon any party by the prior discovery orders entered in this matter, including, without limitation, the Interim Order Motion For Sanctions entered on November 26, 2014.
4. That in addition to the above, it is hereby ordered that BIE shall serve the entities identified as Respondents in the amended complaint, filed on January 9, 2015, along with a notice to plead or defend, within ten (10) days of this date. Said entities shall timely file an appropriate responsive pleading to the amended complaint and counsel for such entities shall timely file a notice of appearance with the Commission’s Secretary.

Mary D. Long

Administrative Law Judge

Date: February 24, 2015

Jeffrey A. Watson

Administrative Law Judge

**C-2014-2422723- Pennsylvania Public Utility Commission, BUREAU OF INVESTIGATION AND ENFORCEMENT V. UBER TECHNOLOGIES, INC.**

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1. The order was amended on October 17, 2014, to permit Uber to redact confidential customer information such as email addresses, credit card numbers and social security numbers. [↑](#footnote-ref-1)