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May 26, 2015

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PA PUBLIC UTILITY COMMISSION  
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**VIA OVERNIGHT DELIVERY & EMAIL**

Secretary's Bureau  
Attn: Secretary Rosemary Chiavetta  
Pennsylvania Public Utilities Commission  
Commonwealth Keystone Building  
2nd Floor, Room-N201  
400 North Street  
Harrisburg, Pennsylvania 17120

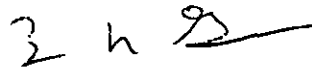
**RE: *Petition of Kim Lyons and PG Publishing, Inc d/b/a The Pittsburgh Post-Gazette for an Interim Emergency Order, PUC Dkt. No. P-2014-2442001; PUC Ref. Dkt. No. A-2014-2415045; and PUC Ref. Dkt. No. A-2014-2415047***

Dear Secretary Chiavetta:

On behalf of Kim Lyons and PG Publishing, Inc. d/b/a The Pittsburgh Post-Gazette, enclosed for filing please find the Answer to the Petition for Stay or Supersedeas of Lyft, Inc.

Thank you for your attention to this matter.

Respectfully,

  
Zachary N. Gordon

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ZNG  
Enclosure

cc: Andrew George, Esquire, *counsel for Lyft, Inc.*, (via email)  
Michael W. Gang, Esquire, *counsel for Lyft, Inc.*, (via email)  
Bohdan R. Pankiw, Esquire, *Chief Counsel for the PUC* (via email)  
Michael S. Henry, Esquire, *counsel for Executive Transportation, Inc.* (via email)  
David William Donley, Esquire, *counsel for JB Taxi LLC t/a Country Taxi Cab*  
(via email)  
Samuel Marshall, *CEO & President of Insurance Fed. Of Pennsylvania* (via email)  
Lloyd R. Persun, Esquire, *counsel for MTR Trans. Inc. and Billtown Cab* (via email)  
Dennis G. Weldon, Jr., Esquire, *counsel for Philadelphia Parking Authority* (via  
first class mail)

PENNSYLVANIA PUBLIC UTILITY COMMISSION

*Petition of Kim Lyons and PG Publishing, Inc  
d/b/a The Pittsburgh Post-Gazette for an Interim  
Emergency Order*

Docket No. P-2014-2442001

Ref. Dkt. No. A-2014-2415045

Ref. Dkt. No. A-2014-2415047

**ANSWER TO THE  
PETITION FOR STAY OR  
SUPERSEDEAS OF  
LYFT, INC.**

Filed on behalf of:  
Petitioners, Kim Lyons and  
*The Pittsburgh Post-Gazette*

Counsel of Record  
for this Party:

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PA PUBLIC UTILITY COMMISSION  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

*Application of Lyft, Inc., a corporation of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of Transportation Network Company for passenger trips Between Points in Allegheny County, PA*

Docket No. A-2014-2415045

*Petition of Kim Lyons and PG Publishing, Inc d/ b/ a The Pittsburgh Post-Gazette for an Interim Emergency Order*

Docket No. P-2014-2442001

*Application of Lyft, Inc., a corporation of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of Transportation Network Company for passenger trips between points in Pennsylvania*

Docket No. A-2014-2415047

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PA PUBLIC UTILITY COMMISSION  
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**ANSWER TO THE PETITION FOR STAY OR SUPERSEDEAS OF LYFT,  
INC.**

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Kim Lyons and PG Publishing, Inc. d/b/a The Pittsburgh Post-Gazette (collectively "The Post-Gazette") file the within Answer to the Petition for Stay or Supersedeas of Lyft, Inc.

**Introduction**

1. This case arises from two separate, but interrelated, petitions before the Pennsylvania Public Utility Commission ("PUC" or "Commission"). Both relate to whether a portion of the record in the applications of Lyft, Inc. ("Lyft") to operate experimental transportation services should be sealed.

2. On September 10, 2014, The Post-Gazette brought a Petition for an

Interim Emergency Order (“The Post-Gazette’s Petition”) at PUC Dkt. No. P-2014-2442001 to unseal the record. The Post-Gazette asserted and Lyft agreed the PUC proceeding was a quasi-judicial proceeding. Therefore, the record could not be sealed unless Lyft met its burden for sealing under the common law and First Amendment rights of access.

3. Lyft filed a Petition for Interlocutory Review and Answer to a Material Question (“Petition for Interlocutory Review”) at PUC Dkt. No. A-2014-2415045 on September 23, 2014, seeking review of the Administrative Law Judges’ (“ALJ”) September 2, 2014 Interim Order denying Lyft’s Motion for Protective Order.

4. The specific matter at issue was whether trip data and insurance data introduced into evidence in a September 3, 2014 hearing should be sealed. The Post-Gazette sought to unseal this evidence. Lyft opposed that effort, asserting the evidence is proprietary, and should remain under seal.

5. On October 23, 2014, this Commission decided both The Post-Gazette’s Petition and Lyft’s Petition for Interlocutory Review in one opinion. While, the PUC denied The Post-Gazette’s Petition, with respect to Lyft’s Petition for Interlocutory Review, the PUC found that Lyft’s trip data was not proprietary and ordered that the record be unsealed.

6. On October 31, 2014, Lyft filed a Petition for a Partial Stay or Supersedeas (“Petition for Stay”) with this Commission asking for a stay of the order unsealing the record, and noting that Lyft intended to file a Petition for

Reconsideration by November 3, 2014. On November 3, 2014, Lyft filed a Petition for Reconsideration.

7. On November 3, 2014, Lyft also filed a Petition for Review and Emergency Application for Stay with the Commonwealth Court, seeking review and an order staying this Commission's October 23, 2014 Order.

8. On November 4, 2014, the Secretary of this Commission issued a letter that delayed release of the trip data at issue pending responses to Lyft's Petition for Reconsideration and Petition for Stay.

9. On November 10, 2014, The Post-Gazette filed a Cross-Petition for Review also seeking review of this Commission's October 23, 2014 Order.

10. On November 13, 2014, this Commission issued an Order, which decided to hear the merits of Lyft's Petition for Reconsideration. The Petition for Review and Cross-Petition for Review before the Commonwealth Court were therefore discontinued.

11. This Commission agreed to consider the issues raised in The Post-Gazette's Cross-Petition for Review along with the issues raised in Lyft's Petition for Reconsideration and Petition for Stay.

12. On November 14, 2014, The Post-Gazette filed an Answer to Lyft's Petition for Reconsideration and Petition for Stay.

13. On May 19, 2015, this Commission denied the request sought in Lyft's Petition for Reconsideration.

14. On May 22, 2015, Lyft filed a Petition for Stay or Supersedeas (“Second Petition for Stay”).

15. On May 22, 2015, The Post-Gazette sent a letter to this Commission informing this Commission that a response would be filed to Lyft’s Second Petition for Stay.

**Argument**

16. Lyft’s Second Petition for Stay does not meet the standard this Commonwealth requires to issue a stay.

17. The specific standard to grant a stay is well established by the Commonwealth Court as follows:

This Court may grant a stay if the applicants [1] make a strong showing that they are likely to prevail on the merits; [2] if they show they will suffer irreparable injury without the stay; and [3] if the stay will not substantially harm other interested parties or [4] adversely affect the public interest.

*Southeastern Pennsylvania Transp. Auth. v. Ass'n of Cmty. Organizations for Reform Now*, 563 A.2d 574, 574-75 (Pa. Cmwlth. 1989) (denying stay) (citing *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. Cmwlth. 1983)). Lyft must satisfy each element of this test in order to receive a stay.

**Lyft is Unlikely to Prevail on the Merits**

18. Lyft must demonstrate that they are likely to prevail on the merits. *Southeastern Pennsylvania Transp. Auth.*, 562 A.2d at 574-75. To prevail, Lyft must show that this Commission’s order should be reversed under the Commonwealth Court’s

standard of review.

19. “This Court’s standard of review of a decision of the PUC is limited to considering whether substantial evidence supports necessary factual findings, whether the PUC erred as a matter of law, and whether any constitutional rights were violated.” *Lloyd v. Pa. P.U.C.*, 17 A.3d 425, 429 (Pa. Cmwlth. 2011).

20. “This Court may not substitute its judgment for that of the PUC when substantial evidence supports the PUC’s decision on a matter within the commission’s expertise.” *Id.* (internal quotations omitted).

21. “Judicial deference is even more necessary when the statutory scheme is technically complex.” *Id.* (internal quotations omitted).

22. Lyft’s Second Petition for Stay does not even discuss this high appellate burden.

23. The ALJs that first heard this matter, initially denied Lyft’s Petition for a Protective Order on September 2, 2014, because Lyft did not produce any evidence that the trip data was proprietary. Instead the ALJs found that Lyft’s evidence consisted solely of bald assertions.

24. Lyft failed to provide any substantial evidence in support of its Petition. Belatedly Lyft attempted to supplement the record with a late-filed affidavit. This Commission, however, agreed with *The Post-Gazette* that the affidavit was procedurally improper as well as substantively “conclusive and speculative.” PUC October 23, 2014 Order, pp. 16-17.



25. Lyft's Second Petition for Stay argues that this Commission's omitting discussion of each trade secret factor set forth in *Crum v. Bridgestone/Firestone North American Tire, LLC*, 907 A.2d 578, 585 (Pa. Super. 2006) constitutes an error of law. Second Petition for Stay, p. 3.

26. The Superior Court's decision, relied upon by Lyft, explained, "the crucial *indicia* for determining whether certain information constitutes a trade secret are substantial secrecy and competitive value to the owner." *Id.* (internal quotation omitted). This Commission's October 23, 2014 Order considered that crucial determination and rejected Lyft's claim.

27. With respect to the evidence that Lyft sought to seal, this Commission found: "The information is simply aggregate data . . . It is not a trade secret or an operational methodology and, in the Commission's judgment, is not of significant value to Lyft's competitors sufficient to warrant non-disclosure." PUC's October 23, 2014 Order, p. 18.

28. Lyft's claims to protect the trip data are merely "weak assertions involving trade secrets" and the Superior Court has refused to protect information in that context when it appears "to be nothing more than a ruse to prevent public exposure." *PA ChildCare LLC v. Flood*, 887 A.2d 309, 313 (Pa. Super. 2005).

29. This Commission also determined that the data at issue is not a trade secret and has become stale. The May 19, 2015 Order notes that the trip data at issue dates "from February 2014 until August 8, 2014. . . . Given the passage of time since

the initial ‘roll-out’ period’, we are not persuaded by Lyft’s arguments that divulging this data would be advantageous to a competitor . . .The trip data is now over 6 months old. . . .” PUC’s May 19, 2015 Order, p. 13.

30. Further, this Commission’s May 19, 2015 Order on the Petition for Reconsideration rested this Commission’s interpretation of 52 Pa. Code § 5.365.

31. The Post-Gazette raised and Lyft agreed that the First Amendment and common law rights of access apply to these proceedings. As Lyft failed to even meet their burden under 52 Pa. Code § 5.365, this Commission did not address the First Amendment and common law rights of access, which set a higher burden that Lyft must meet before the data may remain sealed.

32. To successfully challenge the Commission’s May 19, 2015 Order on appeal Lyft would have to demonstrate not only that the trip data should remained sealed pursuant to this Commission’s regulations, but will also have to demonstrate that Lyft met the higher burden for sealing this data under the First Amendment and common law rights of access. Lyft failed to even address those higher burdens in the Second Petition for Stay and will be unable to meet those higher standards on appeal.

33. Lyft has failed to make a “strong showing” that Lyft will prevail on the merits. Instead, Lyft’s arguments are a re-hash of the same arguments before this Commission, and do not show how Lyft can meet its appellate burden.

### Lyft Will Not Suffer Irreparable Injury

34. Lyft's contention that it will suffer irreparable harm is premised upon the fact that the trip data is proprietary or a trade secret. This contention was explicitly rejected by the ALJs and this Commission's October 23, 2014 and May 19, 2015 Orders. Therefore, there is no injury to Lyft.

### The Issuance of a Stay Will Substantially Harm The Post-Gazette

35. The Post-Gazette has asserted First Amendment and common law rights of access to the evidence presented at a quasi-judicial hearing. Even Lyft agrees the First Amendment and common law rights of access apply.

36. Each day The Post-Gazette and the public are wrongfully denied access to the proceedings constitutes a continued violation of their First Amendment common law rights of access.

37. The Post-Gazette opposed the sealing from the outset when the issue first arose at the September 3, 2014 hearing. The Post-Gazette's and the public's access has been delayed long enough.

38. The Post-Gazette and the public will be substantially harmed by the continued denial of their rights of access if Lyft's Petition for Stay is granted. Thus, the Second Petition for Stay should be denied.

### The Issuance of a Stay Will Adversely Affect the Public Interest

39. As noted by the Commonwealth Court, the press stands in the shoes of the public when it seeks information on the affairs of government. *Press-Enter., Inc. v. Benton Area Sch. Dist.*, 604 A.2d 1221, 1225 (Pa. Cmwlth. 1992) (“The role of the press is to disseminate information; if that information is withheld from the press, many concerned citizens who do not attend public meetings would have no way of informing themselves of their government’s activities.”)

40. Here, Lyft seeks to withhold from The Post-Gazette and the public information relating to an important government process, deciding whether or not to grant an application to provide experimental transportation services. The public interest strongly favors transparency.

41. This Commission’s May 19, 2015 Order also emphasized the particular public interest in disclosing the specific trip data at issue explaining:

We stress that the data at issue involves trips provided by Lyft both before and after the Commission had issued a cease and desist order. While Lyft characterizes the trip data as service provided during its ‘roll out’ phase, this is a euphemistic mischaracterization of the data. Lyft had no authority to operate during this alleged ‘roll-out period’ and certainly cannot shield its unlicensed operations from public view by claiming those operations were somehow proprietary. Lyft’s actions during its so-called ‘roll out phase’ placed the public at risk, and the public has a right to know the extent of that risk.

42. Therefore, the issuance of a stay will adversely affect the public interest and Lyft’s Second Petition for Stay should be denied.


WHEREFORE, The Post-Gazette requests this Commission deny the Petition for Stay or Supersedeas of Lyft, Inc. filed on May 22, 2015.

Respectfully submitted,

FRANK, GALE, BAILS, MURCKO  
& POCRASS, P.C.

DATED: May 26, 2015

By:



Frederick N. Frank, Esq.  
Zachary N. Gordon, Esq.  
Attorneys for Kim Lyons and  
*The Pittsburgh Post-Gazette*

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PA PUBLIC UTILITY COMMISSION  
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**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving the foregoing Answer to Petition for Stay or Supersedeas of Lyft, Inc. upon the persons in the manner set forth below, in accordance with 52 Pa. Code § 1.54.

**Via E-Mail**

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CERTIFICATE OF SERVICE (continued)

Via First Class Mail

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Dated: May 26, 2015

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