**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :

Bureau of Investigation and Enforcement :

:

v. :C-2014-2422713

:

Lyft, Inc. :

**INITIAL DECISION**

Before

Mary D. Long

Jeffrey A. Watson

Administrative Law Judges

This decision approves a settlement agreement to resolve alleged violations of the Public Utility Code, reached by the Bureau of Investigation and Enforcement and a transportation network company.

HISTORY OF THE PROCEEDINGS

On June 6, 2014, the Commission’s Bureau of Investigation and Enforcement (BIE) filed a formal complaint against Lyft, Inc. (Lyft). The complaint alleged, among other things, that Lyft was acting as a broker of transportation without a certificate of public convenience and that its actions constituted a violation of the Public Utility Code. The complaint sought civil penalties in the amount of $130,000 and an additional $1,000 per day for each day that Lyft continued to operate after the date of filing. Lyft filed an answer to the complaint on June 26, 2014.

On June 16, 2014, BIE also filed a petition for emergency relief at Docket No. P-2014-2426847. Following an evidentiary hearing, the petition was granted by order dated July 1, 2014, and Lyft 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, and by Secretarial Letter dated July 28, 2014, directed Lyft to provide certain trip data to the Commission in this enforcement proceeding.

BIE commenced discovery designed, in part, to obtain the trip data required by the Commission’s July 28, 2014 Secretarial Letter. Lyft initially resisted answering these discovery requests on the basis that the trip data constituted trade secrets.[[1]](#footnote-1)

On October 8, 2014, BIE filed an amended complaint which broadened the basis upon which it alleged that Lyft had violated the Public Utility Code, and increased the amount of the civil penalty sought to $6,986,500. BIE represented that the amended complaint was meant to replace the complaint filed on June 6, 2014.

Lyft filed a timely answer to the amended complaint on October 28, 2014. Lyft also filed preliminary objections seeking dismissal of the amended complaint in its entirety based upon a lack of specificity of the pleading, lack of legal sufficiency and lack of Commission jurisdiction. BIE filed an answer to the preliminary objections on November 7, 2014. The preliminary objections were dismissed by order dated November 25, 2014.

On November 18, 2014, Lyft sought a protective order which would designate the raw trip data and customer contact data requested by BIE in discovery as confidential and proprietary pursuant to 52 Pa.Code § 5.365. Lyft’s request was supported by the verified statement of Joseph Okpaku, Director of Public Policy for Lyft. Lyft also presented for our signatures a proposed protective order which permitted both parties to designate information as confidential and to prevent disclosure of such designated information to the public. BIE did not object to the proposed protective order and by letter dated November 25, 2014, stated that it took no position whether Lyft’s motion should be granted. We granted the request by order dated December 3, 2014.

Thereafter, the parties engaged in serious settlement negotiations. By email dated March 23, 2015, the parties informed us that their discussions were productive and they were able to reach a settlement in principle. The evidentiary hearings were cancelled and the parties were directed to file a joint petition for settlement along with statements in support. The parties filed their settlement petition and supporting statements on April 30, 2015. The record closed upon receipt of the settlement.

The parties stipulated to facts in support of the settlement as set forth below.[[2]](#footnote-2)

STIPULATIONS OF FACTS

1. Complainant is BIE. The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to BIE and other bureaus with enforcement responsibilities.

2. Lyft is a technology company that offers a mobile ride-sharing application – the Lyft platform – that connects riders with drivers, who may, at their discretion, provide riders with transportation for compensation.

3. On June 5, 2014, BIE filed a formal complaint against Lyft in this matter alleging, *inter alia*, that Lyft acts as an unlicensed broker of transportation for compensation between points within the Commonwealth through the Lyft platform, which connects passengers to Lyft drivers.

4. In the initial complaint, BIE sought relief including: (a) civil penalties in the amount of $130,000; (b) that Lyft cease offering what the complaint characterized as ride-sharing passenger transportation service until its service conforms to the laws and regulations of the Commonwealth; and (c) such other remedies as may be appropriate, including the addition of a $1,000 civil penalty for each and every day that Lyft continued to operate without authority after the filing of the complaint.

5. In the initial complaint, BIE alleges that on February 7, 2014, Lyft announced the “kick-off” of its transportation network service in Pittsburgh, Pennsylvania. Starting on February 7, 2014, BIE alleges that passengers could download and use the Lyft platform to obtain rides on demand around Pittsburgh and Allegheny County.

6. At the time that Lyft initiated service in Pennsylvania, it did not hold any authority from the Commission.

7. BIE Motor Carrier Enforcement Manager Charles Bowser (Officer Bowser), who is a duly authorized officer of this Commission, downloaded the Lyft application to a mobile phone.

8. Between March 31, 2014 and July 2, 2014, either Officer Bowser or an officer under his supervision used the Lyft platform to request passenger transportation service in and around Pittsburgh on sixteen (16) separate occasions.

9. On all sixteen (16) occasions, the BIE Motor Carrier Enforcement Officers were transported by Lyft drivers using their personal vehicles, and BIE further alleges that a fare for each trip was billed to the Officers’ credit cards.

10. On June 26, 2014, Lyft filed an answer to BIE’s complaint. In its

answer, Lyft admitted or denied the various averments made by BIE in the complaint. In particular, Lyft specifically denied that any of its actions violated the Public Utility Code.

11. During the pendency of the complaint proceeding, on June 16, 2014, BIE

filed a Petition for Interim Emergency Relief seeking an order from the Commission directing Lyft to immediately cease and desist from operating its passenger transportation service until it receives the requisite authority to do so.

12. On June 23, 2014, Lyft filed an answer to the Petition of BIE for Interim

Emergency Order, requesting that the presiding Administrative Law Judges (ALJs) and the Commission deny BIE’s Petition.

13. A hearing on the Petition of BIE for Interim Emergency Order was

conducted in Pittsburgh on June 26, 2014 before the presiding ALJs.

14. On July 1, 2014, the presiding ALJs issued an Order granting the Petition

of BIE for Interim Emergency Relief at Docket No. P-2014-2426847, and directing Lyft to cease and desist from utilizing the Lyft platform to facilitate transportation to passengers using non-certificated drivers in their personal vehicles until such time as it secures appropriate authority from the Commission.

15. Pursuant to 52 Pa.Code § 3.10(b), whether BIE met the requirements for

obtaining interim emergency relief was certified as a material question to the Commission.

16. On July 8, 2014, BIE filed a Brief in Support of the Cease and Desist Order Against Lyft and Answer to Material Question at Docket No. P-2014-2426847 regarding the Petition of BIE for Interim Emergency Order. Also on July 8, 2014, Lyft filed a Brief on the Material Question.

17. By Order entered July 24, 2014 at Docket No. P-2014-2426847 regarding

the Petition of BIE for Interim Emergency Order, the Commission answered the material question in the affirmative, determined that BIE successfully met the requirements for obtaining interim emergency relief and returned the matter to the ALJs for further proceedings under the above complaint docket.

18. The Commission’s Order entered July 24, 2014, 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.

19. By Secretarial Letter dated July 28, 2014, and served upon all Parties in the complaint proceeding, the Commission concluded:

Accordingly, in order to create a complete record in the Complaint proceeding at Docket No. C-2014-2422713, 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 Lyft’s service in Pennsylvania to June 5, 2014 (the date BIE filed the Complaint against Lyft);

(b) From June 5, 2014 to July 1, 2014 (the date the Cease and Desist Order became effective); and

(c) From July 1, 2014 to the date on which the record in this Complaint proceeding is closed.

(2) Should there be a finding that Lyft’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.

(3) 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.

*Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Lyft, Inc*., Docket No. C‑2014-2422713 (Secretarial Letter dated July 28, 2014).

20. In response to BIE discovery requests and the directives set forth in the Commission’s July 28, 2014 Secretarial Letter, Lyft provided trip data that it designated as highly confidential related to the number of transactions and/or rides provided to passengers within the Commonwealth of Pennsylvania via connections made with drivers through Lyft’s digital platform between certain points in time.

21. Lyft was granted emergency temporary authority by the Commission on August 14, 2014. See Application of Lyft, Inc., for Emergency Temporary Authority to Operate an Experimental Transportation Network Service Between Points in Allegheny County, PA, Docket No. A-2014-2432304 (Order entered July 24, 2014).

22. Prior to August 14, 2014, the BIE Motor Carrier Enforcement Division could not inspect the vehicles of Lyft drivers, examine records pertaining to the driving history and criminal history of Lyft drivers, and verify that liability insurance in sufficient levels of coverage was maintained.

23. On October 8, 2014, BIE filed proprietary and non-proprietary versions of an amended complaint in this matter, which: (1) alleges that Lyft brokered and provided for the transportation of persons for compensation in the Commonwealth of Pennsylvania without first holding authority to do so; (2) updates and quantifies the violations that BIE alleges were discovered and/or occurred subsequent to the filing of BIE’s initial complaint on June 5, 2014; and (3) revises the relief requested and seeks $6,986,500 in civil penalties. This revised civil penalty amount is based on a “per day” civil penalty from February 7, 2014 to July 1, 2014, and a “per trip” civil penalty for each trip that occurred via a connection made with a Lyft driver through Lyft’s digital platform from the entry of the cease and desist order on July 1, 2014 until August 8, 2014.

24. On October 28, 2014, Lyft filed an answer to BIE’s amended complaint in which Lyft admitted or denied the various averments made by BIE. Also on October 28, 2014, Lyft filed Preliminary Objections to BIE’s amended complaint arguing that the Commission lacks jurisdiction to grant BIE’s requested relief and the amended complaint fails to state a claim on which relief could be granted.

25. On November 7, 2014, BIE filed an answer to Lyft’s Preliminary Objections to BIE’s amended complaint and asserted that Lyft’s actions are within the purview of the Commission’s jurisdiction and that relief in the form of civil penalties is appropriate.

26. By Order entered on November 25, 2014, the ALJs dismissed the Preliminary Objections of Lyft to BIE’s amended complaint.

27. On February 12, 2015, Lyft was granted a Certificate of Public Convenience that is valid for two (2) years to transport, by motor vehicle, persons in the experimental service of Transportation Network Company (“TNC”), pursuant to 52 Pa.Code § 29.352, for passenger trips between points in Allegheny County and Pennsylvania. Docket A‑2014-2415045.

28. By hearing notice dated February 26, 2015, an Initial Hearing in the complaint proceeding was scheduled for March 30, 2015.

29. By e-mail dated March 23, 2015, the parties advised the ALJs that they reached a settlement in principle regarding the instant proceeding.

30. BIE has initiated no enforcement proceedings against Lyft before the Commission, other than the instant matter.

SETTLEMENT TERMS

The parties agreed to the following terms of settlement:

1. The purpose of this Joint Settlement Petition is to resolve this matter without further litigation. There has been no evidentiary hearing before any tribunal and no sworn testimony taken in BIE’s complaint proceeding docketed at C-2014-2422713. Sworn testimony related to the issues raised in BIE’s complaint proceeding was taken during the evidentiary hearing that occurred on June 26, 2014 regarding the Petition of BIE for Interim Emergency Order docketed at P-2014-2426847.

2. Lyft has been cooperative with BIE and promptly complied with BIE’s discovery requests. Lyft has worked to address the novel issues in this and related proceedings, including providing confidential trip data to BIE.

3. Lyft fully acknowledges the seriousness of BIE’s allegations, namely, that Lyft facilitated or provided unauthorized passenger transportation service and continued to provide such service subsequent to the ALJs’ and Commission’s Cease and Desist Orders entered July 1, 2014 and July 24, 2014, respectively, directing Lyft to immediately cease and desist from utilizing its digital platform. Although Lyft disputes BIE’s allegations, Lyft recognizes the significant public safety concerns related to unauthorized transportation, specifically that the Commission is deprived of the ability to verify the existence of appropriate liability insurance coverage, inspect motor vehicles for compliance with inspection standards and examine records pertaining to a driver’s criminal history and driving history.

4. The parties recognize that their positions and claims are disputed and, given that the precise outcome of a contested proceeding is uncertain, the parties further recognize the benefits of amicably resolving the disputed issues through settlement.

5. BIE and Lyft, intending to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

a. Lyft will pay a total amount of Two Hundred Fifty Thousand Dollars ($250,000) to resolve all alleged violations of orders and regulations of the Commission during the period from the initiation of service in February 2014 through the date of the executed Settlement Agreement. This amount has or will be paid by payment of: 1) Sixteen Thousand Dollars ($16,000), which has already been transmitted to the Commonwealth of Pennsylvania in relation to the matters set forth in Paragraph 12 of the Joint Petition for Settlement; and 2) Two Hundred Thirty-Four Thousand Dollars ($234,000) which will be paid in the manner set forth below in sub-paragraph (b).

b. The remaining Two Hundred Thirty-Four Thousand Dollars ($234,000) to be paid as a civil settlement amount to the Commonwealth of Pennsylvania, pursuant to 66 Pa.C.S. § 3301, will be paid in two installments of One Hundred Seventeen Thousand Dollars ($117,000), with the first installment being paid within sixty (60) days after the approval of a Settlement reflecting these terms by the Commission without modification, and the second installment being paid by Lyft one year thereafter. Said payments shall be made by check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

Secretary

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA 17105-3265

No other amount shall be paid by Lyft or sought by BIE related to the above-docketed matter.

c. Lyft does not admit to any wrongdoing or violation of law.

d. BIE will not oppose Lyft in maintaining the confidentiality and non-public disclosure of actual trip data pursuant to the terms of the Protective Order entered in this proceeding.

6. In consideration of Lyft’s payment of a civil settlement amount, BIE agrees that the investigation at Bureau of Investigation and Enforcement of the *Pa. Pub. Util. Comm’n v. Lyft, Inc*., Docket No. C-2014-2422713 (the “Matter”) relating to Lyft’s conduct as described in this Settlement Agreement and in the initial and amended complaints referenced herein shall be terminated and marked closed upon approval by the Commission of this Settlement Agreement in its entirety. Nothing contained in this Settlement Agreement shall affect the Commission’s authority to receive and resolve any future formal or informal complaints filed by any affected party regarding Lyft’s business that are unrelated to the actions addressed in the Settlement Agreement.

7. BIE and Lyft jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission’s Policy Statement for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations, 52 Pa.Code § 69.1201. The parties submit that the Settlement Agreement is in the public interest because it effectively addresses BIE’s allegations of unauthorized transportation that is the subject of the BIE complaint proceeding, and avoids the time and expense of litigation, which entails hearings, travel for Lyft’s out-of-state witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as Appendices A and B are Statements in Support submitted by BIE and Lyft, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

DISCUSSION

A. Legal Principles

The Commission encourages parties in contested on-the-record proceedings to settle cases.[[3]](#footnote-3) Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission.

By definition, a “settlement” reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.[[4]](#footnote-4) In their supporting statements, BIE and Lyft conclude, after discovery and extensive discussion, that this settlement resolves the issues in this case, it fairly balances the interests of the public and Lyft, is in the public interest and should be approved.

In proceedings involving violations of the Public Utility Code, the Commission has set forth as a policy ten factors which should be considered in evaluating the terms of a settlement:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission’s investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.[[5]](#footnote-5)

In settled cases, these factors will not be applied in as strict a fashion as in litigated cases. This allows the parties the flexibility to reach an amicable resolution to complaints.[[6]](#footnote-6)

Both parties state that they arrived at the settlement after conducting discovery and engaging in discussions over several months. According to BIE and Lyft, the terms and conditions of this settlement agreement constitute a carefully crafted package representing reasonable negotiated compromises on the issues addressed herein. Thus, in the parties’ view, the settlement agreement is consistent with the Commission’s rules and practices encouraging negotiated settlements set forth in 52 Pa.Code §§ 5.231 and 69.1201.

B. Analysis of Civil Penalty Factors

In their statements in support of the settlement, the parties addressed each of the factors set forth by the Commission’s policy.

1. Nature of the Conduct

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher penalty.[[7]](#footnote-7) BIE states that the violations averred in the complaint and amended complaint were of a serious nature in that they involved the initiation of allegedly unauthorized passenger transportation service to the public for compensation and the alleged continuation of such service after being directed to cease and desist by the ALJs and the Commission. BIE asserts that Lyft operated without Commission oversight, which is designed to protect public safety. Specifically, the Motor Carrier Enforcement Division of BIE routinely inspects vehicles of certificated motor carriers to ensure that the vehicles, which are used commercially and, therefore, likely endure heavier use than personal vehicles, meet Pennsylvania Department of Transportation (PennDOT) vehicle inspection standards in between PennDOT annual inspections. The Motor Carrier Enforcement Division also examines records pertaining to the driving history and criminal history of drivers and verifies that liability insurance in sufficient levels of coverage is consistently maintained. Therefore, significant public safety concerns are present when unauthorized and unregulated transportation for compensation occurs. BIE submits that Lyft’s alleged conduct is of a serious nature and was considered in arriving at the civil penalty in the Settlement Agreement.

Lyft notes the novel nature of service and the uncertainty of the Commission’s jurisdiction over the provision of the app to facilitate ride sharing. Lyft also recognizes the significance of not responding to the Cease and Desist Order.

2. Consequences of the Conduct

The second factor considered is whether the resulting consequences of Lyft’s alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.[[8]](#footnote-8) Given that the Commission did not oversee Lyft’s activities during the periods of time that are referenced in the amended complaint, the Commission has no means to determine whether personal injury or property damage occurred, such as through the notification and record-keeping requirements set forth in the Commission’s regulation at 52 Pa.Code § 29.44 (related to accident reports). Lyft submits that there was no fraud or misrepresentation and states that there was no personal injury or property damage resulting from Lyft’s actions, factors listed by the Commission as justifying a higher penalty.

3. Was the Conduct Intentional or Negligent

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. “This factor may only be considered in evaluating litigated cases.”[[9]](#footnote-9) Whether Lyft’s alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the parties.

4. Remedial Actions by the Company

The fourth factor to be considered is whether the Company has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa.Code § 69.1201(c)(4). After BIE filed its complaint in this proceeding on June 5, 2014, Lyft sought authority to operate its digital platform to facilitate passenger transportation service in the Commonwealth. Therefore, the conduct alleged in BIE’s complaint and amended complaint has been addressed.

Lyft relies on its applications for emergency and experimental authority and points out that it has implemented procedures to comply with all Commission requirements as set forth in the Compliance Tariff submitted to and approved by the Commission following the Commission’s Order granting Experimental Authority. Order entered February 12, 2015, at A‑2014-2415045 (“Experimental Service Order”). The BIE complaint relates solely to actions prior to the grant of authority.

5. Number of Customers Affected

The fifth factor to be considered relates to the number of customers affected by Lyft’s actions and the duration of the violations. 52 Pa.Code § 69.1201(c)(5). BIE states that given the nature of the allegations of the amended complaint, all of the passengers who received transportation arranged by the Lyft digital platform between February 7, 2014 and August 14, 2014, as well as the general public – specifically, pedestrians and drivers and passengers of other vehicles – may have been affected by the Company’s conduct.

Lyft believes that this factor is not applicable because no customer was denied service and Lyft at all times conducted criminal background checks of drivers and provided insurance.

6. Compliance History

The sixth factor to be considered relates to the compliance history of Lyft. 52 Pa.Code § 69.1201(c)(6). “An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.” *Id*. Due to the fact that Lyft’s service is new to Pennsylvania, the instant matter is the first alleged infraction on Lyft’s compliance history.

7. Cooperation with the Investigation

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa.Code § 69.1201(c)(7). BIE points out that following judicial resolution of the discovery disputes, Lyft promptly complied with BIE’s discovery requests, including providing the highly confidential trip data to BIE. This factor serves to mitigate the civil penalty.

Lyft also states that throughout these proceedings, Lyft has cooperated with BIE in its investigation. Although Lyft does not believe that it is permissible or appropriate to apply a penalty on a per ride basis, Lyft has provided BIE with per ride data requested by BIE on a confidential basis.

8. Deterrence

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa.Code § 69.1201(c)(8). “The size of the utility may be considered to determine an appropriate penalty amount.” *Id*. BIE submits that a civil penalty amount of $250,000, which may not be claimed as a tax deduction by operation of law, is substantial and sufficient to deter Lyft from committing future violations. Regarding the “size of the utility,” Lyft is a much smaller company when compared to its primary competitor. Lyft agrees and observes that, the civil settlement amount exceeds the revenue received by Lyft during the period that the Cease and Desist Order was effective.[[10]](#footnote-10)

9. Commission Precedent

The ninth factor to be considered relates to past Commission decisions in similar matters. 52 Pa.Code § 69.1201(c)(9). BIE submits that the scope of the conduct complained of in this proceeding is unique and unlike other complaint proceedings involving motor carriers that the Commission has decided. There are no past Commission decisions responsive to a similar situation, and for that reason, this case should be viewed on its own merits.

However, BIE further observes, in looking at the relevant factors, that are comparable to other incidents, such as the allegations at issue here – namely, unauthorized transportation for compensation – and comparing the allegations to the relief provided in the settlement – specifically, a civil penalty – this settlement is consistent with past Commission actions involving alleged unauthorized motor carrier service, and presents a fair and reasonable outcome.

10. Other Relevant Factors

The tenth factor considers “other relevant factors.” 52 Pa.Code § 69.1201(c)(10). BIE submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise but allow the parties to move forward and to focus on implementing the agreed upon remedial actions.

C. Conclusion

We have reviewed the proposed settlement and we rely upon the positions of the parties that the civil penalty amount agreed upon is in the public interest largely because it avoids further litigation of this matter. While we note Lyft’s position that the uncertainty in the regulatory framework relating to transportation network companies may offer some justification for the launch of Lyft’s transportation network service without first securing authority from the Commission, we are troubled by the fact that Lyft continued to operate after being directed to cease and desist from utilizing its digital platform on July 1, 2014, until its emergency authority was granted on August 14, 2014. However, Lyft points out that the civil penalty agreed upon exceed the amount of revenue earned by Lyft during the most egregious period of alleged violation, thus removing some benefit derived from its conduct.

We generally agree with BIE that Lyft has been otherwise cooperative in the conduct of these proceedings and has not violated any other orders which were issued in connection with these enforcement proceedings. We also rely upon BIE’s strongly held view that the settlement is in the public interest and Lyft’s good faith efforts to work with BIE to achieve a resolution. Therefore, the settlement is approved as submitted without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject-matter and parties in this matter. 66 Pa.C.S. §§ 701; 1101.

2. It is Commission policy to promote settlements. 52 Pa.Code § 5.231.

3. Approval of the Settlement Agreement reached by BIE and Lyft is in the public interest. *Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Settlement Petition filed on April 30, 2015 between the Commission’s Bureau of Investigation and Enforcement and Lyft, Inc. is approved in its entirety without modification.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within sixty (60) days of the date this Order becomes final, Lyft, Inc. shall pay $117,000, which consists of one-half of the net civil settlement amount totaling $234,000. The second and final installment of $117,000 shall be paid one year thereafter. Said payments shall be made by check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

Secretary

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA 17105-3265

3. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

4. That upon receipt of the final payment set forth in Ordering Paragraph 2, the Secretary shall mark the docket closed.

/s/

Mary D. Long

Administrative Law Judge

Date: June 1, 2015 /s/

Jeffrey A. Watson

Administrative Law Judge

1. The reader is directed to the many discovery orders issued in this proceeding for a full rendition of those matters and the legal bases for each party’s position. [↑](#footnote-ref-1)
2. Joint Stipulation of Settlement, Exhibit A. [↑](#footnote-ref-2)
3. *See* 52 Pa.Code § 5.231. [↑](#footnote-ref-3)
4. *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991). [↑](#footnote-ref-4)
5. 52 Pa.Code § 69.1201(c). [↑](#footnote-ref-5)
6. 52 Pa.Code § 69.1201(b). [↑](#footnote-ref-6)
7. 52 Pa.Code § 69.1201(c)(1). [↑](#footnote-ref-7)
8. 52 Pa.Code § 69.1201(c)(2). [↑](#footnote-ref-8)
9. 52 Pa.Code § 69.1201(c)(3). [↑](#footnote-ref-9)
10. The Cease and Desist Order was effective from the date it was first entered, July 1, 2014, until Lyft received its emergency temporary authority on August 14, 2014. [↑](#footnote-ref-10)