



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

IN REPLY PLEASE  
REFER TO OUR FILE  
C-2014-2422723

July 8, 2015

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

Dear Secretary Chiavetta:

Enclosed for filing please find the **Non-Proprietary (Public) Version** of the Main Brief of the Bureau of Investigation and Enforcement in the above-referenced proceeding. A Proprietary Version of this Main Brief has been filed under separate cover. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Swindler".

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Stephanie M. Wimer  
PA Attorney ID No. 207522

Enclosure

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2014-2422723
	:	
Uber Technologies, Inc., Rasier-PA LLC,	:	
Rasier LLC and Gegen LLC	:	

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**MAIN BRIEF OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

**\*\*NON-PROPRIETARY VERSION\*\***

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Dated: July 8, 2015

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## I. STATEMENT OF THE CASE

### A. Description of the Case

This matter involves widespread unauthorized passenger transportation for compensation and the continuation of that transportation despite being ordered by Administrative Law Judges and the Pennsylvania Public Utility Commission (Commission) to cease and desist. Such unauthorized transportation occurred without any regulatory oversight – and at the expense of public safety. This case is also about a company’s defiant refusal to either furnish information to or cooperate with the governmental agency that regulates it.

On February 11, 2014, Uber Technologies, Inc. (Uber or Company) or an affiliate of Uber launched a mobile app (the Uber App) in Pittsburgh, Allegheny County, Pennsylvania. (Exhibit ALJ 1- Revised at ¶ 7). After the launch, the public could download the Uber App and establish an account, including providing payment information. (Exhibit ALJ 1- Revised at ¶ 9). The public could use the Uber App to locate the nearest available driver, who was registered with an Uber subsidiary and was logged onto the Uber App to transport the passenger to the desired destination for compensation. *Id.* Upon arrival to the passenger’s destination, a fare was charged utilizing the form of payment provided by the passenger upon establishing an Uber App account. (Exhibit ALJ 1- Revised at ¶ 13). Once the payment was processed by Uber or the Company’s third party processing entity, the passenger received an electronic receipt from Uber documenting the details of the completed trip, including the fare charged. (Exhibit ALJ 1-Revised at ¶ 14).

From February 11, 2014 through and including August 20, 2014, neither Uber nor any Uber subsidiary held authority from the Commission to transport passengers in Pittsburgh, Allegheny County, Pennsylvania for compensation.<sup>1</sup> (Exhibit ALJ 1-Revised at ¶ 15).

Between March 31, 2014 and July 10, 2014, the Bureau of Investigation and Enforcement's (I&E) Motor Carrier Enforcement Division, under the supervision of Manager Charles Bowser (Officer Bowser), used the downloaded Uber App to request passenger transportation service in Pittsburgh, Allegheny County, Pennsylvania on sixteen (16) occasions. (I&E Exhibits 2 and 4). On all sixteen (16) occasions, either Officer Bowser or an enforcement officer under his supervision were transported by drivers registered with Uber, or an Uber affiliate, using the drivers' personal vehicles and a fare for each trip was billed to the passenger's credit card. *Id.*

On June 5, 2014, I&E filed a Formal Complaint (Complaint) at this docket against Uber alleging, *inter alia*, that Uber launched a ride-sharing transportation network service on or around March 13, 2014, which enables passengers to connect with individuals who registered with Uber as drivers to obtain transportation for compensation via the Uber App.<sup>2</sup>

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<sup>1</sup> Effective August 21, 2014, the Commission granted Rasier-PA LLC (Rasier-PA) emergency temporary authority to operate between points in Allegheny County. *See Application of Rasier-PA LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc., for Emergency Temporary Authority to Operate an Experimental Ride-Sharing Network Service Between Points in Allegheny County, PA*, Docket No. A-2014-2429993.

<sup>2</sup> The name of the Uber affiliate responsible for providing the transportation, Rasier LLC (Rasier), and the exact date of the launch, February 11, 2014, was not known to I&E at the time the initial Complaint was filed and, in fact, such information was not provided until March 6, 2015, in defiance of numerous orders compelling the production of that information. A detailed procedural history is set forth herein.

On June 16, 2014, during the pendency of the Complaint proceeding, I&E filed a Petition for Interim Emergency Relief seeking an order from the Commission directing Uber to immediately cease and desist from operating its passenger transportation service until it receives the requisite authority to do so.<sup>3</sup> I&E's Petition for Interim Emergency Relief was granted by presiding ALJs Mary D. Long and Jeffrey A. Watson (presiding ALJs or ALJs) on July 1, 2014<sup>4</sup> and the Commission upheld the presiding ALJs' Order on July 24, 2014.<sup>5</sup>

When directing Uber to cease and desist, the Commission concluded:

We agree with the ALJs' conclusions that the Commission cannot currently determine that the vehicles arranged by Uber comply with regulatory safety requirements nor that the drivers possess the requisite qualifications to maintain the public safety. Additionally, we have no measure of whether riders using the Uber service are protected by adequate insurance coverage. Uber's refusal to submit to the Commission's oversight is preventing the Commission from enforcing the safety regulations pertaining to motor carriers and from helping to prevent possibly catastrophic accidents involving injury or death.

Uber has refused to submit to our Regulations which we believe would be injurious to the public and potentially compromise the safety of passengers and

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<sup>3</sup> *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for an Interim Emergency Order requiring Uber Technologies, Inc. to immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania*, Docket No. P-2014-2426846 (hereinafter referred to as Petition for Interim Emergency Relief). The record testimony and exhibits in the Petition for Interim Emergency Relief were admitted into the record of the instant Complaint proceeding. (May 6, Tr. 57). (The hearing transcript at page 57 mistakenly refers to the Petition for Interim Emergency Relief docket as P-2014-2426841, whereas the correct docket number, P-2014-2426846, is referenced on the previous page).

<sup>4</sup> Petition for Interim Emergency Relief (Order entered July 1, 2014) (hereinafter referred to as July 1, 2014 Order).

<sup>5</sup> Petition for Interim Emergency Relief (Order entered July 24, 2014) (hereinafter referred to as July 24, 2014 Order).

pedestrians if permitted to continue during the pendency of the Complaint proceeding.

(July 24, 2014 Order at 21-22).

Nevertheless, in spite of the Commission's clearly articulated concerns regarding public safety, Uber or an Uber affiliate defiantly continued to operate without authority in Pittsburgh, Allegheny County, Pennsylvania until August 20, 2014.

Then, during the litigation of the Complaint proceeding, Uber unfairly hampered I&E's ability to obtain information that was judicially determined to be discoverable by refusing to provide any answers to discovery requests, despite the granting of Motions to Compel and the imposition of sanctions. In fact, I&E did not learn certain information, specifically – the number of trips Rasier provided without authority – until the day of the hearing and Uber still has not responded to two discovery requests. A detailed procedural history, including a description of Uber's refusal to abide by the ALJs' and Commission's Orders, follows.

**B. Procedural History**

As previously mentioned, on June 5, 2014, I&E filed a Complaint at this docket against Uber. I&E alleged that Uber acted as an unlicensed broker of transportation for compensation between points within the Commonwealth through its digital software and in defiance of a letter dated July 1, 2012 from the Commission's Bureau of Technical Utility Services, Transportation Division, which directed Uber to cease and desist from brokering transportation between points within the Commonwealth. I&E sought relief including: (1) civil penalties in the amount of \$95,000; (2) that Uber cease offering

passenger transportation service until its service conforms to the laws and regulations of the Commonwealth; and (3) other such remedies as may be appropriate, including the addition of a \$1,000 civil penalty for each and every day that Uber continues to operate without authority after the filing of the Complaint.

On June 16, 2014, I&E filed the above-referenced Petition for Interim Emergency Relief.

On June 18, 2014, Uber filed a Motion for Stay of the Complaint proceeding seeking a stay until after the Commission addresses applications for operating authority filed by Rasier-PA, one of Uber's subsidiaries.<sup>6</sup> Also on June 18, 2014, Uber filed a Motion seeking an extension of time to file an answer to I&E's Complaint until after its Motion for Stay is addressed. Additionally, on June 18, 2014, the presiding ALJs issued a Prehearing Order setting forth the various procedural rules governing the emergency hearing on the Petition for Interim Emergency Relief.

On June 20, 2014, I&E filed an Answer to Uber's Motion for Stay requesting that it be denied, as a stay would allow any individual or company to provide unlicensed transportation or brokerage services so long as they file an application for authority, regardless of whether the application is still pending. Also on June 20, 2014, I&E filed

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<sup>6</sup> See *Application of Rasier-PA LLC, a limited liability company of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of shared-ride network for passenger trips between points in Allegheny County*, Docket No. A-2014-2416127; and *Application of Rasier-PA LLC, a limited liability company of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of shared-ride network for passenger trips between points in Pennsylvania, excluding those which originate or terminate in the Counties of Beaver, Clinton, Columbia, Crawford, Lawrence, Lycoming, Mercer, Northumberland and Union*, Docket No. A-2014-2424608 (hereinafter collectively referred to as *Application of Rasier-PA*).

an Answer to Uber's Motion for an extension of time to respond to I&E's Complaint and requested that it be denied. In addition, on June 20, 2014, the presiding ALJs entered an Interim Order denying Uber's Motion for extension of time to file an answer to I&E's Complaint.

On June 23, 2014, Uber filed an Answer to the Petition for Interim Emergency Relief, requesting that the ALJs and the Commission deny I&E's Petition.

On June 25, 2014, I&E and Uber each filed a Prehearing Memorandum in the proceeding regarding the Petition for Interim Emergency Relief.

A hearing on the Petition for Interim Emergency Relief was conducted in Pittsburgh on June 26, 2014 before the presiding ALJs. Also on June 26, 2014, Uber filed an Answer to I&E's Complaint. In its Answer, Uber admitted or denied the various averments made by I&E in the Complaint.

By Order dated July 1, 2014, the presiding ALJs granted I&E's Petition for Interim Emergency Relief and directed Uber to "immediately cease and desist from utilizing its digital platform to facilitate transportation to passengers utilizing non-certificated drivers in their personal vehicles until such time as it secures appropriate authority from the Commission."<sup>7</sup> The ALJs explained that "I&E adduced sufficient evidence to conclude that it has a reasonable expectation of success on the merits of a proceeding on the underlying complaint." *Id.* at 11. The July 1, 2014 Order also certified

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<sup>7</sup> (July 1, 2014 Order at Ordering Paragraph 2).

as a material question to the Commission the issue of granting or denying I&E's requested relief by an interim emergency order.

On July 8, 2014, I&E and Uber each filed a Brief arguing their respective positions regarding the merits of the material question in the Petition for Interim Emergency Relief proceeding.

By Order entered on July 24, 2014 in the Petition for Interim Emergency Relief proceeding, the Commission determined that I&E met the requirements for obtaining interim emergency relief.<sup>8</sup> The Commission directed Uber to "immediately cease and desist from utilizing its digital platform to facilitate transportation of passengers utilizing non-certificated drivers in their personal vehicles until such time that: (a) it secures appropriate authority from the Commission and Uber Technologies, Inc., has satisfied the compliance requirements of such authorization; or (b) the Complaint at Docket No. C-2014-2422723 is dismissed by a final and unappealable Order." *Id.* at Ordering Paragraph 3. The Commission also directed that the matter be returned to the ALJs for further proceedings under the above Complaint docket.<sup>9</sup>

The July 24, 2014 Order 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.

On July 25, 2014, the presiding ALJs entered an Interim Order denying Uber's Motion to Stay the Complaint proceeding.

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<sup>8</sup> (July 24, 2014 Order).

<sup>9</sup> Additionally, the Commission concluded that "any determination approving a [Rasier-PA] application will have no bearing on the pending enforcement actions in this proceeding." (July 24, 2014 Order at 25).

By Notice dated July 29, 2014, an Initial Hearing was scheduled in this matter for October 23, 2014.

By Secretarial Letter dated July 28, 2014, and served upon all Parties in the Petition for Interim Emergency Relief and Complaint proceedings, the Commission concluded:

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:
  - (a) From the initiation of Uber's service in Pennsylvania to June 5, 2014 (the date I&E filed the Complaint against Uber);
  - (b) 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;
  - (c) From June 5, 2014 to July 1, 2014 (the date the *Cease and Desist Order* became effective); and
  - (d) From July 1, 2014 to the date on which the record in this Complaint proceeding is closed.
- (2) 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.
- (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.

Consistent with the direction set forth in the Secretarial Letter, on August 8, 2014, I&E propounded Interrogatories and Requests for Production of Documents – Set I (I&E Discovery – Set I) upon Uber in this proceeding. I&E’s Interrogatories largely mirrored the information that was requested in the Secretarial Letter in that it asked Uber to identify the number of trips provided using its digital software between certain points in time in which Uber lacked authority to facilitate or provide passenger transportation service for compensation. I&E Discovery – Set I also requested that Uber identify the name of the affiliate or entity responsible for providing rides to persons between points within the Commonwealth of Pennsylvania via connections made with drivers through Uber’s digital software, if such transportation was not provided by Uber Technologies, Inc.

On August 18, 2014, Uber filed Objections to I&E Discovery – Set I and objected to the entirety of I&E’s discovery requests.

On August 28, 2014, I&E filed a Motion to Compel requesting that the presiding ALJs dismiss the objections to discovery by Uber and direct Uber to provide the information sought in I&E Discovery – Set I. I&E amended its Motion to Compel on August 29, 2014 to reflect that I&E unsuccessfully attempted to resolve the discovery dispute with counsel for Uber prior to seeking judicial resolution of the dispute.

Uber filed an Answer to I&E’s Motion to Compel on September 3, 2014 requesting that it be denied.

On October 2, 2014, I&E filed an unopposed Motion for Continuance of the Initial Hearing scheduled for October 23, 2014.

On October 3, 2014, the presiding ALJs entered an Order granting I&E's Motion to Compel (hereinafter referred to as October 3, 2014 Discovery Order).<sup>10</sup> The ALJs directed Uber to "answer Bureau of Investigation and Enforcement Interrogatories and Requests for Production of Documents, Set I within 10 days of entry of this order." (October 3, 2014 Discovery Order at Ordering Paragraph 2).

On October 6, 2014, Uber filed a Petition for Certification seeking interlocutory review of the October 3, 2014 Discovery Order.

On October 14, 2014, I&E filed a Brief in opposition of Uber's Petition for Certification of the October 3, 2014 Discovery Order. Also on October 14, 2014, Uber filed a Brief in support of its Petition for Certification.

By Order entered on October 17, 2014, the presiding ALJs denied Uber's Petition for Certification of the October 3, 2014 Discovery Order. (Order on Petition for Certification). In that Order, the ALJs specifically stated that "a stay of proceedings has not been granted." (Ordering Paragraph 2 of Order on Petition for Certification). Also on October 17, 2014, the ALJs entered an Order amending the October 3, 2014 Discovery Order to permit Uber to redact certain information in its responses to I&E Discovery – Set I.

On October 24, 2014, I&E propounded Interrogatories and Requests for Production of Documents – Set II (I&E Discovery – Set II) upon Uber.

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<sup>10</sup> The October 3, 2014 Discovery Order also granted I&E's Motion for Continuance of the evidentiary hearing that was scheduled for October 23, 2014.

On November 3, 2014, Uber filed Objections to I&E Discovery – Set II and objected to the entirety of I&E’s Interrogatories and document requests.

On November 6, 2014, Uber filed a Motion for Judgment on the Pleadings requesting that I&E’s Complaint be dismissed.

On November 7, 2014, I&E filed a Motion for Sanctions due to Uber’s refusal to abide by the October 3, 2014 Discovery Order and respond to I&E Discovery – Set I.

Uber answered I&E’s Motion for Sanctions on November 12, 2014, and requested that it be denied.

On November 13, 2014, I&E filed a Motion to Compel requesting that the presiding ALJs dismiss the objections to discovery by Uber and direct Uber to provide the information sought in I&E Discovery – Set II.

On November 18, 2014, Uber answered I&E’s Motion to Compel and requested that it be denied.

By Order entered on November 25, 2014, the presiding ALJs granted I&E’s Motion to Compel and directed Uber to answer “Bureau of Investigation and Enforcement Interrogatories and Requests for Production of Documents, Set II within 10 days of entry of this order.” (hereinafter referred to as November 25, 2014 Discovery Order).

On November 26, 2014, I&E filed an Answer to Uber’s Motion for Judgment on the Pleadings and requested that it be denied. On that same day, the presiding ALJs entered an Order denying Uber’s Motion for Judgment on the Pleadings. Also by Order

entered on November 26, 2014, the ALJs granted I&E's Motion for Sanctions and directed Uber to "serve full and complete answers to all outstanding discovery requests on or before **December 12, 2014.**" (November 26, 2014 Sanctions Order at Ordering Paragraph 2) (emphasis in original). The Order further provided that if Uber "fails 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." (November 26, 2014 Sanctions Order at Ordering Paragraph 3).

By Order entered on December 2, 2014, the ALJs established a procedural schedule setting dates for the filing of any further motions and service of discovery requests. The Order also rescheduled the Initial Hearing for February 18, 2015.

On December 12, 2014, Uber filed a Motion for Stay regarding the effective date of the November 26, 2014 Order on Motion for Sanctions. I&E responded to Uber's Motion on that same day and requested that Uber's Motion for Stay be denied and that the civil penalty sanctions be immediately effective.

By Order entered on December 17, 2014, the presiding ALJs denied Uber's Motion to Stay the effective date of the November 26, 2014 Order on Motion for Sanctions.

On January 9, 2015, I&E filed an Amended Complaint, which identifies Uber, Rasier, Gegen LLC (Gegen) and Rasier-PA as the proper Respondents responsible for or directly or indirectly facilitating and/or providing unauthorized passenger motor carrier

service within the Commonwealth of Pennsylvania.<sup>11</sup> The Amended Complaint also updates and quantifies the violations alleged by I&E 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. In the Amended Complaint, I&E was forced to resort to the use of “proxy” trip data and name all known Uber affiliates in Pennsylvania as Respondents to the Complaint proceeding due to Uber’s continued, ongoing and intentional defiance of the Commission’s July 28, 2014 Secretarial Letter, the orders of the presiding ALJs, the Commission’s regulations pertaining to discovery and Section 333(d) of the Public Utility Code (Code), 66 Pa.C.S.

§ 333(d) (relating to Interrogatories). In the Amended Complaint, I&E seeks relief including: (1) a civil penalty in the amount of \$19,000,000 for the unauthorized passenger motor carrier service; (2) a civil penalty in the amount of \$1,000 per day per unanswered discovery request for each and every day since October 3, 2014 and up until such information is provided; and (3) any other remedy that the Commission deems appropriate.

Also on January 9, 2015, I&E filed a Second Motion for Sanctions regarding Uber’s failure to comply with the presiding ALJs’ November 26, 2014 Sanctions Order by ignoring a directive to serve full and complete answers to all outstanding discovery requests on or before December 12, 2014, and, alternatively, ignoring a directive to pay a civil penalty in the amount of \$500 per day, due and payable each day that it fails to serve

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<sup>11</sup> With the filing of I&E’s Amended Complaint, “Uber” or “Respondents” will hereinafter be used as a reference to Uber Technologies, Inc., Rasier, Rasier-PA and Gegen.

the required discovery responses until the conclusion of the evidentiary hearing in the Complaint proceeding.

Additionally, on January 9, 2015, I&E filed an Application for Subpoena of Travis Kalanick, the Chief Executive Officer of Uber.

On January 14, 2015, Uber filed a Motion for Scheduling of a Settlement Conference and Assignment of Settlement Judge. Also on January 14, 2015, Uber filed an Answer to I&E's Second Motion for Sanctions requesting that the Motion be denied.

On January 15, 2015, I&E filed an Answer in Opposition to Uber's Motion for Scheduling of a Settlement Conference and Assignment of Settlement Judge.

On January 21, 2015, Uber filed an Objection to I&E's Application for Subpoena of Travis Kalanick.

I&E replied to Uber's Objection to the Application for Subpoena of Travis Kalanick on January 23, 2015.

By Order entered on January 23, 2015, the ALJs denied Uber's Motion to Schedule a Settlement Conference. Also by separate Order entered on January 23, 2015, the ALJs denied I&E's Application for Subpoena of Travis Kalanick, but granted I&E leave to file an application to subpoena Jonathan Feldman, the General Manager of Uber-Pennsylvania.

By Order entered on January 29, 2015, the ALJs held I&E's Second Motion for Sanctions in abeyance and converted the Initial Hearing scheduled for February 18, 2015 into an oral argument on the relief requested by I&E in the Second Motion for Sanctions.

On February 2, 2015, Uber filed an Answer to I&E's Amended Complaint. In its Answer, Uber admitted or denied the various averments made by I&E in the Amended Complaint.

On February 4, 2015, Uber filed a Motion for Reconsideration of the Interim Order regarding the scheduling of a settlement conference and assignment of a settlement judge. Also on February 4, 2015, Uber filed a Motion for Protective Order seeking to limit the use of information that Uber asserts is confidential and that it was ordered to provide to I&E for use by I&E in settlement discussions only.

On February 6, 2015, I&E filed an Answer to Uber's Motion for Reconsideration of the Interim Order regarding the scheduling of a settlement conference and assignment of a settlement judge. I&E requested that Uber's Motion for Reconsideration, which was filed after the deadline established for filing motions in this proceeding as set forth in the ALJs' December 2, 2014 Order, be denied. Also on February 6, 2015, I&E filed with the Commission a Petition for Disclosure of Trip Data, which was submitted by Rasier-PA in its Application proceedings, due to the fact that Uber unilaterally deprived I&E access to such data in the discovery process of the Complaint proceeding. I&E's Petition for Disclosure of Trip Data is docketed at P-2015-2466136. Additionally, on February 6, 2015, I&E filed an Answer in opposition to Uber's Motion for Protective Order.

Oral argument pertaining to I&E's Second Motion for Sanctions was held in Pittsburgh on February 18, 2015.

By Order entered on February 24, 2015, the ALJs entered an Order Regarding Various Procedural Matters, which held I&E's Second Motion for Sanctions in abeyance,

directed that Uber provide full and complete answers to all outstanding discovery requests should the parties fail to enter into stipulations by March 4, 2015, directed I&E to serve the Amended Complaint upon all named entities and clarified that no stay has been granted with regard to the prior discovery orders.

On February 26, 2015, Uber filed an Answer to I&E's Petition for Disclosure of Trip Data at Docket No. P-2015-2466136 and requested that it be denied.<sup>12</sup>

On February 27, 2015, I&E served the Amended Complaint on Rasier, Raiser-PA and Gegen.

By letter dated March 4, 2015, the parties requested a continuance of two weeks to provide a list of proposed stipulations to the ALJs in the Complaint proceeding.

On March 6, 2015, Uber provided partial discovery responses to I&E.

The parties' request for a continuance to present proposed stipulations was granted by Order dated March 9, 2015.

In an e-mail dated March 16, 2015, counsel for Respondents requested an extension of time until March 27, 2015 to file answers to I&E's Amended Complaint. Counsel's requested extension of time was granted by Order dated March 17, 2015.

Also on March 17, 2015, I&E filed an Application for Subpoena of Jonathan Feldman, General Manager of Uber Pennsylvania.

On March 18, 2015, the parties advised that they were unable to enter into stipulations at that time.

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<sup>12</sup> As of this date, no action has been taken by the Commission on I&E's Petition for Disclosure of Trip Data.

By Notice dated March 19, 2015, an Initial Hearing was scheduled for May 6, 2015.

On March 23, 2015, Uber filed a response to I&E's Application for Subpoena.

By Order entered on March 25, 2015, the ALJs granted I&E's Application for Subpoena of Jonathan Feldman and on that same day, issued a Subpoena to compel his attendance at the Initial Hearing.

In a separate Order entered on March 25, 2015, the ALJs granted, in part, I&E's Second Motion for Sanctions. (March 25, 2015 Sanctions Order). The ALJs denied I&E's request to use proxy trip data. However, the ALJs prohibited Uber from presenting any evidence or challenge to evidence presented regarding the dates, times, drivers, vehicles, relationship to Uber, number of rides taken or any related facts or issues. The ALJs also prohibited Uber from asserting any claim, position or defense that Rasier, Rasier-PA, Gegen or other affiliate is the actual broker or provider of transportation in this proceeding. Further, the ALJs imposed an additional civil penalty in the amount of \$500 per day from December 12, 2014 to the date that Uber fully complies with the previous discovery orders or the date of the conclusion of the evidentiary hearing, whichever is first met.

On March 27, 2015, Rasier, Rasier-PA and Gegen filed separate Answers to I&E's Amended Complaint that admitted or denied the various averments made by I&E.

On April 14, 2015, Uber filed an unopposed Motion for Protective Order.

By letter dated April 15, 2015, I&E served the Subpoena on Jonathan Feldman.<sup>13</sup>

By Order entered April 21, 2015, the ALJs granted Uber's Protective Order.

The evidentiary hearing in this matter took place on May 6, 2015. During the hearing, the parties submitted Stipulations of Fact that were admitted into the record as Exhibit ALJ-1 Revised. For the first time at hearing, Uber provided data concerning the number of unauthorized trips furnished by Rasier between February 11, 2014 and August 20, 2014.

Two discovery requests remain incomplete: I&E Interrogatories and Requests for Production of Documents Set I, No. 3 (relating to supporting documentation for the unauthorized trips) and Set II, No. 1 (relating to licensing agreements between Uber and any other entity, including affiliates, concerning passenger transportation services in the Commonwealth). (May 6, Tr. 201).

I&E submits this Main Brief in accordance with the briefing schedule established at the conclusion of the evidentiary hearing. (May 6, Tr. 202). Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs are attached as Appendices A through C, respectively.

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<sup>13</sup> I&E made numerous attempts to schedule a mutually agreeable time to personally serve the Subpoena on Mr. Feldman. Mr. Feldman did not cooperate with I&E's efforts regarding personal service of the Subpoena and, therefore, I&E resorted to service of the Subpoena by certified mail. Mr. Feldman apparently refused to accept service of the Subpoena in this form as well, as I&E's certified mail was then returned as "unclaimed."

## II. STATEMENT OF QUESTIONS

1. Whether Respondents violated Section 1101 or, in the alternative, Section 2505 of the Public Utility Code, 66 Pa.C.S. §§ 1101 and 2505, by providing or brokering the transportation of persons for compensation between points within the Commonwealth of Pennsylvania without first holding authority from the Commission?

Suggested Answer: Yes.

2. Whether a civil penalty of \$19,000,000 is lawful and appropriate given the magnitude of Respondents' violations and their defiant refusal to submit to the Commission's regulatory authority?

Suggested Answer: Yes.

3. Whether an additional civil penalty sanction in the amount of \$1,000 per day per unanswered discovery request until such information is provided or until this proceeding is closed, whichever comes first, is appropriate due to Respondents' defiant refusal to provide responses or produce documents to what was judicially determined to be proper discovery?

Suggested Answer: Yes.

### III. SUMMARY OF ARGUMENT

With minor exception, the Commission is responsible for regulating the provision of passenger transportation service for compensation within the Commonwealth of Pennsylvania. Passenger motor carriers are required to obtain a Certificate of Public Convenience from the Commission before rendering service and brokers of transportation must first obtain a brokerage license issued by the Commission prior to selling or offering for sale any transportation by a certificated motor carrier. The question presented is whether Uber or any of the wholly-owned subsidiaries of Uber, fall within the classification as such a regulated entity. The answer is unequivocally yes.

Between February 11, 2014 and August 20, 2014, Rasier, a wholly-owned subsidiary of Uber, operated an illegal transportation network between points in Pennsylvania that connected passengers who downloaded and requested a ride through the Uber App with the nearest available driver for compensation. At the conclusion of each trip, a fare was charged to the passenger's credit card or other form of payment provided by the passenger upon establishing an account with Uber. Not Rasier, or Uber or any other Uber subsidiary possessed authority from the Commission to operate during this time period. Respondents admit that [REDACTED] unauthorized trips were completed in Pittsburgh, Allegheny County from February 11, 2014 up to and including August 20, 2014.

As if the launching of unauthorized passenger transportation service was not bad enough, Uber unabashedly continued to provide the unauthorized transportation service

even after the issuance of Orders directing Uber to cease and desist – the first Order being entered by the presiding ALJs on July 1, 2014, and the second by the Commission on July 24, 2014.

I&E proposes, and the record supports, the imposition of a Nineteen Million Dollar (\$19,000,000) civil penalty, which, all else being equal, is based on a fair and reasonable civil penalty in the amount of \$[REDACTED] for each of the [REDACTED] unauthorized trips that were facilitated by the Uber App, in flagrant defiance of the Code and Commission's subsequent directives.

Lastly, I&E avers that additional punitive measures against Respondents are completely warranted based on the Respondents' blatant failure to cooperate with I&E, their willful misconduct displayed in defiance of Commission directives and Orders and their overall contumacious behavior in obstructing the orderly conduct of this proceeding. Eleven months after I&E's initial discovery requests were propounded and now two months after the evidentiary hearing, Uber still has not produced documents in response to two I&E discovery requests. Uber also has not paid *any* amount towards the civil penalty sanction. Accordingly, Uber's misconduct warrants the imposition of an additional civil penalty in the amount of \$1,000 per unanswered discovery response per day until such documents are produced or until the Complaint proceeding is closed.<sup>14</sup>

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<sup>14</sup> In its Second Motion for Sanctions, I&E requested that the sanction be increased to a \$1,000 civil penalty per unanswered response per day until the conclusion of the evidentiary hearing or the production of responses to all outstanding discovery requests. The ALJs granted I&E's request in the March 25, 2015 Sanctions Order. However, Uber still has not produced certain responses to outstanding discovery requests or paid any civil penalty sanction. Therefore, I&E seeks to continue the application of the civil penalty sanction until such responses are provided or until this proceeding is closed, whichever comes first.

#### IV. ARGUMENT

A. **Respondents Violated Section 1101, or, in the Alternative, Section 2505, of the Public Utility Code, 66 Pa.C.S. §§ 1101 and 2505, in That They Provided or Brokered the Transportation of Persons for Compensation Between Points Within the Commonwealth of Pennsylvania Without First Holding Authority From the Commission**

Section 1101 of the Code requires motor carriers to first obtain a Certificate of Public Convenience, which evidences the Commission's approval of the proposed public utility, prior to beginning "to offer, render, furnish, or supply service within this Commonwealth." 66 Pa.C.S. § 1101. Motor carriers are defined as "[a] common carrier by motor vehicle, and a contract carrier by motor vehicle." 66 Pa.C.S.

§ 102. Common carriers by motor vehicle are defined, in pertinent part, as: "[a]ny common carrier who or which holds out or undertakes the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by motor vehicle for compensation . . . ." *Id.*

Brokers, by definition, are not public utilities and, consequently, do not require Certificates of Public Convenience. 66 Pa.C.S. § 2501(b). However, brokers of transportation must nevertheless first obtain a brokerage license issued by the Commission prior to selling or offering for sale any transportation by a certificated motor carrier. 66 Pa.C.S. § 2505(a). A "broker" is defined as:

Any person or corporation not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, or the furnishing, providing, or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing, or procuring of facilities therefor, other than as a motor

carrier directly or jointly, or by arrangement with another motor carrier, and who does not assume custody as a carrier.

66 Pa.C.S. § 2501(b); *See also* (July 1, 2014 Order at 2); (July 24, 2014 Order at 3).

Uber had neither a certificate of public convenience nor a brokerage license to facilitate, arrange or provide passenger transportation for compensation. Since Uber had neither, the Code was violated with each and every trip facilitated by the Uber App from February 11, 2014 through and including August 20, 2014.

On June 5, 2014, I&E filed a Complaint<sup>15</sup> before the Commission against Uber alleging, *inter alia*, that Uber acts as an unlicensed broker of transportation for compensation between points within the Commonwealth. I&E's initial Complaint further alleged that Uber drivers do not possess Certificates of Public Convenience issued by the Commission authorizing them to provide motor carrier passenger service.<sup>16</sup> Despite the fact that the Uber parent company never, at any point, applied for or obtained a license or certificate of public convenience and, thus, did not possess the authority to legally operate as a licensed broker or a certificated motor carrier within the Commonwealth of Pennsylvania, it continued to facilitate transportation in Pittsburgh through the use of the Uber App by Uber drivers even after the filing of I&E's Complaint. (June 26, Tr. 22).

Given Uber's blatant recalcitrance and I&E's concerns for public safety, I&E, as the bureau within the Commission that is charged with the duty of enforcing the Code

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<sup>15</sup> *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Uber Technologies, Inc.*, Docket No. C-2014-2422723.

<sup>16</sup> I&E filed an Amended Complaint on January 9, 2015 and included allegations that Uber operated as an uncertificated public utility, in violation of Section 1101 of the Code, 66 Pa.C.S. § 1101.

and the Commission's regulations,<sup>17</sup> was left with no choice but to seek interim emergency relief from the Commission. Accordingly, on June 16, 2014, I&E filed with the Commission a Petition for Interim Emergency Relief requesting that Uber be ordered to immediately cease and desist from unlawfully brokering transportation for compensation.

On June 26, 2014, an emergency hearing was held before ALJs Long and Watson on I&E's Petition for Interim Emergency Relief. As the record from that hearing reflects, the presiding ALJs correctly determined that the standard for emergency relief was met, granted I&E's Petition, and directed Uber to immediately cease and desist from utilizing its digital platform to facilitate transportation to passengers utilizing non-certificated drivers in their personal vehicles until such time as it secures appropriate authority from the Commission. (July 1, 2014 Order at Ordering Paragraph 2).<sup>18</sup> Specifically, I&E met its burden in showing that Uber is brokering transportation for compensation without being licensed or certificated and that Uber is using non-certificated drivers to provide the transportation. (July 1, 2014 Order at 6-7). Moreover, I&E demonstrated that substantial safety risks are posed to the public by Uber's continued unlawful and unregulated operation without Commission oversight. *Id.* Notably, the ALJs stated:

It is not in the public interest for the Commission to ignore its statutory mandate to oversee brokers and motor carriers through the enforcement of its rules and regulations in order to safeguard the public and to protect against preventable accidents and injuries to the public.

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<sup>17</sup> I&E is the entity established to initiate proceedings that are prosecutory in nature for violations of the Code and Commission regulations. See *Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11).

<sup>18</sup> The July 1, 2014 Order was admitted into evidence as Exhibit ALJ 2.

(July 1, 2014 Order at 15).

At the hearing, I&E's witness, Officer Bowser, presented his un rebutted testimony which described in detail the process he followed to utilize the Uber App and personally obtain numerous rides that were provided by non-certificated Uber drivers in their personal vehicles. (June 26, Tr. 15-21).<sup>19</sup> Officer Bowser was charged for each ride that he took and the compilation of printed invoices that he received via email after taking each Uber trip was admitted into evidence as I&E Exhibit 2. Officer Bowser testified:

Q. Is it your testimony that Uber has been and continues to be providing this transportation service without approval of the Commission?

A. Yes.

(June 26, Tr. 22).

Officer Bowser testified at length about public safety concerns due to the fact that the Commission does not inspect the vehicles of Uber drivers or review records pertaining to the driving history or criminal background of Uber drivers. (June 26, Tr. 23-33). Officer Bowser also testified that, with regard to insurance coverage, it was not sufficient for a motor carrier to simply say, "Trust me, we have more than adequate coverage." (June 26, Tr. 25).

Officer Bowser's un rebutted testimony demonstrates that a lack of Commission oversight adversely impacts public safety. Officer Bowser testified:

Q. In your opinion, and based on your experience, does the fact that Uber does not submit to Commission oversight have any impact on public safety?

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<sup>19</sup> A comprehensive summary of the evidence presented at the hearing on the Petition for Interim Emergency Relief, and incorporated herein by direction of the ALJs, is set forth in the July 1, 2014 Order at 6-9.

A. Yes. We don't know how many there are, who they are or where they are currently located.

Q. And, what is the impact on public safety?

A. I think it's a recipe for disaster.

(June 26, Tr. 31).

In their July 1, 2014 Order granting the emergency relief sought by I&E, the presiding ALJs found that the evidence presented at hearing:

- Established that neither Uber nor the drivers who provided rides to Officer Bowser when he initiated a service request using the Uber App held authority from the Commission to provide transportation services. (July 1, 2014 Order at 11);
- Officer Bowser paid for each trip he took. (July 1, 2014 Order at 11);
- Since I&E filed its Complaint on June 5, 2014, Uber has not suspended its operation. (July 1, 2014 Order at 12);
- Uber has continued to offer this service as recently as June 24, 2014, despite not having Commission authority. (July 1, 2014 Order at 12); and
- Established that currently there is no Commission oversight of Uber operators and no inspection of the private vehicles providing transportation services. (July 1, 2014 Order at 13-14).

The Commission upheld the ALJs' July 1, 2014 Order, and in directing Uber to cease and desist, the Commission concluded that "the public interest is better served by enforcing the Code and helping to ensure the safety of the public." (July 24, 2014 Order at 24).

At the May 6, 2015 hearing, Officer Bowser presented additional testimony regarding the continued provision of unauthorized service after the July 1, 2014 Order was entered. (May 6, Tr. 61-64). Three rides were taken by Commission Enforcement

Officers on July 10, 2014. Each ride was facilitated by the Uber App. Officer Bowser did not personally take the rides because his Uber App had been disabled by Uber subsequent to Officer Bowser's earlier sting operation. (May 6, Tr. 61). (See also, I&E Exhibit 4). I&E's witness confirmed that Uber's actions violated Sections 1101 and/or 2505 of the Code. (May 6, Tr. 70).

To further support I&E's argument that Uber violated the Code, Uber **admits** that Rasier, a wholly-owned subsidiary of Uber, launched the Uber App in Pittsburgh, Allegheny County on February 11, 2014, thereby permitting the public to download the Uber App, establish an account and request transportation service for compensation from the nearest driver. (Exhibit ALJ 1- Revised at ¶¶ 7, 9, 13). The relevant Stipulations of Fact read:

7. On February 11, 2014, Rasier launched the UTI App in Pittsburgh, Allegheny County, Pennsylvania.

9. A passenger who has downloaded the UTI App, established an account and provided payment information may use the UTI App to locate the nearest available driver who has registered with a UTI subsidiary and is logged on to the UTI App in order to transport the passenger to the passenger's desired destination for compensation.

13. Upon arrival to the passenger's desired destination, the request for transportation through the UTI App is deemed completed and the fare is charged to the credit card or other form of payment provided by the passenger upon establishing an account to use the UTI App.

Uber further admits that from February 11, 2014 through and including August 20, 2014, not Uber, Rasier, or any other Uber subsidiary held authority from the Commission to transport passengers for compensation. (Exhibit ALJ 1-Revised at ¶ 15). Stipulation of Fact No. 15 reads:

15. From February 11, 2014 through and including August 20, 2014, neither Rasier, nor UTI nor any other UTI subsidiary held authority from the Commission to transport passengers in Pittsburgh, Allegheny County, Pennsylvania for compensation or any other Commission authority relative to Pittsburgh, Allegheny County, Pennsylvania.

Additionally, Uber's witness, Jonathan Feldman, who is Uber's General Manager in Pennsylvania<sup>20</sup> provided at hearing on the proprietary record, the long-awaited actual trip data that I&E first sought nearly 10-months earlier. (May 6, Tr. 86-89). A total of [REDACTED] trips were provided while Uber lacked authority to operate in Pennsylvania. (May 6, Tr. 89). Mr. Feldman also testified that it was Rasier that licensed the Uber App and contracted with drivers prior to acquiring authority on August 21, 2014. (May 6, Tr. 91). Thus, Uber does not dispute that unauthorized passenger transportation for compensation occurred.

It is clear that Uber either provided uncertificated passenger transportation service as a motor carrier or operated in the capacity of an unlicensed broker that facilitated transportation using uncertificated motor carriers through the Uber App. Either way, Uber's actions violate the Code no matter what label is given to the transportation, *i.e.* motor carrier service or brokering.

Furthermore, any argument proposed by Uber that Respondents were unaware that Commission authority first had to be obtained prior to operating must be rejected. By letter dated July 6, 2012, the Commission's Bureau of Technical Utility Services – Transportation Division noted that the Commission received information regarding Uber

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<sup>20</sup> Mr. Feldman first presented testimony as a witness subpoenaed by I&E to respond to outstanding discovery and discovery related matters. (May 6, Tr. 76-109). Mr. Feldman also presented testimony separately on direct examination by Uber's counsel. (May 6, Tr. 123-178).

acting as an unlicensed broker of passenger transportation for compensation, and directed Uber to cease and desist from acting as a broker of transportation without the authority to provide the service. (Attached to Amended Complaint). Additionally, in obvious recognition that Respondents' service was subject to regulation, Rasier-PA applied for authority to operate a ride-sharing network on April 14, 2014 while its sister subsidiary, Rasier, continued its unlawful operation. Lastly and most egregiously, Uber admits that they continued to operate after the July 1, 2014 and July 24, 2014 Orders directing Uber to immediately cease and desist using a digital platform to facilitate transportation to passengers using non-certificated drivers until such time that Commission authority was granted based on nothing more than an internal company decision. (May 6, Tr. 199).

In addition, it is expected that Respondents may argue that Uber is not within the jurisdiction of the Commission because they are merely a software company. Uber attempted to maintain this ruse throughout the proceeding. Respondents argued that Uber licensed software (the Uber App) to another company, and it was that company that facilitated the transportation at issue. Uber's claim is specious at best.

I&E served discovery upon Uber, requesting that Uber provide the contractual licensing agreements between Uber and the licensee, but Uber refused to comply with this discovery request. It was determined that Uber had licensed the Uber App to Rasier, a subsidiary of Uber. I&E filed an Amended Complaint which, in part, expanded the named Respondents from Uber to Uber's subsidiaries, Rasier, Rasier-PA and Gegen. It was determined that the affiliated companies were not only subsidiaries, but wholly-owned subsidiaries of Uber. In fact, the record evidence showed these wholly-owned

subsidiaries had no employees of their own but rather were managed and run by personnel of the parent company. (Exhibit ALJ 1 – Revised at ¶ 17). Despite Respondents’ efforts to sabotage the discovery process and deny the information sought by I&E, I&E’s investigation and evidence at hearing ultimately revealed that the parent company was much more intimately involved in the entities facilitating the transportation services than Uber strenuously sought to portray.

Therefore, upon consideration of the record, testimony and evidence of the Petition for Interim Emergency Relief at P-2014-2426846, incorporated herein, the testimony of I&E’s Officer Bowser and Uber’s Mr. Feldman, and the Stipulations of Fact entered into by the parties and submitted as Exhibit ALJ 1-Revised, it is abundantly clear that I&E has presented sufficient evidence to prevail on the merits of the underlying complaint, as amended, and find that all trips facilitated by the Uber App from February 11, 2014 through and including August 11, 2014 were unauthorized trips in violation of the applicable provisions of the Code.

**B. A Civil Penalty of \$19,000,000 is Lawful and Appropriate Given the Magnitude of Respondents’ Violations and Their Defiant Refusal to Submit to the Commission’s Regulatory Authority**

As a result of the unauthorized service facilitated, brokered or provided by Uber, I&E seeks a civil penalty against Uber in the amount of \$19,000,000 pursuant to 66

Pa.C.S. § 3301. Specifically, Section 3301(a) reads:

*General rule.* --If any public utility, or any other person or corporation subject to this part, shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or

order made by the commission, or any order of the commission prescribing temporary rates in any rate proceeding, or to comply with any final judgment, order or decree made by any court, such public utility, person or corporation for such violation, omission, failure, neglect, or refusal, shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000, to be recovered by an action of assumpsit instituted in the name of the Commonwealth. In construing and enforcing the provisions of this section, the violation, omission, failure, neglect, or refusal of any officer, agent, or employee acting for, or employed by, any such public utility, person or corporation shall, in every case be deemed to be the violation, omission, failure, neglect, or refusal of such public utility, person or corporation.

66 Pa.C.S. § 3301(a).

A civil penalty of \$19,000,000 is warranted based on the violations of the Code committed by Respondents and is appropriate upon consideration of the factors and standards used by the Commission to evaluate and impose such civil penalties.

1. **The Civil Penalty Sought is Warranted Given the Number of Violations Committed**

I&E initiated its request for trip data from Uber in I&E Discovery – Set I, which was served upon Uber on August 8, 2014. Ascertaining the “trip data,” or number of rides facilitated by the Uber App, was absolutely critical as it was the crux of I&E’s Amended Complaint. Not until the day of the evidentiary hearing, through the testimony of Uber-Pennsylvania General Manager Jonathan Feldman, did Uber finally disclose the trip data long sought by I&E. Mr. Feldman confirmed that his testimony at the May 6, 2015 hearing was the first time that Uber’s trip data was provided to I&E. (May 6, Tr. 97). The presiding ALJs deemed Uber’s trip data to properly fall within the protections of the April 21, 2015 Protective Order. (May 6, Tr. 83). On the proprietary record, Mr. Feldman provided the following Uber trip data:

<b>Date to Date</b>	<b>No. of Trips</b>
February 11, 2014 to June 5, 2014	████████
June 6, 2014 to July 1, 2014	████████
July 2, 2014 to July 24, 2014	████████
July 25, 2014 to August 20, 2014	████████
Total number of trips from February 11, 2014 to August 20, 2014	████████

(May 6, Tr. 86-89). Mr. Feldman further confirmed that these trips were provided by Uber or an affiliate of Uber in Pittsburgh, Allegheny County. (May 6, Tr. 89).

**2. Uber Should Be Fined For Each and Every Unauthorized Trip Facilitated by the Uber App**

The imposition of a civil penalty for each unauthorized trip facilitated by the Uber App, provided to the general public for compensation and completed using uncertified drivers and their personal vehicles, is appropriate because each and every trip can be feasibly segregated into a discrete violation of the Code.

In *Newcomer Trucking, Inc. v. Pa. Pub. Util. Comm'n*, 531 A.2d 85 (Pa. Cmwlth. 1987), the Commonwealth Court held that Section 3301 of the Code authorizes the Commission to impose a civil penalty of up to \$1,000 for *each and every discrete violation*, regardless of the number of violations occurred. In *Newcomer*, the carrier's certificate prohibited it from transporting the goods of more than one consignor on one truck at any time. *Newcomer* was found to have violated its certificate restriction 184 times on 128 separate days. The Commonwealth Court affirmed the Commission's Order and found that since 184 unlawful shipments were identified, each shipment

constituted a violation. The Court disagreed with the carrier's argument that the shipments could be characterized as a continuing offense of an ongoing nature because the shipments could be feasibly segregated into discrete violations so as to impose separate penalties. *Id.* at 87. The Court stated:

Interpreting Section 3301(a) of the Code in the fashion proposed by Newcomer, however, would be both absurd and unreasonable. Under Newcomer's argument, no matter how many times a Code provision or PUC regulation is violated, be it once or 100 times, the maximum penalty that the PUC could levy would be \$1,000. Clearly, this could not have been the intent of the legislature, and we decline to so find.

*Id.* at 86.

Consistent with Commonwealth Court's determination regarding the number of unlawful shipments in *Newcomer*, the number of unauthorized trips facilitated by Uber that took place in Pittsburgh, Allegheny County between February 11, 2014 and August 20, 2014 can be segregated into discrete violations. The total number of trips provided by Rasier during this time period was divulged by Uber's witness, Mr. Feldman, at the evidentiary hearing on May 6, 2015 as [REDACTED]. (May 6, Tr. 89). Each trip is a discrete violation of either 66 Pa.C.S. § 1101 or 66 Pa.C.S. § 2505(a) and each trip is subject to a separate monetary civil penalty. As Officer Bowser testified, driver habits and vehicle differences support a fine per trip. (May 6, Tr. 117-119). Should each of the trips facilitated between February 11, 2014 and August 20, 2014 be afforded equal weight, the \$19 million dollar total civil penalty divided by the total number of trips facilitated by Uber equals a per trip civil penalty of \$ [REDACTED]. (May 6, Tr. 112).

By any standards, the imposition of a \$ [REDACTED] fine for each unauthorized trip provided by the Uber App is more than reasonable given the parameters of Section 3301 to impose a fine of up to \$1,000 per violation. I&E seeks a fine against Uber that is less than [REDACTED] the allowable maximum penalty. I&E's proposed civil penalty of \$ [REDACTED] per unauthorized trip is also less than what the Commission has imposed for similar violations in the past. *See Pa. Pub. Util. Comm'n, Bureau of Transp. and Safety v. Franz Percell Greer*, Docket No. C-2011-2207151 (Initial Decision issued November 18, 2011) (Order entered January 4, 2012) (imposing a \$500 civil penalty for offering to provide passenger transportation service for compensation without holding a Certificate of Public Convenience). *See also Pa. Pub. Util. Comm'n, Bureau of Transp. and Safety v. Raymond H. Rucker*, Docket C-2009-2080992 (Order entered January 28, 2011) (imposing a civil penalty in the amount of \$800 for offering to transport persons for compensation between points in the Commonwealth while not holding a Certificate).

Moreover, when considering the totality of the evidence of record in this proceeding, the presiding ALJs are free to assign their own weight to items of evidence and the inferences which may be drawn from the evidence. *See Application of Harrisburg Taxicab & Baggage Company, t/d/b/a Yellow Cab, et al.*, Docket Nos. A-00079143 F.8, Am-B and A-00079143 F. 9, 1991 Pa. PUC Lexis 168 (Order entered September 25, 1991) at \*22. As such, it would be entirely appropriate for the presiding ALJs to modify I&E's blanket per trip fine of \$ [REDACTED] and instead conclude that those trips provided by Uber *after* the ALJs' July 1, 2014 Order, which expressly directed Uber to cease and desist from providing such transportation services, are deserving of a civil

penalty per violation that is *more than* the civil penalty amount for those trips provided prior to the issuance of the July 1, 2014 Order. For example, this Commission could determine that the appropriate fine for each of the ██████ unauthorized trips provided after the July 1, 2014 Order is \$█████, whereas the appropriate fine for each of the ██████ unauthorized trips provided before the July 1, 2014 Order is half as much, or \$█████. The resulting total civil penalty is still essentially \$19,000,000. I&E respectfully submits that no matter how the civil penalty per violation is ultimately calculated, a total civil penalty of \$19,000,000 remains the appropriate total, before consideration of the additional sanctions penalty.

3. **The Imposition of a \$19,000,000 Civil Penalty is Warranted upon Consideration of the *Rosi* Standards**

The Commission promulgated a Policy Statement<sup>21</sup> at 52 Pa. Code § 69.1201 as a guideline that sets forth ten factors that are to be considered when evaluating whether and to what extent a civil penalty for violating a Commission order, regulation or statute is warranted. While these factors are evaluated for both litigated and settled proceedings involving violations of the Code and Commission regulations, 52 Pa. Code § 69.1201(b) notes that these factors and standards are applied in a more strict fashion in a litigated proceeding (like this one) and without the flexibility afforded in a settled proceeding.

The present standard for the imposition of a civil penalty was developed in *Rosi v. Bell-Atlantic -- Pennsylvania, Inc. and Sprint Communications, L.P.*, Docket No.

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<sup>21</sup> A policy statement does not establish a “binding norm,” but announces the agency’s tentative intentions for the future. *Pa. Human Relations Comm’n v. Norristown Sch. Dist.*, 374 A.2d 671, 679 (Pa. 1977).

C-00992409 (Order entered March 16, 2000) and in *Pa. Pub. Util. Comm'n v. NCIC Operator Serv.*, Docket No. M-00001440 (Order entered December 21, 2000), where the Commission held that violations would be subject to the *Rosi* standards. Subsequently, the Commission adopted the Policy Statement at 52 Pa. Code § 69.1201, which enumerates the same standards. Through case law, the Commission has directed that litigated proceedings seeking to impose a civil penalty include an analysis of these standards. *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Gholston Paratransit Serv., LLC*, Docket No. C-2013-2354805 (Initial Decision issued May 23, 2014) (Order entered July 24, 2014). Here, application of the factors set forth in 52 Pa. Code § 69.1201 substantiates the imposition of a \$19,000,000 civil penalty against Respondents.

**a. Uber's Willful Misconduct is Serious**

The first factor for consideration is whether the conduct at issue was of a serious nature. Section 69.1201(c)(1) states:

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.

52 Pa. Code § 69.1201(c)(1).

In this case, the “conduct” to be considered is three-fold. First, Uber’s conduct could initially be defined as the provision of unauthorized transportation services in violation of Sections 1101 or 2505 of the Code, 66 Pa.C.S. §§ 1101 (relating to the

beginning of service of a public utility) and 2505 (requiring brokers to obtain a license). This conduct is serious due to its impact on public safety.

Officer Bowser testified at length at the June 26, 2014 hearing concerning the Petition for Interim Emergency Relief about public safety concerns due to the fact that the Commission does not inspect the vehicles of Uber drivers or review records pertaining to the driving history or criminal background of Uber drivers. (June 26, Tr. 23-33). Officer Bowser also testified that a motor carrier's insurance company must submit certificates of liability insurance to the Commission and that motor carriers are suspended from providing service until evidence of insurance is on file. (June, 26, Tr. 24). The Commission was unable to verify whether Uber maintained adequate insurance coverage based on the record.

One of the primary tenets of the Commission is protecting the public interest. I&E submits that the evidence of record in this proceeding<sup>22</sup> makes clear that from February 11, 2014 through and including August 20, 2014, numerous drivers registered with Uber provided multiple trips per day without Commission oversight. Each and every day that Uber operated without a brokerage license or as an uncertificated transportation network company, and with each and every trip conducted by an uncertificated driver, Uber subjected the public to potential injury or even death. Uber's failure to submit to regulation by the Commission prior to initiating its service left the Commission unable to prevent injury to people or damage to property through an inspection of vehicles and a review of records pertaining to drivers. Further, had an

accident occurred, it is not clear that there would have been sufficient, adequate or even any insurance coverage for injury and damage to persons or property caused by drivers operating in Uber's network. By providing unauthorized service using uncertificated drivers to transport the public, Respondents unilaterally deprived the Commission of its obligation to ensure driver integrity, vehicle safety and the maintenance of sufficient insurance coverage.

I&E demonstrated that substantial safety risks were posed to the public by Uber's continued unlawful and unregulated operation without Commission oversight. Notably, the ALJs stated in their July 1, 2014 Order:

Under the circumstances, the Commission cannot currently determine that the vehicles arranged by Uber comply with its vehicle safety requirements nor that the drivers possess the requisite qualifications to maintain the public safety. The occurrence of a fatal or injurious motor vehicle accident, which could be avoided with appropriate Commission oversight, could be catastrophic.

The Commission cannot accurately determine the existence of adequate insurance coverage for riders using the Uber service in order to ensure the public safety. The occurrence of a fatal or injurious motor vehicle accident, without adequate insurance coverage, could also be catastrophic.

(July 1, 2014 Order at 14).

The next aspect of Uber's misconduct is the egregious and willful disregard of the July 1, 2014 Order directing Uber to cease and desist from facilitating transportation services via the digital platform followed by Uber's continued disregard of the Commission's July 24, 2014 Order, which confirmed and adopted the ALJs' July 1, 2014

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<sup>22</sup> The record in this proceeding includes the incorporation of the record at P-2014-2426846.

Order.<sup>23</sup> This aspect of Uber's misconduct is unquestionably worthy of a substantial civil penalty.

Uber's action to launch the ride-sharing service followed by Uber's outright defiance of the Commission's subsequent orders expressly directing Uber to cease and desist the provision of the unauthorized transportation service were clearly neither a mere administrative error nor technical glitch. Rather, Uber made a conscious business decision to ignore the Commission's mandate that they cease and desist providing unauthorized transportation services. (May 6, Tr. 178). Moreover, as Officer Bowser testified, Respondents' conduct of providing unauthorized service was of a serious nature because every single trip was a potential safety issue in and of itself. (May 6, Tr. 115).

I&E's proposed civil penalty per unauthorized trip is well within the maximum \$1,000 per violation allowed pursuant to 66 Pa.C.S. § 3301. In fact, there are many instances where a higher monetary penalty was deemed appropriate where the matter did not involve property damage, the loss of life or even the potential for that to occur. For example, the Commission imposed a civil penalty of \$1,000 for failing to file an assessment report in cases involving relatively small assessments where the respondent was found to have committed violations of the Code. The Commission found a significant penalty was necessary to deter additional violations in the future. *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. C&J Services, Inc.*, Docket No. C-2012-2335066 (Order entered May 9, 2013); *Pa. Pub. Util. Comm'n, Bureau of*

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<sup>23</sup> ALJ Exhibit 2 and ALJ Exhibit 3.

*Investigation and Enforcement v. Hathaway Specialized Hauling, Inc. t/a Fantasia Machinery Transport*, Docket No. C-2012-2325066 (Order entered March 14, 2013).

Clearly, the seriousness of Uber's misconduct is not simply a measure of whether accidents occurred, property was damaged, or lives were lost. Respondents' defiant disregard for the Commission's regulations over motor carrier transportation services and subsequent disregard for the July 1, 2014 and July 24, 2014 Orders was a level of willful misconduct that warrants the imposition of the fine sought by I&E in this proceeding.

The third and final aspect of Uber's misconduct is its unconscionable disregard for this Commission's rules of discovery. The October 3, 2014 Discovery Order granted I&E's Motion to Compel responses to I&E Discovery – Set I, which included precisely the information that the Commission directed be provided in the July 28, 2014 Secretarial Letter, namely, the trip data. The November 25, 2014 Discovery Order granted I&E's Motion to Compel responses to I&E Discovery – Set II. Not only did Uber ignore the October 3, 2014 and November 25, 2014 Discovery Orders, but also Uber failed to pay the sanctions that they were directed to pay in the November 26, 2014 Sanctions Order and the March 25, 2015 Sanctions Order. This conduct must be considered of a serious nature because it “directly affects the due process rights of the promulgating party and therefore prevents orderly and fair litigation.” November 26, 2014 Sanctions Order at p. 4 citing *Nippes v. PECO Energy Co.*, Docket No. C-2013-2363324 (Initial Decision issued August 20, 2014) (Order entered September 30, 2013). Uber sent a clear message to this Commission that they are of the mindset that they are above and immune to the

Commission's regulatory authority. Such an audaciously spiteful and dangerous mindset is a serious threat that must be thwarted by this Commission with impunity.

In summary, Uber's misconduct was an unconscionable disregard for the Code, Commission's regulations and the Commission's administrative and adjudicatory processes. Consequently, the imposition of a substantial civil penalty per violation as well as a \$1,000 civil penalty per day sanction for disobeying the ALJs' directives, as imposed by the ALJs in the March 25, 2015 Sanctions Order, is warranted due to the serious nature of Uber's misconduct.

**b. The Consequences of Uber's Misconduct Are Serious**

The second factor is whether the resulting consequences of Uber's misconduct at issue were of a serious nature. 52 Pa. Code § 69.1201(c)(2). As Officer Bowser testified, every single trip was a "recipe for disaster." (June 26, Tr. 315). Frankly, it is unknown to I&E whether serious consequences occurred from the unauthorized transportation because Uber deprived the Commission of any ability to oversee their operations for more than six months. For example, neither Uber nor Rasier adhered to the Commission's regulations between February 11, 2014 and August 20, 2014, including the Commission's requirement that passenger motor carriers submit accident reports. 52 Pa. Code § 29.44.

While Respondents assert that only nine accidents or incidents occurred that could lead to insurance claims between February 11, 2014 and August 20, 2014, I&E is unable to verify the accuracy of that statement. (May 6, Tr. 168). Additionally, Uber's witness, Mr. Feldman, was unable to state with any certainty whether every accident or incident

leads to an insurance claim. (May 6, Tr. 168-169). Thus, it is entirely possible that more than nine incidents or accidents occurred from the unauthorized transportation service. At the very minimum, at least nine accidents or incidents occurred during a six month period, which is serious especially given that neither Uber nor Rasier followed the Commission's regulations related to driver integrity, vehicle safety and insurance during that period of time.

**c. Uber's Misconduct Was Intentional**

The third factor is whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "Intentional" is defined as "done by intention or design." *Merriam-Webster's Collegiate Dictionary* 609 (10th ed. 1999). The record is replete with testimony in this case that proves without any doubt that Respondents purposely and by design violated the Commission's regulations and launched the transportation service in Pittsburgh, Allegheny County despite warnings from the Commission that such unauthorized service violated the Commission's regulations.<sup>24</sup> Uber's disregard of the July 1, 2014 Order and July 24, 2014 Order are further blatant examples of Uber's intentional defiance of the Commission's directives.<sup>25</sup>

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<sup>24</sup> See attachment to I&E's Amended Complaint.

<sup>25</sup> Ordering Paragraph 2 of the July 1, 2014 Order states, "That Uber Technologies, Inc., shall immediately cease and desist from utilizing its digital platform to facilitate transportation to passengers utilizing non-certificated drivers in their personal vehicles until such time as it secures appropriate authority from the Commission." Ordering Paragraph 3 of the July 24, 2014 Order states, "That Uber Technologies, Inc., shall immediately cease and desist from utilizing its digital platform to facilitate transportation to passengers utilizing non-certificated drivers in their personal vehicles until such time that: (a) it secures appropriate authority from the Commission and Uber Technologies, Inc., has satisfied the compliance requirements of such authorization; or (b) the Complaint at Docket No. C-2014-2422723 is dismissed by a final and unappealable Order." Uber ignored these directives.

The July 1, 2014 Order noted that the evidence presented at the June 26, 2014 hearing regarding the Petition for Interim Emergency Relief established that since I&E filed its Complaint on June 5, 2014, Uber had not suspended their operations. (July 1, 2014 Order at 12). Evidence at the June 26, 2014 hearing further established that Uber continued to offer the service as of June 24, 2014, despite not having Commission authority. *Id.* In its July 24, 2014 Order, the Commission found that “there is substantial evidence that Uber engages in the brokerage business without a broker license and, in doing so, arranges for the transportation of passengers with un-certificated motor carriers.” (July 24, 2014 Order at 18).

Respondents do not dispute that neither Uber nor its wholly-owned subsidiary, Rasier, had Commission authority to provide transportation service during the period in question. (Exhibit ALJ 1- Revised at ¶ 15). Uber also does not dispute that they continued to facilitate transportation service following entry of the July 1, 2014 Order and July 24, 2014 Order requiring Uber to cease and desist. (Exhibit ALJ 1- Revised at ¶¶ 15-16). Uber’s Mr. Feldman testified as follows:

MR. SWINDLER:

Q. Mr. Feldman, do you agree that to continue to provide service after the Cease and Desist Orders were entered by the Commission was a business decision made by Uber?

A. As opposed to what? Yes, Uber Technologies, Inc., employees made that decision.

(May 6, Tr. 178).

Then, there was this colloquy:

JUDGE WATSON:

I just have one question. Ms. Moury. You indicated that a decision was made by the company not to pull the rug out from under this process after the July 1<sup>st</sup>, 2014 Cease and Desist Order. Under what authority was that decision made?

MS. MOURY:

Under what?

JUDGE WATSON:

What authority did the company have to violate the Cease and Desist Order and make that determination?

MS. MOURY:

It would have just been an internal decision that was made by the team of people assigned to the Pennsylvania operations.

JUDGE WATSON:

But, given that it was an Order of the Administrative Law Judges and approved by the Commission, was there reliance upon some statute or Public Utility Code or regulation?

MS. MOURY:

Not that I'm aware of.

JUDGE WATSON:

Okay, thank you.

(May 6, Tr. 199).

Moreover, Respondents intentionally disregarded every Commission Order to provide discovery responses to I&E. Incredibly, Respondents purposely did not provide the trip data that was imperative to I&E's case, sought by I&E for over 10 months and

readily available to them, until Uber's witness was on the stand testifying at the evidentiary hearing on May 6, 2015. As Mr. Feldman testified:

MR. SWINDLER:

Q. Are you aware that one of the primary requests sought in I&E's Set I discovery was the trip data relevant to I&E's complaint?

A. Yes.

Q. Prior to today, has Uber provided I&E with the trip data sought in this proceeding?

A. Prior to today, it has not been provided to I&E.

(May 6, Tr. 77).

When I&E counsel questioned Mr. Feldman regarding the provision of full and complete discovery responses, Uber's stubborn recalcitrance was again reflected in counsel's objection to I&E's query. The presiding ALJs aptly responded to Uber's objection:

JUDGE LONG:

Your objection is overruled. If your witness isn't prepared to produce the documentation now, the record will simply reflect that you have once again refused to comply with discovery, once again refused to comply with a direct order of the Administrative Law Judge, and that factor will be taken into account as appropriate.

(May 6, Tr. 94).

Additionally, Uber intentionally did not make any civil penalty payment related to sanctions imposed on them for their failure to respond to I&E's discovery. (May 6, Tr. 55).

Respondents' misconduct was clearly intentional. The evidence in this case unequivocally shows that Respondents' disregard for the Commission's directives, the Commission's Orders and the Commission's sanctions was willful, deliberate and intentional. As such, the imposition of a higher civil penalty is justified.

d. **Uber Made No Attempt to Modify Their Internal Practices and Procedures to Address Their Misconduct**

The fourth factor considers whether Uber made any effort to modify internal practices and procedures to address the conduct at issue. Section 69.1201(c)(4) states:

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.

52 Pa. Code § 69.1201(c)(4).

Based on consideration of this factor, there is no evidence to support any mitigation to the imposition of a higher civil penalty. As has been previously stated, Uber's contumacious behavior from thumbing their nose at Commission authority, to their blatant disregard of the Orders of the ALJs and the Commission, to their total and intentional noncompliance with orders for sanctions, as then First Deputy Chief Prosecutor Wayne T. Scott stated at the February 18, 2015 oral argument:

MR. SCOTT:

There is a first for everything. I have never, in my 30 years of experience, seen a company completely disregard, ignore, and, if you will excuse the expression, thumb their nose at the Office of Administrative Law Judge and the Commission.

There are at least five different things, five different Orders that you have put out or that the Commission has put out that they have not complied with, and they don't intend to comply with it because they could have done it a long time ago. These are unprecedented circumstances. We need a remedy that is going to meet those circumstances.

(February 18, Tr. 13).

Without question, there was absolutely *no* attempt by Uber to modify their internal practices and procedures to address the conduct at issue because Uber's conduct was – in and of itself – precisely the practice that company management intended.

e. **The Impact of Uber's Misconduct Was Extensive**

The fifth factor involves the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). The number of persons impacted by Uber's intentional misconduct is extensive because the conduct of providing unauthorized passenger transportation service on public streets has the potential of impacting not only passengers, but also the public at large – especially pedestrians.

Officer Bowser testified that from a public safety perspective, allowing Uber drivers on the road without Commission oversight was a recipe for disaster. (June 26, Tr. 31). Similarly, lack of Commission oversight over the vehicles providing the transportation service facilitated by the Uber platform had a detrimental impact on public safety. (June 26, Tr. 33). As Officer Bowser noted at the May 6, 2015 hearing:

MR SWINDLER:

Q. Based on your experience as a PUC enforcement officer and again in the investigation of Uber operations that either you personally conducted or you supervised in your management position, do you have an opinion regarding the number of customers that would have been affected by Uber's provision of unauthorized service?

- A. Each and every single customer could have been potentially affected, and every member of the public, including motorists and pedestrians that were in the area, could have also been affected.

(May 6, Tr. 115-16).

Additionally, the Commission concluded in its July 24, 2014 Order:

As discussed above, there is substantial evidence that Uber engages in the brokerage business without a broker license and, in doing so, arranges for the transportation of passengers with un-certificated motor carriers. Based on the evidence adduced at hearing, Uber has not complied with the Code. As such, the Commission has no information related to vehicle safety inspections, driver histories, criminal background checks of drivers, or insurance certifications on vehicles. We believe that failure to submit to the Commission's oversight and the lack of information related to the Uber drivers and their vehicles constitutes an immediate safety risk for the general public.

(July 24, 2014 Order at 18). For purposes of this proceeding, the entire general public was at risk. Therefore, the impact of Uber's misconduct was extensive and warrants a higher penalty.

f. **Uber's Abysmal Compliance History Must be Considered**

The sixth factor addresses the compliance history of Uber. 52 Pa. Code § 69.1201(c)(6). Section 69.1201(c)(6) provides:

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.

52 Pa. Code § 69.1201(c)(6).

Uber has been non-compliant from day one. As already stated, Rasier launched service under the Uber App before Uber or Rasier had authority. Rasier continued to provide service without Commission authority. Uber ignored the ALJs' July 1, 2014

Order to cease and desist. They ignored the Commission's July 24, 2014 Order to cease and desist. They ignored the ALJs' October 3, 2014 Discovery Order directing that full and complete responses to I&E Discovery – Set I be provided. They ignored the ALJs' November 25, 2014 Discovery Order directing that full and complete responses to I&E Discovery – Set II be provided. Respondents ignored the ALJs' November 26, 2014 Sanctions Order directing payment of a \$500 civil penalty, due and payable for each day that Uber continued to fail to answer I&E's legitimate discovery requests. Respondents ignored the March 25, 2015 Sanctions Order, which increased the civil penalty sanction to \$1,000 per day. Incredibly, Uber's general manager for Pennsylvania, Mr. Feldman, refused to cooperate with the personal service of I&E's subpoena to testify and then failed to claim the subpoena served by certified mail.

Due to Respondents' history of non-compliance, I&E avers that Respondents' actions warrant a higher civil penalty as well as consideration regarding Rasier-PA's fitness to be granted permanent authority upon the expiration of its existing two-year license.

**g. Uber Has Utterly Failed to Cooperate**

The seventh factor addresses whether Uber cooperated with I&E's investigation. 52 Pa. Code § 69.1201(c)(7). "Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty." *Id.* The record of this proceeding is replete with testimony, motions, statements and orders which irrefutably prove that Uber utterly failed to cooperate not

only with I&E, but also with the presiding ALJs as well as the Commission itself that entered Orders which Uber blatantly and defiantly ignored.

I&E's prosecutor summarized Uber's behavior at the conclusion of the May 6, 2015 evidentiary hearing as follows:

In my two-plus decades of practice before the Pennsylvania Public Utility Commission, I have never seen the level of blatant defiance and complete disregard for Commission authority as I have had the displeasure of witnessing with Uber.

(May 6, Tr. 183).

To be honest, when I first saw the word contumacious in Commissioner Cawley's July 24<sup>th</sup> statement, I did not know what it meant. However, now ten months later, I can say that I am acutely and painfully aware of what contumacious means.

I&E has struggled with a contumacious opposing party and its contumacious pleadings and lack of full and complete discovery responses for nearly a year. If there were to be a contest for contumacious poster child, Uber wins hands down.

(May 6, Tr. 185-86).

Uber was even sanctioned for their failure to cooperate with the discovery process. *See* November 26, 2014 Sanctions Order and March 25, 2015 Sanctions Order. Uber failed to adhere to the sanctions that were imposed, specifically, the payment of a daily monetary fine. (May 6, Tr. 55). Uber's complete and utter lack of cooperation is simply unprecedented before the Commission.

**h. A Civil Penalty in the Amount of \$19,000,000 is Appropriate**

The eighth factor is consideration of the amount of the fine or civil penalty 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.* Uber is widely known to be a large start-up company with significant capital. The vast scale of its operations is demonstrated by the sizeable number of trips that took place and were secured by using the Uber App in Allegheny County during a six month time period. (May 6, Tr. 89). Uber likely earned significant sums of money from the unauthorized transportation. Thus, a civil penalty in the amount of \$19,000,000 is necessary to be punitive and deter future egregious behavior, not only regarding Uber, but also to other motor carriers or brokers of transportation who are likely monitoring this enforcement proceeding.

**i. Past Commission Decisions in Similar Situations**

The ninth factor calls for a consideration of “past Commission decisions in *similar situations*.” 52 Pa. Code § 69.1201(c)(9) (emphasis added). First, it must be stated that I&E is aware of no similar case where a regulated entity acted in such blatant defiance and committed such a large number of violations as the evidence shows in this proceeding. In that vein, there are no “similar” cases. On the other hand, there are some aspects of I&E’s requested relief from Uber that is similar to other matters. For instance, Officer Bowser testified that the imposition of a fine per trip is “usually what our standard operating procedure is.” (May 6, Tr. 116). Officer Bowser’s testimony is supported by past Commission decisions wherein a civil penalty was imposed for each separate and distinct violation of the Code. *See Jack Bleiman v. PECO Energy Company*, Docket No. F-2012-2284038 (Initial Decision issued November 20, 2012) (Order entered June 13, 2013) (Imposing a civil penalty of \$20.00 per day for 184 days wherein the

complainant was incorrectly billed for utility service provided by the respondent). See also *Pa. Pub. Util. Comm'n, Bureau of Transp. & Safety v. Steve R. Brungard and Rosemarie Metz-Brungard, t/d/b/a Protean Potentials*, Docket No. A-00113098C0101, 202 Pa. PUC LEXIS 23 (Order entered June 3, 2002) (Imposing a \$1,000 civil penalty for a single occurrence of actually providing transportation for compensation without holding a Certificate of Public Convenience and \$10 per day for 918 days wherein respondents continually held themselves out to provide uncertificated transportation service for compensation).

In addition, I&E's proposed civil penalty of \$[REDACTED] per trip is reasonable when compared to previous Commission decisions. In *Brungard*, the Commission imposed the statutory maximum civil penalty of \$1,000 for the unauthorized transportation that actually occurred and was not merely advertised. Here, I&E is cognizant of the large number of unauthorized trips that occurred and, therefore, is seeking a civil penalty that is [REDACTED] than the statutory maximum.

In *Blue & White Lines, Inc. v. Katrina V. Waddington, t/d/b/a Waddington Tours*, Docket No. A-00108279C9301, 1995 Pa. PUC LEXIS 22 (Order entered February 13, 1995), the Commission levied a civil penalty in the amount of \$250 per violation for seven violations of performing unauthorized brokerage service for violations that occurred prior to the time that Waddington Tours applied for a brokerage license. For the three violations that occurred after Waddington Tours applied for a broker's license, the Commission imposed a \$1,000 civil penalty for each instance of unauthorized brokering. In its Order, the Commission quoted the presiding officer's justification for imposing

higher fines for violations occurring after Waddington Tours' application was filed: "I view the submission of the Application as evidence that Waddington was aware that it lacked brokerage authority. I find that the arranging of trips after the submission of the Application to be a deliberate disregard of the Commission's jurisdiction and assess a \$1,000 penalty." *Id.* at \* 20. Again, I&E's civil penalty of \$[REDACTED] per trip, for a total of \$19,000,000, is reasonable when compared to previous Commission decisions and the ALJs have the discretion to increase the civil penalty sought per trip for the trips that occurred after the July 1, 2014 Order and July 1, 2014 Order directing Uber to cease and desist.

**j. Other Relevant Factors**

Lastly, the Commission's Policy Statement affords the Commission an opportunity to consider "other relevant factors." 52 Pa. Code § 69.1201(c)(10). I&E submits that no relevant factors exist that would serve to mitigate the proposed civil penalty sought against Uber. To the contrary, Uber has consumed, and perhaps even wasted, vast amounts of judicial and administrative time and resources over the past year by advancing frivolous arguments<sup>26</sup> and refusing to adhere to the orders of the Commission and presiding ALJs. I&E suggests that this factor supports the proposed civil penalty.

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<sup>26</sup> For example, Uber filed a Motion for Judgment on the Pleadings on November 6, 2014 alleging that the factual allegations set forth in I&E's initial Complaint fail to support a claim that Uber violated the Code. At the same time that Uber advanced its argument, it blocked I&E from obtaining information related to the Uber subsidiary that performed the transportation service in Pittsburgh, Allegheny County. Uber ultimately reached stipulations of fact with I&E essentially admitting that Rasier violated the Code by performing passenger transportation for compensation without first holding authority from the Commission.

For all the foregoing reasons, I&E submits that a civil penalty of \$19,000,000 is appropriate upon consideration of the factors and standards set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201(c).

C. **An Additional Civil Penalty Sanction in the Amount of \$1,000 Per Day Per Unanswered Discovery Request Until Such Information is Provided or Until this Proceeding is Closed, Whichever Comes First, is Appropriate due to Respondents' Defiant Refusal to Produce Documents that were Judicially Determined to be Proper Discovery**

During the May 6, 2015 evidentiary hearing, I&E noted that Uber continues to fail to produce documents in response to the following two outstanding discovery requests propounded by I&E: I&E Discovery – Set I, No. 3 (relating to supporting documentation for the unauthorized trips)<sup>27</sup> and I&E Discovery – Set II, No. 1 (relating to licensing agreements between Uber and any other entity, including affiliates, concerning passenger transportation services in the Commonwealth). (May 6, Tr. 201). In fact, Mr. Feldman testified that Uber was not prepared to provide the trip documentation (May 6, Tr. 96) or the licensing agreements sought by I&E. (May 6, Tr. 107). Due to Uber's continued defiance of the Commission's discovery process, I&E requested that the civil penalty sanction of one thousand dollars (\$1,000) per day continue and the ALJs advised addressing this matter in I&E's brief. (May 6, Tr. 95).

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<sup>27</sup> This documentation included invoices for all unauthorized trips performed in Pittsburgh, Allegheny County. Since Respondents unilaterally deprived I&E of this information, I&E has no means to calculate refunds to passengers, which was a remedy that the Commission suggested that I&E pursue in the July 28, 2014 Secretarial Letter.

The Commission's regulations at Sections 5.371 and 5.372, 52 Pa. Code §§ 5.371-5.372, address the consequences of a failure to comply with the Commission's regulations regarding discovery. Section 5.371(a) provides:

- (a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:
  - (1) A participant fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests, as required under this subchapter.

52 Pa. Code § 5.371(a)(1).

Section 5.372 provides that the Presiding Officer may impose appropriate sanctions upon a party found to be in violation of the obligations set forth in the Commission's regulations. Specifically, the Presiding Officer is authorized to make "an order with regard to the failure to make discovery **as is just.**" 52 Pa. Code § 5.372(a)(4) (emphasis added).

The Commission has previously imposed civil penalties as sanctions for violations of the Commission's regulations regarding practice and procedure. In *Raymond J. Smolsky v. Global Tel\*Link Corporation*, Docket No. C-20078119, 2009 Pa. PUC LEXIS 455 (Order entered January 15, 2009), the Commission upheld the presiding officer's assessment of a \$5,650 civil penalty sanction for various violations of the Commission's regulations governing practice and procedure before the Commission. Of significance was the Commission's imposition of a \$500 civil penalty for each of the three company's failures to provide discovery responses within twenty (20) days, for a total of \$1,500. The Commission stated that "We find the Company's actions were intentionally dilatory

and warrant a serious penalty to deter future violations.” *Id.* at \* 17. *See also Application of K & F Medical Transport, LLC*, Docket No. A-2008-2020353, 2008 Pa. PUC LEXIS 208 (Initial Decision entered April 25, 2008) at \*15, providing that “[i]n cases where the Commission finds that one of the parties has litigated in bad faith, the Commission is empowered to impose sanctions in the form of civil penalties against that party.” In this case, the ALJs directed Uber to produce the above-referenced discovery responses in multiple orders: October 3, 2014 Discovery Order, November 25, 2014 Discovery Order, November 26, 2014 Sanctions Order and March 25, 2015 Sanctions Order. Thus, the ALJs already determined that the requested information is relevant, not unduly burdensome, not privileged and not otherwise protected from being discoverable.

Unlike in *Smolsky*, Respondents never provided I&E with the supporting documentation regarding the trips and the licensing agreements. Without the ability to examine these documents, I&E was afforded no way to independently verify the accuracy of the number of unauthorized trips that took place in Pittsburgh, Allegheny County between February 11, 2014 and August 20, 2014, and the entity that allegedly licensed the Uber App and performed the unauthorized transportation services.<sup>28</sup> Uber has essentially coerced I&E, the ALJs and ultimately the Commission into taking Uber’s bald assertions as the truth. Such behavior is not only unfair and undermines the integrity of the adjudicatory process, but also I&E questions the veracity of Respondents’ representations given Respondents’ deplorable conduct throughout this proceeding.

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<sup>28</sup> For example, while Uber asserts that Rasier is the entity responsible for performing the unauthorized passenger transportation service, Rasier has no employees, but rather utilizes Uber employees to conduct its daily operations. (Exhibit ALJ 1- Revised at ¶ 17).

Nevertheless, the continuing failure to produce documents that were judicially determined to be discoverable constitutes a violation of Section 333(d) of the Code, 66 Pa.C.S. § 333(d), and Section 5.342 of the Commission's regulations, 52 Pa. Code § 5.342. Accordingly, pursuant to Section 3301(a)-(b) of the Code, 66 Pa.C.S. § 3301(a)-(b), it is lawful and appropriate to impose a civil penalty in the amount of \$1,000 per unanswered discovery response per day until such documents are produced or until the Complaint proceeding is closed. Such a civil penalty is appropriate to deter future abuses of the discovery process committed by Respondents and to send a message to other entities appearing before Commission that Commission takes the integrity of its adjudicatory process seriously.

**V. CONCLUSION**

The Bureau of Investigation and Enforcement respectfully requests that the Commission: (1) find Respondents to be in violation of the Public Utility Code for each unauthorized trip that took place in Pittsburgh, Allegheny County from February 11, 2014 up to and including August 20, 2014; (2) impose a cumulative civil penalty upon Respondents in the amount of Nineteen Million Dollars (\$19,000,000); (3) impose an additional civil penalty in the amount of One Thousand Dollars (\$1,000) per day per unanswered discovery request until such information is produced or the instant Complaint proceeding is closed; and (4) order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,



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Dated: July 8, 2015

# **APPENDIX A**

**NON-PROPRIETARY VERSION**

## **PROPOSED FINDINGS OF FACT**

1. Uber licenses a mobile or internet application (the Uber app) that is used to connect passengers and drivers in cities, including Pittsburgh, Allegheny County, Pennsylvania. (Exhibit ALJ 1 – Revised at 1).
2. Rasier is a wholly-owned subsidiary of Uber. (Exhibit ALJ 1– Revised at 2).
3. From February 11, 2014 through and including August 20, 2014, Rasier licensed the Uber App and contracted with drivers operating their personal automobiles to provide passenger transportation between points in Pittsburgh, Allegheny County, Pennsylvania. (Exhibit ALJ 1 – Revised at 16; May 6, Tr. 91).
4. Between February 11, 2014 and August 20, 2014, Rasier operated a transportation network between points in Pittsburgh, Allegheny County, Pennsylvania that connected passengers who downloaded, established an account and requested a ride through the Uber App with the nearest available driver for compensation. (Exhibit ALJ 1 – Revised at 7, 8, 15 and 16).
5. When a passenger submitted a request for transportation through the Uber App, drivers were alerted of the trip request through the Uber App. (Exhibit ALJ 1 – Revised at 11).
6. Upon arrival to the passenger’s desired destination, a fare was charged to the credit card or other form of payment provided by the passenger upon establishing an account to use the Uber App. (Exhibit ALJ 1 – Revised at 13).

7. Once the payment was processed, the passenger received through the Uber App an electronic receipt from Uber documenting the details of the completed trip.  
(Exhibit ALJ 1 – Revised at 14).
8. From February 11, 2014 through and including August 20, 2014, neither Rasier, nor Uber nor any other Uber subsidiary held authority from the Commission to transport passengers in Pittsburgh, Allegheny County, Pennsylvania for compensation. (Exhibit ALJ 1 – Revised at 15).
9. The drivers with whom Rasier contracted from February 11, 2014 through and including August 20, 2014, did not hold operating authority from the Commission.  
(Exhibit ALJ 1 – Revised at 18).
10. August 21, 2014 was the first date that an Uber subsidiary possessed lawful authority issued by the Commission to operate the transportation network under the Uber App in Pennsylvania. (Exhibit ALJ 1 – Revised at 5).
11. As early as July 6, 2012, Uber was advised by the Commission’s Bureau of Technical Utility Services that the transportation network performed under the Uber App was subject to the Commission’s regulatory oversight. (Attached to Amended Complaint).
12. In recognition that Respondents’ services were subject to regulation, Rasier-PA applied for authority to operate a ride-sharing network on April 14, 2014, while its sister subsidiary, Rasier, continued its unlawful operation. *Application of Rasier-PA*, Docket Nos. A-2014-2416127 and A-2014-2424608.

13. Officer Bowser began investigating Respondents' transportation network in March 2014. (June 26, Tr. 15).
14. Between March 31, 2014 and April 21, 2014, Officer Bowser obtained eleven (11) rides that were arranged by the Uber app and received invoices by e-mail from Uber at the conclusion of each trip. (June 26, Tr. 18; I&E Exhibit 2).
15. The fare for each trip that Officer Bowser took through the Uber App was charged to his credit card. (June 26, Tr. 20; I&E Exhibit 2).
16. On June 5, 2014, I&E filed a Complaint in this proceeding.
17. Respondents continued to operate the transportation network through the Uber App after the filing of I&E's Complaint. (Exhibit ALJ 1 – Revised at 15).
18. On June 16, 2014, I&E filed a Petition for Interim Emergency Relief seeking an order directing Uber to cease and desist from operating its transportation network until it receives the requisite authority to do so. *Petition for Interim Emergency Relief*, Docket No. P-2014-2426846.
19. By Order dated July 1, 2014, the presiding ALJs granted I&E's Petition for Interim Emergency Relief and directed Uber to "immediately cease and desist from utilizing its digital platform to facilitate transportation to passengers utilizing non-certificated drivers in their personal vehicles until such time as it secures appropriate authority from the Commission." (ALJ Exhibit 2 at Ordering Paragraph 2).

20. Respondents defied the July 1, 2014 Order by continuing to facilitate passenger transportation through the Uber App in Pittsburgh, Allegheny County, Pennsylvania. (May 6, Tr. 59).
21. I&E Motor Carrier Enforcement Officers who work under Officer Bowser's supervision obtained three rides using the Uber App on July 10, 2014, after the July 1, 2014 Order was issued. (May 6, Tr. 61, 63-64; I&E Exhibit 4).
22. Officer Bowser did not personally take the rides on July 10, 2014 because the Uber App had been disabled on his device by Uber. (May 6, Tr. 61).
23. By Order entered on July 24, 2014, the Commission upheld the ALJs' July 1, 2014 Order and directed Uber to "immediately cease and desist from utilizing its digital platform to facilitate transportation of passengers utilizing non-certificated drivers in their personal vehicles until such time that: (a) it secures appropriate authority from the Commission and Uber Technologies, Inc., has satisfied the compliance requirements of such authorization; or (b) the Complaint at Docket No. C-2014-2422723 is dismissed by a final and unappealable Order." (ALJ Exhibit 3 at Ordering Paragraph 3).
24. Uber and Rasier defied Commission's July 24, 2014 Order by continuing to facilitate passenger transportation through the Uber App in Pittsburgh, Allegheny County, Pennsylvania. (May 6, Tr. 61).
25. Uber and Rasier operated without authority before and after the entry of both cease and desist Orders. (May 6, Tr. 65; Exhibit ALJ 1 – Revised at 16).

26. Through the Uber App, [REDACTED] trips were provided in Pittsburgh, Allegheny County, Pennsylvania between February 11, 2014 up to and including June 5, 2014. (May 6, Tr. 86-7).
27. Through the Uber App, [REDACTED] trips were provided in Pittsburgh, Allegheny County, Pennsylvania between June 6, 2014 up to and including July 1, 2014. (May 6, Tr. 87).
28. Through the Uber App, [REDACTED] trips were provided in Pittsburgh, Allegheny County, Pennsylvania between July 2, 2014 up to and including July 24, 2014. (May 6, Tr. 87).
29. Through the Uber App, [REDACTED] trips were provided in Pittsburgh, Allegheny County, Pennsylvania between July 25, 2014 up to and including August 20, 2014. (May 6, Tr. 88).
30. Through the Uber App, [REDACTED] trips were provided in Pittsburgh, Allegheny County, Pennsylvania between July 1, 2014 and August 20, 2014, after the issuance of the July 1, 2014 Order that first directed Uber to cease and desist. (May 6, Tr. 87-88).
31. Through the Uber App, a grand total of [REDACTED] trips were provided in Pittsburgh, Allegheny County, Pennsylvania between February 11, 2014 through and including August 20, 2014 when Respondents lacked operating authority. (May 6, Tr. 89-90).

32. This trip data, or the number of unlawful trips, was not provided to I&E until the day of the hearing despite being requested in discovery over the past ten (10) months. (May 6, Tr. 66, 77).
33. Each and every unauthorized trip is a separate and distinct incident. (May 6, Tr. 116).
34. Seeking a civil penalty for each unauthorized trip is standard operating procedure and I&E's witness, Officer Bowser, has personally imposed a fine per unauthorized trip in other matters. (May 6, Tr. 116).
35. I&E requests a civil penalty of \$ [REDACTED] for each unauthorized trip that took place. (May 6, Tr. 112).
36. Unauthorized trips involving passenger transportation should be subject to a higher level of scrutiny than property transportation. (May 6, Tr. 118-9).
37. Respondents' conduct in providing unauthorized passenger transportation service was serious because:
  - a. Every single trip was a potential public safety issue. (May 6, Tr. 115);
  - b. The Commission was unable to inspect the vehicles of drivers operating in the transportation network. (June 26, Tr. 31-33);
  - c. Vehicles that are used commercially typically endure heavier use and a once-a-year vehicle inspection is inadequate. (June 26, Tr. 33);

- d. Without an inspection, a large number of vehicles could be operating on the streets and highways in disrepair, resulting in accidents. (June 26, Tr. 33);
- e. The Commission was unable to review records pertaining to driving history and criminal background of drivers operating in the transportation network. (June 26, Tr. 29-31);
- f. The Commission was unable to ascertain the number, identity or location of drivers operating in Respondents' transportation network. (June 26, Tr. 31).
- g. The Commission was unable to verify whether Respondents maintained liability insurance coverage. (June 26, Tr. 24).

38. Respondents' conduct was intentional because they:

- a. Provided an unauthorized transportation network after being warned that Commission authority was required. (Attached to Amended Complaint);
- b. Continued to provide unauthorized transportation after the July 1, 2014 and July 24, 2014 Orders directing Uber to cease and desist. (May 6, Tr. 115);
- c. Operated the unauthorized transportation network during the pendency of a subsidiary's, Rasier-PA's, application for authority. (Exhibit ALJ 1 – Revised at 15; *Application of Rasier-PA*); and

- d. Made an informed business decision, which was not based on any legal authority, to continue to operate the unauthorized transportation network after entry of the July 1, 2014 and July 24, 2014 Orders. (Tr. 178, 199).
39. Every single customer and every member of the public, including motorists and pedestrians, were affected by Respondents' unauthorized transportation network. (May 6, Tr. 116).
40. Respondents filed insurance claims for accidents that occurred between February 11, 2014 and August 20, 2014. (May 6, Tr. 143-144).
41. Respondents' witness could not state whether every incident or accident between February 11, 2014 and August 20, 2014 would lead to an insurance claim. (May 6, Tr. 169).
42. Respondents' witness could not state how many accident reports were maintained between February 11, 2014 and August 20, 2014. (May 6, Tr. 155).
43. Respondents' witness was unable to state how many drivers operating in the transportation network were suspended from the platform between February 11, 2014 and August 20, 2014 for violating Company policies. (May 6, Tr. 145).
44. Respondents presented no written policies regarding vehicles, driver integrity, driver minimum requirements, driver background checks, and drug/alcohol zero tolerance policy that were employed between February 11, 2014 and August 20, 2014. (May 6, Tr. 155).

45. Respondents were unable to substantiate their assertion that their operations were covered by insurance between February 11, 2014 and August 20, 2014. (May 6, Tr. 146-152).
46. Respondents' Exhibit 2 is a quarterly report pertaining to Rasier-PA's compliance plan and does not relate to Respondents' operations that occurred prior to August 21, 2014. (May 6, Tr. 174; Respondents' Exhibit 2).
47. Respondents' did not employ all of the components set forth in the quarterly report prior to August 21, 2014, such as ensuring that the vehicle age limit is eight (8) model years old and requiring an electronic signature from drivers verifying that they notified their automobile insurance company that they are providing transportation under the Uber App. (May 6, Tr. 175-176; Respondents' Exhibit 2).
48. The ALJs, upon granting I&E's Motions to Compel, directed Respondents to provide discovery responses to I&E by Orders entered on October 3, 2014 and November 25, 2014 in this proceeding.
49. By Order entered on November 26, 2014, the ALJs imposed a civil penalty sanction on Respondents that would become effective on December 12, 2014, in the amount of \$500 per day for each day Respondents fail to answer I&E's Set I discovery requests until the conclusion of the evidentiary hearing in this proceeding.
50. On March 6, 2015, Uber provided partial discovery responses to I&E.
51. By Order entered on March 25, 2015, the ALJs imposed an additional civil penalty sanction in the amount of \$500 per day for a total civil penalty sanction of \$1,000

per day from December 12, 2014 to the date that Respondents fully comply with the previous discovery orders or the date of the conclusion of the evidentiary hearing in this proceeding, whichever is first met.

52. Respondents continue to fail to provide documents in response to two outstanding I&E discovery requests, despite the ALJs ordering the production of those documents: I&E Interrogatories and Requests for Production of Documents Set I, No. 3 (relating to supporting documentation for the unauthorized trips) and Set II, No. 1 (relating to licensing agreements between Uber and any other entity, including affiliates, concerning passenger transportation services in the Commonwealth). (May 6, Tr. 91-92, 106-7, 201; I&E Exhibit 5 at 4, 6).
53. Respondents made no civil penalty payments that were imposed as sanctions for Respondents' failure to answer I&E's discovery. (May 6, Tr. 50).

# **APPENDIX B**

**NON-PROPRIETARY VERSION**

## PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 501.
2. I&E serves as the prosecutory bureau in matters brought before the Commission. *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071853 (Order entered August 11, 2011).
3. I&E bears the burden of proof in this proceeding. 66 Pa.C.S. § 332(a).
4. “Burden of proof” means the duty to establish one’s case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest amount, than the evidence presented by the other side. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (1990), *alloc. den.*, 602 A.2d 863 (1992).
5. I&E has met its burden of proof in this proceeding. 66 Pa.C.S. § 332(a).
6. The Commission regulates the provision of passenger transportation to the public for compensation. 66 Pa.C.S. § 102 (relating to the definition of “common carrier by motor vehicle”).
7. Motor carriers, as public utilities, are required to first obtain a Certificate of Public Convenience prior to beginning “to offer, render, furnish, or supply service within this Commonwealth.” 66 Pa.C.S. § 1101.
8. Brokers of transportation must first obtain a brokerage license issued by the Commission prior to selling or offering for sale any transportation by a certificated motor carrier. 66 Pa.C.S. § 2505(a).

9. The Commission is authorized to issue Orders granting interim emergency relief when a petitioner demonstrates that its right to relief is clear, the need for relief is immediate, the injury would be irreparable if relief is not granted and the relief requested is not injurious to the public interest. 52 Pa. Code §§ 3.6 and 3.10.
10. I&E's Petition for Interim Emergency Relief that it filed against Uber was granted by both the presiding officers and Commission, and Uber was directed to cease and desist from utilizing its digital platform to facilitate transportation to passengers utilizing non-certificated drivers in their personal vehicles until such time as it secures appropriate authority from the Commission. *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for an Interim Emergency Order requiring Uber Technologies, Inc. to immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania*, Docket No. P-2014-2426846 (Orders entered July 1, 2014 and July 24, 2014).
11. The Commission is authorized to impose a civil penalty of up to \$1,000 per violation of the Public Utility Code, Commission regulation or Commission order. 66 Pa.C.S. § 3301(a).
12. A separate civil penalty for each violation is appropriate when each violation can be feasibly segregated into distinct and discrete violations. *Newcomer Trucking, Inc. v. Pa. Pub. Util. Comm'n*, 531 A.2d 85 (Pa. Cmwlth. 1987).
13. Respondents committed [REDACTED] violations of 66 Pa.C.S. § 1101 or 66 Pa.C.S.

14. § 2505(a), which represents each trip arranged by and provided under the Uber App when Respondents operated without Commission approval. *Newcomer Trucking, Inc. v. Pa. Pub. Util. Comm'n*, 531 A.2d 85 (Pa. Cmwlth. 1987); (May 6, N.T. 89).
15. The Commission has promulgated a Policy Statement that sets forth ten specific factors and standards that will be considered when evaluating whether and to what extent a civil penalty for violating a Commission order, regulation or statute is warranted. 52 Pa. Code § 69.1201.
16. A civil penalty of \$ [REDACTED] per trip with a cumulative total civil penalty of \$19,000,000 is appropriate upon consideration of the ten factors and standards. 52 Pa. Code § 69.1201(c)(1)-(10).
17. The presiding officers are free to assign their own weight to items of evidence and the inferences which may be drawn from the evidence and, therefore, the presiding officers have the authority to increase the per trip civil penalty proposed by I&E for trips facilitated by the Uber App after the presiding officers' July 1, 2014 Order directing Uber to cease and desist. *See Application of Harrisburg Taxicab & Baggage Company, t/d/b/a Yellow Cab, et al.*, Docket Nos. A-00079143 F.8, Am-B and A-00079143 F. 9, 1991 Pa. PUC Lexis 168 (Order entered September 25, 1991) at \*22.
18. The Commission is authorized to impose sanctions upon a party for failing to file sufficient answers to discovery requests and refusing to obey an order of a presiding officer regarding discovery. 52 Pa. Code § 5.371.

19. The presiding officer is authorized to impose a sanction for the failure to make discovery “as is just.” 52 Pa. Code § 5.372.
20. Refusing to answer reasonable discovery violates the Public Utility Code and the Commission’s regulations. 66 Pa.C.S. § 333(d) and 52 Pa. Code § 5.342.
21. The Commission is authorized to impose a civil penalty of up to \$1,000 per violation of the Public Utility Code, Commission regulation or Commission order for each and every day’s continuance of the violation. 66 Pa.C.S. § 3301(b).
22. Respondents’ contumacious behavior in this proceeding warrants the imposition of a civil penalty sanction in the amount of \$1,000 per unanswered discovery response per day until such documents are produced or until the Complaint proceeding is closed. 66 Pa.C.S. § 3301(b).

# **APPENDIX C**

**PROPOSED ORDERING PARAGRAPHS**

1. That the Amended Complaint filed by the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission against Uber Technologies, Inc., *et al.* at C-2014-2422723 is sustained.
2. That Uber Technologies, Inc., *et al.* shall pay a civil penalty of Nineteen Million Dollars (\$19,000,000) for the violations set forth in the Bureau of Investigation and Enforcement's Amended Complaint, as well as One Hundred Forty-Four Thousand Dollars (\$144,000) as a civil penalty sanction for failing to provide discovery responses between December 12, 2014 through and including May 5, 2015, for a total of Nineteen Million One Hundred Forty-Four Thousand Dollars (\$19,144,000) by certified check or money order, within twenty (20) days after service of the Commission's order, made payable to the Commonwealth of Pennsylvania and forwarded to:

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

3. That Uber Technologies, Inc., *et al.* shall be assessed a civil penalty in the amount of One Thousand Dollars (\$1,000) per day per outstanding discovery request for each day that they fail to submit responses to the Bureau of Investigation and Enforcement until such documents are produced or the Complaint proceeding is closed.

4. That Uber Technologies, Inc., Rasier LLC, Gegen LLC and Rasier-PA LLC shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. §§ 101 *et seq.*
5. That Uber Technologies, Inc.'s contumacious conduct displayed in this proceeding shall be a factor to be considered by this Commission in any future application by Uber Technologies, Inc., Rasier-PA LLC, Rasier LLC, Gegen LLC or other subsidiary of Uber Technologies, Inc. for initiation or renewal of Commission authority to provide passenger transportation service in this Commonwealth.
6. That after Uber Technologies, Inc., *et al.* pays the amounts set forth in Ordering Paragraphs 2 and 3 above, the docket at Docket No. C-2014-2422723 shall be marked closed.

## 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 Electronic Mail:

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Dated: July 8, 2015