**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :

Bureau of Investigation and Enforcement :

:

v. :C-2014-2422723

:

Uber Technologies, Inc., *et al.* :

**INITIAL DECISION**

Before

Mary D. Long

Jeffrey A. Watson

Administrative Law Judges

**PUBLIC VERSION**

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I. INTRODUCTION

The Bureau of Investigation and Enforcement sustained its burden of proving that a transportation network company provided transportation for compensation without authority from the Commission in violation of the Public Utility Code. A civil penalty in the amount of $49,852,300 is appropriate. Further, the transportation network company violated numerous discovery orders of the presiding officers which severely impeded BIE’s ability to prepare its case and obstructed the orderly course of the litigation of these proceedings. An additional civil penalty in the amount of $72,500 is imposed as a sanction. A total civil penalty in the amount of $49,924,800 is assessed.

This decision also denies Uber’s second request for the assignment of a settlement judge and denies reconsideration of an order which denied Uber’s first request for the assignment of a settlement judge.

II. PROCEDURAL HISTORY

On June 6, 2014, the Commission’s Bureau of Investigation and Enforcement (BIE), filed a complaint against Uber Technologies, Inc. (Uber or Respondent). The complaint alleged, among other things, that Uber acted as a broker of transportation without a certificate of public convenience and that its actions constituted a violation of the Public Utility Code. The complaint sought civil penalties in the amount of $95,000 and an additional $1,000 per day for each day that Uber continued to operate after the date of filing. Uber filed an answer on June 23, 2014, denying the material allegations of the complaint.

BIE also filed a petition for emergency relief on June 16, 2014, at Docket No. P‑2014-2426846. Following an evidentiary hearing, the petition was granted by order dated July 1, 2014, and Uber was ordered to cease and desist its operations in Pennsylvania utilizing its digital platform to facilitate transportation for compensation to passengers utilizing non-certificated drivers in their personal vehicles. By opinion and order entered July 24, 2014, the Commission approved that order. Further, the Commission determined that additional information would aid in the formulation of a final order in this complaint proceeding. Accordingly, by Secretarial Letter dated July 28, 2014, the parties were directed to address specific questions regarding the number of trips provided by Uber during specific periods of time.

On August 8, 2014, BIE served interrogatories and a request for documents upon Uber, intended to elicit the information directed by the July 28 Secretarial Letter. This discovery request and other pre-litigation disputes are discussed more fully below.

On January 9, 2015, BIE filed an amended complaint, which replaced its complaint filed on June 5, 2014, in order to identify additional respondents affiliated with Uber Technologies in these proceedings which were averred to be responsible for or involved in facilitating and/or providing unauthorized passenger motor carrier services within the Commonwealth. In addition, the amended complaint updated and quantified the alleged violations alleged by BIE by removing the “per day” violation component and replacing it with a “per ride” violation component and recalculating the appropriate civil penalty as the relief requested. BIE calculated a proposed civil penalty in the amount of $19 million based upon a “proxy” number of trips because Uber had not yet provided the trip data requested in August 2014. On February 2, 2015, Uber and its affiliates filed answers to the amended complaint, and requested that the amended complaint be dismissed with prejudice.

On January 14, 2015, Uber filed a motion seeking the assignment of a settlement judge. That motion also requested that answers to the amended complaint be held in abeyance. BIE filed an answer opposing the motion on January 15, 2015. BIE took the position that a settlement conference would be unlikely to be productive in view of Uber’s continued failure to answer discovery or comply with the numerous orders that have been issued by the presiding administrative law judges. By interim order dated January 23, 2105, Uber’s motion was denied. Uber filed a motion for reconsideration of the January 23, 2015 Interim Order on February 4, 2015. That motion is denied as set forth below.

BIE continued unsuccessfully to secure answers to discovery and ultimately filed two motions for sanctions. The first motion for sanctions was granted by interim order dated November 26, 2014. An oral argument on the second motion for sanctions by BIE was held on February 18, 2015. After initial argument by counsel and prior to adjourning the proceeding, the parties entered into discussions in an attempt to resolve the outstanding issues in this matter. Counsel for the parties expressed a desire to continue their discussions subsequent to the February 18, 2015 proceeding. By order dated February 24, 2015, the matters agreed upon were memorialized. Specifically, the parties were directed to submit a proposed stipulation of facts on or before March 4, 2015. In the event that the parties were not able to enter into a stipulation, Uber was directed to serve full and complete answers to all outstanding discovery requests and the parties were directed to provide proposed dates for the scheduling of the evidentiary hearing in this matter.

The parties engaged in discussions, but were not able to meet the March 4, 2015 deadline. A joint request for an extension of time was granted. The parties filed a timely joint status report on March 18, 2015. The parties reported that Uber had filed partial discovery responses on March 6, 2015. However, they were unable to agree on proposed stipulations. Therefore, they provided dates for an evidentiary hearing on the complaint.

By interim order dated March 25, 2015, we granted BIE’s motion for sanctions in part, denied BIE’s request to utilize a “proxy number” of trips and scheduled an evidentiary hearing for Wednesday, May 6, 2015 at 9:00 a.m. in Pittsburgh. The hearing was held as scheduled.

BIE appeared and was represented by Attorneys Michael L. Swindler and Stephanie M. Wimer. BIE made a motion to incorporate the record from the emergency petition hearing, PUC Docket P-2014-2426841, into the record of the complaint proceedings. Uber did not object, and the motion was granted. That record includes 60 pages of testimony of the June 26, 2014 hearing and BIE Exhibits 1-3. The May 6, 2015 hearing included additional testimony by BIE witness Charles S. Bowser. BIE also introduced BIE Exhibits 4-5, which were admitted into the record without objection.

Uber appeared and was represented by Attorney Karen O. Moury. Uber presented the testimony of one witness, Jon Feldman. One exhibit was admitted into the record.

The parties also agreed to the admission of a written stipulation of facts, and two Commission orders. These materials were admitted as ALJ Exs. 1-3.

The hearings in this matter resulted in a transcript of 204 pages in addition to the notes of testimony of the emergency petition hearing. The parties were directed to brief their positions. The final brief was received on August 14, 2015. By interim order dated August 17, 2015, the record was closed.

On October 13, 2015, after the close of the record, Uber filed a Motion for Settlement Conference and Assignment of Settlement Judge. In the alternative Uber requests that the Commission hold this proceeding in abeyance when it issues the ALJs’ Initial Decision by deferring the exception and reply exception periods while a Commission-directed ALJ-facilitated settlement conference is held. On October 19, 2015, BIE filed a response opposing the motion. We reopened the record on October 27, 2015, to include the motion and the response into the record, and reclosed the record in the same order.

III. FINDINGS OF FACT

1. Bureau of Investigation and Enforcement (BIE), is authorized to enforce the provisions of the Public Utility Code and regulations, pursuant to Section 308.2 of the Public Utility Code, 66 Pa.C.S. § 308.2.
2. Uber Technologies, Inc. (Uber or Respondent) is a technology company that is registered in Delaware and headquartered in San Francisco, California. (Feldman, N.T. 125-26 (May 6, 2015))
3. Uber licenses a mobile or internet application (Uber App) that is used to connect passengers and drivers in Pittsburgh, Allegheny County. (ALJ Ex. 1 (Revised), No. 1)
4. Gegen LLC (Gegen), Rasier LLC (Rasier) and Rasier-PA LLC (Rasier-PA) are all wholly-owned subsidiaries of Uber and operate or have operated within Pennsylvania from February 2014 to the present. (ALJ Ex. 1 (Revised), No. 2)
5. Gegen operates as a broker under a license issued by the Commission on March 1, 2013, pursuant to the Commission’s Order approving Gegen’s application to arrange for the transportation of persons between points in Pennsylvania. (Docket No. A-2012-2317300; ALJ Ex. 1 (Revised), No. 3)
6. Gegen, Rasier, and Rasier-PA have no employees, but rather utilize Uber employees to conduct their daily operations. (ALJ Ex. 1 (Revised), No. 17)
7. Rasier was responsible for contracting with and overseeing the drivers who were registered to offer transportation using the Uber App and their vehicles. (Feldman, N.T. 98-99; 131-34; 145)
8. On February 11, 2014, Rasier launched the Uber App in Pittsburgh, Allegheny County, Pennsylvania. (ALJ Ex. 1 (Revised), No. 7)
9. At the time of the launch of the Uber service on February 11, 2014 until Uber’s certificate for experimental authority was issued by the Commission on August 20, 2014, drivers were required to use company-owned smartphones in order to use the App. (Feldman, N.T. 100 (May 6, 2015))
10. The drivers with whom Rasier contracted, from February 11, 2014 through and including August 20, 2014, did not hold operating authority from the Commission. (ALJ Ex. 1 (Revised), No. 18)
11. A driver could be “deactivated” from using the Uber App, if the driver violated any of Uber’s policies or failed to deliver transportation which met Uber’s quality controls. (Feldman, N.T. 134, 145)
12. To use the Uber ridesharing service, a passenger who has downloaded the Uber App, established an account, and provided payment information, uses the App to locate the nearest available driver who has registered with an Uber subsidiary and has logged into the Uber App in order to transport the passenger to the passenger’s desired destination. (ALJ Ex. 1 (Revised), No. 9)
13. When a passenger submits a request for transportation through the Uber App, drivers are alerted of the trip request through the Uber App. (ALJ Ex. 1 (Revised), No. 11)
14. When a driver accepts the passenger’s request for transportation through the Uber App, the passenger receives the driver’s estimated time of arrival, along with a photo of the driver and a description of the driver’s vehicle. (ALJ Ex. 1 (Revised), No. 12)
15. Upon arrival to the passenger’s desired location the fare is charged to the credit card or other form of payment provided by the passenger upon establishing an account to use the Uber App. (ALJ Ex. 1 (Revised), No. 13)
16. Once the payment has been processed, the passenger receives an electronic receipt from Uber, through the Uber App, documenting the details of the completed trip. (ALJ Ex. 1 (Revised), No. 14; see also Bowser, N.T. 18-19 (June 26, 2014))
17. The receipts which Officer Bowser received by email were titled as “Your … ride with Uber,” included an Uber logo and thanked Officer Bowser for “choosing Uber.” (BIE Ex. 2 (June 27, 2014))
18. Officer Bowser’s credit card confirmation noted that payment was made to “ADY\*UBER TECHNOLOGIES.” (BIE Ex. 2 (June 27, 2014))
19. Transportation secured by other enforcement officers in July 2014, who reported to Officer Bowser, were similarly marked. (BIE Ex. 4 (May 6, 2015)).
20. Uber also retained the right to “deactivate” passengers from using the App. (Bowser, N.T. 61 (May 6, 2015))
21. Uber was in communication with the Commission during this period of time and Uber decided to file the application for experimental service in April 2014. (Feldman, N.T. 135 (May 6, 2015))
22. Uber filed an application for experimental authority because the Commission advisory staff advised that Uber needed additional authority other than the authority provided by Gegen’s broker license. (Feldman, N.T. 135 (May 6, 2015))
23. On June 16, 2015, BIE filed a Petition for Interim Emergency Relief, which sought an order directing Uber to stop providing ridesharing service.
24. By Order dated July 1, 2014 (July 1, 2014 Cease and Desist Order), the presiding ALJs granted BIE’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).
25. Uber continued to operate after the July 1, 2014 Cease and Desist Order based on Uber’s view of the needs of the market. (Feldman, N.T. 137)
26. By Order entered on July 24, 2014, the Commission upheld the ALJs’ July 1, 2014 Cease and Desist 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).
27. Uber continued to operate after the Commission’s July 24, 2015 Order. (Feldman, N.T. 87-89 (May 6, 2015))
28. The Commission issued a certificate of public convenience pursuant to Uber’s request for emergency transportation authority on August 20, 2014. (A-2014-2429993)
29. August 21, 2014, was the first date that Uber possessed lawful authority issued by the Commission to operate the transportation network service using the Uber App in Pennsylvania. (ALJ Ex. 1 (Revised), No. 5)
30. Uber arranged a large number of trips for compensation without Commission authority from February 11, 2014, through and including August 20, 2014. (Feldman, N.T. 87-89)
31. The exact number of trips are set forth in Proprietary Appendix A to this decision and are incorporated as findings of fact.
32. From February 11, 2014 through and including August 20, 2014, there were at least nine accidents which “could lead to an insurance claim.” (Feldman, N.T. 168 (May 6, 2015))
33. Mr. Feldman did not know if there were other incidents that did not lead to an insurance claim. (N.T. 168-69 (May 6, 2015))
34. Each and every customer of Uber could have been potentially affected by Uber’s unregulated transportation services, and every member of the public, including motorists and pedestrians that were in the area, could have also been affected. (Bowser, N.T. 115-16 (May 6, 2015)
35. A motor carrier’s insurance company must submit certificates of liability insurance to the Commission and motor carriers are suspended from providing service until evidence of insurance is on file. (Bowser, N.T. 24 (June 26, 2014))
36. Until Uber submitted information to the Commission, the Commission was unable to verify whether Uber maintained adequate insurance coverage based on the record. (Bowser, N.T. 24 (June 26, 2014))

IV. DISCUSSION

A. Preliminary Issues

Before beginning our analysis in this matter, we believe it is necessary to describe the nature of Uber Technologies, Inc. and its affiliates. Uber Technologies, Inc. operates several wholly-owned subsidiaries which play a role in the transportation at issue in this case. First is Gegen LLC. Gegen holds at a broker license which was issued by the Commission on March 1, 2013. Next, Rasier-PA LLC is also a wholly owned subsidiary. Rasier-PA LLC is the subsidiary which applied for experimental authority in Allegheny County from the Commission on April 14, 2014.[[1]](#footnote-1) Rasier-PA LLC did not provide any transportation during the period of time which is the subject of this complaint.

Finally, Rasier LLC, a third subsidiary, was the subsidiary which launched the Uber App in February 2014 and was responsible for securing and supervising drivers and passengers. None of these subsidiaries has its own employees. Rather, each is managed by employees of Uber Technologies, LLC.

As explained above, BIE filed amended complaints which named Rasier and Gegen as Respondents to the complaint. Further, as a sanction for failing to answer discovery (which is discussed more fully below), Uber was precluded from asserting any claim that a subsidiary or other affiliate of Uber Technologies was the provider of the passenger transportation services in order to avoid liability. Accordingly, in our discussion of the facts, we refer generally to Uber. The specific subsidiary is only mentioned where it is important or clarifies the discussion.

B. Legal Standards

1. Burden of Proof

As the proponent of a rule or order, BIE bears the burden of proof pursuant to Section 332(a) of the Code.[[2]](#footnote-2) To establish a sufficient case and satisfy the burden of proof, BIE must show that the Respondent is responsible or accountable for the problem described in the Complaint.[[3]](#footnote-3) Such a showing must be by a preponderance of the evidence.[[4]](#footnote-4) That is, BIE’s evidence must be more convincing, by even the smallest amount, than that presented by the Respondent.[[5]](#footnote-5) Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.[[6]](#footnote-6)

2. Civil Penalty Standards

Section 3301 of the Public Utility Code provides that if any public utility fails to comply with any Commission regulation, it shall forfeit and pay to the Commonwealth a sum not exceeding $1,000.00 per day of violation.[[7]](#footnote-7) To implement this section, the Commission has adopted certain standards that should be applied when imposing a civil penalty for violations of

Commission directives and regulations.[[8]](#footnote-8) Section 69.1201(a) of the Commission’s regulations states:

The Commission will consider specific factors and standards in evaluating litigated … cases involving violations of 66 Pa.C.S. (relating to the Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate.[[9]](#footnote-9)

These factors and standards to be considered are enumerated in subsection (c):

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

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

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

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

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

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

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

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

(9) Past Commission decisions in similar situations.

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

C. Violation of the Transportation Provisions of the Public Utility Code

BIE contends that Uber violated the Public Utility Code because neither Uber nor its subsidiaries held proper authority from the Commission to offer transportation services to the public from February 11, 2014, when Uber launched, until August 20, 2014, when the Commission issued a certificate of public convenience for temporary emergency authority to Uber’s subsidiary, Raiser-PA. Uber counters that none of its activities fell within the definitions of either a motor carrier or a broker, therefore it did not violate the Public Utility Code.

Reviewing the facts in this record, it is clear that Uber’s activities violated the Public Utility Code. Uber exercised substantial control over each trip offered and was therefore providing transportation for compensation. Even if Uber was considered a broker, arranging transportation using the Uber App violated Gegen’s broker license.

Section 102 of the Public Utility Code defines a transportation public utility as “Any person or corporation . . . owning or operating in this Commonwealth equipment or facilities for . . . transporting passengers or property as a common carrier.”[[11]](#footnote-11) A “common carrier” is a person or corporation “holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers . . . .” A “common carrier by motor vehicle” is a common carrier which undertakes the transportation of passengers within the Commonwealth “by motor vehicle for compensation, whether or not the owner or operator of such motor vehicle, or who or which provides or furnishes the motor vehicle, with or without driver, for transportation for use in the transportation of persons . . . .”

The mechanics of the Uber platform are by now well-known. Accordingly, the parties stipulated to the following:

On February 11, 2014, Rasier launched the [Uber] App in Pittsburgh, Allegheny County, Pennsylvania.

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

Upon arrival to the passenger’s desired destination, the request for transportation through the [Uber] 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 [Uber] App.[[12]](#footnote-12)

The ridesharing services offered by Uber fall into the category of offering transportation service to the public for compensation. The fact that an app was used as the method of hail does not alter the essence of the transaction. In its brief, Uber argues that all it did was partner drivers with people who requested rides through the Uber App. This is another permutation of Uber’s argument throughout these proceedings that Uber is “just a software company.”[[13]](#footnote-13) But, as described below, Uber took a more active role in providing transportation service than simply providing the Uber App for people with cars to use to provide rides for people who needed transportation -- it was not a disinterested invisible entity in the background.

First, drivers had to apply to become drivers on the platform and were required to meet minimum criteria which were established by Uber. Indeed, at the time of the launch of the Uber service until its experimental authority was issued by the Commission, drivers were required to use company-owned smartphones in order to use the app. Further, a driver could be “deactivated” from using the app, if the driver violated any of Uber’s policies or failed to deliver transportation which met Uber’s quality controls.[[14]](#footnote-14) (Uber also retained the right to “deactivate” passengers from using the app.)[[15]](#footnote-15) Finally, Uber touted an insurance policy which it claimed would cover any accidents or injuries which resulted from the transportation transaction.

Next, the service was clearly held out to the public as an “Uber” service. For example, all of the accompanying communications received by Officer Bowser when he used the Uber App were clearly from Uber. Officer Bowser received an email entitled “Your first **Uber** ride,” which congratulated him for taking his first “Uber ride” and provided him with a “custom **Uber** invite code” so that he could refer his friends.[[16]](#footnote-16) Although Mr. Feldman testified that Uber employed a third-party vendor to process the credit cards used in the transaction,[[17]](#footnote-17) the receipts which Officer Bowser received by email were titled as “Your … ride with **Uber**,” included an **Uber** logo and thanked Officer Bowser for “choosing **Uber**.” Officer Bowser’s credit card confirmation noted that payment was made to “ADY\*UBER TECHNOLOGIES.” [[18]](#footnote-18) Transportation secured by other enforcement officers who reported to Officer Bowser were similarly marked.[[19]](#footnote-19)

Viewed in totality, Uber was “offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers.”[[20]](#footnote-20) Uber meets the definition of a common carrier and was required to have authority from the Commission to provide transportation.[[21]](#footnote-21)

Uber finally contends that it is not a common carrier because its services are only available to a segment of the public. Specifically, “the only way in which a member of the public can use the transportation network services is to download the App to a compatible mobile device or computer with an Internet browser, agree to Respondent’s terms and conditions and provide payment information.” Therefore, in Uber’s view, the Uber service is not available to the public at large.

Uber relies primarily on *Aroniminick Transportation Co. Pa. Service Comm’n,*[[22]](#footnote-22) and *Drexelbrook Associates v. Publ. Util. Comm’n*.[[23]](#footnote-23) In *Aroniminick* the court considered whether a bus service offered by a landlord for the sole use of the landlord’s tenants constituted common carriage and required the landlord to secure a certificate of public convenience. The court considered the definition of a common carrier as one who undertakes for hire to carry “all persons indifferently who may apply for passage . . . .”[[24]](#footnote-24) The court concluded that because the bus service was for the sole use of a particularly identified class of person, at special times, for no direct charge, it was not “common carriage” and no certificate of public convenience was required.

Similarly, in *Drexelbrook*, a landlord proposed to acquire metering equipment in order to supply electricity and water to its tenants. In both cases, the reviewing courts considered whether the service offered was “public.” Following the precedent of *Aroniminick*, the court in *Drexelbrook*, concluded that the landlord was not proposing public utility service because only those individuals who had a landlord-tenant relationship with the landlord were eligible to receive service. Since service was only offered to this special class of people and not offered for the “indefinite public,” the landlord was not a public utility.[[25]](#footnote-25)

Uber’s reliance on these cases is misplaced. Access to a mobile device or computer in order to arrange for transportation does not identify a special class of persons who may use the Uber service. Rather, it simply defines the method of hail and payment. Every public utility is permitted to define conditions of service and methods of payment through their tariffs. These restrictions do not render customers a “special class” rather than the “indefinite public.”[[26]](#footnote-26)

BIE also argues that Uber violated Section 2501 of the Public Utility Code relating to the brokerage of transportation service. Jon Feldman testified that at the time of launch, Uber believed that the broker license held by Gegen created “regulatory permissibility” to launch the service.[[27]](#footnote-27)

The Public Utility Code defines a “broker” 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 in 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). The Public Utility Code further provides:

No person or corporation shall engage in the business of a broker in this Commonwealth unless such person holds a brokerage license issued by the commission. No such person or corporation, by virtue of a brokerage license, shall render service as a motor carrier unless he holds a certificate of public convenience or permit, as the case may be. ***It shall be unlawful for any broker to employ any motor carrier who or which is not the lawful holder of an effective certificate of public convenience or permit.***[[28]](#footnote-28)

There is no dispute that none of the drivers who took part in the transportation held effective certificates of public convenience.[[29]](#footnote-29) Therefore, the Gegen license did not provide authority to provide the transportation rendered by Uber. Rather, the ridesharing service facilitated by the Uber App was prohibited by Section 2505(a) of the Public Utility Code.

In sum, BIE proved that from February 11, 2014, until August 20, 2014, Uber was providing transportation for compensation. There is no dispute that Uber did not hold a certificate of public convenience. There is no dispute that none of the drivers used by Uber to provide the transportation held certificates of public convenience. Therefore, from February 11, 2014, until August 20, 2014, when Uber received a certificate of public convenience from the Commission, Uber was operating in violation of Sections 2505 and 1101 of the Public Utility Code.[[30]](#footnote-30)

D. Civil Penalty Related to Violation of the Transportation Provisions of the Public Utility Code

Having concluded that Uber was in violation of the Public Utility Code from the time it launched its ridesharing service until it received its certificate of public convenience pursuant to the Commission’s grant of emergency authority, it is appropriate to consider a civil penalty.[[31]](#footnote-31)

BIE seeks a civil penalty in the amount of $19 million, which is based on an amount per unauthorized trip. We are not bound by the amount sought by BIE.[[32]](#footnote-32) Rather,

[t]he ten factors listed in the Policy Statement are to be applied to the unique facts of each specific case, and the ALJ and the Commission will determine “if a fine for violating a Commission order, regulation or statute is appropriate” and, if so, the amount of that civil penalty.[[33]](#footnote-33)

1. Penalty per Day or Penalty per Trip

BIE’s original complaint sought a civil penalty based on the number of days Uber continued to provide transportation without authority from the Commission. BIE later amended its complaint to revise the prayer for relief to seek a penalty based on each trip rendered by Uber without authority. However, the amended complaint was based on a “proxy” number of trips because Uber had not yet provided BIE with the trip data that it had been requesting since August 2014. On the day of the hearing, Uber finally provided the trip data by the testimony of Jon Feldman.[[34]](#footnote-34) Rather than revising the gross penalty requested, BIE revised the amount of penalty requested for each unauthorized trip.

Uber objects to the calculation of the penalty on a per trip basis. According to Uber, any penalty should be assessed on a “per day” basis. Uber contends that assessing the penalty on a per trip basis will result in an “excessive” penalty.

Section 3301 of the Public Utility Code provides the Commission with the authority to assess a civil penalty for violations of the Public Utility Code:

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 direct, requirement, determination or order made by the commission . . . 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 . . . .[[35]](#footnote-35)

BIE contends that the Commonwealth Court’s decision in *Newcomer Trucking, Inc. v. Pa. Pub. Util. Comm’n*,[[36]](#footnote-36) is controlling. In that case, a motor carrier violated a Commission regulation which prohibited a certificate holder from transporting the goods of more than one consignor on one truck at any one time. Newcomer Trucking violated the certificate restriction 184 times on 128 separate days. The Commission assessed a civil penalty in the amount of $100 for each of the 184 events, for a total of $18,400, and suspended Newcomer’s certificate of public convenience for 90 days. On appeal to the Commonwealth Court, Newcomer Trucking argued even though it had violated the regulation 184 times, the Commission was only authorized to assess a total penalty in the amount of $1,000.

The Commonwealth Court soundly rejected this argument. As there was no case

law which interpreted Section 3301, the court turned to Section 1930 the Statutory Construction Act, which states:

Whenever a penalty or forfeiture is provided for the violation of a statute, such penalty or forfeiture shall be construed to be for each such violation.[[37]](#footnote-37)

Accordingly, the Commonwealth Court held that Section 3301 authorized the Commission to assess a civil penalty in amount of up to $1,000 for each of the 184 times that Newcomer Trucking violation the regulation:

When [Section 1930 of the Statutory Construction Act] is read in conjunction with Section 1922(1) of the Act, it becomes obvious that Section 3301(a) of the Code permits the PUC to impose a fine of up to $1,000 for each and every discrete violation of the Code or PUC regulation, *regardless of the number of violations that occur*.[[38]](#footnote-38)

The Commonwealth Court also rejected Newcomer Trucking’s argument that the Public Utility Code required the Commission to impose the monetary penalty on a per day, not a per violation, basis. The court noted that Section 3301 did not explicitly provide this distinction, but noted that Section 3301(b) provided for the assessment of penalties for “continuing offenses.” The court held that a continuing offense was one which “is of an ongoing nature and cannot be feasibly segregated into discrete violations so as to impose separate penalties.”[[39]](#footnote-39) The court went on to observe that in the case of the violations by Newcomer Trucking, each of the 184 separate shipments were identified and each shipment clearly constituted a discrete violation of the Public Utility Code. Therefore, the Commission properly assessed a separate penalty for each violation, rather than on a per day basis.

Similarly, the Commonwealth Court upheld the assessment of a $2,000 civil penalty for four distinct violations of the Public Utility Code in *Kviatkovsky v. Public Utility Commission*.[[40]](#footnote-40) In that case, a motor carrier presented a taxicab to the PUC for a medallion inspection. During the inspection, Commission inspector identified four separate violations of the Public Utility Code. After a hearing the Commission imposed a $2,000 civil penalty. Relying on *Newcomer Trucking*, the Commonwealth Court held that having identified four distinct and separate violations of the Public Utility Code, the Commission could have imposed a $1,000 penalty for each of the four violations identified for a total of $4,000. Therefore, the $2,000 penalty was authorized by Section 3301.

The Commission has also, on many occasions, imposed a civil penalty upon a motor carrier for each and every trip that was not authorized by the Public Utility Code or the motor carrier’s certificate of public convenience. For example, in *Blue & White Lines, Inc. v. Waddington*,[[41]](#footnote-41) the Commission imposed a penalty of $250 per trip which violated the Commission’s regulations related to the brokering of transportation, and an additional $1,000 for each of three trips which were taken after the motor carrier applied for a broker license, but before the license was granted. In *Public Utility Commission v. Penn Harris Taxi Service Company, Inc.*[[42]](#footnote-42) the Commission imposed a penalty of $200 for each of 54 trips taken outside the territory authorized by the motor carrier’s certificate of public convenience. The Commission imposed a further $1,000 for each of two trips where the carrier unlawfully permitted an unregulated carrier to operate under Penn Harris Taxi’s operating rights.

In this case, each trip provided by Uber when it did not have a certificate of public convenience from the Commission constituted a distinct, identifiable and separate violation of the Public Utility Code. The Commission has consistently applied this approach to other carriers found to have provided unauthorized transportation in violation of the Public Utility Code.

As Uber correctly points out, a penalty assessed for each unauthorized trip will result in an unprecedented total penalty. However, this is due solely to the sheer number of violations which occurred and does not preclude the application of a penalty on a per trip basis.

2. Evaluation of Penalty According to Section 69.1201 Guidelines

Having concluded that Section 3301 of the Public Utility Code authorizes the imposition of a penalty for each trip provided by Uber when it did not have a certificate of public convenience, we turn now to the consideration of the amount of penalty which is appropriate.

We note that the number of trips provided by Uber is protected as proprietary information. Accordingly, the actual calculation of the penalty for each trip taken will not be set forth in our discussion. Rather, the calculation will be provided in Proprietary Appendix A which is appended to this decision.

a. The conduct at issue was of a serious nature and the consequences of the conduct are serious: 69.1201(c)(1) and 69. 1201(c)(2)

BIE contends that Uber’s conduct is serious due to its impact on public safety. Uber counters 1) that the conduct is not serious because Uber was providing “desperately needed alternatives . . . for transportation;” 2) Uber believed that the broker license held by Gegen covered its operation; and 3) BIE did not prove that any actual harm occurred.

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.[[43]](#footnote-43) 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.[[44]](#footnote-44) The Commission was unable to verify whether Uber maintained adequate insurance coverage.

In the July 24, 2014 Opinion and Order on the Petition for Emergency Relief, the Commission reviewed its mandate to regulate transportation and protect the public safety:

Section 501 of the Code, 66 Pa. C.S. § 501, gives the Commission broad authority to enforce the Code, to supervise public utilities doing business in Pennsylvania, and to promulgate regulations necessary to perform these duties. *Keystone Cab Service, Inc. v. Pa. PUC,* 54 A.3d 126, 128 (Pa. Cmwlth. 2012). In enacting Section 501, the General Assembly expressed the Commission’s authority as both an authorization to act and as a duty to enforce, execute and carry out the provisions of the Code. Section 1501 of the Code also requires every public utility to “maintain adequate, efficient, safe, and reasonable service and facilities” and to “make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” 66 Pa. C.S. § 1501. Pursuant to this authority and duty to protect the public interest, the Commission promulgated regulations for motor carriers of passengers. See 52 Pa. Code Ch. 29. [[45]](#footnote-45)

The Commission recognized that ratifying the emergency relief requested by BIE would impact the public’s access to transportation, but that public safety was of paramount importance:

As we have previously discussed, the public interest is an amorphous concept that may be applied where public policy is clearly better served by one course of action than another. See *Petition of Service Electric Company, LLC for Interim Emergency Order*, Docket No. P-2013-2349801 (Order entered April 4, 2013) at 37. Here, we conclude that the public interest is better served by enforcing the Code and helping to ensure the safety of the public. Although the granting of emergency relief during the pendency of the proceeding may result in the limitation of options for some riders in Allegheny County and may impact the business interests of Uber and its drivers, such considerations do not outweigh the higher goal of public safety. Under the delegated authority of the General Assembly, we have the responsibility, and the public expects, that we will work to ensure that the travelling public is transported safely. As the ALJs correctly noted in the Order on Interim Emergency Relief involving Lyft, Inc., the “public has a compelling interest in compliance with the law and the Commission has an unassailable duty to ensure compliance with the … Code.” *Petition of the Bureau of Investigation and Enforcement for an Interim Emergency Order requiring Lyft, Inc. to immediately cease and desist from brokering transportation service for compensation between points in Pennsylvania*, Docket No. P-2014-2426847 (Order entered July 1, 2014) at 12.[[46]](#footnote-46)

Accordingly, providing transportation without authorization from the Commission is a serious violation of the Public Utility Code. The risk to public safety as a consequence of the violation merits a higher penalty.[[47]](#footnote-47) The need for transportation perceived by Uber does not outweigh the Commission’s mandate to ensure that the travelling public is transported safely.

Finally, the fact that BIE did not present evidence of actual harm to specific individuals, does not negate the seriousness of the violation. First, Commission regulation to protect public safety does not guarantee that no damage to property or personal injury will ever occur. The purpose of Commission oversight is to minimize the *potential* for damage to property or personal injury. Therefore, BIE was not required to prove that its public safety concerns were realized by actual events.

Further, there is evidence that Uber was involved in accidents. Mr. Feldman testified that during the relevant period of time, there were at least nine accidents which “could

lead to an insurance claim.”[[48]](#footnote-48) He did not know if there were other incidents that did not lead to an insurance claim.[[49]](#footnote-49) While this may seem like a small number, it highlights the need for Commission oversight to protect the public.

b. The conduct of Uber was intentional from February 11, 2014 until July 1, 2014, but was a deliberate disregard for the Commission’s jurisdiction from July 1, 2014, until August 20, 2014: 69.1201(c)(3)

BIE argues that for the entire period at issue in the complaint, Uber’s conduct was intentional and that Uber “purposely and by design violated the Commission’s regulations. . . .”[[50]](#footnote-50) Uber counters that it believed that its operation was permitted pursuant to the Gegen’s broker license until the July 1, 2014 Cease and Desist Order. Thereafter, Uber argues that its perceived need for its services justified its continued operation.

Uber Technologies is not an unsophisticated company. As noted above, Mr. Feldman testified that in the period leading up to the February 11, 2014 launch, Uber undertook both an evaluation of the transportation market in Allegheny County and also the regulatory status in the market. Uber’s subsidiary, Gegen, applied for and received a broker license in March 2013. Mr. Feldman testified that the Uber ridesharing service was launched with the belief that the broker license permitted the service.[[51]](#footnote-51)

The Public Utility Code clearly provides that a broker may not “employ any motor carrier who or which is not the lawful holder of an effective certificate of public convenience or permit.”[[52]](#footnote-52) There is no dispute that none of the drivers providing transportation held certificates of public convenience. As a sophisticated company, Uber clearly should have been aware that arranging transportation with uncertificated drivers was not permitted by Gegen’s broker license as it was clearly spelled out in the Public Utility Code.[[53]](#footnote-53) Moreover, Uber was clearly in communication with the Commission during this period of time because it decided to file the application for experimental service in April 2014.[[54]](#footnote-54) The Commission has held that arranging for unauthorized trips following the submission of an application is a deliberate disregard of the Commission’s jurisdiction and has assessed the maximum penalty for each trip arranged.[[55]](#footnote-55) Similarly, any claim by Uber for “good faith ignorance” is disingenuous and does not form the basis for exoneration of the penalties.[[56]](#footnote-56)

Yet, Uber did secure some authority from the Commission in the form of Gegen’s broker license and was at least in discussions with the Commission concerning the proper type of application that should be filed which would permit the use of the private drivers in their private vehicles as a ridesharing service. Although it is not unprecedented to assess the maximum penalty for unauthorized service during the pendency of the application process, we believe it is appropriate to assess a lower penalty for Uber’s violations for the period of time between the launch of the service until July 1, 2014.

However, Uber’s conduct following our issuance of the Cease and Desist Order on July 1, 2014, is of a completely different character. That order clearly directed Uber to cease its ridesharing service until it received authority from the Commission. As argued by BIE, Uber was acting in defiance of an order of the Commission as a calculated business decision. In his testimony, Mr. Feldman admits that Uber simply did not want to comply with the July 1, 2014 Cease and Desist Order, and so it continued to operate.[[57]](#footnote-57)

Incredibly, counsel for Uber argued that it was justified in continuing its operation because the July 1, 2014 Order was subject to review by the Commissioners.[[58]](#footnote-58) Uber further contends that the July 1 Order was rendered “without the benefit of a full record that clearly identified the functions being performed by the Respondents.”[[59]](#footnote-59)

First, Section 3.10 of the Commission’s regulations explicitly provides:

An order granting or denying interim emergency relief is immediately effective upon issuance by the presiding officer. No stay of the order will be permitted while the matter is being reviewed by the Commission.[[60]](#footnote-60)

As acknowledged by Uber, this regulation does not provide for a stay pending review by the whole Commission. Second, while we acknowledge that the service provided by Uber may have been novel, the reason that there was not a more thorough evidentiary record explaining the functions being performed by Uber was due to Uber’s election to not present any witnesses or exhibits at the hearing on BIE’s emergency petition for our consideration.

In sum, there is no excuse for Uber’s continued operation after July 1, 2014. Its decision to do so was a deliberate disregard of the Commission’s authority. This decision was intentional on the part of Uber’s management. Uber filed its petition for emergency authority with the Commission on July 2, 2014, which further evidences Uber’s awareness that it was providing transportation in violation of the Public Utility Code.[[61]](#footnote-61)

When other motor carriers have similarly flouted the Commission’s authority, the Commission has not hesitated to assess a maximum penalty. In *Blue & White Lines, Inc. v. Waddington*,[[62]](#footnote-62) the Commission held that the respondent had brokered transportation without a license. For seven of these unlicensed transactions, the Commission assessed a civil penalty in the amount of $250 for each violation. However, the respondent filed an application for a broker license, but arranged three additional trips. The Commission adopted the administrative law judge’s conclusion that the arranging of trips after the submission of the application was evidence of an awareness that the respondent lacked authority and was therefore “a deliberate disregard of the Commission’s jurisdiction . . . .” Accordingly, the Commission assessed the maximum penalty for each of these trips.

Similarly in *Public Utility Commission v. Brungard,* [[63]](#footnote-63) the carrier rendered transportation services without authority from the Commission when its certificate of public convenience was cancelled. The Commission assessed a penalty for each day the carrier held itself out to the public as authorized to provide transportation service, and also assessed the maximum penalty in the amount of $1,000 for providing an unauthorized trip.

The Commission also assessed a maximum penalty in *Public Utility Commission v. Classic Coach, Ltd*.[[64]](#footnote-64) In that case, the respondent provided limousine transportation while its certificate was suspended for failing to maintain appropriate insurance on file with the Commission. Reversing the administrative law judge, the Commission held that there were no mitigating factors and assessed the maximum civil penalty in the amount of $1,000 for each of the violations.

In *Public Utility Commission v. Greer*,[[65]](#footnote-65) the Commission assessed a penalty of $500 for providing transportation without authority on one occasion. The administrative law judge held that the violation was serious, but assessed a penalty for less than the maximum permitted because the “Respondent appeared genuinely contrite and the likelihood of him engaging in this type of activity in the future seems remote.”[[66]](#footnote-66)

In contrast to the respondent in *Greer*, Uber has not been “contrite” or in any way recognized the necessity of a consequence for flouting the Commission’s authority. We find that this factor alone supports the assessment of the maximum penalty for the trips provided by Uber from July 2, 2014 until it was issued the certificate of public convenience for emergency authority on August 20, 2014.

To sum, we find that Uber’s conduct from February 11, 2014 until July 1, 2014, while intentional because it knew or should have known that it was providing transportation which required authority from the Commission, merits a lower penalty. In contrast, Uber’s conduct from July 2, 2014 until August 20, 2014, was deliberate and calculated and therefore merits the maximum penalty.

c. Efforts to modify internal practices: 69.1201(c)(4)

BIE argues that Uber has done nothing since the filing of the complaint to modify its internal practices and that there are no facts to consider under this factor to mitigate any penalty.

Uber counters that since the Commission issued the certificate for emergency authority, Uber has submitted reports and compliance plans as directed by the Commission, including an assessment report on March 31, 2015. Uber has also been granted experimental authority in Allegheny County and filed the compliance plan as directed.

We agree with Uber that it appears that, once it was granted authority by the Commission in August 2014, it has complied with the technical directives of the Commission regarding the ridesharing service.[[67]](#footnote-67) However, as explained above, this compliance occurred well after Uber was aware that its ridesharing service provided transportation without proper authorization from the Commission. Therefore, while it may offer some mitigation of a penalty, it is only a small measure.[[68]](#footnote-68)

d. Many customers were affected: 69.1201(c)(5)

BIE argues that many customers were affected by Uber’s conduct, as well as the public at large. Uber counters that this factor should not be considered as an enhancement factor because had it not provided its ridesharing service, many people would not have had access to transportation.

Officer Bowser offered strong testimony concerning the scope of those affected by Uber’s conduct:

Each and every 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.[[69]](#footnote-69)

Uber provided a substantial number of ridesharing trips without Commission authority and without Commission oversight. As explained by Officer Bowser, each of these trips impacted not just the driver and the passenger involved, but other motorists and pedestrians as well. While Commission oversight is not a guarantee of public safety, a substantial number of people were put at risk which merits a higher penalty.

e. As a new provider compliance history is not a significant factor: 69.1201(c)(6)

BIE contends that the factor relating to compliance history merits a higher penalty, because Uber has been non-compliant since “day one.” BIE focuses on Uber’s conduct which forms the basis of the complaint. Uber contends that it has no history of non-compliance, relying on Mr. Feldman’s testimony that the Commission has not sustained any complaints against Uber or its affiliates.

This factor merits neither mitigation nor magnification of the civil penalty. This factor of the guidelines focuses on a respondent’s historical behavior at the Commission, not the conduct which formed the basis for the enforcement action in the first place. Here, Uber began operating in 2014 and had no prior history with the Commission. There is no evidence in the record that the Commission was required to take enforcement action (other than this complaint) against Gegen, which has held a broker license since 2013. Therefore, the factor of compliance history does not play a role in establishing an appropriate civil penalty on this complaint.

f. Uber did not cooperate with the Commission: 69.1201(c)(7)

This factor requires us to consider “[f]acts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations . . .” In BIE’s view “[t]he record of these proceedings is replete with testimony, motions, statements and orders which irrefutably prove that Uber failed to cooperate not only with [BIE], but also with the presiding ALJs as well as the Commission itself that entered Orders which Uber blatantly and defiantly ignored.”[[70]](#footnote-70)

Uber counters that a respondent in a litigated proceeding is not required to cooperate with BIE. Relying on *Bleiman v. PECO Energy Company,*[[71]](#footnote-71) Uber states that this factor is irrelevant when no investigation has been conducted. Finally, Uber points to its efforts to resolve the litigation through settlement as evidence of its cooperation.

Uber’s characterization of *Bleiman* is misleading. That decision involved a consumer complaint against PECO. The presiding administrative law judge held that the consumer had proven that there were incorrect charges on her bill. The ALJ further concluded that the imposition of these charges constituted a violation of the Public Utility Code. In her review of Section 69.1201(c)(7), the ALJ simply stated that this factor was not relevant to her determination of an appropriate civil penalty because there had been no Commission investigation.[[72]](#footnote-72) The case was also not a Commission prosecution, but a consumer complaint, so it does not answer the question raised in these proceedings.

There is no question that Uber’s conduct in the litigation of this complaint has been obstructive. Uber has failed to answer discovery and failed to comply with our orders. Uber did not comply with the July 28 Secretarial Letter. When testifying, Uber’s witnesses were continually reminded to answer questions directly. As explained more fully below, this conduct impeded BIE’s ability to prosecute the complaint and impeded our ability to create a complete record of facts from which to render a decision.

Neither Uber nor BIE have provided us with any case law which explains the meaning of a “Commission investigation” as opposed to a Commission prosecution for the purposes of evaluating an appropriate civil penalty. As these factors are to provide guidance in the assessment of civil penalties, they are not binding and the penalty we assess need not be based on each and every factor.[[73]](#footnote-73) Further, we deal with Uber’s conduct of the litigation and compliance with our orders in these proceedings in our assessment of a civil penalty as a sanction for failing to comply with our orders compelling Uber to answer BIE’s discovery and trip data requested by the July 28 Secretarial Letter. Therefore, the factor regarding cooperation does not play a role in our civil penalty assessment.

g. Deterrence is a significant factor: 69.1201(c)(8)

Uber contends that deterrence should not be considered as a factor in assessing the civil penalty because it has come into compliance and no further deterrence is necessary.

Deterrence is a significant consideration when crafting an appropriate civil penalty. Penalty assessments by the Commission serve not only to deter the violator from future non-compliance, but also to deter others from violating the Public Utility Code. First Deputy Chief Prosecutor Wayne Scott explained the importance of deterrence eloquently:

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 the Administrative Law Judge and the Commission.

. . . .

You know, your Honor, I have been amazed over my years about how many times things get out. If big companies do something, another big company knows about it. Maybe they know about it through the board room, the courtroom, whatever.

If a tiny, little trucking company knows about it, other little trucking companies find out. I don’t know if it’s the region; I don’t know if it’s the barroom. I don’t know where they find out, but they find out, and guess what, people are looking at this.

. . . .

What do you tell the next company who ignores you? What do you tell the next company that comes into Pennsylvania, disregards the law and just goes forward and does whatever they want to do? What do you tell the next company that you say, give this information to this party, and they say, no? You need to send a message.[[74]](#footnote-74)

Deterrence is important not just to deter Uber, but also serves a wider public purpose of deterring other entities who may wish to launch an innovative utility service without Commission approval. Therefore, this factor merits heavily in favor of a substantial civil penalty, particularly for the period of time following the July 1 Cease and Desist Order.

h. The Commission has assessed significant civil penalties for providing unauthorized transportation: 69.1201(c)(9)

BIE contends that in many respects this complaint presents an unprecedented set of facts, where an “entity acted in such blatant defiance and committed such a large number of violations. . . .”[[75]](#footnote-75) However, BIE also draws our attention to several of the cases we discussed above, including *Brungard* and *Waddington.* In both *Brungard* and *Waddington,* the Commission assessed a civil penalty of $1,000 for each unauthorized trip.

Uber attempts to distinguish these cases. Uber also suggests that the settlement reached between BIE and Lyft which resulted in a civil penalty of $250,000 should be considered.

First, as we detailed above, the Commission has on many occasions assessed the maximum civil penalty for each time a person or company provides transportation services without authorization from the Commission. Indeed these cases provided guidance in our determination of the appropriate civil penalty and are in the range of per trip assessments made by the Commission in these past decisions.

However, the settlement in *BIE v. Lyft*,[[76]](#footnote-76) plays no role in our determination. Uber’s reliance on Lyft is misplaced and inappropriate. Therefore, it is irrelevant to the consideration of an appropriate penalty in a fully litigated case. The penalty in Lyft was the result of a negotiated settlement. Indeed, Section 69.1201(b) provides that:

[T]hese factors and standards will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases will be afforded flexibility in reaching amicable resolution to complaints and other matter so long as the settlement is in the public interest.[[77]](#footnote-77)

i. Other relevant factors: 69.1201(10)

BIE submits that there are no other relevant factors which should mitigate the penalty. Rather, BIE takes the position that the significant time and resources that have been expended in the litigation of the complaint justify the penalty requested.

Uber counters that the benefits provided to the public by providing an additional transportation service are significant and meet a transportation need identified by the Commission. According to Uber, this fact should mitigate or exonerate any civil penalty.

We have carefully reviewed the evidence and arguments offered by both parties to these proceedings. We have weighed the factors set forth in Section 69.1201. We are not unmindful of the public benefits offered by ridesharing services and transportation network companies. However, it is inescapable that Uber chose to launch its ridesharing service and then continued to evade Commission oversight until August 20, 2014, placing the public at risk and impeding the Commission’s mandate to apply the requirements of the Public Utility Code. Therefore, a total civil penalty for the violations of Sections 2505 and 1101 of the Public Utility Code from February 11, 2014 until August 20, 2014, in the amount of $49,852,300 is appropriate.[[78]](#footnote-78)

E. Discovery Violations

BIE has requested additional civil penalties as a sanction for Uber’s failure to answer discovery in defiance of several orders from the presiding officers directing it to do so. We reserved our ruling on that sanction until our final decision on the complaint. Our March 25, 2015 Interim Order provided that a final ruling on the amount of the civil penalty due and payable as a sanction for failing to provide full and complete answers to discovery as ordered by the presiding Administrative Law Judges would be held in abeyance until a written decision on the merits is issued. In addition, the parties were provided with an opportunity to include argument on this issue in their final briefs.

As previously noted, BIE filed a petition for emergency relief at Docket No. P‑2014-2426846. Subsequently, the petition was granted by order dated July 1, 2014 and Uber was ordered to cease and desist its operations in Pennsylvania utilizing its digital platform to facilitate transportation for compensation to passengers utilizing non-certificated drivers in their personal vehicles. By order entered July 24, 2014, the Commission approved that order. Further, the Commission determined that additional information would aid in the formulation of a final order in this complaint proceeding. A Secretarial Letter dated July 28, 2014, directed the parties to address the following questions:

1. 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:The number of transactions/rides provided to passengers in Pennsylvania via the connections made with drivers through Internet, mobile application, or digital software during the following periods:
2. From the initiation of Uber’s service in Pennsylvania to June 5, 2014 (the date BIE filed the Complaint against Uber);
3. From the receipt of the cease and desist letter from the Commission’s Bureau of Technical Utility Services dated July 6, 2012, to June 5, 2014;
4. From June 5, 2014, to July 1, 2014 (the date the *Cease and Desist Order* became effective); and
5. From July 1, 2014, to the date on which the record in this Complaint proceeding is closed.
6. Should there be a finding that Uber’s conduct in any one or all of the periods in question (1), above, was a violation of the Public Utility Code, whether refunds or credits to customers would be an appropriate remedy.
7. Whether either evidence of prior unlawful operations or contumacious refusal to obey Commission orders negates the need for the proposed service and/or the fitness of the applicant as a common carrier such that no certificate of public convenience can be issued by the Commission.

On August 8, 2014, BIE served interrogatories and a request for documents upon Uber, intended to elicit the information directed by the July 28, 2014 Secretarial Letter wherein the parties were directed to provide trip data and other information for consideration as part of the record in the enforcement proceedings.

BIE’s interrogatories sought (1) the number of trips for the time periods consistent with those requested by the July 28 Secretarial Letter; (2) the name of the affiliate that provided the trips if they were not provided by Uber Technologies; and (3) supporting documentation including invoices, receipts, e-mails or other documents generated by Uber Technologies or the affiliate responsible for the distribution of the supporting documentation. Uber objected to each of the interrogatories and document requests on a variety of grounds. After attempts to resolve the dispute were unsuccessful, BIE filed a motion to compel on August 29, 2014. Uber filed a timely response, which repeated the objections. By order dated October 3, 2014 (October 3 Interim Order), we rejected Uber’s arguments and directed it to answer the discovery within 10days of entry of the order.[[79]](#footnote-79) Uber filed a petition for certification of the order for interlocutory review by the Commission. That petition was denied by order dated October 17, 2014.

On November 7, 2014, BIE filed its first motion for sanctions, because Uber refused to respond to BIE’s discovery requests as directed by the October 3 Interim Order. BIE contended that Uber’s continued refusal to provide the trip data and other information sought in discovery precluded BIE from determining the scope of Uber’s transportation activities and prevented it from fully preparing its case. Uber filed a response to the motion.

By order dated November 26, 2014, we required that Uber serve full and complete answers to all outstanding discovery requests on or before December 12, 2014. We concluded that the assessment of a civil penalty was appropriate pursuant to Section 3301 of the Public Utility Code, which permits the assessment of a civil penalty to “refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the Commission” and Section 5.372(a)(4) of the Commission’s regulations, which permits us to impose any sanction which is just. We indicated that we would provide Uber with one additional opportunity to comply with the October 3 Interim Order. However, if it continued to refuse to comply, we would impose a civil penalty of $500 per day for each day thereafter that it failed to serve discovery responses. The order entered on November 26, 2014 further provided that the $500 per day civil penalty, as a sanction for failing to provide the requested discovery information would be assessed, in addition to any penalties which we may impose if BIE is successful in proving the violations of the Public Utility Code alleged in its complaint. The penalties were made due and payable each day. Uber continued to refuse to respond to discovery and did not pay the civil penalties as required by the November 26 interim order. On January 9, 2015, BIE filed its second motion for sanctions. BIE averred that Uber failed to provide answers to discovery requests pursuant to the interim order on the motion to compel and motion for continuance entered on October 3, 2014 and that Respondent failed to comply with the interim order motion for sanctions entered on November 26, 2014. BIE averred that Uber openly refused to comply with the orders and regulations of the Commission and failed to abide by the November 26, 2014 order requiring Respondent to serve full and complete answers to all outstanding discovery requests on or before December 12, 2014 or pay the civil penalty. BIE averred that Uber neither served the outstanding discovery responses, nor paid the daily civil penalty, and requested that more severe sanctions be imposed upon Uber. BIE proposed several possible sanctions, including the imposition of civil penalties of $1,000 for each day Uber continued to fail to answer the discovery from October 17, 2014 to the date of compliance by Uber.

On January 14, 2015, Uber filed an answer to the motion. In its answer to the second motion for sanctions, Uber reiterated that it opposed the motion for the same reasons set forth in its response filed to the original motion for sanctions on November 7, 2014.

On January 29, 2015, an interim order on the second motion for sanctions was entered. The motion for sanctions was held in abeyance, and scheduled oral argument on the motion was scheduled for February 18, 2015. The oral argument on the second motion for sanctions convened as scheduled on February 18, 2015. The parties also engaged in settlement discussions. An interim order was entered on February 24, 2015, memorializing the matters agreed upon and approving the agreement of the parties that the second motion for sanctions filed by BIE on January 9, 2015 would be held in abeyance, that the parties would be permitted to continue their settlement discussions. In the event that the parties were unable to enter into any proposed stipulations, on or before March 6, 2015, Uber would serve full and complete answers to all outstanding discovery requests. The order specifically provided that “nothing herein shall modify or stay any provision, order or obligation imposed upon any party by the prior discovery orders entered in this matter, including, without limitation, the Interim Order Motion For Sanctions entered on November 26, 2014.”

The parties engaged in discussions, but were not able to meet the March 4, 2015 deadline. A joint request for an extension of time was granted. The parties filed a timely joint status report on March 18, 2015. The parties reported that Uber had filed partial discovery responses on March 6, 2015. However, the parties were unable to agree on proposed stipulations. Therefore, the parties provided dates for an evidentiary hearing on the complaint. Accordingly, an evidentiary hearing was scheduled for May 6, 2015.

By interim order dated March 25, 2015, we granted BIE’s motion for sanctions in part and scheduled an evidentiary hearing for May 6, 2015.

In our March 25, 2015 order granting, in part,[[80]](#footnote-80) BIE’s motion for sanctions, we noted that we share BIE’s frustration with Uber’s recalcitrance in the conduct of this matter. As we noted, we previously ruled that the information sought by BIE in discovery was discoverable and relevant in these proceedings. The arguments made by Uber for why it should not be required to comply with our orders were not an adequate defense to BIE’s requests for sanctions.

1. BIE’s Position

BIE seeks an additional civil penalty in the amount of $1,000 per day for each unanswered discovery request, until such information is provided or until the proceeding is closed, whichever occurs first. BIE asserts that such a penalty is appropriate based upon what it characterizes as Uber’s “defiant refusal” to produce documents that were judicially determined to be proper discovery.

During the May 6, 2015 evidentiary hearing, BIE noted that Uber had not produced documents in response to two outstanding discovery requests propounded by BIE.[[81]](#footnote-81) BIE argues that since Respondent unilaterally deprived BIE of this information, BIE had no means to calculate refunds to passengers, which was a remedy that the Commission suggested that BIE pursue in the July 28, 2014 Secretarial Letter.[[82]](#footnote-82) At the May 6, 2015 evidentiary hearing, Uber witness Feldman testified that Uber was not prepared to provide the trip documentation[[83]](#footnote-83) or the licensing agreements sought by BIE.[[84]](#footnote-84)

The Commission’s regulations address the consequences of a failure to comply with the Commission’s regulations regarding discovery. Section 5.371(a) provides:

1. The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:
2. 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.[[85]](#footnote-85)

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.”[[86]](#footnote-86)

BIE correctly argues that 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,*[[87]](#footnote-87)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 failures by the company to provide discovery responses within 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.[[88]](#footnote-88)

The *Smolsky* case involved Global Tel’s prepaid telephone services to Mr. Smolsky, a state correctional institute inmate. Mr. Smolksy alleged that Global Tel added hidden costs in its prepaid calling cards. Mr. Smolsky made three discovery requests on October 25, 2007, October 30, 2007 and November 4, 2007, respectively. Global Tel did not object to the discovery requests, but provided incomplete and unverified responses on December 12, 2007. On December 24, 2007, Mr. Smolsky filed a Motion for Sanctions and a Motion to Compel Discovery Compliance. Global Tel filed its answers to the motion and a Motion for a Protective Order on January 2, 2008. Attached to the answers were the responses to all three discovery requests that were originally served on December 12, 2007. In accordance with Section 5.342(g)(1) of the Commission’s regulations, Global Tel was required to file its answer to the motion on December 31, 2007. The answers were untimely filed on January 2, 2008.

The presiding officer ordered Global Tel to pay a civil penalty for numerous violations. In his Initial Decision, ALJ Louis G. Cocheres found several violations of Commission regulations by Global Tel. The violations included failing to file timely Answers to the Complaint and the Amended Complaint (52 Pa.Code §5.61), and failing to file an entry of appearance for the Company’s attorneys until November 26, 2007. The ALJ also noted that Global Tel’s actions demonstrated a pattern of disregard for the Commission’s regulations and

delayed the progress in this case. The ALJ concluded that the Company had litigated in bad faith, which warranted the application of sanctions, including:

1. Filing untimely objections to discovery requests, 52 Pa. Code §§ 5.342(e), 5.349(d);
2. Filing untimely answers to discovery requests, 52 Pa. Code §§ 5.341(c), 5.342(d), 5.349(d)
3. Failing to identify the name and positon of the individual who provided the answer to discovery requests, 52 Pa. Code § 5.342(a)(2);
4. Failing to answer discovery requests fully and completely, in the absence of an objection, 52 Pa. Code § 5.342(a)(4);
5. Failing to verify the answers to interrogatories, 52 Pa. Code §§ 1.36, 5.342(a)(6);
6. Failing to solicit an agreement from Mr. Smolsky to treat information as proprietary prior to the issuance of a protective order, and instead resorting to self-help, 52 Pa. Code § 5.423(c)(4); and
7. Filing an untimely petition for a protective order, 52 Pa. Code § 5.423(c)(4).

The ALJ, in his Initial Decision, also ordered civil penalties for each of the instances of violations as follows:

Failure to appoint counsel $ 500.00

Failure to file timely discovery responses 1,500.00

Failure to identify witnesses and verify responses 1,600.00

Assertion of waived defenses and redaction 1,000.00

Failure to include Attachment 4 50.00

Supplying a known false answer 1,000.00

TOTAL $5,650.00

The Commission agreed with the ALJ that a civil penalty was appropriate as a sanction for discovery violations. The Commission imposed a $500 civil penalty for each of the Company’s failures to file timely discovery responses. The Commission concluded that Global Tel knew or should have known that it was required to respond to these requests within twenty days, pursuant to 52 Pa.Code §§ 5.341(c), 5.342(d), 5.349(d). The Commission concluded that the Company’s actions were intentionally dilatory and warrant a serious penalty to deter future violations.

The Commission also imposed a $500 civil penalty for the Company’s refusal to answer discovery requests, and its production of a redacted document in response to a discovery request. The Commission noted that the regulations provide procedures for objecting to discovery requests and seeking protective orders to protect proprietary information. The Company did not avail itself of those procedures, but simply resorted to self-help.

BIE also cites the case of *Application of K&F Medical Transport, LLC.*[[89]](#footnote-89) There, the Applicant filed an application for the right to provide paratransit services to Legisti Care Solutions, LLC, under its contract with the Pennsylvania Department of Public Welfare. Germantown Cab Co. (Germantown) filed a protest to the application alleging the granting of the application would have an adverse impact on it and that applicant would be in direct competition with Germantown for the transporting of passengers. Subsequently, Applicant filed preliminary objections to the protest. In its Preliminary Objection, the Applicant requested that the Commission find that the Germantown protest was made in bad faith and to impose sanctions on Germantown by ordering it to reimburse Applicant for fees and costs incurred to prepare and file its Preliminary Objections and to grant such other relief as the Commission may deem appropriate. The presiding officer noted that the Commission does not have jurisdiction to award attorney’s fees and costs.[[90]](#footnote-90) However, in 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. 66 Pa.C.S. § 3301. As Germantown’s protest was dismissed in its entirety, the presiding officer concluded that no further sanctions were warranted in the case.

BIE argues that the *K&F* decision supports its position 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.” BIE notes that in the instant case, the undersigned presiding officers directed Uber to produce the above referenced discovery responses in multiple orders, including the October 3, 2014 Discovery Order, the November 25, 2014 Discovery Order, the November 26, 2014 Sanctions Order and the March 25, 2015 Sanctions Order. Therefore, it was already determined that the requested information is relevant, not unduly burdensome, not privileged and not otherwise protected from being discoverable.

BIE argues that unlike *Smolsky*, Respondents *never* provided BIE with responses to the discovery requests including documentation regarding the trips and the licensing agreements. Without the ability to examine these documents, BIE asserts it 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 identity of the entity that allegedly licensed the Uber App and performed the unauthorized transportation services.[[91]](#footnote-91) According to BIE, Uber has essentially coerced BIE, the undersigned presiding officers and ultimately the Commission into taking Uber’s bald assertions as the truth. Such behavior, BIE contends, is not only unfair and undermines the integrity of the adjudicatory process, but also BIE questions the veracity of Respondents’ representations given Respondents’ conduct throughout these proceedings.

Nevertheless, BIE asserts, 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)(relating to interrogatories), and Section 5.342 of the Commission’s regulations, 52 Pa.Code § 5.342. Accordingly, pursuant to Section 3301(a)-(b) of the Code,[[92]](#footnote-92) BIE argues it is lawful and appropriate to impose a civil penalty in the amount of $1,000 for each unanswered discovery response per day until such documents are produced or until the Complaint proceeding is closed. BIE stresses that 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 the Commission that the Commission takes the integrity of its adjudicatory process seriously.

2. Uber’s Position

Uber argues that no civil penalty is warranted in this case for its failure to respond to BIE’s discovery request and the Order of the Commission. Uber asserts that only two discovery requests were unanswered. The first request is for invoices, receipts, emails, records and documents sent to individuals who received rides in Allegheny County between February 11, 2014 and August 20, 2014. Uber notes that its objection that the requests were overly burdensome, were denied. Uber asserts, given that Respondent provided the trip data at the hearing, and common sense suggests that scores of boxes would have been necessary to provide the additional documentation, it would serve no purpose to impose a civil penalty on Respondents.

Uber also asserts that the second outstanding discovery request concerns copies of licensing agreements between Uber Technologies, Inc. and its subsidiaries. Uber notes that BIE stated in its Motion to Compel that it needed this information to identify the functions performed by the subsidiaries. Uber argues that information was furnished through other discovery responses, the Stipulations of Fact and Mr. Feldman’s testimony and that no additional purpose would be served by producing, what Uber characterizes as “proprietary” documents.

Uber further argues that discovery sanctions are not intended to be punitive. The Commission’s regulations specify certain sanctions that are available when a party fails to respond to discovery requests, including factual inferences, prohibitions on introducing evidence, and striking pleadings, or the issuance of another order “as is just.” 52 Pa.Code § 5.372(a). Uber argues that appellate courts reviewing sanction orders issued pursuant to Pa.R.C.P. 4019(c)(5) have considered whether the lower court struck the appropriate balance between the procedural need to move the case to prompt disposition and the substantive rights of the parties.[[93]](#footnote-93) In this case, Uber argues that the undersigned presiding officers issued an Interim Order on March 26, 2015 imposing several sanctions on Respondent, including limitations on their ability to defend the factual allegations in the amended complaint through cross-examination and the introduction of evidence. In Uber’s view, the outstanding discovery request was not needed to move the case to prompt disposition, and BIE’s prosecution was not hampered. Therefore, Uber takes the position that no additional sanctions are appropriate or warranted.

Uber further attempts to distinguish the *Smolsky* decision from the instant preceding arguing that because the conduct of Global Tel actually prevented the proceeding from moving forward, the Commission viewed the matter as “justice delayed is justice denied” and imposed a civil penalty. Uber asserts that nothing in the *Smolsky* decision supports the imposition of monetary sanctions on Respondents in this case.

Uber simply mischaracterizes the Commission’s reasoning in the *Smolsky* case. In *Smolsky*, the Commission upheld the civil penalties imposed by the ALJ based upon the failure of Global Tel to follow the Commission’s discovery rules and deadlines. Uber argues the Commission permits sanctions in the form of civil penalties when a party litigates in bad faith and notes that the *K&F* case did not involve a discovery dispute. Rather, the applicant in *K&F* requested the imposition of sanctions against Germantown for filing the protest in bad faith and the Commission declined to impose monetary sanctions.

In *K&F*, the Commission clearly indicated that, where a party has litigated in bad faith, the Commission is empowered to impose sanctions in the form of civil penalties against that party. There, the Chief ALJ dismissed the protest filed by Germantown, who acted in bad faith, and the Commission concluded that no further sanctions were warranted. Here, the undersigned presiding officers had the option to revoke the operating authority of Uber as a sanction for its conduct in this matter or it could have imposed a civil penalty in these proceedings. BIE did not seek revocation of Uber’s operating authority at the hearing in this matter.

Here, as explained in our earlier orders, it is appropriate to assess a civil penalty.

F. Civil Penalty for Discovery Violations

We begin by applying the factors set forth in 52 Pa.Code § 69.1201 to Uber’s failure and refusal tofile timely discovery responses to BIE’s discovery requests and the Orders of the undersigned presiding officers. Uber was represented by experienced legal counsel and certainly knew or should have known that it was initially required to respond to the discovery requests within twenty days of service. [52 Pa.Code §§ 5.341(c)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS5.341&originatingDoc=Ic8567b21ed6a11ddb7e683ba170699a5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), [5.342(d)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS5.342&originatingDoc=Ic8567b21ed6a11ddb7e683ba170699a5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), [5.349(d)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS5.349&originatingDoc=Ic8567b21ed6a11ddb7e683ba170699a5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)).

The first factor to consider in assessing a civil penalty is whether the conduct at issue was of a serious nature. [52 Pa.Code § 69.1201(c)(1)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS69.1201&originatingDoc=Ic8567b21ed6a11ddb7e683ba170699a5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). “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.” *Id*.

BIE first requested the information identified in the July 28, 2014 Secretarial Letter from Uber through discovery requests served on August 8, 2014. By interim order dated October 3, 2014, we granted BIE’s motion to compel and directed Uber to answer the discovery requests within ten days. A motion for sanctions was filed by BIE on November 7, 2014 for Uber’s failure to comply with the October 3, 2014 Interim Order. BIE alleged the refusal to provide the trip data and other information sought in the discovery request rendered BIE unable to fully prepare its case. By interim order dated November 26, 2014, Uber was again directed to provide the discovery responses on or before December 12, 2014, or to pay a civil penalty of $500 each day the requests remained outstanding.

On January 9, 2015, BIE filed its second motion for sanctions resulting from Uber’s refusal to provide the discovery requests or to pay the daily $500 civil penalty. Oral argument was held on the motion on February 18, 2015 and the litigation of these proceedings was delayed in order to permit the parties to attempt to negotiate a resolution of this issue. Uber failed or refused to fully provide responses to the discovery requests or to pay the civil penalty previously imposed. This conduct by Uber, a party represented by experienced legal counsel, was knowing and intentional and warrants a serious penalty to deter future violations.

The second factor to consider is whether the resulting consequences of the conduct are of a serious nature. [52 Pa.Code § 69.1201(c)(2)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS69.1201&originatingDoc=Ic8567b21ed6a11ddb7e683ba170699a5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id*.

The resulting consequences of the conduct of Uber, as described above, was also of a serious nature. BIE notes that Uber was ordered to produce the discovery responses in multiple orders over a period of several months, which were determined to be relevant and not unduly burdensome nor privileged. Without the ability to examine the documentation regarding trip data and licensing agreements, BIE was unable to verify the accuracy of the number of trips at issue or the entities that provided the transportation services. As BIE has asserted, Uber essentially coerced BIE, the undersigned presiding officers and ultimately the Commission into taking Uber’s bald assertions as the truth. Such behavior, as BIE contends, is unfair and undermines the integrity of the adjudicatory process. Accordingly, the consequences of the conduct by Uber in this regard, and its effect on the litigation in these proceedings, is undeniably of a serious nature.

The third factor to consider is whether the conduct is deemed intentional or negligent. Conduct that is deemed intentional may result in a higher penalty. [52 Pa.Code § 69.1201(c)(3)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS69.1201&originatingDoc=Ic8567b21ed6a11ddb7e683ba170699a5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). The conduct of Uber, as described above, was certainly intentional. As BIE explains, Uber was ordered to produce the discovery responses in multiple orders over a period of several months, which were determined to be relevant and not unduly burdensome nor privileged. Further, Uber, represented by experienced legal counsel, certainly knew that, without the ability to examine the documentation regarding trip data and licensing agreements, BIE was unable to verify the accuracy of the number of trips at issue or the entities that provided the transportation services. Under the circumstances, it would be implausible to conclude that the conduct by Uber in this regard, was anything but intentional.

The fourth factor to consider is 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.

Through the date of the evidentiary hearing held in this matter on May 6, 2015, Uber failed or refused to fully provide responses to the discovery requests or to pay the civil penalty previously imposed. The conduct by Uber fails to provide any evidence of efforts to modify its practices or procedures to address these issues or to prevent similar conduct in the future. Furthermore, Uber was represented by experienced legal counsel, who certainly was aware of the Commission rules regarding discovery and the need to comply with Commission orders and utilize Commission resources judiciously.

The fifth factor for consideration is the number of customers affected and the duration of the violation. [52 Pa.Code § 69.1201(c)(5)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS69.1201&originatingDoc=Ic8567b21ed6a11ddb7e683ba170699a5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). This factor is not a significant consideration as the failure to comply with discovery is not a customer service complaint. However, BIE did represent that it was unable to address the issue of refunds as directed by the Secretarial Letter because it did not have the necessary facts to construct a request for redress.

The sixth factor to consider is the compliance history of the regulated entity which committed the violation. [52 Pa.Code § 69.1201(c)(6)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS69.1201&originatingDoc=Ic8567b21ed6a11ddb7e683ba170699a5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). This is not a significant factor for the discovery sanction because Uber does not have a history with the Commission.

The seventh factor for consideration is whether the regulated entity cooperated with the Commission’s investigation. [52 Pa.Code § 69.1201(c)(7)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000636&cite=52PAADCS69.1201&originatingDoc=Ic8567b21ed6a11ddb7e683ba170699a5&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). This factor does not apply to this case as this matter was addressed through litigation and does not involve a formal investigation by the Commission.

The eighth factor we may consider is the amount of the civil penalty necessary to deter future violations. In our March 25, 2015 order granting, in part, BIE’s motion for sanctions, we noted that we share BIE’s frustration with Uber’s recalcitrance in the conduct of this matter. We further indicated that we share First Deputy Chief Prosecutor Wayne Scott’s concern that the Commission’s enforcement role will be much harder in the future if Uber’s repeated refusal to comply with orders of the presiding Administrative Law Judges and the Commission is without consequence.[[94]](#footnote-94)

As we noted, we previously ruled that the information sought by BIE in discovery was discoverable and relevant in these proceedings. The arguments made by Uber for why it should not be required to comply with our orders were not an adequate defense to BIE’s requests for sanctions.

The ninth factor to consider are past Commission decisions in similar situations. As previously discussed 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,* the Commission upheld the presiding officer’s assessment of a $5,650 civil penalty sanction for various violations of the Commissions 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 failures by the company 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 7.

The tenth factor we may consider is additional relevant factors. The factors discussed above sufficiently provide a proper basis for the imposition of an appropriate civil penalty for the discovery violations by Uber in these proceedings. Our October 3, 2014 Interim Order required Uber to serve full and complete answers to BIE’s discovery requests. Uber failed and refused to comply. The November 26, 2014 order granted BIE’s motion for sanctions and required Uber to serve full and complete answers to BIE’s discovery requests on or before December 12, 2014 or pay a civil penalty of $500 per day for each day it fails to answer the discovery requests, until conclusion of the evidentiary hearing. The evidentiary hearing was concluded on May 6, 2015, at which time Uber had failed to serve full and complete discovery responses or pay any portion of the civil penalty previously imposed.

Based upon the foregoing, we find that Uber’s actions in failing and refusing to provide responses to the discovery requests, and to pay the daily civil penalties as ordered, were intentional and a blatant defiance of the rules of the Commission and the orders of the undersigned. Such conduct warrants a serious penalty to deter future violations. We will impose a $500 per day civil penalty for the discovery violations, upon Uber, calculated from the due date of December 12, 2014 through the conclusion of the evidentiary hearing on May 6, 2015, for a total of 145 days ($500 x 145 = $72,500.00).

  Based on these criteria, we conclude that a $72,500 civil penalty for Uber’s discovery violations is appropriate.

Under the circumstances of the specific facts in these proceedings, the penalty imposed herein is warranted as a result of the egregious conduct by Uber throughout the litigation of this case.

G. Motion for Settlement Conference and Assignment of Settlement Judge

On October 13, 2015, after the close of the record, Uber filed a Motion for Settlement Conference and Assignment of Settlement Judge. On October 19, 2015, BIE filed a response opposing the motion. Uber’s motion seeks the appointment of a settlement judge to facilitate a settlement of this complaint or in the alternative seeks an abeyance of the exceptions period for the Commission’s review of our Initial Decision. We reopened the record on October 27, 2015, to include the motion and the response into the record, and reclosed the record in the same order.

We find that at this juncture this matter is no longer appropriate for an ALJ-facilitated settlement conference. As we explained on our order denying Uber’s earlier motion for the appointment of a settlement judge, the settlement judge process is not to be used to force a party to the bargaining table against their will. The Public Utility Code and the Commission’s regulations provide that a settlement judge may participate in settlement discussions upon the agreement of the parties. 66 Pa.C.S. § 331(d)(6); 52 Pa.Code § 5.223(c). Moreover, our January 29, 2015 interim order directed Uber to appear at the February 18, 2015 oral argument along with the appropriate individual with authority to make stipulations or agreements. Uber appeared through counsel but did not come with the appropriate individual with authority to make stipulations or agreements. In addition to the oral argument, we made arrangements for a private conference room and held a settlement conference with the parties. While the parties were able to reach some limited agreements on production of information, they were not able to discuss the ultimate resolution of the case because Uber did not send an individual with authority to reach an agreement with BIE.[[95]](#footnote-95) Uber observes in its second settlement judge motion that we did not rule on its February 4, 2015 Motion for Reconsideration of the January 23, 2015 Interim Order. In sum, Uber has had ample opportunity to settle this matter with the involvement of an administrative law judge. Uber’s motion for reconsideration of our January 23, 2015 order denying the request for a settlement judge is moot and therefore denied.

In the alternative, Uber requests that the Commission hold this proceeding in abeyance when it issues the ALJs’ Initial Decision by deferring the exception and reply exception periods while a Commission-directed ALJ-facilitated settlement conference is held. We do not have authority to rule on this alternative request. Uber’s alternative request is premature because at the time the motion was filed, no decision by the ALJs had been issued, and furthermore the ALJs are not authorized under Commission regulations to rule on motions made after the submission of its decision. 52 Pa.Code § 5.103(d)(1)(ii).

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject-matter of this dispute. 66 Pa.C.S. § 701.
2. The Bureau of Investigation and Enforcement bears the burden of proof. 66 Pa.C.S. § 332.
3. The Bureau of Investigation and Enforcement sustained its burden of proving that Uber Technologies, Inc. offered transportation for compensation without authority from the Commission in violation of the Public Utility Code. 66 Pa.C.S. §§ 1101, 2501.
4. The Commission is authorized to impose civil penalties for violations of the Public Utility Code. 66 Pa.C.S. § 3301.
5. The Commission is authorized to impose civil penalties on a “per trip” basis where an entity provides transportation for compensation without authority from the Commission. 66 Pa.C.S. § 3301; *e.g*., *Newcomer Trucking, Inc. v. Pa. Pub. Util. Comm’n*, 531 A.2d 85 (Pa.Cmwlth. 1987).
6. The Commission is authorized to impose civil penalties as a sanction for failing to comply with discovery orders. 66 Pa.C.S. § 3301; 52 Pa.Code § 5.372.

VI. ORDER

THERFORE,

IT IS ORDERED:

1. That the formal complaint of the Bureau of Investigation and Enforcement against Uber Technologies, Inc. *et al.* at Docket No. C-2014-2422723 is sustained.

2. That Uber Technologies, Inc. shall pay a civil penalty in the amount of

$49,924,800 for the violations of the Public Utility Code by sending a certified check or money

order payable to the Commonwealth of Pennsylvania, within thirty (30) days from the entry of the Final Commission Order to:

Secretary

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA 17105-3265

3. That Uber Technologies, Inc. *et al*. shall cease and desist from further violations of the Public Utility Code.

4. For the reasons set forth in this Initial Decision, the Motion for Reconsideration of the January 23, 2015 Interim Order denying the Motion for Settlement Conference and Assignment of Settlement Judge filed by Uber Technologies, Inc. on February 4, 2015 is denied.

5. That the Motion for Settlement Conference and Assignment of Settlement Judge by Uber Technologies, Inc. filed on October 13, 2015 is denied.

6. That the Secretary shall mark this docket at No. C-2014-2422723 closed.

/s/

Mary D. Long

Administrative Law Judge

Date: November 17, 2015 /s/

Jeffrey A. Watson Administrative Law Judge

1. Docket No. A-2014-2416127. [↑](#footnote-ref-1)
2. 66 Pa.C.S. § 332(a); *Public Utility Comm’n v. Yellow Cab Company of Pittsburgh*, Docket No. C-2012-2249031 (Opinion and Order entered February 6, 2014). [↑](#footnote-ref-2)
3. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). [↑](#footnote-ref-3)
4. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). [↑](#footnote-ref-4)
5. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). [↑](#footnote-ref-5)
6. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980). [↑](#footnote-ref-6)
7. 66 Pa.C.S. § 3301. [↑](#footnote-ref-7)
8. *See* 52 Pa.Code § 69.1201; *see also, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communica­tions Company*, Docket No. C‑00992409 (Order entered February 10, 2000) (*Rosi*). [↑](#footnote-ref-8)
9. 52 Pa.Code § 69.1201(a). [↑](#footnote-ref-9)
10. 52 Pa.Code § 69.1201(c). [↑](#footnote-ref-10)
11. 66 Pa.C.S. § 102 “Public Utility” (1)(iii). [↑](#footnote-ref-11)
12. ALJ Ex. 1 (Revised) Nos. 7, 9, 13. [↑](#footnote-ref-12)
13. N.T. 56 (June 26, 2014);  *Petition of the Bureau of Investigation and Enforcement for an Interim Emergency Order*, PUC Docket No. P-2014-2426846 (Opinion and Order entered July 24, 2014); *BIE v. Uber Technologies,* C-2014-2422723 , Interim Orders on Motions to Compel entered October 3, 2014, and November 25, 2014; Interim Order on Motion for Judgment on the Pleadings entered November 26, 2014. [↑](#footnote-ref-13)
14. Feldman, N.T. 134, 145 (May 6, 2015). [↑](#footnote-ref-14)
15. Bowser, N.T. 61 (May 6, 2015). [↑](#footnote-ref-15)
16. BIE Ex. 2 (June 27, 2014). [↑](#footnote-ref-16)
17. N.T. 101 (May 6, 2015). [↑](#footnote-ref-17)
18. BIE Ex. 2 (June 27, 2014). [↑](#footnote-ref-18)
19. BIE Ex. 4 (May 6, 2015). [↑](#footnote-ref-19)
20. 66 Pa.C.S. § 102. [↑](#footnote-ref-20)
21. 66 Pa.C.S. § 1101. [↑](#footnote-ref-21)
22. 170 A. 375 (Pa.Super. 1934) (*Aroniminick*). [↑](#footnote-ref-22)
23. 212 A.2d 237 (Pa. 1965)(*Drexelbrook*). [↑](#footnote-ref-23)
24. 170 A. at 377. [↑](#footnote-ref-24)
25. 212 A.2d at 239. [↑](#footnote-ref-25)
26. *Keystone Warehousing Company v. Publ. Svc. Comm’n*, 161 A. 891 (Pa.Super. 1932) (the fact that the carrier required contracts with customers and sometimes declined to contract with others does not mean that it did not hold itself out to the public generally to offer transportation service). [↑](#footnote-ref-26)
27. N.T. 135 (May 6, 2015). Notably, Mr. Feldman did not testify that Uber had concluded that it was only a software company and therefore did not need any “regulatory permissibility” at all. [↑](#footnote-ref-27)
28. 66 Pa.C.S. § 2505(a)(emphasis added). [↑](#footnote-ref-28)
29. ALJ Ex. 1 (Revised), No. 18. [↑](#footnote-ref-29)
30. 66 Pa.C.S. §§ 1101, 2501. [↑](#footnote-ref-30)
31. 66 Pa.C.S. § 3301. [↑](#footnote-ref-31)
32. *Public Utility Commission v. Blue and White USA, Inc.*, Docket No. C-2011-2245312 (Opinion and Order entered August 15, 2013). [↑](#footnote-ref-32)
33. *Blue and White USA,* at p. 10. [↑](#footnote-ref-33)
34. This testimony was provided pursuant to a protective order. [↑](#footnote-ref-34)
35. 66 Pa.C.S. § 3301(a)(emphasis added). [↑](#footnote-ref-35)
36. 531 A.2d 85 (Pa.Cmwlth. 1987). [↑](#footnote-ref-36)
37. 1 Pa.C.S. § 1930. [↑](#footnote-ref-37)
38. 531 A.2d at 87 (emphasis added). Section 1922(1) of the Statutory Construction Act states that a statute is to be interpreted to avoid an absurd or unreasonable result. 1 Pa.C.S. § 1922(1). [↑](#footnote-ref-38)
39. 531 A.2d at 87. [↑](#footnote-ref-39)
40. 618 A.2d 1209 (Pa.Cmwlth. 1992). [↑](#footnote-ref-40)
41. Docket No. A-00108279C9301 (Opinon and Order entered February 13, 1995), *affirmed sub nom Publ. Util. Comm’n v. Waddington*, 670 A.2d 199 (Pa.Cmwlth. 1995), *petition for allowance of appeal denied,* 678 A.2d 368 (Pa. 1996). [↑](#footnote-ref-41)
42. Docket No. A-00002450C9603, F.2 (Opinion and Order entered March 12, 1998)(*Penn Harris Taxi*). [↑](#footnote-ref-42)
43. N.T. 23-33 (June 26, 2014). [↑](#footnote-ref-43)
44. (N.T. 24 (June 26, 2014). [↑](#footnote-ref-44)
45. Docket No. P-2014-2426846 (Opinion and Order entered July 24, 2014), at p. 17-18. [↑](#footnote-ref-45)
46. Opinion and Order at p. 24. *See also Public Utility Commission v. Greer,* Docket No. C-2011-2207151 (Initial Decision dated November 4, 2011, Final Order entered January 14, 2012) (“The violation was serious, because unauthorized transportation endangers the public safety. Unauthorized operation may involve the use of unsafe drivers and vehicles, as well as uninsured or underinsured operators.”), at p. 6. [↑](#footnote-ref-46)
47. *Id.* at 21 ( “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.”). [↑](#footnote-ref-47)
48. N.T. 168 (May 6, 2015). [↑](#footnote-ref-48)
49. N.T. 168-69 (May 6, 2015). [↑](#footnote-ref-49)
50. BIE Main Brief at 42. [↑](#footnote-ref-50)
51. N.T. 134-35 (May 6, 2015). [↑](#footnote-ref-51)
52. 66 Pa.C.S. § 2505. [↑](#footnote-ref-52)
53. *Penn Harris Taxi.* [↑](#footnote-ref-53)
54. Feldman, N.T. 135 (May 6, 2015). BIE also states that the Commission sent Uber a warning letter in 2013. Although in briefs Uber’s counsel admits that the letter exists, it was not presented as evidence in the hearing, therefore it does not play a part in our evaluation of an appropriate penalty. [↑](#footnote-ref-54)
55. *Blue & White Lines, Inc. v. Waddington*, Docket No. A-00108279C9301 (Opinion and Order entered February 13, 1995). [↑](#footnote-ref-55)
56. *Id*. [↑](#footnote-ref-56)
57. Feldman, N.T. 137 (May 6, 2015). [↑](#footnote-ref-57)
58. Uber Main Brief at 33-35. [↑](#footnote-ref-58)
59. Uber Main Brief at 34. [↑](#footnote-ref-59)
60. 52 Pa.Code § 3.10(a). [↑](#footnote-ref-60)
61. A-2014-2429993. [↑](#footnote-ref-61)
62. Docket No. A-00108279C9301 (Opinion and Order entered February 13, 1995). [↑](#footnote-ref-62)
63. Docket No. A-00113098C0101 (Opinion and Order entered June 2, 2002). [↑](#footnote-ref-63)
64. Docket No. A-00107689C0303 (Opinion and Order entered May 15, 2007). [↑](#footnote-ref-64)
65. Docket No. C-2011-2207151 (Initial Decision dated November 18, 2011, Final Order entered January 4, 2012). [↑](#footnote-ref-65)
66. *Greer,* Initial Decision at p. 6. [↑](#footnote-ref-66)
67. We will discuss Uber’s conduct in this litigation more fully below. [↑](#footnote-ref-67)
68. 52 Pa.Code § 69.1201(c)(4)(“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.”). [↑](#footnote-ref-68)
69. Bowser, N.T. 115-16 (May 6, 2015). [↑](#footnote-ref-69)
70. BIE Main Brief at 49-50. [↑](#footnote-ref-70)
71. Docket No. F-2012-2284038 (Initial Decision served November 20, 2012, exceptions denied by Opinion and Order entered June 13, 2013). [↑](#footnote-ref-71)
72. *Bleiman,* Initial Decision at p. 20-21. [↑](#footnote-ref-72)
73. *Public Utility Commission v. Blue and White USA, Inc.*, Docket No. C-2011-2245312 (Opinion and Order entered August 15, 2013). [↑](#footnote-ref-73)
74. N.T. 13-16 (February 18, 2015). [↑](#footnote-ref-74)
75. BIE Main Brief at p. 51. [↑](#footnote-ref-75)
76. Docket No. C-2014-2422713 (Final Order entered July 15, 2015). [↑](#footnote-ref-76)
77. 52 Pa.Code § 69.1201(b). [↑](#footnote-ref-77)
78. The calculation of the penalty is set forth in Proprietary Appendix A. [↑](#footnote-ref-78)
79. The order was amended on October 17, 2014, to permit Uber to redact confidential customer information such as email addresses, credit card numbers and social security numbers. [↑](#footnote-ref-79)
80. We denied BIE’s request to use a “proxy” for the number of trips provided by Uber. Uber provided the requested trip data through testimony at the evidentiary hearing on May 6, 2015. That testimony was provided subject to a protective order and was not substantiated with documentary support. [↑](#footnote-ref-80)
81. BIE Discovery – Set 1, No. 3 relates to supporting documentation for the unauthorized trips which included invoices for all unauthorized trips performed in Pittsburgh, Allegheny County. [↑](#footnote-ref-81)
82. BIE Discovery – Set II, No. 1 relates agreements between Uber and any other entity, including affiliates, concerning passenger transportation services in the Commonwealth. [↑](#footnote-ref-82)
83. N.T. 96 (May 6, 2015). [↑](#footnote-ref-83)
84. N.T. 107 (May 6, 2015). [↑](#footnote-ref-84)
85. 52 Pa.Code § 5.371(a)(1). [↑](#footnote-ref-85)
86. 52 Pa.Code § 5.372(a)(4). [↑](#footnote-ref-86)
87. Docket No. C-20078119, 2009 Pa. PUC LEXIS 455, (Opinion and Order entered January 15, 2009)(*Smolsky*). [↑](#footnote-ref-87)
88. *Id*. at 7. [↑](#footnote-ref-88)
89. Docket No. A-2008-2020353, 2008 Pa. PUC LEXIS 208, (Final Order entered July 8, 2008 *K&F*). [↑](#footnote-ref-89)
90. *Pa. Pub. Util. Comm’n v. Duquesne Light Co*., 61 Pa. PUC 485 (1986). [↑](#footnote-ref-90)
91. For example, while Uber asserts that Rasier is the entity responsible for performing the unauthorized passenger transportation service, Rasier has no employees, but rather utllizes Uber employees to conduct its daily operations. (Exhibit ALJ 1-Revised at ¶ 17). [↑](#footnote-ref-91)
92. 66 Pa.C.S. § 3301(a)-(b). [↑](#footnote-ref-92)
93. *Marshall v. SEPTA*, 76 Pa.Cmwlth. 205, 463 A.2d 1215 (1983); *Gonzales v. Procaccio Brothers Trucking Company*, 268 Pa.Super. 245, 407 A.2d 1338 (1979). [↑](#footnote-ref-93)
94. See discussion above for Mr. Scott’s comments. [↑](#footnote-ref-94)
95. See February 18, 2015 Transcript, N.T. 45-49. [↑](#footnote-ref-95)