



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

IN REPLY PLEASE
REFER TO OUR FILE
C-2014-2422723
P-2016-_____

June 6, 2016

Via Electronic filing

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. Uber Technologies, Inc., *et al.*
Docket Nos. C-2014-2422723; P-2016-_____

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's Answer to the Petition for Rehearing and Reconsideration of Uber Technologies, Inc., *et al.* in the above-referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

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

Sincerely,

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

Stephanie M. Wimer
PA Attorney ID No. 207522
Prosecutor

Michael L. Swindler
PA Attorney ID No. 43319
Deputy Chief Prosecutor

Johnnie E. Simms
Chief Prosecutor
PA Attorney ID No. 33911

Enclosure

cc: As per Certificate of Service
Honorable Mary D. Long
Honorable Jeffrey A. Watson
ra-OSA@pa.gov

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility	:	
Commission, Bureau of Investigation	:	
and Enforcement	:	
	:	
v.	:	Docket Nos. C-2014-2422723;
	:	P-2016-_____
Uber Technologies, Inc., Rasier-PA,	:	
LLC, Rasier, LLC and Gegen, LLC	:	

**ANSWER OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT
IN OPPOSITION TO THE PETITION OF
UBER TECHNOLOGIES, INC., *ET AL.*
FOR REHEARING AND RECONSIDERATION OF THE
COMMISSION’S MAY 10, 2016 ORDER**

TO THE HONORABLE COMMISSION:

Pursuant to 52 Pa. Code § 5.572(e), the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission) hereby submits is Answer in opposition to the Petition for Rehearing and Reconsideration¹ of the Commission’s May 10, 2016 Opinion and Order (Order) in the above-captioned proceeding filed by Uber Technologies, Inc., *et al.*² on May 25, 2016. In support of this Answer, I&E avers as follows:

¹ Hereinafter referred to as “Petition.”

² The Respondents in this proceeding are Uber Technologies, Inc., Gegen, LLC (Gegen), Rasier, LLC (Rasier) and Raiser-PA, LLC (Rasier-PA). Unless otherwise noted, I&E collectively refers to the Respondents as “Uber” or “Company” throughout its Answer.

I. BACKGROUND

A. Description Of Uber's Lawless Conduct

The Commission's Order, which imposes a civil penalty in the amount of \$11.4 million,³ is the appropriate response to a Company that deliberately defied the law on 122,998⁴ discrete occasions, in defiance of orders directing it to cease and desist, without regard or concern for public safety and presumably for its own selfish economic gain. The civil penalty imposed by the Commission is also an appropriate reaction to Uber's defiant corporate culture as evidenced by its conduct in this proceeding. Uber operates in bad faith and without any regard for the regulatory body governing it, as exemplified below:

- It is now well known that Uber's *modus operandi* is to enter a market unlawfully first in order to gain the market share and then subsequently address its regulatory transgressions. Pennsylvania is merely one jurisdiction of many that is maltreated by Uber's unlawfulness and arrogance. In April 2014, Commission staff advised Uber to file an application to cover its operations.⁵ On June 5, 2014, I&E filed its initial Formal Complaint at the above-captioned docket alleging violations of the Public Utility Code (Code) regarding Uber's provision of unlawful transportation. On June 16, 2014, I&E filed a Petition for Interim Emergency Order at Docket No. P-2014-2426846 to demand that Uber cease operating until it obtains the requisite authority. On July 1, 2014, the presiding Administrative Law Judges (ALJs) entered

³ The exact amount imposed is eleven million three hundred sixty-four thousand seven hundred thirty-six dollars (\$11,364,736.00). Order at 72; Ordering Paragraph No. 5.

⁴ I&E will refer to the trip data throughout its Answer. With Uber's voluntary, deliberate and public disclosure of its own trip data, Uber has waived the proprietary designation of such information that I&E had heretofore agreed to.

⁵ Order at 33.

an order directing Uber to cease and desist from operating its unlawful transportation service. On July 24, 2014, the Commission ratified the presiding ALJs' cease and desist order. Uber's response was predictable at every step: it thumbed its nose at the regulatory body governing it by continuing its unlawful transportation network in order to gain market share. Uber's motivation is purely driven by economics. Had Uber garnered any concern for its passengers, it would have immediately submitted to the Commission's regulatory oversight.

- During I&E's continued investigation of Uber's unlawful conduct after I&E filed its initial Complaint on June 5, 2014, **Uber deactivated the Uber App associated with the mobile phone of one of I&E's motor carrier enforcement officers.**⁶ Based on I&E's initial Complaint, Uber knew full well that it would be subject to a "per trip" civil penalty for each unlawful trip taken by one of I&E's motor carrier enforcement officers and it impeded I&E's continued investigation by directly obstructing I&E from obtaining evidence that could be used against Uber. In light of the fact that Uber deactivated the Uber App on a mobile number associated with I&E, Uber's arguments made throughout the instant Petition that a civil penalty should be imposed only for each trip actually taken by I&E motor carrier enforcement officers are incredibly devious.
- Uber defied and continues to defy at least five interim orders issued by the presiding ALJs by failing to produce documents that were judicially determined to be discoverable and by refusing to pay the civil penalty sanction that was imposed for Uber's failure to adhere to discovery rules. The interim orders that Uber has defied are as follows: (i) *October*

⁶ (May 6, N.T. 61).

3, 2014 *Interim Order* (granting I&E's Motion to Compel and directing Uber to respond to I&E's Set I discovery requests, which included a request for Uber's trip data and supporting documentation to substantiate the aggregate number of trips); (ii) *October 17, 2014 Interim Order* (denying Uber's Petition for Certification of the October 3, 2014 Interim Order and directing Uber to respond to I&E's Set I discovery requests); (iii) *November 25, 2014 Interim Order* (granting I&E's Motion to Compel and directing Uber to respond to I&E's Set II discovery requests, which included a request for Uber's licensing agreements that were sought by I&E to discern the business relationships of and between the various affiliates under the Uber Technologies, Inc. corporate umbrella and their respective roles in operating passenger transportation service in the Commonwealth); (iv) *November 26, 2014 Interim Order* (granting I&E's Motion for Sanctions regarding Uber's failure to respond to I&E's Set I discovery requests and imposing a civil penalty in the amount of \$500 per day for each day it fails to answer until the conclusion of the evidentiary hearing); and (v) *March 25, 2015 Interim Order* (granting, in part, I&E's Motion for Sanctions related to Uber's failure to respond to I&E's Set II discovery requests and imposing, among other sanctions, a civil penalty in the amount of \$500 per day until Uber complies with discovery orders or until the date of the evidentiary hearing). In upholding the imposition of a civil penalty sanction of \$72,500, the Commission recognized that Uber's repeated refusal to comply with the presiding ALJs' interim orders "impeded the ability of I&E to fully prosecute this matter."⁷ The civil penalty sanction is absolutely necessary to deter any future abuses of the discovery process by Uber and to send a stern message to other entities appearing before

⁷ Order at 69.

Commission that Commission will take great measures to uphold the integrity of its regulatory process. Indeed, a proceeding that permits the utility to create its own set of rules and then use those rules to its advantage, as Uber did here, erodes I&E's ability to enforce the law and, ultimately, the Commission's responsibility to oversee the operations of the regulated entity.

- Two discovery responses, which Uber was court-ordered to provide to I&E, remain outstanding: (1) documentation to verify Uber's trip data; and (2) licensing agreements to verify the corporate subsidiary that performed the unlawful transportation service in Allegheny County in 2014. Uber deprived I&E, as well as the Commission, of the ability to substantiate Uber's claims and thus coerced I&E and the Commission into accepting Uber's assertions at face value. This point is especially significant upon a review of Uber's Petition. On page 7 of the Petition, Uber now readily admits that "**Rasier-PA was . . . engaged in unauthorized operations in Allegheny County.**" (emphasis added). The Commission granted Rasier-PA authority to operate in experimental service, in part, because it relied on Uber's representation that a subsidiary other than Rasier-PA performed the unlawful transportation that is the subject of this proceeding. The Commission stated that "we are troubled by the fact that Uber's other subsidiary, Rasier LLC, decided to continue to operate without Commission authority within Allegheny County after the issuance of the *Uber Cease and Desist Order*. Nonetheless, we recognize that the Applicant is a separate corporate entity than Rasier LLC."⁸ In light of Uber's revelation, it is imperative that Uber be compelled to provide the

⁸ *Application of Rasier-PA LLC for Experimental Service Authority*, Docket No. A-2014-2424608 (Order entered December 5, 2014) at 62-63.

Commission with the licensing agreements that covered the period of unauthorized transportation in Allegheny County in 2014, or face the harshest of civil penalties for failing to disclose such information.

Likewise, Uber's trip data was not verified and it is more probable than not that more than 122,998 trips actually occurred given Uber's deceitful propensities. The Commission should view the entirety of Uber's unsubstantiated claims with skepticism.

- From October 3, 2014 to May 6, 2015, Uber failed to provide I&E with its trip data (in defiance of the aforementioned orders) by advancing arguments that the trip data is "privileged," "commercially sensitive" and would constitute the regulatory taking of a "trade secret" in deprivation of its due process rights.⁹ Without explanation, Uber unceremoniously publicly discloses the trip data in the instant Petition. With the public disclosure of such information, Uber's true intentions have been revealed: Uber does not care whether the public or competitors know how many trips it provided. The trip data was never a trade secret, privileged or commercially sensitive. Rather, Uber merely sought to obstruct I&E from obtaining information that was judicially determined to be discoverable to hamper I&E's enforcement efforts and avoid payment of a civil penalty.
- Subsequent to the Commission's grant of authority to Rasier-PA, Uber precluded the I&E motor carrier enforcement office from learning the identity or location of its drivers and as a result, I&E was not able to conduct vehicle inspections or review driver records, which are necessary to ensure public safety, for many months. In fact, Uber only

⁹ *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Uber Technologies, Inc., et al.*, Docket No. C-2014-2422723, Brief of Uber Technologies, Inc. in Support of Petition for Certification, Docket No. C-2014-2422723 (filed October 14, 2014).

“offered” to share such information if an I&E motor carrier enforcement officer in Pittsburgh agreed to the burdensome task of visiting Uber’s attorney’s office in Philadelphia each time an officer wanted to review a record.¹⁰

- Uber publicly revealed its settlement offer made in the context of settlement negotiations.¹¹ The Commission has determined that unsuccessful settlement discussions and negotiations are privileged and should not be used to chastise the other parties to the negotiation. In *Pa. Pub. Util. Comm’n v. Pennsylvania Electric Company*, Docket Nos. R-80051197 and C-80072106, 1980 Pa. PUC LEXIS 5 (Order entered December 4, 1980). It is noteworthy that the referenced settlement offer was made on June 29, 2015, nearly six weeks **after** this matter had been litigated at the evidentiary hearing on May 6, 2015. Moreover, the amount offered is much lower than even what a dissenting Commissioner would have ordered,¹² only reaffirming the unreasonableness of Uber’s offer and further justifying I&E’s refusal to accept it.
- Uber agreed to provide trip data to I&E **only if** I&E was restricted in the use of such information for settlement purposes.¹³ I&E understands and appreciates the art of settlement negotiations and since I&E’s inception, the vast majority of its enforcement proceedings have resulted in settled outcomes. However, I&E could not achieve a settlement with Uber. As

¹⁰ While these facts are not a part of the record below, Uber unfairly chastises I&E in its Petition for not overseeing Raiser-PA’s operations after Raiser-PA became certificated and I&E deems it necessary to defend itself against Uber’s duplicitous arguments.

¹¹ Petition at 3.

¹² *Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Uber Technologies, Inc., et al.*, Docket No. C-2014-2422723 (Statement of Commissioner Robert F. Powelson) (recommending the imposition of a civil penalty in the amount of \$2.5 million – an amount over six times greater than Uber’s settlement offer).

¹³ See *Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Uber Technologies, Inc., et al.*, Docket No. C-2014-2422723, Motion for Reconsideration of Interim Order Regarding Scheduling Settlement Conference and Assignment of Settlement Judge (filed February 4, 2015).

President John F. Kennedy once stated, “we cannot negotiate with people who say what’s mine is mine and what’s yours is negotiable.”

In its Petition, Uber relies heavily on its contention that the Commission imposed a \$250,000 civil penalty on its competitor for similar service at the same time and in the same geographic location.¹⁴ Uber’s disingenuous argument overlooks the many ways in which its deplorable conduct set itself apart from *Lyft* include, but are not limited to, the fact that Uber: (1) provided many more unlawful trips;¹⁵ (2) defied five interim orders issued by the presiding ALJs; (3) deactivated the Uber App associated with the mobile phone of an I&E motor carrier enforcement officer when the officer was investigating Uber’s operations; (4) made release of trip data to I&E contingent upon a settlement; (5) publicly divulged settlement negotiations; and (6) hindered I&E’s ability to learn the identity or location of Uber’s drivers after Rasier-PA became certificated.

Given the audacity of Uber, the \$11.4 million civil penalty is entirely appropriate in response to Uber’s conduct and to send a message that the Commission will not tolerate such outrageous, derisive acts of regulatory noncompliance that denigrate and ultimately erode the very essence of this Commission’s oversight responsibilities.

¹⁴ See *Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Lyft, Inc.*, Docket No. C-2014-2422713 (Order entered July 15, 2015) (*Lyft*).

¹⁵ The number of trips provided by Uber’s competitor when it was unauthorized is considered proprietary information for the purposes of the *Lyft* enforcement proceeding at Docket No. C-2014-2422713 and, accordingly, I&E will not disclose the number of trips. However, various sources suggested at the time that Uber’s size was in all respects at least sevenfold that of *Lyft*.

B. Uber's Petition Does Not Meet The Grounds For Rehearing Or Reconsideration

As a threshold matter, Uber's arguments in the instant Petition do not meet the Commission's standards for granting relief in the form of either a rehearing or reconsideration of the Commission's Order. The Commission should not entertain Uber's obvious attempt to coax the Commission into granting a second bite at the apple. Uber has not raised any factual matter or legal argument that is relevant to the instant proceeding and could not have been raised below.

1. Legal Standard Regarding Reconsideration

Many arguments advanced by Uber to justify reconsideration are arguments that have already been expressly rejected by the Commission. Reconsideration requires that a petition identify "new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." *Duick v. Pa. Gas and Water Co.*, 56 Pa. PUC 553, 559 (1982). Reconsideration is not "a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them." *Id.* (quoting *Pa. Railroad Co. v. Pa. Pub. Serv. Comm'n*, 179 A. 850, 854 (Pa. Super. 1935)). Commonwealth Court recently affirmed the Commission's decision to deny reconsideration requesting a second review of questions "definitively decided" against a party. *Executive Transp. Co., Inc. v. Pa. Pub. Util. Comm'n*, ___ A.3d ___, 2016 WL 1612955 (Pa. Cmwlth. 2016).

The entirety of Uber's argument that a civil penalty be based on the number of days it unlawfully operated as opposed to the number of trips it provided has been

expressly considered and rejected by the Commission. *See* Order at 31-34 (wherein the Commission found that it possesses the legal authority to impose a “per trip” civil penalty and the imposition of such a civil penalty was appropriate because “each ride can be feasibly documented as a separate rather than a continuing violation.”)¹⁶

Likewise, Uber’s argument that a public need or demand justified the fact that it broke the law has also been considered and rejected by the Commission. As the Commission cogently stated when directing Uber to cease and desist, “[a]lthough the granting of emergency relief . . . 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.”¹⁷ In the instant Order, the Commission did not find Uber’s claim that the public allegedly depended on Uber’s unlawful transportation service to be a mitigating circumstance when it found that Uber’s actions in failing to submit to the Commission’s regulatory oversight were “of a most serious nature which presented a significant risk to the safety of the Uber passengers and drivers and to other travelers and pedestrians.”¹⁸

2. Legal Standard Regarding Newly Discovered Evidence

Uber also purports to rely on extraneous matters not included in the record evidence under the guise of being “new” or “additional evidence.” The purpose of a rehearing is to take testimony or evidence not offered at the original hearing because it

¹⁶ Order at 32.

¹⁷ *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for an Interim Emergency Order requiring Uber Technologies, Inc. to immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania*, Docket No. P-2014-2426846 (Order entered July 24, 2014) at 24 (hereinafter referred to as July 24, 2014 Cease and Desist Order).

¹⁸ Order at 52.

was not available. *Powell v. Sonntag*, 48 A.2d 62, 66 (Pa. Super. 1946). The petition must aver that the alleged evidence was obtained after the hearing and that, even by the exercise of ordinary diligence, it could not have been presented at the hearing. *Schach v. Hazle Brook Coal Co.*, 198 A. 464 (Pa. Super. 1938). However, after-discovered evidence must also be such as to render a different result probable on rehearing. *Application of Bickley's Auto Express, Inc.*, Docket No. A-75433, F.2, Am-D, 1978 WL 5059 (Pa. PUC) (Order entered May 17, 1978). “[A] prime consideration of the test must be whether the outcome of the litigation might be different if that evidence is admitted into the record.” *Reading Co. v. Pa. Pub. Util. Comm’n*, 333 A.2d 525, 527 (Pa. Cmwlth. 1975).

Uber’s purported “new” evidence related to its trip data, such as the revenues it received for its unlawful enterprise,¹⁹ the fares it charged for unauthorized trips²⁰ and the number of paying customers who took Uber rides,²¹ was either available to Uber or obtainable by it through the exercise of ordinary diligence and could have been brought forth at the evidentiary hearing. Further, other new information that Uber attempts to raise for the first time now related to the alleged public benefits of its service²² would not result in a different outcome. As previously mentioned, the Commission has determined that the higher goal of public safety outweighed any perceived benefit of Uber’s unlawful transportation.²³

¹⁹ Uber Petition at 23-24.

²⁰ Affidavit of Jonathan J. Feldman at ¶¶ 9-10 (Feldman Affidavit).

²¹ Feldman Affidavit at ¶ 12.

²² Feldman Affidavit at ¶¶ 7-8, 15-17.

²³ July 24, 2014 Cease and Desist Order at 24; Order at 52.

3. Uber Waived Any Constitutional Challenges To The Commission's Civil Penalty Since They Were Not Brought Below

Uber waived the right to challenge the Commission's civil penalty on constitutional grounds, including such arguments that the civil penalty purportedly violates the excessive fines and due process clauses of the U.S. and Pennsylvania Constitutions. As the Commission recently explained, "in the interest of judicial economy, the Commission will not grant exceptions or reconsideration when the party failed to raise an argument earlier in the proceeding." *Ruth Mathieu-Alce v. Philadelphia Gas Works*, 2016 WL 1534812 (Pa. PUC) (Order entered April 7, 2016) (citing *Hess v. Pa. PUC*, 107 A.3d 246, 265-66 (Pa. Cmwlth. Ct. 2014); *Pa. PUC v. York Cab, Inc.*, Docket No. C-2010-2212946 (Order entered April 18, 2013), at 5; *Generic Investigation Regarding Transportation Assessments*, Docket No. I-2008-222003 (Order entered August 26, 2008), at 8). Further, matters not raised below may not be considered in a post-hearing proceeding or at a later appeal. *Tripps Park Civic Ass'n v. Pa. PUC*, 415 A.2d 967, 969 (Pa. Cmwlth. Ct. 1980).

The Commission's \$11.4 million civil penalty is lower than the civil penalty that was recommended at any other level; I&E's Amended Complaint filed on January 9, 2015 requested a \$19 million civil penalty and the presiding ALJs' imposed a civil penalty of \$49,852,300 in their Initial Decision dated November 17, 2015. Uber's Answer to I&E's Amended Complaint, its Main Brief and Exceptions are absolutely silent with respect to constitutional challenges related to the civil penalty and, therefore,

Uber has unequivocally waived the right to now bring those arguments before this Commission.

4. **Uber's Petition Inappropriately Contains Extra-Record Material**

Uber's Petition is nothing more than a public relations stunt, consisting of a transparent attempt to appeal to the public and pressure the Commission into considering matters not contained in the record evidence of the instant matter. The Commission, however, is a quasi-judicial agency and must preserve the essential rules of evidence. *In re Shenandoah Suburban Bus Lines, Inc.*, 50 A.2d 301, 304 (Pa. 1947). "Quasi-judicial" has been described as "[a] term applied to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature." Black's Law Dictionary 1245 (6th ed. 1990).

Much of the information contained in Uber's pleading is not a part of the record and, accordingly, should be stricken by the Commission or at the very minimum, disregarded. Extra-record evidence cannot sustain an adjudication. *Kyu Son Yi, DVM v. State Bd. Of Veterinary Medicine*, 960 A.2d 864 (Pa. Cmwlth. 2008) (citing *Ohio Bell Telephone Co. v. Pub. Util. Comm'n of Ohio*, 57 S.Ct. 724, (U.S. 1937)); *See also Kelley v. Duquesne Light Company*, Docket No. C-20078502 (Order entered January 22, 2009) (finding that new matter attached to Exceptions consisted of extra-record evidence and may not be considered by the Commission in reaching its decision); *See also* 52 Pa. Code

§ 5.431 (relating to the close of the record). The Commission should strike or, alternatively, completely disregard all facts contained in pages 2-3 and paragraph 20 of Uber's Petition, as well as the Feldman Affidavit, because the information that appears therein is not contained in record evidence.²⁴

Accordingly, Uber's request for rehearing and reconsideration must be denied. Alternatively, should the Commission elect to grant Uber a rehearing, which it should not for the reasons described above, civil penalty sanctions in the amount of \$1,000 for each of the two unanswered discovery requests (related to licensing agreements and supporting documentation to substantiate trip data) should continue to be imposed for each day each discovery request remains outstanding as this matter remains active before the Commission.

II. INTRODUCTION

1. The averments made in Paragraph 1 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent that a response is deemed necessary, Uber's interpretation of the language of the letter is denied. The letter speaks for itself.

2. The averments made in Paragraph 2 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent that a response is deemed necessary, Uber's broad characterization of the public's reaction to the Commission's Order and the civil penalty as being "anti-business" or

²⁴ These portions of Uber's Petition, which are identified as averring facts not contained in the record, are not an all-inclusive list. Efforts will be made by I&E to identify extra-record material throughout its Answer and in correspondence to the paragraphs containing extra-record material in Uber's voluminous Petition.

“anti-competitive” is denied. Further, public sentiment or reaction to a Commission order is not an appropriate ground to grant reconsideration or rehearing. *See Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (Order entered December 17, 1982).

3. Denied. If the civil penalty imposed is deemed unprecedented, it is because the number of violations amassed through Uber’s illegal conduct is unprecedented. The civil penalty imposed is appropriate due to the “sheer number of violations which occurred.”²⁵ It is denied that the Commission’s Order espouses an anti-competitive message and rather, is the appropriate response to enforce violations of the Code and Commission regulations committed by a defiant and arrogant corporate citizen.

4. The averments made in Paragraph 4 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent a response is deemed necessary, they are denied. Any implication that such facts constitute “newly” discovered evidence sufficient to justify the granting of a rehearing is specifically denied. Uber could have presented evidence and testimony at the evidentiary hearing regarding I&E’s efforts to conduct vehicle inspections of Uber drivers subsequent to the time that Uber’s subsidiary eventually received operating authority in Pennsylvania and became subject to Commission oversight, but Uber failed to raise that issue. Advancing new facts now that are not supported by record evidence and that could have been explored below, is inappropriate. Moreover, Uber’s argument that a perceived public demand justified its continued unlawful transportation is an impermissible ground

²⁵ Order at 34.

for reconsideration because it raises the same argument that was specifically decided against it. The Commission has already determined that limiting the transportation options for some does not outweigh the higher goal of public safety.²⁶ Additionally, it is emphatically denied that “no one” was harmed by Uber’s operations. Record evidence supports that at least nine accidents over a six-month period were serious enough to warrant the filing of an insurance claim.²⁷ When questioned by ALJ Watson, Uber’s witness admitted that there could have been other accidents that were not so filed.²⁸ Because Uber failed to submit to the Commission’s regulation requiring the filing of accident reports during the time in which it provided unlawful transportation service, the Commission will never know the exact number of accidents that occurred during this time. *See* 52 Pa. Code § 29.44. In any event, requiring actual harm to occur before imposing a civil penalty is legally erroneous and simply constitutes poor policy. “When the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public. For one to continue such unlawful conduct constitutes irreparable injury.” *Pa. Pub. Util. Comm’n v. Israel*, 52 A.2d 317, 321 (Pa. 1947). *See also Phila. Suburban Water Co. v. Pa. Pub. Util. Comm’n*, 808 A.2d 1044, 1056 (Pa. Cmwlth. 2002). The Commission should find imprudent Uber’s apparent position that a driver, passenger or innocent pedestrian should first be maimed or killed before regulatory oversight is warranted.

²⁶ July 24, 2014 Cease and Desist Order at 24; Order at 52.

²⁷ (May 6, N.T. 168).

²⁸ (May 6, N.T. 159).

5. Denied. The Commission's determination in a separate proceeding that Rasier-PA possesses the propensity to operate safely and legally,²⁹ which was determined in the context of considering Rasier-PA's motor carrier application, does not inhibit any finding in the instant enforcement action that Uber's actions "presented a significant risk to the safety of the Uber passengers and drivers and to other travelers and pedestrians."³⁰ In the separate application proceeding, Rasier-PA submitted to the Commission's authority. In the instant matter, Uber operated widespread unauthorized transportation without any regard to the Commission's authority. Additionally, in the application proceeding, the Commission relied on Uber's representation that a subsidiary other than the applicant performed the unlawful transportation. The Commission stated that "we are troubled by the fact that Uber's other subsidiary, Rasier LLC, decided to continue to operate without Commission authority within Allegheny County after the issuance of the *Uber Cease and Desist Order*. Nonetheless, we recognize that the Applicant [Rasier-PA] is a separate corporate entity than Rasier LLC."³¹ However, in Paragraph 5 of Uber's Petition, Uber seemingly retracts its stipulation that Rasier performed the uncertificated transportation³² and admits that Rasier-PA was engaged in the unauthorized operations. Without the licensing agreements that Uber was directed to produce, the Commission will never be able to substantiate any of Uber's claims. Lastly, Uber's assertion that harm did not occur is denied. See I&E's response to Paragraph 4, above.

²⁹ *Application of Rasier-PA LLC for Experimental Service Authority*, Docket No. A-2014-2424608 (Order entered December 5, 2014) at 62-64.

³⁰ Order at 52.

³¹ *Application of Rasier-PA LLC for Experimental Service Authority*, Docket No. A-2014-2424608 (Order entered December 5, 2014) at 62-63.

³² ALJ Exhibit 1 (revised), no. 7.

6. Denied. The Commission has no way of verifying that Uber complied with motor carrier regulations pertaining to safety when it provided its unlawful transportation service because Uber failed to submit to the Commission's oversight during that time period. Moreover, Section 1103 of the Code provides, in pertinent part, as follows: "Any holder of a certificate of public convenience, exercising the authority conferred by such certificate, shall be deemed to have waived any and all objections to the terms and conditions of such certificate." 66 Pa.C.S. § 1103(a). The plain language of Section 1103(a) is clear: after applying for and receiving a Certificate of Public Convenience, Raiser-PA is estopped from asserting that the Commission lacks jurisdiction to regulate it.

7. Denied. The Commission's finding that Raiser-PA possesses the propensity to operate safely within the context of a motor carrier application proceeding and on a going-forward basis does not prohibit any finding that Uber jeopardized public safety by actually operating without Commission oversight in the instant enforcement matter. Further, the Commission relied on Uber's representation that a corporate subsidiary other than Raiser-PA was responsible for providing the unauthorized transportation. The \$11.4 million civil penalty is far less than the statutory maximum penalty that the Commission could have imposed upon Uber for its violations and, therefore, is not excessive. Moreover, it is emphatically denied that "no one" was harmed by Uber's operations. Record evidence supports that at least nine accidents over

a six-month period were serious enough to warrant the filing of an insurance claim.³³ Because Uber failed to submit to the Commission's regulation requiring the filing of accident reports during the time in which it provided unlawful transportation service, the Commission will never know the exact number of accidents that occurred during this time. *See* 52 Pa. Code § 29.44. In any event, requiring actual harm to occur prior to enforcing the law is legally erroneous and simply constitutes poor policy. "When the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public. For one to continue such unlawful conduct constitutes irreparable injury." *Israel*, 52 A.2d at 321.

8. Denied. Uber's reliance on outcomes that were settled rather than litigated is misplaced. The Commission has held that it is inappropriate to consider a settlement, which is intended to be an amicable resolution of disputed claims, as precedent in any subsequent proceeding.³⁴ Even if the Commission were to consider settled matters, the \$11.4 million civil penalty imposed on Uber is justifiable when compared to the civil penalty in *Lyft* because the number of violations were not comparable and the company was not subject to a civil penalty sanction for failing to furnish discoverable information and abide by the interim orders of the presiding ALJs, such as is the case here.

9. Denied. I&E hereby incorporates its response to Paragraph 8. It is also denied that the Commission is under a duty to consider "the highly competitive nature of

³³ (May 6, N.T. 168).

³⁴ Order at 56; *See Pa. Pub. Util. Comm'n v. Bell Telephone Co. of Pa.*, 68 Pa. P.U.C. 430 (1988).

the TNC industry” and the “continued viability of a business’ operations” when developing a civil penalty. *See* 52 Pa. Code § 69.1201(c).

10. Denied. It is denied that the civil penalty for Uber’s admitted 122,998 violations of the Code adversely affects other public utilities or calls into question the Commission’s civil penalty structure.

11. The averments made in Paragraph 11 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent a response is deemed necessary, they are denied. Merely because a service is innovative or responds to a public need does not excuse it from abiding by the law.

12. Denied. The civil penalty imposed by the Commission considered mitigating factors and was far less than the maximum allowable civil penalty pursuant to 66 Pa.C.S. § 3301, the civil penalty requested by I&E in its Amended Complaint and the penalty recommended by the presiding ALJs’ in the November 17, 2015 Initial Decision. The civil penalty is appropriate given the vast number of violations committed by Uber and its defiant attitude towards the Commission. I&E will individually respond to the remaining averments of Paragraph 12 as they are raised below.

III. BACKGROUND

13. Admitted.

14. The statements in Paragraph 14 are admitted in part and denied in part. It is admitted that I&E filed an Amended Complaint against Uber Technologies, Inc., Gegen, Rasier and Raiser-PA on January 9, 2015 utilizing proxy data to represent the number of trips provided in Allegheny County when Uber lacked operating authority. The proxy

trip data was then used to amend the number of violations alleged by I&E by removing the “per day” violation component and replacing it with a “per trip” violation component and recalculating the requested civil penalty accordingly. Resorting to the use of proxy data was necessary due to Uber’s intentional defiance of the orders of the presiding ALJs directing Uber to provide information to I&E as properly sought in discovery by I&E for months. Specifically, Uber obstructed I&E from: (1) securing trip data regarding the unauthorized passenger motor carrier service that occurred in Allegheny County from the time that Uber Technologies, Inc., or an affiliate, initiated service until the time that Rasier-PA received emergency temporary operating authority from the Commission; and (2) discerning the business relationships of and between the various affiliates under the Uber Technologies, Inc. corporate umbrella and their respective roles in operating passenger transportation service in the Commonwealth. Any implication by Uber that the filing of an Amended Complaint is improper is denied. Section 1.81 of the Commission’s regulations permits “an amendment to a submittal or pleading [to be] tendered for filing at any time” 52 Pa. Code § 1.81.

15. Admitted. It is important to note that not until the evidentiary hearing on May 6, 2015, did Uber provide on the *proprietary* record, the long-awaited trip data that I&E first sought nine months earlier.³⁵

16. Admitted. By way of further answer, the presiding ALJs’ Initial Decision also imposed a civil penalty of \$72,500 as a sanction for Uber’s numerous violations of the Commission’s discovery rules.

³⁵ (May 6, N.T. 86-89).

17. Denied. Uber filed Exceptions on December 7, 2015 and I&E filed Reply Exceptions on December 17, 2015. I&E's Motion to Strike asserted various reasons to strike Uber's Exceptions, including, but not limited to the fact that Uber defied the page limitation. I&E also sought to strike Uber's Exceptions because they discussed privileged settlement negotiations and introduced exhibits that are irrelevant and outside the body of record evidence in this proceeding (much like the instant Petition).

18. Admitted.

19. Admitted in part and denied in part. It is only admitted that Uber filed a Petition for Rehearing and Reconsideration. It is denied that the civil penalty imposed by the Commission should be reduced.

IV. SUMMARY OF ARGUMENT

20. The averments made in Paragraph 20 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent a response is deemed necessary, they are denied. Uber's disingenuous and deceptive claim that I&E did not seek a "per trip" civil penalty until seven months after filing the initial Complaint in June 2014 should be expressly rejected by the Commission. Uber was court-ordered to provide trip data to I&E as early as October 3, 2014. Indeed, Uber knew that it would be subject to a "per trip" civil penalty because it refused to provide the trip data to I&E until the day of the evidentiary hearing on May 6, 2015. In defiance of numerous orders of the presiding ALJs, Uber conditioned providing the trip data to I&E upon first reaching a settlement with I&E. I&E utilized every possible avenue to secure the trip data despite Uber's refusal to provide it, including Motions to Compel, Motions

for Sanctions and the filing of a Petition for Disclosure of the Trip Data submitted by Rasier-PA at Docket Nos. A-2014-242608 and A-2014-2416127,³⁶ which remains pending a ruling by the Commission. Further, Uber's argument that a perceived public demand justified its continued unlawful transportation is an impermissible ground for reconsideration because it raises the same argument that was specifically decided against it. The Commission has already determined that limiting the transportation options for some does not outweigh the higher goal of public safety.³⁷ Uber's argument that Gegen's brokerage license permitted its unauthorized transportation, which used uncertificated motor carrier-drivers, also has been repeatedly rejected and lacks merit.³⁸ Additionally, it is emphatically denied that "no one" was harmed by Uber's operations. Record evidence supports that at least nine accidents over a six-month period were serious enough to warrant the filing of an insurance claim.³⁹ Because Uber failed to submit to the Commission's regulation requiring the filing of accident reports during the time in which it provided unlawful transportation service, the Commission will never know the exact number of accidents that occurred during this time. *See* 52 Pa. Code § 29.44.

21. Denied. Uber's "per day" versus "per trip" argument as it relates to civil penalties is an impermissible ground for reconsideration because it raises the same argument that was specifically decided against it.⁴⁰ Should Uber's argument be

³⁶ I&E's Petition is docketed at P-2015-2466136.

³⁷ July 24, 2014 Cease and Desist Order at 24.

³⁸ Order at 37.

³⁹ (May 6, N.T. 168).

⁴⁰ Order at 31-33.

considered, it is well settled that the Commission is authorized to impose a civil penalty for each instance of unauthorized transportation because each unlawful trip constitutes a discrete violation of the Code. *See* 66 Pa.C.S. § 3301; *Newcomer Trucking, Inc. v. Pa. Pub. Util. Comm'n*, 531 A.2d 85 (Pa. Cmwlth. 1987).

22. Denied. Uber's argument that a perceived public demand justified its continued unlawful transportation is an impermissible ground for reconsideration because it raises the same argument that was specifically decided against it. The Commission has already determined that limiting the transportation options for some does not outweigh the higher goal of public safety.⁴¹ Additionally, the Commission's determination in a separate proceeding that Rasier-PA possesses the requisite propensity to operate safely and legally⁴² in the context of considering Rasier-PA's motor carrier application does not inhibit any finding in the instant enforcement action that Uber's unlawful actions "presented a significant risk to the safety of the Uber passengers and drivers and to other travelers and pedestrians."⁴³ In the application proceeding, Rasier-PA submitted to the Commission's authority. In the instant matter, Uber operated widespread unauthorized transportation without any regard to the Commission's authority.

23. Denied. The Commission's statement referenced in Paragraph 23 is substantiated by Uber's admitted 122,998 violations of the Code, an amount larger than any other public utility has ever committed.

⁴¹ July 24, 2014 Cease and Desist Order at 24; Order at 52.

⁴² *Application of Rasier-PA LLC for Experimental Service Authority*, Docket No. A-2014-2424608 (Order entered December 5, 2014) at 62-64.

⁴³ Order at 52.

24. Denied. I&E will separately address each averment made in Paragraph 24 below.

25. Denied. Uber’s “per day” versus “per trip” argument as it relates to civil penalties is an impermissible ground for reconsideration because it raises the same argument that was specifically decided against it.⁴⁴ Should Uber’s argument be considered, it is well settled that the Commission is authorized to impose a civil penalty for each instance of unauthorized transportation because, as I&E argued and this Commission agreed, each unlawful trip constitutes a discrete violation of the Code. *See* 66 Pa.C.S. § 3301; *Newcomer Trucking, Inc.* 531 A.2d 85.

26. The averments made in Paragraph 26 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent a response is deemed necessary, they are denied.

V. ARGUMENT

A. Uber Fails To Meet The Stringent Standards For Reconsideration And Rehearing Because It Raises The Same Arguments That Were Previously Rejected And Brings Forth Extra-Record Material Under The Guise Of “New Evidence” That Could Have Been Reasonably Ascertained Through The Exercise Of Ordinary Diligence

27. The averment states a conclusion of law to which no response is required.

28. The averment states a conclusion of law to which no response is required.

29. The averment states a conclusion of law to which no response is required.

30. The averment states a conclusion of law to which no response is required.

By way of further answer, reconsideration is not “a second motion to review and

⁴⁴ Order at 31-33.

reconsider, to raise the same questions which were specifically considered and decided against them.” *Duick v. Pa. Gas and Water Co.*, 56 Pa. PUC 553, 559 (1982) (quoting *Pa. Railroad Co. v. Pa. Pub. Serv. Comm’n*, 179 A. 850, 854 (Pa. Super. 1935).

31. Denied. Uber’s Petition presents no new or novel considerations that were previously overlooked by the Commission and advances no new “evidence” that was not available or could not have been obtained through the exercise of ordinary diligence. As such, Uber’s Petition should be denied.

B. Uber Advances No Convincing Argument for Rehearing

32. Denied. Uber’s “new” evidence merely consists of extra-record material that was available and could have been presented during the May 6, 2015 evidentiary hearing.

33. Denied. Uber was fully aware that it would be subject to a substantial civil penalty. Indeed, the civil penalty requested by I&E in its Amended Complaint was over \$7 million more than what the Commission ultimately imposed. Uber elected not to present any evidence regarding the alleged impact of a sizeable civil penalty on its operations. Further, such consideration is not a factor that the Commission considers when evaluating civil penalties and thus is irrelevant. *See* 52 Pa. Code § 69.1201(c).

34. Denied. Uber was fully aware that it would be subject to a “per trip” civil penalty and hence is the reason why Uber precluded I&E from discovering its trip data for nine months. All the information that Uber attempts to present now was available at the time of the evidentiary hearing on May 6, 2015. It is specifically denied that the Commission has not previously imposed a “per trip” civil penalty for trips occurring on

the same day. In *Pa. Pub. Util. Comm'n, Bureau of Transp. and Safety v. Corey Transport, LLC*, Docket No. C-2010-2155103 (Initial Decision issued February 9, 2012; Final Order entered March 22, 2012), the Commission imposed a \$2,000 civil penalty when the respondent held himself out to provide uncertificated passenger transportation service on two separate occasions on July 7, 2010. Further, Uber's public disclosure of its trip data affords no basis for rehearing, since the data is the same information that was presented below.

35. Denied. Public safety was *the* central concern when the Commission directed Uber to cease and desist its unauthorized transportation. The Commission stated as follows:

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

July 24, 2014 Cease and Desist Order at 21. Uber elected not to present the arguments it seeks to advance now during the May 6, 2015 evidentiary hearing or in its Main Brief that was filed in this proceeding. Thus, Uber has waived the opportunity to present such challenges now.

36. Denied. The Commission has already determined that limiting the transportation options for some does not outweigh the higher goal of public safety.⁴⁵ Further, any benefit presently received by Uber's transportation service does not bear any relevance to the time period in which Uber provided unauthorized transportation service.

37. Denied. Uber was fully aware that it would be subject to a substantial civil penalty. Indeed, the civil penalty requested by I&E in its Amended Complaint was over \$7 million more than what the Commission ultimately imposed. Uber elected not to present any evidence regarding the alleged impact of a sizeable civil penalty on its operations. Further, such consideration is not a factor that the Commission considers when evaluating civil penalties and thus is irrelevant. *See* 52 Pa. Code § 69.1201(c). Moreover, undocumented and unsubstantiated claims of "financial distress" should be viewed by the Commission with utmost suspicion as Uber has been reported to be valued at over \$60 billion.

38. Denied. Uber was fully aware that a substantial civil penalty was a possibility by virtue of I&E's Amended Complaint. Uber waived any challenge to the civil penalty based on an alleged impact of the civil penalty by failing to raise such matters below. Further, any "impact" of a civil penalty is not a factor that the Commission considers and thus is irrelevant. *See* 52 Pa. Code § 69.1201(c).

39. I&E hereby incorporates its response to Paragraph 38. By way of further answer, no legal grounds exist to challenge the alleged "impact" of a civil penalty on businesses unrelated to the regulated entity.

⁴⁵ July 24, 2014 Cease and Desist Order at 24; Order at 52.

40. The averments made in Paragraph 40 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent a response is deemed necessary, they are denied. Such information was available to Uber at the time of the evidentiary hearing on May 6, 2015. Further, if there is clear and uncontradicted testimony of an indiscriminate holding out to the general public to provide transportation service, then whether a fixed charge was demanded is irrelevant. *Commonwealth v. Babb*, 70 A.2d 660 (Pa. Super. 1950) (finding that it was not necessary for defendant to charge a specific fee or even ask for compensation in order to conclude that he operated as a taxi without a Certificate of Public Convenience). “Such an arrangement is only an artifice or subterfuge.” *Id.* at 668. *See also Israel*, 52 A.2d 317 (affirming a lower court order enjoining drivers from providing transportation service when the funds received for the transportation are obtained as a “donation or tip” and not by a fixed charge).

41. The averments made in Paragraph 41 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent a response is deemed necessary, they are denied. Such information was available to Uber at the time of the evidentiary hearing on May 6, 2015. By way of further answer, the Commission appropriately considered the fare charged for each unlawful trip since this amount includes the monetary total that customers paid for the trips. It is impertinent and irrelevant how Uber internally divided the money collected from customers for its unlawful transportation service.

42. The averments made in Paragraph 42 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent a response is deemed necessary, they are denied. Such information was available to Uber at the time of the evidentiary hearing on May 6, 2015. By way of further answer, Uber cites to no legal basis and none exists to excuse a civil penalty for subsequent trips taken by same rider. Rather, it is well settled that the Commission is authorized to impose a civil penalty for each instance of unauthorized transportation because each unlawful trip constitutes a discrete violation of the Code. *See* 66 Pa.C.S. § 3301; *Newcomer Trucking*, 531 A.2d 85.

43. The averments made in Paragraph 43 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent a response is deemed necessary, they are denied. Such information was available to Uber at the time of the evidentiary hearing on May 6, 2015. By way of further answer, the Commission has no method to substantiate Uber's claimed revenue amount since Uber continues to defy the Commission's discovery rules, which included a discovery request from I&E directed to Uber for Uber to provide supporting documentation, such as invoices, related to its trip data.

44. The averments made in Paragraph 44 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent a response is deemed necessary, they are denied. Such information was available to Uber at the time of the evidentiary hearing on May 6, 2015. Uber precluded the I&E motor carrier enforcement office from learning the identity or location of its drivers and as a

result, I&E was not able to conduct vehicle inspections or review driver records, which are necessary to ensure public safety, for many months. In fact, Uber only “offered” to share such information if an I&E motor carrier enforcement officer from Pittsburgh visited its attorney’s offices in Philadelphia each time an officer desired to review information.

45. I&E hereby incorporates its response to Paragraph 36.

46. The averments made in Paragraph 46 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent a response is deemed necessary, it has not been shown by Uber that such studies pertain to the period of time in which Uber provided its unauthorized transportation and thus, such information is irrelevant to the instant proceeding.

47. The averments made in Paragraph 47 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent a response is deemed necessary, it has not been shown by Uber that the statistics in which it refers pertain to the period of time in which Uber provided its unauthorized transportation. As such, the information is irrelevant to the instant proceeding.

48. The averments made in Paragraph 48 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent a response is deemed necessary, it has not been shown by Uber that such information bears any relevance to the period of time in which Uber provided its unauthorized transportation.

49. Denied. It is denied that Uber has met the high standard for the grant of a rehearing. All information that it seeks to present now was available, or could have become available to Uber through the exercise of ordinary diligence, at the time of the evidentiary hearing on May 6, 2015. Further, Uber has not demonstrated that the additional information it seeks to present now bears any relevance to the period of time in which Uber provided its unauthorized transportation.

C. **Uber Has Not Advanced A New or Novel Issue Such As That Which Would Be An Appropriate Basis To Grant Reconsideration**

50. Denied. The arguments advanced by Uber to justify reconsideration have already been expressly rejected by the Commission. Reconsideration requires that a petition identify “new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.” *Duick v. Pa. Gas and Water Co.*, 56 Pa. PUC 553, 559 (1982). Reconsideration is not “a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” *Id.* (quoting *Pa. Railroad Co. v. Pa. Pub. Serv. Comm’n*, 179 A. 850, 854 (Pa. Super. 1935)).

51. Denied. By failing to raise constitutional challenges below, Uber has waived the right to bring such claims now and the Commission should not consider them.

52. Contrary to Uber’s assertions, it is not clear that the Commission did not conduct a *de novo* review of the presiding ALJs’ Initial Decision. Rather, the Commission’s Order demonstrates that the Commission impartially and objectively reviewed the record in this proceeding and arrived at an independent judgment; the Order

contains an outcome and analysis that clearly departs from the presiding ALJs' Initial Decision.

53. Denied. By way of further answer, Uber waived any challenges to the Commission's civil penalty on the grounds that it is unconstitutional or violates due process because Uber failed to raise such challenges below when the civil penalty amounts requested and imposed were much higher than that in the Commission's Order. It is specifically denied that the Commission acted beyond its statutory authority in enacting the civil penalty or that the Commission's statutory penalty authority is vague. It is well settled that the Commission is authorized to impose a civil penalty of up to \$1,000 for each instance of unauthorized transportation because each unlawful trip constitutes a discrete violation of the Code. *See* 66 Pa.C.S. § 3301; *Newcomer Trucking, Inc.*, 531 A.2d 85.

54. Denied. It is specifically denied that the Commission has not previously imposed a "per trip" civil penalty for trips occurring on the same day. In *Pa. Pub. Util. Comm'n, Bureau of Transp. and Safety v. Corey Transport, LLC*, Docket No. C-2010-2155103 (Initial Decision issued February 9, 2012; Final Order entered March 22, 2012), the Commission imposed a \$2,000 civil penalty when the respondent held himself out to provide uncertificated passenger transportation service on two separate occasions on July 7, 2010. It is also denied that Commission precedent does not exist to impose a civil penalty based on data produced by a respondent.⁴⁶

⁴⁶ *See Lyft.*

55. Denied. By way of further answer, Uber waived any challenges to the Commission's authority to issue a cease and desist order because Uber previously and repeatedly failed to raise such challenge. To the extent that Uber's argument is considered, Section 501 of the Code grants the Commission broad powers to enforce the law, supervise and regulate any public utilities doing business in the Commonwealth, and make regulations as may be necessary in the exercise of its powers. 66 Pa.C.S. § 501. Issuing interim emergency orders directing utilities to cease and desist from engaging in unlawful behavior fit squarely within the Commission's statutory authority. *See* 52 Pa. Code §§ 3.6 *et seq.*⁴⁷ By way of further answer, the Supreme Court of Pennsylvania has upheld the Commission's authority to enjoin motor carriers from providing uncertificated service. *See Israel*, 52 A.2d 317. Additionally, Commonwealth Court has upheld the Commission's issuance of a cease and desist order directing a limousine service to cease from offering and providing non-luxury transportation service for which it was not certificated. *In re Delaware Valley Transp. Co. v. Pa. Pub. Util. Comm'n*, 400 A.2d 678 (Pa. Cmwlth. 1979).

56. Denied. The Commission's civil penalty comports with Section 3301 of the Code and as interpreted by Commonwealth Court, which permits the Commission to impose a fine of up to \$1,000 for each and every discrete violation of the Code regardless of the number of violations that occur. 66 Pa.C.S. § 3301; *Newcomer Trucking*, 531 A.2d at 87. Uber benefitted from the Commission's evaluation of Uber's civil penalty using

⁴⁷ The regulations pertaining to interim emergency relief were promulgated, in part, under the Commission's authority pursuant to Section 501 of the Code.

the factors established in the Policy Statement in that the Commission concluded that mitigating factors were present and justified the imposition of a civil penalty that was far lower than: (1) the maximum allowable civil penalty of \$1,000 for each of the 122,998 admitted violations committed by Uber; (2) the civil penalty imposed by the presiding ALJs of \$49,852,300; and (3) the \$19 million civil penalty sought by I&E in its Amended Complaint.

57. Denied. I&E hereby incorporates its response to Paragraph 56. By way of further answer, the Commission is not able to verify whether Uber conducted a safe operation during the period of time that it operated without authority because Uber refused to submit to the Commission's jurisdiction. It is emphatically denied that "no one" was harmed by Uber's operations. Record evidence supports that at least nine accidents over a six-month period were serious enough to warrant the filing of an insurance claim.⁴⁸ Because Uber failed to submit to the Commission's regulation requiring the filing of accident reports during the time in which it provided unlawful transportation service, the Commission will never know the exact number of accidents that occurred during this time. *See* 52 Pa. Code § 29.44.

58. Denied. Uber's "per day" versus "per trip" argument is an impermissible ground for reconsideration because it raises the same argument that was specifically decided against it. By way of further answer, I&E had no way of knowing the amount of trips provided by Uber when the original Complaint was filed, which is why I&E conducted discovery to learn the full extent of Uber's unlawful operations. It is denied

⁴⁸ (May 6, N.T. 168).

that “per trip” civil penalties must originate from trips actually taken by I&E motor carrier enforcement officers. If that were the law, then the entire compliment of the Commission’s motor carrier enforcement officers would have had to move to Pittsburgh, take trips using the Uber App around the clock for six months, and even with all of those efforts, the officers would not have been able to take the 122,998 unauthorized trips provided by Uber.

1. **Uber Waived Any Constitutional Challenges To The Civil Penalty By Failing To Raise Them Earlier**

59. Denied. I&E expressly denies that the penalty imposed violates any provision of the Pennsylvania Constitution or the United States Constitution, including, but not limited to the Excessive Fines Clause and the Due Process Clause. The remainder of Paragraph 59 consists of conclusions of law and legal argument to which no response is necessary. To the extent a response is deemed necessary, I&E denies any other allegation, averment, or implication contained in Paragraph 59. By way of clarification, I&E notes that, despite having notice that a large civil penalty could be sought, Uber failed to raise any constitutional challenges to the penalty until the present Petition. As early as the filing of the Amended Complaint, Uber had notice that a significant penalty may be imposed. However, instead of raising these constitutional challenges in any prior pleading including its Answer, various motions, and ultimately in its Exceptions, Uber raises these challenges only now as part of a public relations campaign to put improper pressure on the Commission to overturn its well-reasoned decision. Finally, as explained above, Uber’s failure to raise these constitutional challenges at any earlier stage of

litigation resulted in a waiver of these claims, and, as such, the Commission should not consider them.

60. Paragraph 60 contains conclusions of law and legal argument to which no response is necessary. To the extent a response is deemed necessary, I&E denies any other allegation, averment, or implication contained in Paragraph 60. By way of further answer, I&E denies any implication that the penalty imposed by the Commission is unfair, excessive, unreasonable, disproportional, or improper in any way. Further, by failing to raise constitutional challenges at any earlier stage of litigation, Uber has waived such claims and the Commission should not consider them.

61. Paragraph 61 in its entirety contains only conclusions of law and legal argument to which no response is necessary. To the extent a response is deemed necessary, I&E denies any other allegation, averment, or implication contained in Paragraph 61. By way of further answer, I&E denies any implication that the penalty imposed by the Commission is unfair, excessive, unreasonable, disproportional, or improper in any way. Further, by failing to raise constitutional challenges at any earlier stage of litigation, Uber has waived such claims and the Commission should not consider them.

62. Paragraph 62 in its entirety contains only conclusions of law and legal argument to which no response is necessary. To the extent a response is deemed necessary, I&E denies any other allegation, averment, or implication contained in Paragraph 62. By way of further answer, I&E denies any implication that the penalty imposed by the Commission is unfair, excessive, unreasonable, disproportional, or

improper in any way. I&E further notes the unprecedented nature of Uber's unlawful conduct and the sheer number of violations that occurred made Uber's unlawful conduct without peer in Pennsylvania's long history.

63. Denied. Substantial record evidence supports the civil penalty imposed by the Commission, as well as the Commission's statement referenced in Paragraph 63, for Uber's 122,998 admitted violations of the Code. The Commission expressly rejected Uber's argument that public demand justified its unlawful conduct when the Commission determined that the higher goal of public safety outweighed any perceived benefit of Uber's unauthorized transportation.⁴⁹ By way of further answer, the Commission has no way of verifying that Uber complied with motor carrier regulations pertaining to safety and provided "safe" service during the period of its unauthorized operations because Uber failed to submit to the Commission's regulatory oversight during that time.

64. Denied. Uber's 122,998 admitted violations of the Code are unprecedented.

65. Denied. Uber's 122,998 admitted violations of the Code are unprecedented, as well as its decision to defy orders directing it to cease and desist and numerous interim orders of the presiding ALJs. By way of further answer, the Commission has expressly rejected Uber's argument that public demand justified its unlawful conduct and determined that the higher goal of public safety outweighed any perceived benefit of Uber's unauthorized transportation.⁵⁰ It is emphatically denied that

⁴⁹ July 24, 2014 Cease and Desist Order at 24; Order at 52.

⁵⁰ July 24, 2014 Cease and Desist Order at 24; Order at 52.

“no one” was harmed by Uber’s operations. Record evidence supports that at least nine accidents over a six-month period were serious enough to warrant the filing of an insurance claim⁵¹ and more could have gone unreported.⁵² Because Uber failed to submit to the Commission’s regulation requiring the filing of accident reports during the time in which it provided unlawful transportation service, the Commission will never know the exact number of accidents that occurred during this time. *See* 52 Pa. Code § 29.44.

66. The averment states a conclusion of law to which no response is required. To the extent that a response is required, the cases cited by Uber are not analogous to Uber’s widespread, unlawful transportation that occurred on 122,998 discrete occasions. In *Pa. Pub. Util. Comm’n v. Daniel and Darlene Applegate t/a Independent Security Cab*, Docket No. C-2015-2451749, 2016 WL 1559265 (Pa. PUC) (Initial Decision issued April 12, 2016), it was found that one individual demonstrated a “pattern of violations” by providing or offering uncertificated transportation service. In *Pa. Pub. Util. Comm’n v. Brungard t/d/b/a Protean Potentials*, Docket No. A-00113098C0101, 97 Pa. P.U.C. 189, 2002 WL 31007842 (Order entered June 3, 2002), the Commission imposed a civil penalty of \$1,000 for a single occurrence of providing transportation for compensation without holding a Certificate of Public Convenience and \$10 per day for 918 days wherein the respondents continually held themselves out to provide uncertificated transportation service for compensation. In each case, the number of unauthorized trips actually taken by passengers were far less than Uber’s.

⁵¹ (May 6, N.T. 168).

⁵² (May 6, N.T. 159).

67. The averment states a conclusion of law to which no response is required. To the extent that a response is required, Uber's admitted violations of the Code on 122,998 discrete occasions is unprecedented.

68. Denied. The case cited relates to the Commission's approval of a settlement agreement. The Commission has held that it is inappropriate to consider a settlement, which is intended to be an amicable resolution of disputed claims, as precedent in any subsequent proceeding.⁵³ Furthermore, matters pertaining to gas safety violations are subject to a civil penalty range that is **completely inapplicable** to civil penalties in transportation network company matters. *See* 66 Pa.C.S. § 3301(c). As such, they do not constitute "similar situations." *See* 52 Pa. Code § 69.1201(c)(9).

69. Denied. Substantial evidence supports the civil penalty imposed by the Commission for Uber's 122,998 admitted violations of the Code. By way of further answer, the Commission has no way of verifying that Uber complied with motor carrier regulations pertaining to safety when it provided its unlawful transportation service because Uber refused to submit to the Commission's oversight during that period of time.

70. Denied. The Commission has considered and rejected the arguments advanced by Uber in Paragraph 70. Specifically, the Commission determined that the higher goal of public safety outweighed any perceived benefit of Uber's unauthorized transportation.⁵⁴ The Commission also rejected the notion that the Code or Commission regulations did not cover Uber's unlawful transportation service.⁵⁵ Further, in reducing

⁵³ Order at 56; *See Pa. Pub. Util. Comm'n v. Bell Telephone Co. of Pa.*, 68 Pa. P.U.C. 430 (1988).

⁵⁴ July 24, 2014 Cease and Desist Order at 24; Order at 52.

⁵⁵ Order at 33.

the civil penalty, the Commission considered Rasier-PA's compliance and deemed it to be a mitigating circumstance.⁵⁶ I&E specifically denies that Uber has been a "model corporate citizen[]" or that Uber has the ability to "voluntarily submit[]" to the Commission's jurisdiction.

71. Denied. Section 3301 of the Code, 66 Pa.C.S. § 3301, speaks for itself. No statutory cap exists with respect to the civil penalty for Uber's conduct and, therefore, the Commission is authorized to impose an \$11.4 million civil penalty for Uber's admitted 122,998 violations of the Code.

72. Denied. The case cited by Uber in Paragraph 72, *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Order entered December 3, 2015) (hereinafter referred to as *HIKO Energy*), does not refer to a previous Commission decision in a "similar situation." See 52 Pa. Code § 69.1201(c)(9). Rather, *HIKO Energy* dealt with an electric generation supplier billing an amount in excess of the price it guaranteed. *HIKO Energy* did not involve an adverse effect, or potentially adverse effect, to public safety, such as the uncertificated passenger transportation at issue here. Therefore, *HIKO Energy* bears no relevance to the instant proceeding except to show that the Commission is not afraid to impose a civil penalty that is commensurate with the egregious conduct of the jurisdictional entity.

73. The averments made in Paragraph 72 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. In addition, I&E hereby incorporates its response to Paragraph 72.

⁵⁶ Order at 54.

74. Denied. The cases cited relate to the Commission's approval of settlement agreements. The Commission has held that it is appropriate to consider a settlement, which is intended to be an amicable resolution of disputed claims, as precedent in any subsequent proceeding.⁵⁷ Additionally, the Commission was prohibited by the Public Utility Code from assessing a civil penalty greater than \$500,000 at the time the incidents occurred in *Pa. Pub. Util. Comm'n v. UGI Utilities, Inc. – Gas Division*, Docket No. C-2012-2308997 (Order entered February 19, 2013) and *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. C-2011-2278312 (Order entered July 26, 2013).

75. Denied. The \$11.4 million civil penalty imposed on Uber is justifiable when compared to the violations in *Lyft*, which were smaller in number, and the company's compliant conduct during litigation, including, but not limited to, furnishing discoverable information and abiding by the interim orders of the presiding ALJs. Further, Lyft did not impede I&E's investigation, as did Uber when, among other things, it disabled the Uber App associated with the mobile phone of one of I&E's motor carrier enforcement officers.

76. The averments made in Paragraph 76 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission.

77. Denied. I&E denies that the civil penalty imposed fails to bear any rational relation to Uber's 122,998 admitted violations of the Code. By way of further answer, by failing to raise constitutional challenges at any earlier stage of litigation, Uber has waived such claims and the Commission is not obligated to consider them.

⁵⁷ Order at 56; See *Pa. Pub. Util. Comm'n v. Bell Telephone Co. of Pa.*, 68 Pa. P.U.C. 430 (1988).

78. Denied. I&E denies that the civil penalty imposed is unreasonable or disproportionate to Uber's 122,998 admitted violations of the Code. By way of further answer, by failing to raise constitutional challenges at any earlier stage of litigation, Uber has waived such claims and the Commission is not obligated to consider them.

2. **The Commission Exercised Independent Judgment In Its Order**

79. Denied. Pursuant to Section 332(h) of the Code, 66 Pa.C.S. § 332(h), the Commission elected to review the presiding ALJs' Initial Decision. Contrary to Uber's assertions, it is not clear that the Commission did not in fact conduct a *de novo* review of the Initial Decision. "[T]he *sine qua non* of *de novo* review is not that the person or body conducting the review hear testimony anew; rather it is that such person or body possess and exercise the authority to arrive at an independent judgment on the matter in dispute." *Cordorus Stone & Supply Co., Inc. v. Kingston*, 711 A.2d 563, 566 (Pa. Cmwlth. 1998). The Commission's analysis and result set forth in its Order certainly demonstrate that it independently evaluated the case; the civil penalty imposed and the manner in which the civil penalty was calculated wholly depart from the presiding ALJs' Initial Decision.⁵⁸ What Uber is really seeking is a complete reversal of the Initial Decision. However, a *de novo* review does not require the Commission to ignore properly entered record evidence. *See Stammel v. PG Energy*, Docket No. C-20027994, 98 Pa. PUC 262 (Order entered May 21, 2003).

80. Denied. I&E hereby incorporates its response to Paragraph 79.

81. Denied. I&E hereby incorporates its response to Paragraph 79.

⁵⁸ Order at 57-58.

82. The averment states a conclusion of law to which no response is required. To the extent that a response is required, substantial evidence supports the civil penalty imposed by the Commission for Uber's 122,998 admitted violations of the Code.

83. Denied. The Commission did consider, and expressly rejected, the arguments that Uber advances in Paragraph 83. Specifically, the Commission determined that the higher goal of public safety outweighs any perceived benefit of Uber's unauthorized transportation.⁵⁹ The Commission also rejected the notion that the Code or Commission regulations did not cover Uber's unlawful transportation service.⁶⁰

3. **Uber's "per day" versus "per trip" argument as it relates to civil penalties is an impermissible ground for reconsideration because it raises the same argument that was specifically decided against it. Alternatively, should it be considered, it is well established that the Commission is authorized to impose a "per trip" civil penalty for motor carrier violations.**

84. Denied. By way of further answer, Uber waived any challenges to the Commission's civil penalty on the grounds that it is unconstitutional or violates due process because Uber failed to raise such challenges below when the civil penalty amounts requested and imposed were much higher than that in the Commission's Order. It is specifically denied that the Commission acted beyond its statutory authority in enacting the civil penalty or that the Commission's statutory penalty authority is vague. It is well settled that the Commission is authorized to impose a civil penalty for each instance of unauthorized transportation because each unlawful trip constitutes a discrete violation of the Code. *See* 66 Pa.C.S. § 3301; *Newcomer Trucking*, 531 A.2d 85.

⁵⁹ July 24, 2014 Cease and Desist Order at 24; Order at 52.

⁶⁰ Order at 33.

85. Denied. It is well settled that the Commission is authorized to impose a civil penalty for each instance of unauthorized transportation because each unlawful trip constitutes a discrete violation of the Code. *Id.*

86. Denied. Uber's interpretation of Section 3301 of the Code, 66 Pa.C.S. § 3301, is flawed. Section 3301(a) of the Code explicitly provides for a penalty of \$1,000 per violation. 66 Pa.C.S. § 3301(a). Additionally, Section 3301(b) permits a civil penalty of \$1,000 for each day's continuance of that same violation. 66 Pa.C.S. § 3301(b). The resulting permissible civil penalty would be far greater than the \$11.4 million civil penalty ultimately imposed upon Uber by the Commission.

87. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. By way of further answer, Uber's unauthorized transportation is analogous to that which occurred in *Newcomer Trucking*, which held that a civil penalty may be imposed for each unauthorized shipment that took place since each shipment equated to a discrete violation of the Code. In the instant matter, each unlawful trip that Uber provided to passengers equates to an individual violation of the Code.

88. Denied. The presiding ALJs and Commission have previously rejected Uber's argument that it merely made a digital platform available to arrange for the transportation of passengers and did not play a substantial, active role in providing the unauthorized transportation.⁶¹ Since Uber's argument requests a second review of

⁶¹ Initial Decision at 14; Order at 32.

questions that were “definitively decided” against it, such argument constitutes an inappropriate ground for reconsideration and should be denied accordingly.

89. Denied. Uber now appears to assert for the first time that Gegen “used the platform.” Not only is this assertion contained nowhere in the record below, Uber *stipulated* that Raiser was the corporate entity responsible for overseeing every aspect of the unauthorized transportation.⁶² Furthermore, Uber’s argument that Gegen’s brokerage license permitted its unauthorized transportation, which used uncertificated motor carrier-drivers, likewise lacks merit and has been repeatedly rejected.⁶³

90. Denied. I&E hereby incorporates its response to Paragraph 88.

91. Denied. Uber misconstrues the Commission’s findings. The Commission *actually* found that Uber was not “simply a disinterested invisible entity partnering drivers with passengers” and played an active role in providing the unauthorized transportation, which culminated in discrete trips.⁶⁴

92. The averment states a conclusion of law to which no response is required. To the extent that a response is required, Uber’s characterization of the law cited is denied. By way of further answer, Uber’s unauthorized transportation is analogous to that which occurred in *Newcomer Trucking*, which held that a civil penalty may be imposed for each unauthorized shipment that took place since each shipment equated to a discrete violation of the Code. In the instant matter, the record evidence proved each

⁶² ALJ Exhibit 1 (revised), no. 7; N.T. 98-99; 131-34; 145.

⁶³ Order at 37.

⁶⁴ Order at 32.

unlawful trip that Uber provided to passengers equates to an individual violation of the Code.

93. Denied. In the original Complaint filed on June 5, 2014, I&E sought a “per trip” civil penalty for trips taken by I&E motor carrier enforcement officers in addition to requesting a “per day” civil penalty. Nevertheless, I&E’s original Complaint was amended to include a “per trip” civil penalty for each trip that occurred, regardless of whether an I&E motor carrier enforcement officer requested the trip, and the Amended Complaint is the pleading that was litigated.

94. Denied. To the extent that Uber is arguing that I&E’s Amended Complaint was not permissible, such notion is denied. Section 1.81 of the Commission’s regulations permits “an amendment to a submittal or pleading [to be] tendered for filing at any time . . .” 52 Pa. Code § 1.81. While no time constraints exist with respect to making amendments, the timing of I&E’s Amended Complaint was due to Uber’s blatant refusal to provide court-ordered discovery to I&E, which unfairly hampered I&E’s ability to prosecute the case and which caused I&E to propose the use of proxy trip data in order to formulate the basis of the violations in its Amended Complaint.

95. Denied. I&E hereby incorporates its response to Paragraph 94. By way of further answer, I&E sought to discover Uber’s trip data as early as August 8, 2014, but Uber refused to divulge it until during the evidentiary hearing held on May 6, 2015 in defiance of numerous court orders and for which it is sanctioned \$72,500.

96. Denied. By way of further answer, Uber waived any challenge to the Commission’s civil penalty on the grounds that it violates due process because Uber

failed to raise such challenge below when the civil penalty amounts requested and imposed were much higher than that ultimately imposed in the Commission's Order. Uber received notice and numerous opportunities to be heard with regard to the arguments it now raises related to the Commission's civil penalty, including, but not limited to: Uber's answer to I&E's Amended Complaint; Uber's Main Brief and Uber's Exceptions. Additionally, Section 3301 of the Code, 66 Pa.C.S. § 3301, as well as case law interpreting Section 3301, *i.e. Newcomer Trucking*, constitute sufficient notice to Uber that a "per trip" civil penalty could be imposed. I&E did not owe a duty to Uber to notify it in advance of the unlawful conduct or the ramifications of said conduct. Rather, it is Uber's obligation to exercise due diligence, including researching applicable law, prior to engaging in unlawful conduct.

97. Denied. Section 3301(a) of the Code explicitly provides for a penalty of \$1,000 per violation. 66 Pa.C.S. § 3301(a). Section 3301(b) permits a civil penalty of \$1,000 for each day's continuance of that violation. 66 Pa.C.S. § 3301(b). Case law instructs that each uncertificated trip constitutes a discrete violation of the Code. *See Newcomer Trucking*, 531 A.2d 85. There is nothing ambiguous about this standard and Uber is feigning confusion for its own benefit.

98. The averment states a conclusion of law to which no response is required. To the extent that a response is required, it is denied. By way of further answer, Uber waived any challenge to the Commission's civil penalty on the grounds that it violates due process because Uber failed to raise such challenge below when the civil penalty

amounts requested and imposed were much higher than that in the Commission's Order. I&E also hereby incorporates its response to Paragraph 97.

99. Denied. Uber, through an exercise of reasonable diligence, would have discovered that its actions fit squarely within the Commission's jurisdiction. Further, in April 2014, Commission staff advised Uber to file an application to cover its operations⁶⁵ and thus Uber's contention that it was "unaware" until the filing of I&E's original Complaint in June 2014 that its service was unlawful is patently false and completely disingenuous. Uber's argument that Gegen's brokerage license permitted its unauthorized transportation, which used uncertificated motor carrier-drivers, likewise lacks merit and has been repeatedly rejected.⁶⁶

100. Denied. Uber received sufficient notice that its exposure could lead to a "per trip" civil penalty by a plain reading of Section 3301 of the Code, 66 Pa.C.S. § 3301, and applicable case law, *i.e.* *Newcomer Trucking*. Likewise, I&E's original Complaint that was filed in June 2014, which sought relief in the amount of a "per trip" civil penalty for each trip taken by the I&E motor carrier enforcement office, notified Uber that it was subject to a "per trip" civil penalty for each trip that occurred. Uber indeed knew full well the extent of its civil penalty because it: (1) deactivated the Uber app that was registered under a motor carrier enforcement officer's mobile phone number after I&E's original Complaint was filed, thereby precluding Officer Bowser from taking more

⁶⁵ Order at 33.

⁶⁶ Order at 37.

trips;⁶⁷ and (2) unlawfully withheld discoverable trip data from I&E and only provided it for the first time at the evidentiary hearing.

101. Denied. To the extent that Uber has not waived the due process arguments that it first seeks to present now, I&E hereby incorporates its response to Paragraph 100.

102. Denied. By way of further answer, Uber's unregulated operation resulted in individual and discrete trips, each of which exposed the public to potential harm. The Commission has previously rejected Uber's argument that the violation consists of merely operating a digital platform⁶⁸ and Uber presents no new argument that would constitute proper grounds for reconsideration.

103. Denied. The Commission has expressly rejected the contention that the public's purported need for Uber's unlawful transportation service outweighs the higher goal of public safety.⁶⁹ By way of further answer, the civil penalty would have been lower if Uber had adhered to the two cease and desist orders issued against it. Instead, Uber's business model was to unleash its passenger transportation app without regard to existing laws, establish a stronghold in the community and only then address its regulatory transgressions.

104. Denied. It is specifically denied that the Commission has not previously imposed a "per trip" civil penalty for trips occurring on the same day. In *Pa. Pub. Util. Comm'n, Bureau of Transp. and Safety v. Corey Transport, LLC*, Docket No. C-2010-2155103 (Initial Decision issued February 9, 2012; Final Order entered March 22, 2012),

⁶⁷ May 6, N.T. 61.

⁶⁸ Order at 32.

⁶⁹ July 24, 2014 Cease and Desist Order at 24.

the Commission imposed a \$2,000 civil penalty when the respondent held himself out to provide uncertificated passenger transportation service on two separate occasions on July 7, 2010. Notably, the complaint did not allege that the transportation actually occurred; rather, the violations for which the maximum civil penalty was imposed merely involved a “holding out” to provide the uncertificated service - an act far less egregious than the 122,998 unlawful trips actually provided by Uber. It is also denied that Commission precedent does not exist to impose a civil penalty based on data produced by a respondent.⁷⁰

105. Denied. Uber cites to no case or Commission Order to support its meritless assertions. It is specifically denied that I&E does not request a civil penalty based on each trip provided when a motor carrier lacks sufficient insurance, or when a driver operates without a valid license or has not been vetted through a criminal background check. Indeed, I&E motor carrier enforcement officers routinely examine trip log sheets maintained by call and demand motor carriers and request a civil penalty for each trip furnished while a violation was on-going. *See Pa. Pub. Util. Comm’n, Bureau of Transportation and Safety v. Paul J. Santomauro and Braden E. Snyder t/a Telos II*, Docket Nos. C-2010-2135989, C-2009-2102428, and C-2010-2170276 2010, WL 4904651 (Order entered November 23, 2010) (the complaint alleged that the respondent transported passengers on 129 occasions without maintaining adequate insurance and sought relief of \$129,000 for this violation).

⁷⁰ *See Lyft*.

106. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Uber misconstrues the Commission's Order, which cited to *Kviatkovsky v. Pa. Pub. Util. Comm'n*, 618 A.2d 1209 (Pa. Cmwlth. 1992) for the well settled legal principle that the Commission is authorized to impose a fine of *up to* \$1,000 for each and every discrete violation of the Code.⁷¹ The Commission also cited to *Newcomer Trucking*, 531 A.2d 85, for the similarly well settled legal principle that the Commission is authorized to impose a civil penalty for each instance of unauthorized transportation because each unlawful trip constitutes a discrete violation of the Code.⁷² Uber's own Petition even acknowledges the Commission's authority to impose a "per trip" civil penalty based on Commonwealth Court's decision in *Newcomer Trucking*.⁷³

107. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Uber misconstrues the facts in *Pa. Pub. Util. Comm'n v. S.S. Sahib Cab Co.*, Docket No. A-00121184C0601 (Order entered March 6, 2007). The carrier's violations in operating for 37 days while its certificate was suspended for failing to maintain evidence of insurance could not be feasibly segregated into separate violations as the carrier failed to retain its trip log sheets, for which it was also penalized.

108. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. The Commission's imposition of the

⁷¹ Order at 31.

⁷² Order at 31-32.

⁷³ Uber Petition at 52-53, Footnote 75.

civil penalty in *Pa. Pub. Util. Comm'n v. Erie Transportation Services, Inc. t/a Erie Yellow Cab*, Docket No. A-00108419C0603 (Order entered March 5, 2007) was the result of a settled case. The Commission has held that it is inappropriate to consider a settlement, which is intended to be an amicable resolution of disputed claims, as precedent in any subsequent proceeding.⁷⁴ Accordingly, the case should not be considered as precedent in the instant matter.

109. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. The Commission's imposition of the civil penalty in *Pa. Pub. Util. Comm'n v. Leroy Mickens, III t/a Big Time's Night Train*, Docket No. A-00121227C0602 (Order entered July 27, 2007) was the result of a settled case. The Commission has held that it is inappropriate to consider a settlement, which is intended to be an amicable resolution of disputed claims, as precedent in any subsequent proceeding.⁷⁵ Accordingly, the case should not be considered as precedent in the instant matter.

110. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Notably, *Blue & White Lines, Inc. v. Waddington*, Docket No. A-00108279C9301 (Order entered February 13, 1995), *aff'd*, *Pa. Pub. Util. Comm'n v. Waddington*, 670 A.2d 199 (Pa. Cmwlth. 1995), *app. den.*, 678 A.2d 368 (Pa. 1996), again stands for the well settled legal principle that the Commission is authorized to impose a "per trip" civil penalty for motor carrier violations of the Code.

⁷⁴ Order at 56; See *Pa. Pub. Util. Comm'n v. Bell Telephone Co. of Pa.*, 68 Pa. P.U.C. 430 (1988).

⁷⁵ Order at 56; See *Pa. Pub. Util. Comm'n v. Bell Telephone Co. of Pa.*, 68 Pa. P.U.C. 430 (1988).

Whether or not the Commission inquired into the total number of trips arranged by the motor carrier in that case, which is more than twenty years old and certainly occurred before the use of smartphones, does not preclude the Commission from making such inquiry or I&E conducting discovery regarding the extent of the unlawful service in the instant matter.

111. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. *Pa. Pub. Util. Comm'n v. Penn Harris Taxi Service Co., Inc.*, Docket No. A-00002450C9603 (Order entered March 12, 1998) directly supports the imposition of a “per trip” civil penalty for motor carrier violations of the Code. In that case, 54 unauthorized trips were known. In the instant matter, 122,998 unauthorized trips are known. Whether or not the Commission inquired into the total number of trips arranged by the motor carrier in that case does not preclude the Commission from making such inquiry or I&E conducting discovery regarding the extent of the unlawful service in the instant matter.

112. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Uber misconstrues the Commission’s Order, which cited to *Pa. Pub. Util. Comm'n v. Brungard t/d/b/a Protean Potentials*, 97 Pa. P.U.C. 189, Docket No. A-00113098C0101 (Order entered June 3, 2002) when summarizing the presiding ALJs’ Initial Decision and not when describing its disposition on the “per trip” civil penalty issue. By way of further answer, I&E did not exist in 2002 when the *Brungard* case was litigated and therefore could not have conducted discovery into the total number of uncertificated trips performed by the carrier.

113. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Whether or not the Commission inquired into the total number of trips arranged by the motor carriers in the cases cited does not preclude the Commission from making such inquiry or I&E conducting discovery regarding the extent of the unlawful service in the instant matter.

114. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Whether or not the Commission inquired into the total number of trips arranged by the motor carriers in the cases cited does not preclude the Commission from making such inquiry or I&E conducting discovery regarding the extent of the unlawful service in the instant matter. By way of further answer, the cases cited directly support the imposition of a “per trip” civil penalty for motor carrier violations of the Code.

115. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Uber misconstrues the facts in *Pa. Pub. Util. Comm’n v. AVP Transport, Inc.*, Docket No. A-00114699C0701 (Order entered September 17, 2007). The civil penalty imposed did not reflect the number of vehicles in use. Whether or not the Commission inquired into the total number of trips provided in *AVP Transport* does not preclude the Commission from making such inquiry or I&E from conducting discovery regarding the extent of the unlawful service in the instant matter.

116. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. By way of further answer, *Pa. Pub.*

Util. Comm'n v. Kitchen, Docket No. A-00117913C0601 (Order entered December 1, 2006) involved a default judgment for which the Commission did not have the benefit of a full hearing and developed record, contrary to the instant fully litigated matter.

117. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. By way of further answer, the Commission has held that it is inappropriate to consider a settlement, which is intended to be an amicable resolution of disputed claims, as precedent in any subsequent proceeding.⁷⁶

118. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Whether or not the Commission inquired into the total number of trips provided by the motor carriers in the cases cited does not preclude the Commission from making such inquiry or I&E conducting discovery regarding the extent of the unlawful service in the instant matter. By way of further answer, the cases cited do not involve uncertificated transportation, do not constitute a similar situation and thus are irrelevant for purposes of developing the civil penalty in this matter. *See* 52 Pa. Code § 69.1201(c)(9).

119. Denied. By way of further answer, Uber waived any challenges to the Commission's civil penalty on the grounds that it violates due process because Uber failed to raise such challenge below when the civil penalty amounts requested and imposed were much higher than that in the Commission's Order. The facts to which Uber stipulated in the instant proceeding demonstrate that each trip can be segregated and

⁷⁶ Order at 56; *See Pa. Pub. Util. Comm'n v. Bell Telephone Co. of Pa.*, 68 Pa. P.U.C. 430 (1988).

documented as an individual ride with a corresponding payment transaction, thus rendering it to be clear that each trip constituted a separate violation.⁷⁷ Precedent also supports the imposition of a “per trip” civil penalty. *See Newcomer Trucking*, 531 A.2d 85. Further, Uber’s “per day” versus “per trip” argument is an impermissible ground for reconsideration because it raises the same argument that was specifically decided against it.

4. **Uber’s Argument That The Commission Lacks The Authority To Issue A Cease And Desist Order Lacks Merit**

120. Denied. By way of further answer, Uber waived any challenges related to the Commission’s authority to issue a cease and desist order because Uber previously and repeatedly failed to raise such a challenge. To the extent that Uber’s argument is considered, Section 501 of the Code grants the Commission broad powers to enforce the law, supervise and regulate any public utilities doing business in the Commonwealth, and make regulations as may be necessary in the exercise of its powers. 66 Pa.C.S. § 501. Issuing interim emergency orders directing utilities to cease and desist from engaging in unlawful behavior fits squarely within the Commission’s statutory authority. *See* 52 Pa. Code §§ 3.6 *et seq.*⁷⁸ By way of further answer, the Supreme Court of Pennsylvania has upheld the Commission’s authority to enjoin motor carriers from providing uncertificated service. *See Israel*, 52 A.2d 317. Additionally, Commonwealth Court has upheld the Commission’s issuance of a cease and desist order directing a limousine service to cease from offering and providing non-luxury transportation service for which it was not

⁷⁷ Order at 32.

⁷⁸ The regulations pertaining to interim emergency relief were promulgated, in part, under the Commission’s authority pursuant to Section 501 of the Code.

certificated. *In re Delaware Valley Transp. Co. v. Pa. Pub. Util. Comm'n*, 400 A.2d 678 (Pa. Cmwlth. 1979).

121. Denied. I&E hereby incorporates its response to Paragraph 120.

122. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. I&E hereby incorporates its response to Paragraph 120.

123. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. I&E hereby incorporates its response to Paragraph 120.

124. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. I&E hereby incorporates its response to Paragraph 120.

125. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. I&E hereby incorporates its response to Paragraph 120.

126. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. I&E hereby incorporates its response to Paragraph 120.

127. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. I&E hereby incorporates its response to Paragraph 120.

128. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. I&E hereby incorporates its response to Paragraph 120.

5. **The Commission Properly Exercised Its Discretion In Evaluating The Civil Penalty Guidelines, From Which Uber Actually Benefitted Since The Civil Penalty Imposed Is Much Lower Than What Was Requested By I&E And Imposed By The Presiding ALJs**

129. Denied. The Commission's civil penalty comports with Section 3301 of the Code and as interpreted by Commonwealth Court, which permits the Commission to impose a fine of up to \$1,000 for each and every discrete violation of the Code regardless of the number of violations that occur. 66 Pa.C.S. § 3301; *Newcomer Trucking*, 531 A.2d at 87. Indeed, the Commission concluded that mitigating factors existed to refrain from imposing the maximum allowable civil penalty of \$1,000 for each of the 122,998 admitted violations committed by Uber (\$123 million) and to lower the civil penalty imposed by the presiding ALJs of \$49.9 million and the \$19 million civil penalty sought by I&E in its Amended Complaint. The Commission correctly concluded that Uber's actions presented a significant risk to the safety of its passengers, drivers and to other travelers and pedestrians, and that I&E was under no duty to present evidence of actual injury or harm; unlawful conduct by its nature is injurious *per se*.⁷⁹

130. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied that the civil penalty imposed by the Commission is unreasonable in light of Uber's 122,998 admitted violations of the Code

⁷⁹ Order at 52-53. *Israel*, 52 A.2d at 321.

or does not fit within the statutory scheme related to the Commission's authority to impose civil penalties.

131. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. I&E hereby incorporates its responses to Paragraphs 129 and 130.

132. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. By way of further answer, Uber waived any challenges to the Commission's civil penalty on the grounds that it violates due process because Uber failed to raise such challenge below when the civil penalty amounts requested and imposed were much higher than that in the Commission's Order. Additionally, Section 3301 of the Code, 66 Pa.C.S. § 3301, as well as case law interpreting Section 3301, *i.e. Newcomer Trucking*, constitute sufficient notice to Uber that a "per trip" civil penalty could be imposed. Further, the fine in question is \$11.4 million, not \$50 million, for a Company whose worth is estimated at over \$60 **billion**.

133. The Commission's \$11.4 million civil penalty comports with the statutory authority conferred on it by the General Assembly to impose and calculate civil penalties for violations of the Code. The Commission's Policy Statement serves as non-binding guidelines used to evaluate civil penalties on a case-by-case basis. Uber actually benefited from the Commission's analysis vis-à-vis the Policy Statement in that the civil penalty imposed by the Commission is far lower than what was sought by I&E and what had been recommended by the presiding ALJs.

134. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied that the Department of Environmental Protection's civil penalty matrix bears any relevance to the instant matter, which was brought and litigated before the Commission. Section 3301 of the Code, 66 Pa.C.S. §3301, applies.

135. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied that the Department of Environmental Protection's civil penalty matrix bears any relevance to the instant matter, which was brought and litigated before the Commission.

136. Denied. It is denied that the Commission's civil penalty analysis is vague.

137. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied that the Commission's Order is vague. By way of further answer, Uber misconstrues the holding in the case in which it cited. In *Northern Associates, Inc. v. State Bd. of Vehicle Manufacturers, Dealers and Salespersons*, 725 A.2d 857 (Cmwlth Ct. 1999), the Board's order was vacated as being vague because the order failed to specify or enumerate each of the violations underlying the civil penalty amount. The civil penalty imposed by the Commission in the instant matter expressly references Uber's 122,998 admitted violations of the Code.

138. Denied. It is denied that the Commission's civil penalty factors are vague. The tenth factor, 52 Pa. Code § 69.1201(c)(10), merely provides the Commission with flexibility to consider any other relevant issue that is not expressly contemplated in the other factors. Indeed, Uber benefited from the Commission's exercise of discretion since

the Commission imposed a civil penalty far lower than what was sought by I&E or recommended by the presiding ALJs.

139. The averments made in Paragraph 139 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent an answer is required, they are denied. The Commission appropriately considered the fare charged for each trip since this amount includes the monetary total that customers paid for the trip. It is impertinent and irrelevant how Uber internally divided the money collected from customers for its unlawful transportation.

140. The averments made in Paragraph 140 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent an answer is required, it is denied that the Commission is afforded too much discretion in developing a civil penalty and that the civil penalty imposed in the instant matter is unreasonable for Uber's 122,998 admitted violations of the Code.

141. Denied. The averments in Paragraph 141 refer to settled outcomes and, as such are misplaced. The Commission has held that it is inappropriate to consider a settlement, which is intended to be an amicable resolution of disputed claims, as precedent in any subsequent proceeding.⁸⁰ By way of further answer, the Commission was statutorily precluded from imposing a civil penalty greater than \$500,000 when the fatal incident referenced in Paragraph 141 occurred. It is also specifically denied that Uber's operations fell within a "grey area" of the law.

⁸⁰ Order at 56; *See Pa. Pub. Util. Comm'n v. Bell Telephone Co. of Pa.*, 68 Pa. P.U.C. 430 (1988).

142. Denied. The Commission's civil penalty comports with Section 3301 of the Code and as interpreted by Commonwealth Court, which permits the Commission to impose a fine of up to \$1,000 for each and every discrete violation of the Code regardless of the number of violations that occur. 66 Pa.C.S. § 3301; *Newcomer Trucking*, 531 A.2d at 87. Uber actually benefited from the Commission's exercise of discretion when considering the civil penalty guidelines in that Uber received a much lower civil penalty than recommended by the presiding ALJs and sought by I&E in its Amended Complaint.

6. **Contrary to Uber's Meritless Claim, The Commission's Order Is Supported By Substantial Evidence And Includes A Thorough And Reasoned Analysis Of The Civil Penalty Factors.**

143. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. By way of further answer, the Commission's Policy Statement at 52 Pa. Code § 69.1201 speaks for itself.

144. Admitted.

145. Denied. By way of further answer, through all of the averments made in Paragraph 145, Uber is raising the same arguments that were specifically decided against it and, therefore, the arguments do not constitute proper grounds for reconsideration and should be denied a second review.

i. **The Commission correctly concluded that Uber's conduct was serious**

146. The averment states a conclusion of law to which no response is required. By way of further answer, the Commission's Order speaks for itself.

147. The averments made in Paragraph 147 contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent an answer is required, they are denied. The Commission should be skeptical of Uber's claims, which are unsupported by record evidence, because there are two sides to every story, including the fact that after Rasier-PA became certificated, it initially refused to submit any information pertaining to the identity or location of its drivers unless I&E motor carrier enforcement officers in Pittsburgh traveled across the Commonwealth and visited its attorney's office in Philadelphia each time any officers desired to view any records that Uber is statutorily obligated to provide. *See* 66 Pa.C.S. § 505 (related to the duty to furnish information to the Commission). I&E had to fight for many months to even be able to review any information from Uber. By way of further answer, it is emphatically denied that "no one" was harmed by Uber's operations. Record evidence supports that at least nine accidents over a six-month period were serious enough to warrant the filing of an insurance claim⁸¹ and more accidents may have gone unreported. Because Uber failed to submit to the Commission's regulation requiring the filing of accident reports during the time in which it provided unlawful transportation service, the Commission will never know the exact number of accidents that occurred during this time. *See* 52 Pa. Code § 29.44. Additionally, the Commission correctly concluded that unlawful conduct is *per se* injurious to the public and that I&E was not required to present evidence of actual injury or harm.⁸²

⁸¹ (May 6, N.T. 168).

⁸² Order at 53.

148. Denied. Uber provides no citation to the record to support its bald assertion regarding I&E's witness' testimony and, therefore, its claim should be disregarded. Further, the Commission correctly rejected Uber's position that it was permitted to self-regulate when it conducted its uncertificated transportation.⁸³ I&E hereby incorporates its response to Paragraph 147.

149. Denied. Uber fails to cite to any portion of the record to support its baseless assertions and, therefore, they should be denied. By way of further answer, Uber operates in an industry that is heavily regulated and the Commission correctly rejected the notion that Uber is permitted to self-regulate.⁸⁴

- ii. The Commission correctly considered that the potential existed for serious consequences to occur

150. Denied. By way of further answer, it is emphatically denied that "no one" was harmed by Uber's operations. Record evidence supports that at least nine accidents over a six-month period were serious enough to warrant the filing of an insurance claim⁸⁵ and more accidents may have gone unreported. Because Uber failed to submit to the Commission's regulation requiring the filing of accident reports during the time in which it provided unlawful transportation service, the Commission will never know the exact number of accidents that occurred during this time. *See* 52 Pa. Code § 29.44. Additionally, the Commission correctly concluded that unlawful conduct is *per se* injurious to the public and that I&E was not required to present evidence of actual injury

⁸³ Order at 53.

⁸⁴ Order at 53.

⁸⁵ (May 6, N.T. 168).

or harm.⁸⁶ Further, Uber operates in an industry that is heavily regulated and the Commission correctly rejected the notion that Uber is permitted to self-regulate.⁸⁷

151. Denied. In its Order, the Commission correctly recognized that policy statements are not binding norms, but are announcements of the Commission's tentative intentions for the future.⁸⁸ Caselaw, however, is binding and supports the proposition that unlawful conduct "is tantamount in law to calling it injurious to the public. For one to continue such conduct constitutes irreparable injury."⁸⁹ Thus, the Commission's consideration of the potential for harm to occur was entirely appropriate.

152. The averment states a conclusion of law to which no response is required. To the extent that a response is required, Uber's characterization of the law cited is denied.

153. Denied. By way of further answer, it is emphatically denied that "no one" was harmed by Uber's operations. Record evidence supports that at least nine accidents over a six-month period were serious enough to warrant the filing of an insurance claim.⁹⁰ Because Uber failed to submit to the Commission's regulation requiring the filing of accident reports during the time in which it provided unlawful transportation service, the Commission will never know the exact number of accidents that occurred during this time. *See* 52 Pa. Code § 29.44.

⁸⁶ Order at 53.

⁸⁷ Order at 53.

⁸⁸ Order at 52, *citing Pa. Human Relations Comm'n v. Norristown Sch. Dist.*, 374 A.2d 671, 679 (Pa. 1977).

⁸⁹ Order at 52, *citing Israel*, 52 A.2d at 321.

⁹⁰ (May 6, N.T. 168).

156. The averment states a conclusion of law to which no response is required. To the extent that a response is required, Uber's characterization of the law cited is denied. It is specifically denied that the Commission's approach was inappropriate, unlawful or not based on Commission precedent when it considered the potential for serious consequences resulting from the 122,998 trips that Uber provided without Commission oversight.

157. The averment states a conclusion of law to which no response is required. To the extent that a response is required, Uber's characterization of the law cited is denied. It is specifically denied that the Commission's approach was inappropriate, unlawful or not based on Commission precedent when it considered the potential for serious consequences resulting from the 122,998 trips that Uber provided without Commission oversight.

158. Denied. Uber's witness was not able to testify about the total number of accidents that occurred⁹³ or the number of insurance claims that were filed⁹⁴ or whether Uber's drivers were found at fault by its insurance carrier for the claims that were filed.⁹⁵ Uber's witness also could not testify about how many accidents involved injuries of any kind.⁹⁶ Uber's witness did not submit any documentation to support his unverified claim that *only* 9 accidents occurred that could lead to an insurance claim.⁹⁷

⁹³ (May 6, N.T. 143-144).

⁹⁴ (May 6, N.T. 159).

⁹⁵ (May 6, N.T. 144).

⁹⁶ (May 6, N.T. 159).

⁹⁷ (May 6, N.T. 164).

159. Denied. It is specifically denied that the Commission's approach in considering the potential for serious consequences resulting from the 122,998 trips that Uber provided without Commission oversight was inappropriate, unlawful or not based on Commission precedent. Uber's conduct in providing widespread unauthorized transportation over a 6-month time period had the real potential to jeopardize public safety on an even greater scope than the examples cited by Uber in Paragraph 159. Indeed, many safety incidents have occurred or are alleged to have occurred in other jurisdictions including sexual assaults committed by Uber drivers (with one accusation being advanced in Philadelphia) and an Uber driver who killed six people in a shooting spree in Michigan. Such incidents point to the necessity of regulating Uber's service and emphasize the real potential for harm. Unlike Uber, I&E deems it inappropriate to wait for an Uber driver to similarly kill six people in a shooting spree in Pennsylvania before the Commission's regulatory oversight would be warranted.

- iii. The Commission correctly concluded that Uber's defiant conduct in blatantly disregarding orders to cease and desist was intentional

160. Denied. With regard to all of the averments made in Paragraph 160, Uber is raising the same arguments that were specifically decided against it and, therefore, the averments do not constitute proper grounds for reconsideration and should be denied. By way of further answer, the evidence admitted at the evidentiary hearing in this matter does not support Uber's assertion that it complied with requirements related to driver integrity, insurance and vehicle safety. In fact, Uber was not able to prove at hearing that it maintained any primary liability insurance coverage and "proof" of Uber's insurance

coverage was specifically excluded from becoming a part of the evidentiary record.⁹⁸

With regard to whether Uber's conduct was intentional, the Commission appropriately concluded that "it is difficult to construe Uber's actions of continuing to operate after two cease and desist orders as being anything but a deliberate disregard of the Commission's authority."⁹⁹

161. Denied. Uber made a calculated and conscious business decision to defy the Commission's authority in order to continue providing its unauthorized transportation. Further, as early as April 2014, staff advised Uber to file an application to cover its operations.¹⁰⁰ Rather, Uber's *modus operandi* is to enter a market unlawfully first and seek permission later. Pennsylvania is merely one jurisdiction of many that is maltreated by Uber's unlawful and arrogant corporate culture.

162. Denied. Uber's argument that a perceived public demand justified its continued unlawful transportation is an impermissible ground for reconsideration because it raises the same argument that was specifically decided against it. The Commission has already determined that limiting the transportation options for some does not outweigh the higher goal of public safety.¹⁰¹

163. Denied. The mere filing of an application *for* authority did not entitle Uber to commence or continue operating unlawfully.

⁹⁸ (May 6, N.T. 160, 166).

⁹⁹ Order at 54.

¹⁰⁰ Order at 33.

¹⁰¹ July 24, 2014 Cease and Desist Order at 24; Order at 52.

iv. The Commission correctly adopted the presiding ALJs' reasoning with regard to the factor concerning the number of affected customers

164. Denied. The Commission correctly adopted the presiding ALJs' analysis that Uber's conduct placed a substantial number of people at risk,¹⁰² a fact which is bolstered by the sheer number of unauthorized trips that Uber provided. Considering the potential for harm is legally permissible. *See Israel*, 52 A.2d at 321.

165. The averment states a conclusion of law to which no response is required. To the extent that a response is required, Uber's characterization of the law cited is denied. By way of further answer, the case cited relates to the Commission's approval of a settlement agreement. The Commission has held that it is inappropriate to consider a settlement, which is intended to be an amicable resolution of disputed claims, as precedent in any subsequent proceeding.¹⁰³

166. The averment states a conclusion of law to which no response is required. To the extent that a response is required, Uber's characterization of the law cited is denied. By way of further answer, the case cited relates to the Commission's approval of a settlement agreement. The Commission has held that it is inappropriate to consider a settlement, which is intended to be an amicable resolution of disputed claims, as precedent in any subsequent proceeding.¹⁰⁴ Additionally, the Commission was prohibited from assessing a civil penalty greater than \$500,000 at the time the incident referenced herein occurred, further distinguishing it from the instant case.

¹⁰² Order at 54; Initial Decision at 30.

¹⁰³ Order at 56; *See Pa. Pub. Util. Comm'n v. Bell Telephone Co. of Pa.*, 68 Pa. P.U.C. 430 (1988).

¹⁰⁴ *Id.*

167. The averment states a conclusion of law to which no response is required. To the extent that a response is required, Uber's characterization of the law cited is denied. I&E hereby incorporates its response to Paragraph 166.

168. The averment states a conclusion of law to which no response is required. To the extent that a response is required, Uber's characterization of the law cited is denied. The case cited by Uber in Paragraph 168, *HIKO Energy*, does not refer to a previous Commission decision in a "similar situation." See 52 Pa. Code § 69.1201(c)(9). Rather, *HIKO Energy* dealt with an electric generation supplier billing an amount in excess of the price it guaranteed. *HIKO Energy* did not involve an adverse effect, or potentially adverse effect, to public safety, such as the uncertificated passenger transportation at issue here.

169. Denied. The Commission's consideration of the potential for harm is appropriate and legally permissible. See *Israel*, 52 A.2d at 32. By way of further answer, Uber deprived the Commission of any ability to oversee whether it followed the Commission's regulations pertaining to driver integrity or vehicle safety in refusing to submit to the Commission's oversight.

170. Uber's argument that a perceived public demand justified its continued unlawful transportation is an impermissible ground for reconsideration because it raises the same argument that was specifically decided against it. The Commission has already

determined that limiting the transportation options for some does not outweigh the higher goal of public safety.¹⁰⁵

- v. The Commission appropriately determined that the need to deter future wrongdoing not only applies to the utility at hand, but also to the industry as a whole

171. Denied. Uber intentionally omitted the remainder of the quote it cited in *HIKO Energy Order*. The actual quote is as follows: “Though we may more often craft penalties specific to the individual case and circumstances at hand, we have leeway to consider the impact of our actions as a deterrence to the industry as a whole.” *HIKO Energy* at 44, fn. 13. Thus, the Commission has considered deterrence on an industry-wide basis. By way of further answer, deterrence to the individual case at hand is also necessary. Rasier-PA’s Certificate of Public Convenience is only valid for two years and Rasier-PA will need to be deterred from providing unlawful transportation in the future should its Certificate not be renewed.

172. The averment states a conclusion of law to which no response is required. To the extent that a response is required, the Commission’s Order speaks for itself.

173. Denied. I&E hereby incorporates its response to Paragraph 171. By way of further answer, the civil penalty factor pertaining to deterrence does not consider any purported “commitment to compliance.”¹⁰⁶ Such consideration is given with regard to the factor related to an entity’s efforts to modify internal practices and procedures. *See*

¹⁰⁵ July 24, 2014 Cease and Desist Order at 24; Order at 52.

¹⁰⁶ Petition at 87.

52 Pa. Code § 69.1201(c)(4). In fact, the Commission already credited Uber by imposing a lower civil penalty due to Rasier-PA's fulfillment of compliance requirements.¹⁰⁷

174. The averment states a conclusion of law to which no response is required. To the extent that a response is required, it is denied. Precedent exists for the Commission to consider deterrence on an industry-wide basis. *See HIKO Energy Order*.

175. Denied. Uber has provided no new or novel argument for the Commission to reconsider its conclusion with respect to the deterrence factor, which was definitively decided against Uber and should not receive a second review. The Commission expressly determined that the need for a significant civil penalty is necessary to deter Uber and other uncertificated motor carriers because "Uber's actions in providing its motor carrier service without authority and in violation of cease and desist orders were well publicized."¹⁰⁸

176. Denied. Deterrence was one of many factors that the Commission considered in imposing an \$11.4 million civil penalty upon Uber. The Commission did not stifle competition, as Uber asserts, because it granted Rasier-PA's application for authority. Rather, Uber simply refuses to be held accountable for its widespread unlawful operation that occurred prior to the granting of Rasier-PA's operating authority. Uber made a business decision to defy Commission orders and now must pay the price.

¹⁰⁷ Order at 54.

¹⁰⁸ Order at 55.

- vi. In accordance with precedent, the Commission properly refused to consider settlements as being “similar situations” to litigated proceedings

177. Denied. The Commission properly refused to consider settled outcomes as being “similar situations” to litigated proceedings for the purposes of evaluating 52 Pa. Code § 69.1201(c)(9). It is also denied that Lyft’s conduct mirrored Uber’s. Uber’s recalcitrant attitude is summarized in the “Background” section of I&E’s Answer and could not be more dissimilar to the conduct in *Lyft*.

178. The averment states a conclusion of law to which no response is required. To the extent that a response is required, it is denied. It is also expressly denied that Uber’s civil penalty exposure ranges between \$201,000 and \$388,000. Rather, Uber’s civil penalty could have been up to a maximum amount of nearly \$123 million [\$1,000 x 122,998 trips] pursuant to 66 Pa.C.S. § 3301.

179. Denied. By way of further answer, it is ironic that Uber argues that the Commission is not required to follow its own precedent¹⁰⁹ while simultaneously requesting that the Commission utilize the *Lyft* settlement as precedential value for the purpose of establishing a civil penalty in this matter.

180. Denied. The Commission’s Order in *Lyft*, which adopted the presiding ALJs’ reasoned analysis of the civil penalty factors, speaks for itself.

181. Denied. The Commission did not err in concluding that litigated matters do not constitute “similar situations” as settled matters for the purposes of establishing a civil penalty. Even if the Commission considers the settlement in *Lyft*, Lyft’s conduct

¹⁰⁹ See *Philboro Coach Corp. v. Pa. Pub. Util. Comm’n*, 446 A.2d 725 (Pa. Cmwlth. 1982).

was not as egregious as Uber's in many ways, including the fact that far fewer trips were provided and that the company appreciated the integrity of the Commission's adjudicatory process in abiding by orders compelling discovery to I&E.

182. Denied. It is well settled that the Commission is authorized to impose a civil penalty for each instance of unauthorized transportation because each unlawful trip constitutes a discrete violation of the Code. *See* 66 Pa.C.S. § 3301; *Newcomer Trucking*, 531 A.2d 85.

- vii. Evidence that could have been, but was not presented below, does not constitute "new evidence" and is not the proper subject for additional relevant factors when developing a civil penalty

183. The averments made in this Paragraph contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent an answer is required, it is denied. Uber should have anticipated a sizeable "per trip" civil penalty based on Section 3301 and *Newcomer Trucking*. By way of further answer, Uber had the opportunity to present evidence at the evidentiary hearing, such as financial documentation, to support its bald, unverified claim of financial distress. Such claim is contrary to the \$60 billion "plus" valuation of Uber Technologies, Inc. as reported in media outlets.

184. I&E hereby incorporates its response to Paragraph 183.

185. The averments made in this Paragraph contain extra-record evidence that should be stricken or, alternatively, not considered by the Commission. To the extent an

answer is required, it is denied that such averments are relevant to Uber's conduct in providing unauthorized passenger transportation.

186. I&E hereby incorporates its response to Paragraph 185.

187. I&E hereby incorporates its response to Paragraph 185.

188. I&E hereby incorporates its response to Paragraph 185.

189. Denied. The civil penalty imposed by the Commission is supported by substantial record evidence and in accordance with the civil penalty scheme provided in Section 3301 of the Code. The Commission's thorough and reasoned analysis of the Policy Statement justifies the level of civil penalty that was imposed. In fact, I&E avers that a much larger civil penalty is warranted.

WHEREFORE, for the reasons set forth above, the Bureau of Investigation and Enforcement respectfully requests that the Petition for Rehearing and Reconsideration of Uber Technologies, Inc., *et al.*, which provides no evidence that was not previously available, contains extra-record material, raises the same arguments that have been definitively decided and brings forth challenges that were waived below, be denied.

Respectfully submitted,



Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Johnnie E. Simms
Chief Prosecutor
PA Attorney ID No. 33911

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 772-8839
stwimer@pa.gov

Dated: June 6, 2016

Pennsylvania Public Utility
Commission, Bureau of Investigation
and Enforcement

v.

Uber Technologies, Inc., Rasier-PA,
LLC, Rasier, LLC and Gegen, LLC

:
:
:
:
:
: Docket Nos. C-2014-2422723;
: P-2016-_____

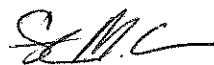
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail and Electronic Mail:

Karen O. Moury, Esq.
Buchanan, Ingersoll and Rooney, P.C.
409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
karen.moury@bipc.com

Counsel for Uber Technologies, Inc., et al.



Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Phone: (717) 772-8839
Email: stwimer@pa.gov

Dated: June 6, 2016