BEFORE THE

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of the Bureau of Investigation and **:**

Enforcement of the Pennsylvania Public Utility **:**

Commission for an Interim Emergency Order **:**

requiring Lyft, Inc. to immediately cease and **:** P-2014-2426847

desist from brokering transportation service for **:**

compensation between points within the **:**

Commonwealth of Pennsylvania. **:**

**ORDER ON INTERIM EMERGENCY RELIEF**

 The Bureau of Investigation and Enforcement’s petition for interim emergency relief in the form of an order to cease and desist from brokering transportation directed to Lyft, Inc. is granted. Further, this matter is certified to the Commission as a material question in accordance with the Commission’s regulations.

PROCEDURAL HISTORY

 On June 5, 2014, the Bureau of Investigation and Enforcement (BIE) filed a complaint against Lyft, Inc. (Lyft). The complaint alleges that Lyft, through its digital software – an app – is acting as a broker of transportation services for compensation without appropriate authority from the Commission. As relief, BIE seeks civil penalties in the amount of $130,000, and that Lyft cease offering passenger transportation service until it has conformed to the requirements of the Public Utility Code and Commission regulations. BIE filed a Petition for Interim Emergency Relief which seeks an immediate order directing Lyft to cease and desist from offering transportation services on June 16, 2014.

By hearing notice dated June 17, 2014, the Commission scheduled a hearing on BIE’s petition and assigned this matter to us for disposition. On June 18, 2014, we issued a prehearing order which outlined the procedures for the conduct of the hearing. Lyft filed an answer to the petition on June 23, 2014. Both BIE and Lyft filed prehearing memoranda on June 25, 2014.

 The hearing convened as scheduled on June 26, 2014. BIE appeared and was represented by Stephanie M. Wimer, Esquire and Michael L. Swindler, Esquire. BIE offered the testimony of one witness, Charles Bowser, and proffered three exhibits which were admitted into the record. Lyft appeared and was represented by Adeolu A. Bakare, Esquire. Lyft offered no testimony and did not offer any exhibits.

 The purpose of an interim emergency order is to grant or deny injunctive relief during the pendency of a proceeding. 52 Pa.Code § 3.1. The purpose of granting injunctive relief has been described as “to maintain things as they are until the rights of the parties can be considered and determined after a full hearing.”[[1]](#footnote-1) The Pennsylvania Supreme Court also said:

The rule is ‘that the status quo which will be preserved by preliminary injunction is the last actual, peaceable [and, we may add, lawful] noncontested status which preceded the pending controversy’.

A preliminary injunction is to put and keep matters in the position in which they were before the improper conduct of the defendants commenced and to prevent them from gaining any advantage by their own wrongful acts.[[2]](#footnote-2)

 Emergency relief in Commission proceedings is governed by 52 Pa.Code §§ 3.1-3.12. The provision at 52 Pa.Code § 3.1 defines an emergency as “[a] situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.” A party seeking emergency interim relief must prove by a preponderance of the evidence that the facts and circumstances meet all four of the requirements set forth in 52 Pa.Code § 3.6(b). If the party seeking relief fails to prove any one of the four requirements, the Commission will deny the relief requested.[[3]](#footnote-3) As set forth above, the party seeking relief must demonstrate the following:

1. The petitioner's right to relief is clear.

2. The need for relief is immediate.

3. The injury would be irreparable if relief is not granted.

4. The relief requested is not injurious to the public interest.[[4]](#footnote-4)

**The Complaint**

 On June 5, 2014, BIE filed a complaint against Lyft. The Commission docketed the complaint at C-2014-2422713. The complaint alleges, among other things, that Lyft provides internet and mobile application software (the Lyft app) that connects passengers with individuals who have registered with Lyft as drivers or driver operators (Lyft driver). The Lyft app permits a passenger’s phone to locate the nearest available Lyft driver, and then alerts the Lyft driver of the passenger’s ride request.[[5]](#footnote-5) According to the complaint, Lyft drivers use their personal vehicles to respond to ride requests.[[6]](#footnote-6)

 BIE avers that Lyft, through the Lyft app, is acting as a broker of transportation in Pennsylvania without proper Commission authority. A “broker” is defined as:

Any person or corporation not included in the term “motor carrier” and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, or in the furnishing, providing, or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing or procuring of facilities therefor, other than as a motor carrier directly or jointly, or by arrangement with another motor carrier, and who does not assume custody as a carrier.[[7]](#footnote-7)

BIE avers that pursuant to 66 Pa.C.S. § 2505(a), brokers of transportation in the Commonwealth of Pennsylvania must obtain a brokerage license issued by the Commission prior to engaging in the business of being a broker, and that Lyft does not hold a brokerage license issued by the Commission.

 BIE also alleged that between March 31, 2014 and April 21, 2014, BIE Motor Carrier Enforcement Manager Charles Bowser (Officer Bowser), after downloading the Lyft app to a mobile phone, was transported on 12 occasions by Lyft drivers using their personal vehicles and a fare for each trip was billed to his credit card for each trip, ranging from $5.00 to $9.00. The Lyft drivers who responded to Officer Bowser’s requests and provided transportation did not have proper Commission authority to transport persons for compensation within Pennsylvania, as required by the Public Utility Code.[[8]](#footnote-8)

 Accordingly, BIE takes the position that Lyft is violating Section 1101 of the Public Utility Code by providing transportation services for compensation without appropriate authority to do so. BIE’s complaint seeks civil penalties in the amount of $130,000, and an order requiring Lyft to cease and desist from providing transportation services until it has secured appropriate authority from the Commission.

 Lyft filed an answer to the complaint on June 26, 2014. Lyft denies the material allegations of the complaint and takes the position that “drivers using Lyft’s platform do not presently offer transportation service for compensation . . . .” Therefore they are not motor carriers and Lyft is not operating as a broker.[[9]](#footnote-9)

**The Petition for Interim Emergency Relief**

 BIE filed its petition for interim emergency relief on June 16, 2014. BIE seeks an order requiring Lyft to “immediately cease and desist from utilizing its digital platform to facilitate transportation for compensation to passengers using non-certificated drivers in their personal vehicles.” In its petition, BIE incorporates the averments of its complaint. In support of its petition, BIE further avers that the need for relief is immediate and ongoing because Lyft continues to operate in spite of direction by BIE to cease. Lyft’s violation of the law constitutes irreparable harm *per se.* BIE takes the position that Lyft’s operation without authority from the Commission represents a substantial threat to public safety.

 Lyft filed an answer to the petition which mirrors its answer to the complaint: Lyft drivers do not offer transportation services for compensation and therefore are not motor carriers as defined by the Public Utility Code. Therefore, it is not violating the law and no cease and desist order is necessary.

**Facts Presented at the Hearing**

 Only one witness testified at the hearing on the petition for an emergency order: Motor Carrier Enforcement Manager Charles S. Bowser. Officer Bowser detailed his education and credentials[[10]](#footnote-10) and provided testimony about his investigation of Lyft and its operations as well as his expert opinion concerning the danger posed by Lyft’s continued operation without Commission oversight or regulation.

 Officer Bowser became aware of Lyft from reports in the media and the February 8, 2014 launch announcement for Lyft on Lyft’s website. Thereafter he downloaded the Lyft app onto a smartphone and registered. The registration required him to provide a Facebook account and a credit card number. From late March into early April he procured 12 rides using the Lyft app. On each occasion he opened the app on his phone and selected the button labelled “service request.” He testified that each ride cost money. In support of this testimony he sponsored BIE Ex. 2, which was a packet of emails and invoices that he had received from Lyft in connection with his Lyft account and rides. The emails include advertisements from Lyft which described “discounts” for rides during “slow hours” introduced as a “Happy Hour” discount.[[11]](#footnote-11) Another email advertised “lower prices in all markets.”[[12]](#footnote-12) Each invoice included a ride charge, which noted the mileage and duration of the ride. Some of the invoices indicated a credit for a “Happy Hour” discount. Each noted a charge made to a Discover card which Officer Bowser indicated was his credit card.[[13]](#footnote-13) Officer Bowser also testified that he visited the Lyft website on June 25, 2014, and downloaded an article entitled “Donations v. Charges.”[[14]](#footnote-14) This article included a list of cities where Lyft advertises that it collects donations and a list of cities where Lyft advertises that it “charges a set amount for rides.” Pittsburgh, Pennsylvania was included among the cities where Lyft advertises that it charges a set amount for rides.[[15]](#footnote-15) Finally, Officer Bowser testified that he or someone under his supervision had secured transportation through the Lyft app as recently as June 24, 2014.

 Lyft does not hold any certificate of public convenience or license from the Commission.[[16]](#footnote-16) Officer Bowser testified that none of the drivers from whom he secured transportation had motor carrier authority from the Commission.

 Officer Bowser also offered a substantial amount of testimony concerning the risks posed to the public by the continued operation of Lyft without Commission oversight. He detailed the inspection requirements for certificated carriers in terms of driver records, vehicle records and insurance requirements. He stated that these inspections are an important part of the Commission’s mission to protect the public safety. Generally, certificated carriers are inspected annually. Carriers are required to maintain a current insurance certificate on file with the Commission. In the event that there is a lapse of insurance coverage, the Commission is notified. Driver records must be maintained that demonstrate that a carrier regularly determines that a driver has a clean driving record and that a criminal history is kept on file.

 Vehicle records must also be maintained and vehicles are inspected by the Commission. Not only must vehicles comply with the Pennsylvania Department of Transportation inspection standards, but they must also comply with additional requirements as provided in the Public Utility Code and Commission regulations. Officer Bowser testified that in his experience, vehicles used for commercial purposes typically have more mileage and more wear and tear. Therefore, vehicles used as motor carriers require more oversight than the safety inspection required for personal vehicles by the Department of Transportation.

 Officer Bowser testified that, based on his experience, the operation of Lyft without Commission oversight is “a recipe for disaster” and poses a significant threat to public safety. Unlike the drivers and vehicles utilized by certificated carriers, the Commission has no ability to inspect the driver safety or criminal backgrounds of Lyft drivers, because they do not have authority to operate from the Commission. The Commission has no way of knowing whether Lyft or its drivers have adequate insurance because Lyft has not submitted to Commission oversight. In short, Lyft’s operation poses a significant safety concern because the Commission does not know how many drivers are operating, where they are operating, or who they are.

 Although counsel for Lyft made statements to the effect that Lyft has standards for driver and vehicle safety and insurance, no testimony or evidence was offered into the record to support those statements.

**The Standard for Emergency Relief Has Been Met**

 It is important to note that our findings here are based solely on the record created before us at the hearing. These proceedings are expedited and prepared on a very short time-frame, as required by the regulations. The Commission is free to reach different conclusions based on the facts presented in any proceedings on the underlying complaint after a full and complete evidentiary record is completed.

 1. The Right to Relief is Clear

 BIE has established that its right to relief is clear. That is, the petition raises a substantial legal question and BIE adduced sufficient evidence to conclude that it has a reasonable expectation of success on the merits of the underlying complaint.[[17]](#footnote-17)

 The Public Utility Code defines a common carrier as one “who or which holds out or undertakes the transportation of passengers . . . by motor vehicle for compensation . . . .”[[18]](#footnote-18) Such a common carrier providing transportation services must hold a certificate of public convenience.[[19]](#footnote-19)

 The Code further defines a broker as “Any person or corporation not included in the term “motor carrier” . . . who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier . . . or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation . . . .[[20]](#footnote-20) A broker must be licensed by the Commission and is precluded from arranging transportation with motor carriers who do not hold a certificate of public convenience or permit.[[21]](#footnote-21)

 The evidence presented at the hearing established that neither Lyft nor the drivers who provided rides to Officer Bowser when he initiated a service request using the Lyft app hold authority from the Commission to provide transportation services. Officer Bowser paid for each trip that he took.

 In its answer to the petition, Lyft contends that it does not receive compensation in exchange for transportation, but instead may receive a “donation.” No evidence was offered in support of this contention, and the facts presented at the hearing clearly suggest otherwise. Moreover, the notion that a passenger is not required to pay for the transportation, is not dispositive of the question of whether a transaction is “transportation for compensation” within the meaning of the Public Utility Code:

Moselle Morris testified that she did not plan on charging individuals for her proposed transportation service. If this is correct, she is transporting persons but is not doing so for compensation. If she is proposing to transport individuals for free, she is not acting as a common carrier. If she is not acting as a common carrier, she is not providing public utility service and does not need a certificate of public convenience to provide her proposed service.

However, if there is indiscriminate holding out to the general public, the fact that Morris does not demand a fixed charge is irrelevant. If there is indiscriminate holding out to the general public, the fact that a passenger riding in Morris’ van is under no legal obligation to pay is also irrelevant. *Commonwealth v. Babb*, 70 A.2d 660 (Pa. Super 1950). Either of these arrangements would be considered a subterfuge to avoid the duties of a common carrier. *Pennsylvania Pub. Util. Comm’n v. Israel*, 52 A.2d 317 (Pa. 1947). Even if Morris did not demand a fixed charge from her passengers, if she were holding out to the general public, she would be providing common carrier service and need a certificate of public convenience. Conversely, if Morris were not holding out to the general public, it would appear that she would not need a certificate of public convenience.[[22]](#footnote-22)

 Thus, even if Lyft had provided evidence to support its contention that donations are not compensation, BIE still established a reasonable likelihood of success on the merits.

 2. The Need for Relief is Immediate

 Since the BIE complaint was filed on June 5, 2014, Lyft has not suspended its operation. Evidence at the hearing also establishes that non-traffic citations were issued to 12 Lyft drivers for providing transportation services without a certificate of public convenience and Lyft has not suspended its operation. Lyft has filed an application for experimental service, but has not been granted that authority by the Commission. Officer Bowser testified in great detail about his concerns for public safety because of the lack of information concerning the safety and integrity of drivers and vehicles used by Lyft in its operation. He testified that in his view as an enforcement officer, the public is at risk if Lyft continues to fail to cooperate with the Commission in the performance of its duties to protect the public safety. Accordingly, BIE successfully demonstrated that the need for relief in the form of an order for injunctive relief is immediate.

 3. The Harm is Irreparable

 Relying on the seminal Supreme Court decision of *Pa. Pub. Util. Comm’n v. Israel*,[[23]](#footnote-23) BIE contends that a violation of the law constitutes irreparable harm *per se*. In that case, much like the facts presented to us here, certain taxicabs began providing transportation to passengers in Philadelphia and did not secure a certificate of public convenience from the Commission. The court stated “If the passenger asked how much the bill was, some of the drivers would state that they do not charge, but would accept whatever was given them.”[[24]](#footnote-24) Accordingly, the Commission sought an injunction to prevent the taxicab association from providing for the transportation of passengers in violation of the Public Utility Code. The court granted the injunction observing:

 The argument that a violation of law can be a benefit to the public is without merit. 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.

 Furthermore, the evidence shows, and additional cases heard by us indicate, that the number people operating taxicabs unlawfully in Philadelphia is increasing since the defendants started their method of operation. Spreading unlawful conduct is irreparable injury of the most serious nature, and a proper subject for preliminary injunction.[[25]](#footnote-25)

As we explained above, BIE has set forth sufficient facts to conclude that, for the purposes of interim relief, Lyft is operating unlawfully. Lyft did not contest these facts with any testimony or other evidence. Therefore, irreparable harm is established as a matter of law.

 4. The Relief Requested is Not Injurious to the Public Interest

 We are not blind or deaf to the public opinion, at least in the Pittsburgh area, that the transportation needs of many individuals are not adequately met by currently certificated carriers. Nor are we unmindful of the potential benefits of the service proposed by Lyft of “enhancing access to transportation alternatives, supplementing existing public transportation, reducing single occupancy vehicle trips, vehicle ownership and usage, and assisting the state in achieving reductions in greenhouse gas emissions.”[[26]](#footnote-26) Therefore, it may seem to some that our order here is contrary to the public interest in the ability of individuals to secure transportation in a timely manner.

 However, the Commission is charged with a higher duty than just the public convenience. The Commission is also charged with ensuring the public safety. The General Assembly determined that before transportation can be provided to the public for compensation, a certificate of public convenience issued by the Commission is necessary. It delegated authority to the Commission to determine how and by whom those services should be rendered by determining that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.”[[27]](#footnote-27) Indeed, the public relies on this Commission to ensure that the travelling public is transported safely. The public has a compelling interest in compliance with the law and the Commission has an unassailable duty to ensure compliance with the Public Utility Code.

 Here, Lyft began operating in Pennsylvania long before it filed an application for authority from the Commission. Although the digital platform used to connect passengers with transportation is new and innovative, the proscription against using private vehicles for transportation without Commission authority is hardly new:

A situation almost identical to the one now before us arose in Pittsburgh in 1930 during a cab drivers’ strike. The strikers obtained automobiles and held themselves out as ready to accommodate the general public by transporting passengers anywhere in the City of Pittsburgh. With a few exceptions no fares were charged, but no “contributions” were refused. The defendants held no certificates of public convenience from the Public Service Commission. The Courts granted a preliminary injunction restraining the defendants from transporting passengers, holding that they were engaged in business as common carriers and that the jurisdiction to restrain them as law violators by preliminary injunction was clear: Yellow Cab Co. v. Cab Drivers Local No. 294A, 1931, 79 P.L.J. 242.[[28]](#footnote-28)

Moreover, Officer Bowser testified convincingly that the Commission’s ability to ensure vehicle safety, driver integrity and that the carriers have some form of insurance coverage is integral to the Commission’s mission of protecting public safety.

 In the closing argument, counsel for Lyft emphasized that no present danger to the public has been established. This may be true so far. However, the rules and regulations of the Commission are in place to ensure that harm to individuals is prevented and empowers the Commission with recourse on behalf of the public should a public utility fail to comply with public safety requirements. Because Lyft has chosen to attempt to avoid Commission jurisdiction and has failed to comply with the law, the Commission and the public it serves have been deprived of the ability to protect the travelling public.[[29]](#footnote-29)

THEREFORE,

IT IS ORDERED:

1. That the petition for emergency relief filed on June 16, 2014 by the Bureau of Investigation and Enforcement is GRANTED.

 2. That Lyft, Inc. shall immediately cease and desist from utilizing its digital platform to facilitate transportation to passengers utilizing non-certificated drivers in their personal vehicles until such time as it secures appropriate authority from the Commission.

 3. That the grant of relief by interim emergency order in proceedings at PUC Docket No. P-2014-2426847 is certified to the Commission as a material question requiring interlocutory review.

Date: July 1, 2014

 Mary D. Long

 Administrative Law Judge

 Jeffrey A. Watson

 Administrative Law Judge

**P-2014-2426847 – PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT v. LYFT, INC.**

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1. *Pa. Pub. Util. Comm’n v. Israel*, 52 A.2d 317; 321 (Pa. 1947). [↑](#footnote-ref-1)
2. *Id.*, 52 A.2d at 321-22*.* [↑](#footnote-ref-2)
3. *Crums Mill Assoc. v. Dauphin Consolidated Water Supply Co*., 1993 PA PUC LEXIS 90 (1993). [↑](#footnote-ref-3)
4. 52 Pa.Code § 3.6(b). [↑](#footnote-ref-4)
5. Complaint ¶ 2. [↑](#footnote-ref-5)
6. Complaint ¶ 3. [↑](#footnote-ref-6)
7. 66 Pa.C.S. § 2501(b). [↑](#footnote-ref-7)
8. Complaint ¶¶ 9-10. [↑](#footnote-ref-8)
9. Answer ¶ 4. [↑](#footnote-ref-9)
10. Officer Bowser has served in an enforcement capacity with the Commission since 1984. He currently serves as the Regional Enforcement Manager for the Western Region, which includes Pittsburgh and Altoona. He has held his current position since December 2010. Officer Bowser holds a Bachelor’s degree in the Administration of Justice and has completed coursework toward a Master’s Degree in Public Administration. [↑](#footnote-ref-10)
11. BIE Ex. 2 at pp. 3-4. [↑](#footnote-ref-11)
12. BIE Ex. 2 at pp. 5-6. [↑](#footnote-ref-12)
13. BIE Ex. 2 at pp. 7-28. [↑](#footnote-ref-13)
14. BIE Ex. 3. [↑](#footnote-ref-14)
15. BIE Ex. 3 at p. 3 of 5. [↑](#footnote-ref-15)
16. BIE Ex. 1. [↑](#footnote-ref-16)
17. *T.W. Phillips Gas and Oil Co. v. The Peoples Natural Gas Co.*, 492 A.2d 776 (Pa.Cmwlth. 1985); *Core Communications, Inc. v. Verizon Pennsylvania Inc.*, PUC Docket No. P-2011-2253650 (Opinion and Order entered September 23, 2011). [↑](#footnote-ref-17)
18. 66 Pa.C.S. § 102. [↑](#footnote-ref-18)
19. 66 Pa.C.S. § 1101.

 [↑](#footnote-ref-19)
20. 66 Pa.C.S. § 2501(b). [↑](#footnote-ref-20)
21. 66 Pa.C.S. § 2505(a). [↑](#footnote-ref-21)
22. *Application of Moselle Morris,* PUC Docket No. A-2009-2098317 (Initial decision dated October 22, 2009, Final Order issued December 3, 2009), slip op. at 13. *See also Pa. Pub. Util. Comm’n v. Israel*, 52 A.2d 317 (Pa. 1947) (upholding a lower court order enjoining drivers from providing transportation served when the funds received for the transportation are obtained as a “donation or tip” and not by a fixed charge). [↑](#footnote-ref-22)
23. 52 A.2d 317 (Pa. 1947). [↑](#footnote-ref-23)
24. 52 A.2d at 320. [↑](#footnote-ref-24)
25. 52 A.2d at 321. [↑](#footnote-ref-25)
26. *Application of Lyft, Inc.*, PUC Docket Nos. A-2014-2415045 and A-2014-2415047, filed on April 3, 2014 at Section I of Attachment A of the applications. [↑](#footnote-ref-26)
27. 66 Pa.C.S. § 1103. [↑](#footnote-ref-27)
28. *Israel,* 52 A.2d at 322. [↑](#footnote-ref-28)
29. It is worth observing that certificated motor carriers are required to display instructions for contacting the Commission in the event that a passenger receives unsafe or unsatisfactory service and wishes to invoke the authority of the Commission. It is unlikely that the private vehicles utilized by Lyft to provide transportation display a similar notice. *See Testimony of Charles S. Bowser* at *Petition of the Bureau of Investigation and Enforcement for an Interim Emergency Order Requiring Uber Technologies, Inc. to Immediately Cease and Desist*, P-2014-2426847. [↑](#footnote-ref-29)