**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :

Bureau of Investigation and Enforcement :

:

v. : C-2014-2422713

:

Lyft, Inc. :

**INTERIM ORDER**

**ON PETITION FOR CERTIFICATION**

On June 6, 2014, the Commission’s Bureau of Investigation and Enforcement (BIE), filed a complaint against Lyft, Inc. (Lyft). The complaint alleges, among other things, that Lyft was acting as a broker of transportation without a certificate of public convenience and that its actions constitute a violation of the Public Utility Code. The complaint sought civil penalties in the amount of $130,000, and an additional $1,000 per day for each day that Lyft continued to operate after the date of filing. Lyft filed an answer to the complaint on June 26, 2014. BIE filed an amended complaint on October 8, 2014, in order to update and quantify the alleged violations by including a “per ride” violation component and to recalculate the civil penalty as the relief requested. On October 28, 2014, Lyft filed an answer as well as preliminary objections to the amended complaint.

On June 16, 2014, BIE also filed a petition for emergency relief at Docket No. P-2014-2426847. Following an evidentiary hearing, the petition was granted by order dated July 1, 2014, and Lyft was ordered to cease and desist its operations in Pennsylvania utilizing its digital platform to facilitate transportation for compensation to passengers utilizing non-certificated drivers in their personal vehicles. By order entered July 24, 2014, the Commission approved that order.

Further, the Commission determined that additional information would aid in the formulation of a final order in this complaint proceeding, and by Secretarial Letter dated July 28, 2014, directed Lyft to provide certain trip data to the Commission in this enforcement proceeding. By interim order, Lyft was also directed to provide this trip data in the proceedings related to its application for a certificate of public convenience.[[1]](#footnote-1) Lyft provided the data pursuant to a temporary protective order in the application proceeding, which was granted in order to permit Lyft to litigate the issue of whether the trip data constitutes a proprietary business record or trade secret. Although the Commission initially determined that the trip data was not proprietary by order entered October 23, 2014, the Commission has subsequently granted reconsideration of that issue.[[2]](#footnote-2) Lyft has also instituted review proceedings before the Commonwealth Court.[[3]](#footnote-3) As of this writing, the trip data remains under seal.

BIE served discovery upon Lyft intended to elicit this trip data as well as additional documents in support of the trips made (Set I). Although Lyft did not object to providing the number of trips requested, it did object to providing the supporting documents requested by BIE. BIE filed a motion to compel on August 28, 2014, which was granted by order dated October 3, 2014. Lyft filed a petition for interlocutory review of that order to the Commission. By order entered November 13, 2014, the Commission granted BIE’s motion to strike the petition. The Commission also noted that the question presented by Lyft was not an important question of law, but instead sought review of a routine discovery order.[[4]](#footnote-4)

BIE served a second set of discovery requests upon Lyft which sought similar trip data and supporting documentation to Set I, for the time period of August 9, 2014, to August 14, 2014 (Set II). Lyft objected to the discovery and BIE filed a motion to compel on October 24, 2014. In its answer to the motion to compel, Lyft expressed concern regarding BIE’s position regarding a potential protective order regarding the trip data sought in Set II. By order dated November 7, 2014, we granted BIE’s motion to compel, in part,[[5]](#footnote-5) holding that the information requested by BIE related to the trip data and supporting documentation was not privileged (November 7 Order).[[6]](#footnote-6)

Lyft now seeks certification of our November 7 Order arguing that it should not be required to furnish what it views as highly confidential information which is the subject of litigation in the Commonwealth Court to protect that information. BIE filed a timely response opposing certification on November 17, 2014.

Section 331 of the Public Utility Code permits a presiding officer to certify a question for interlocutory review by the Commission “where he finds that it is necessary to do so to prevent substantial prejudice to any party or to expedite the conduct of the proceeding.”[[7]](#footnote-7) Review of discovery orders are generally disfavored and only permitted in limited circumstances:

(a) *General*. Rulings of presiding officers on discovery are not subject to interlocutory review unless one or more of the following apply:

(1) Interlocutory review is ordered by the Commission.

(2) Interlocutory review is certified by the presiding officer.

(3) The ruling has as its subject matter the deposing of a Commissioner or Commission employee.

(b) *Standard for certification*. A presiding officer may certify that a discovery ruling is appropriate for interlocutory review when the ruling involves an important question of law or policy that should be resolved immediately by the Commission.[[8]](#footnote-8)

Lyft has not raised any novel issue of law or policy which requires immediate Commission review. Indeed, Lyft’s answer to BIE’s motion to compel answers to the Set II interrogatories is silent as to the pending Commonwealth Court proceedings as a basis for not providing answers to discovery, but instead relies on other bases for protecting the information requested. Lyft raised no novel legal arguments in opposition to BIE’s motion.

Further, Lyft has not exhausted its procedural remedies before the administrative law judges, but instead once again seeks to cure its failure to seek appropriate relief by raising new arguments before the Commission that were not raised in its arguments on the motion in which it seeks review. Lyft has not sought a protective order in these enforcement proceedings due to the litigation on the trip data in the application proceedings. Lyft has not sought a stay of proceedings. In short, Lyft has not demonstrated that there is any compelling reason for immediate Commission review.

It is clear from Lyft’s petition and BIE’s response that communications between the parties has become contentious and unproductive. The gamesmanship displayed here to date, by no means has effectuated a just, speedy and inexpensive determination of this action.[[9]](#footnote-9) Both Lyft and BIE are represented by able and experienced counsel. We see no reason why a reasonable confidentiality agreement or request for a protective order cannot be negotiated without continual resort to judicial involvement either on our part as the presiding administrative law judges, or by the Commission. The exchange of information in discovery which is alleged to be confidential is nothing new or novel. In short, we highly recommend that counsel meet and reach an agreement which meets the needs of both sides.

THEREFORE,

IT IS ORDERED:

That the Petition of Lyft, Inc. for Certification of a Material Question regarding the Interim Order on Motion to Compel dated November 7, 2014, is denied.

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Date: November 20, 2014 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Jeffrey A. Watson Administrative Law Judge

**C-2014-2422713 - PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT v. LYFT, INC.***Revised 11/14/14*

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1. A-2014-2415045. [↑](#footnote-ref-1)
2. *Application of Lyft, Inc.*, A-2014-2515045 (Reconsideration Order entered November 13, 2014. [↑](#footnote-ref-2)
3. *Lyft, Inc. v. Public Utility Commission,* 1980 CD 2014. [↑](#footnote-ref-3)
4. *Public Utility Commission v. Lyft, Inc.*, PUC Docket No. C-2014-2422713 (Opinion and Order entered November 13, 2014.) [↑](#footnote-ref-4)
5. The motion to compel was denied relating to enforcement proceedings in other jurisdictions. [↑](#footnote-ref-5)
6. The order permitted Lyft to redact certain personal information of its customers that may be included in the supporting documentation. [↑](#footnote-ref-6)
7. 66 Pa.C.S. § 331(e). [↑](#footnote-ref-7)
8. 52 Pa.Code § 5.304. [↑](#footnote-ref-8)
9. See 52 Pa.Code § 1.1. See also *B*[*oyle v. Steiman,* 631 A.2d 1025, 1031 (Pa. Super. Ct. 1993)](http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=le&search=429+Pa.+Super.+1%2520at%25201031) (“The purpose of discovery is to expedite litigation and not to provide an intermediate arena for jousting in the time between the pleadings and the actual trial.”). [↑](#footnote-ref-9)