



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

IN REPLY PLEASE  
REFER TO OUR FILE

February 6, 2015

**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 No. \_\_\_\_\_

Dear Secretary Chiavetta:

Enclosed for electronic filing is a Petition of the Bureau of Investigation and Enforcement for Disclosure of Trip Data Submitted by Rasier-PA LLC (Rasier-PA) at Docket Nos. A-2014-2424608 and A-2014-2416127.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please contact me at (717) 772-8839.

Sincerely,

A handwritten signature in blue ink that reads "Stephanie M. Wimer".

Stephanie M. Wimer  
Prosecutor

Michael L. Swindler  
Prosecutor

Enclosures

cc: Honorable Mary D. Long  
Honorable Jeffrey A. Watson  
As per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Petitioner	:	
	:	
v.	:	Docket No. _____
	:	
Uber Technologies, Inc., <i>et al.</i> ,	:	
Respondents	:	

**PETITION OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT  
FOR DISCLOSURE OF TRIP DATA SUBMITTED BY RASIER-PA LLC  
AT DOCKET NOS. A-2014-2424608 AND A-2014-2416127**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

The Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission), by and through its prosecuting attorneys, hereby petitions the Commission pursuant to Sections 1.74 and 5.41 of the Commission's regulations, 52 Pa. Code §§ 1.74 and 5.41, to disclose to I&E, for purposes of developing a full and complete record in its Complaint proceeding at C-2014-2422723, the confidential version of Attachment B of the Compliance Plan filed by Rasier-PA LLC (Rasier-PA) on December 24, 2014 at Docket Nos. A-2014-2424608 and A-2014-2416127. Attachment B of the confidential, non-redacted version of Rasier-PA's Compliance Plan is alleged to contain trip data consisting of the number of transactions or rides provided to passengers in Pennsylvania via connections made with drivers through Internet, mobile application or digital software of Uber Technologies, Inc. (Uber)

during certain periods of time. While Rasier-PA provided its trip data to the Commission as a confidential attachment to its Compliance Plan in its application proceedings, Rasier-PA, Uber and other Uber affiliates have refused to provide this same information to I&E in the Complaint proceeding.

As set forth herein, I&E has sought trip data from Uber for the past eight (8) months. On numerous occasions, Uber has been directed by the Commission and Administrative Law Judges (ALJs) to provide trip information to I&E in the Complaint proceeding at C-2014-2422723. Despite Commission directives, Secretarial Letters, ALJ Orders and even culminating in the imposition of a sanction of a civil penalty of \$500 per day for each day that Uber fails to provide trip information, among other information, to I&E, Uber has failed to release any trip data to I&E.<sup>1</sup> Consequently, Uber has unilaterally deprived I&E of information sought in discovery, and which this Court ordered Uber to provide, that supports the allegations in I&E's original and Amended Complaints at C-2014-2422723.

For these reasons, as more fully explained below, disclosure of the confidential version of Attachment B of Rasier-PA's Compliance Plan to I&E for use in the Complaint proceeding at Docket No. C-2014-2422723 is appropriate because the trip data is significant, unprivileged, not discoverable by other reasonable means and is the crux of I&E's Complaint against Uber and its affiliates. This trip data is information that Uber is obligated to provide but access to which I&E has been defiantly deprived. Importantly,

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<sup>1</sup> The \$500 per day civil penalty is due and payable each and every day that Uber continues to fail to provide trip information to I&E. At the present time, Uber has not made any civil penalty payment to the Commission for its misconduct.

I&E will agree to treat such information as confidential. In support thereof, I&E states as follows:

## **I. BACKGROUND**

1. Since March 31, 2014, and perhaps even earlier, I&E had reason to believe that Uber was providing passenger transportation service to the public for compensation without authority from the Commission.

2. On June 5, 2014, I&E filed a Formal Complaint (Complaint) against Uber alleging, *inter alia*, that Uber acts as a broker of transportation for compensation between points within the Commonwealth through its internet and mobile application software (the Uber app), which connects passengers to individuals who have registered with Uber as independent ride-sharing operators (Uber drivers). The original Complaint as filed sought civil penalties in the amount of \$95,000 and an additional \$1,000 per day for each day that Uber continued to unlawfully operate after the date of filing. The Complaint is docketed at C-2014-2422723.

3. On June 16, 2014, during the pendency of the Complaint proceeding, I&E filed a Petition for Interim Emergency Relief at Docket No. P-2014-2426846 seeking an Order from the Commission directing Uber to cease and desist its operations. Following an emergency evidentiary hearing, I&E's Petition was granted by Order dated July 1, 2014, and Uber was directed to cease and desist its operations in Pennsylvania utilizing its digital platform to facilitate transportation for compensation to passengers using non-certificated drivers in their personal vehicles. By Order entered July 24, 2014, the Commission approved the July 1, 2014 Order.

4. The Commission's July 24, 2014 Order was accompanied by a Statement of Commissioner James H. Cawley, directing that a Secretarial Letter be issued seeking additional information (including trip data) to aid in the formulation of a Final Order in the Complaint proceeding at the above docket.

5. By Secretarial Letter dated July 28, 2014, at Docket No. C-2014-2422723 and served upon all parties at this docket, the Commission concluded:

Accordingly, in order to create a complete record in the Complaint proceeding at Docket No. C-2014-2422723, the Parties are directed to address the following questions:

- (1) The number of transactions/rides provided to passengers in Pennsylvania via the connections made with drivers through Internet, mobile application, or digital software during the following periods:
  - (a) From the initiation of Uber's service in Pennsylvania to June 5, 2014 (the date I&E filed the Complaint against Uber);
  - (b) From the receipt of the cease and desist letter from the Commission's Bureau of Technical Utility Services dated July 6, 2012 to June 5, 2014;
  - (c) From June 5, 2014 to July 1, 2014 (the date the *Cease and Desist Order* became effective); and
  - (d) From July 1, 2014 to the date on which the record in this Complaint proceeding is closed.

...

*Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Uber Technologies, Inc.*, Docket No. C-2014-2422723 (Secretarial Letter dated July 28, 2014).

6. On August 8, 2014, I&E propounded Interrogatories and Requests for Production of Documents – Set I upon Uber in the Complaint proceeding docketed at C-2014-2422723. I&E's Interrogatories largely mirrored the information that was

requested in the Secretarial Letter in that it asked Uber to identify the number of trips provided using its digital software between certain points in time in which Uber is alleged to have lacked authority to facilitate or provide passenger transportation service for compensation. Further, I&E requested the production of documents to substantiate the number of rides provided by Uber during these time periods. I&E's Interrogatories and Requests for Production of Documents – Set I also requested that Uber identify the name of the affiliate or entity responsible for providing rides to persons between points within the Commonwealth of Pennsylvania via connections made with drivers through Uber's digital software, if such transportation was not provided by Uber Technologies, Inc.

7. On August 18, 2014, Uber filed Objections to I&E's Interrogatories and Requests for Production of Documents – Set I. Uber objected to the entirety of I&E's Interrogatories and document requests.

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

9. Uber filed an Answer to I&E's Motion to Compel on September 3, 2014.

10. On October 3, 2014, the presiding ALJs entered an Interim Order granting

I&E's Motion to Compel (Discovery Order).<sup>2</sup>

11. The Discovery Order provided that "Uber Technologies, Inc. shall answer Bureau of Investigation and Enforcement Interrogatories and Requests for Production of Documents, Set I within 10 days of entry of this order." Discovery Order at 4, Ordering Paragraph No. 2.

12. On October 6, 2014, Uber filed a Petition for Certification seeking certification of the Discovery Order for interlocutory review by the Commission.

13. On October 14, 2014, I&E filed a timely response opposing certification.

14. On October 17, 2014, the presiding ALJs entered an Order denying Uber's Petition for Certification for interlocutory review. The Order specifically directed that "a stay of proceedings has not been granted." Order on Petition for Certification at 3.

15. Therefore, Uber's responses to I&E's Interrogatories and Requests for Production of Documents – Set I were due immediately following entry of the presiding ALJs' Order on Petition for Certification, or by October 17, 2014.

16. On November 7, 2014, I&E filed a Motion for Sanctions due to Uber's continued refusal to respond to I&E's discovery, as directed by the presiding ALJs' October 3 Order.

17. On November 26, 2014, the presiding ALJs entered an Order granting I&E's Motion for Sanctions. Uber was directed to serve full and complete answers to all outstanding discovery requests on or before December 12, 2014. The November 26

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<sup>2</sup> The Discovery Order also granted I&E's Motion for Continuance of the evidentiary hearing that was scheduled for October 23, 2014.

Order further directed that in the event that Uber failed to serve answers to discovery on or before December 12, 2014, Uber shall be assessed a civil penalty in the amount of \$500 per day for each day it fails to answer until the conclusion of the evidentiary hearing on the above-captioned Complaint. The November 26 Order directed that “penalties are due and payable each day.” November 26 Order at 6.

18. As of this date, Uber has failed to serve any of the outstanding responses to I&E’s discovery, in complete defiance of the presiding ALJs’ Interim Order on Motion for Sanctions dated November 26, 2014.

19. As of this date, Uber has failed to pay any of the civil penalty of \$500 per day, which is due and payable for each day it fails to answer until the conclusion of the evidentiary hearing on the above-captioned complaint, in complete defiance of the presiding ALJs’ Interim Order on Motion for Sanctions dated November 26, 2014.

20. On January 9, 2015, I&E filed an Amended Complaint at C-2014-2422723. The Amended Complaint identifies Uber Technologies, Inc., Rasier LLC (Rasier), Gegen LLC (Gegen) and Rasier-PA as the proper Respondents allegedly responsible for or directly or indirectly involved in facilitating and/or providing unauthorized passenger motor carrier service within the Commonwealth of Pennsylvania. The Amended Complaint also updates and quantifies the violations alleged by I&E by removing the “per day” violation component and replacing it with a “per ride” violation component, and recalculating the appropriate civil penalty as the relief requested.

21. In the Amended Complaint, I&E was forced to resort to the use of “proxy data” and name all known Uber affiliates in Pennsylvania as Respondents to the

Complaint proceeding due to Uber's continued, ongoing and intentional defiance of the Commission's July 28, 2014 Secretarial Letter, the orders of the presiding ALJs, the Commission's regulations pertaining to discovery and Section 333(d) of the Public Utility Code, 66 Pa.C.S. § 333(d) (relating to Interrogatories).

22. On January 9, 2015, I&E filed a Second Motion for Sanctions at C-2014-2422723 concurrently with its Amended Complaint. I&E's Second Motion for Sanctions is premised upon Uber's failure to comply with the presiding ALJs' November 26 Sanctions Order by ignoring a directive to serve full and complete answers to all outstanding discovery requests on or before December 12, 2014, and, alternatively, ignoring a directive to pay a civil penalty in the amount of \$500 per day, due and payable each day, that it fails to serve the required discovery responses until the conclusion of the evidentiary hearing in the Complaint proceeding.

23. Oral argument concerning I&E's Second Motion for Sanctions is currently scheduled for February 18, 2015. *See* Interim Order on Second Motion for Sanctions issued on January 29, 2015.

24. Regardless of the ruling on I&E's Second Motion for Sanctions, it is highly doubtful that Uber, or an affiliate, will comply with any order directing the release of information to I&E for use in an enforcement proceeding. Uber does not deny that it has failed to answer any of I&E's discovery requests and it offers no explanation or excuse for its misconduct.

25. For the reasons set forth below, disclosure of Attachment B of the confidential, non-redacted version of Rasier-PA's Compliance Plan to I&E is necessary

to preserve I&E's due process right to a fundamentally fair proceeding. Disclosure of the confidential Compliance Plan will cure I&E's inability to ascertain information from Uber and its affiliates through meaningful discovery.

## **II. DISCLOSURE TO I&E OF THE TRIP DATA SUBMITTED BY RASIER-PA TO THE COMMISSION IS APPROPRIATE**

26. Pursuant to Section 1.74 of the Commission's regulations, 52 Pa. Code § 1.74, I&E petitions the Commission for access to the confidential, non-redacted version of Rasier-PA's Compliance Plan, specifically Attachment B of this version of the Plan, which allegedly contains trip data that Uber, Rasier-PA and/or other affiliates have refused to disclose in I&E's Complaint proceeding at C-2014-2422723, despite being ordered to disclose it and sanctioned for their failure to produce it.

27. Release of documents pursuant to 52 Pa. Code § 1.74 is solely within the discretion of the Commission. *Re Tristate Household Goods Tariff Conference, Inc.*, 59 Pa. PUC 301, Docket No. P-850004 (Order entered March 29, 1985). The Commission has examined such requests in light of the stated criteria that appear in Section 333(d) of the Public Utility Code, 66 Pa.C.S. § 333(d), governing interrogatories directed to the Commission. *Id.* For the request to be granted, the information must be shown to be significant (*i.e.* relevant), unprivileged and not discoverable by any other means. *Re Tristate Household Goods Tariff Conference, Inc.*, 59 Pa. PUC 301; *See also Weiner v. Bell Telephone Co.*, 59 Pa. PUC 525, Docket No. C-844487 (Order entered June 27, 1985).

**A. The Trip Data Is Highly Relevant To The Complaint Proceeding**

28. The trip data is significant and highly relevant to I&E's Complaint proceeding. In its Amended Complaint, I&E alleges that Uber, or an affiliate, brokered and provided for the transportation of persons for compensation in the Commonwealth of Pennsylvania without holding authority, at the time, in that Uber, or an affiliate, launched the Uber app on or before March 13, 2014, and continued to facilitate passenger transportation through the software up to and including August 21, 2014 without Commission approval, thus blatantly defying the orders directing it to cease and desist. Potentially tens of thousands of trips were unlawfully provided during this time frame and it is nearly impossible for I&E to have first-hand knowledge, or otherwise be cognizant of, each unlawful trip that occurred. This information is solely within the possession of Uber and/or one or more of its affiliates and is contained in Attachment B of the confidential version of Rasier-PA's Compliance Plan.

29. Moreover, the trip data is highly relevant because the Commission itself directed in its July 28, 2014 Secretarial Letter that this information be provided in order to develop a complete record in the Complaint proceeding.

**B. The Trip Data Is Not Privileged**

30. The trip information is not protected by any recognized privilege. To the extent that Uber and its affiliates assert that the trip data is protected from disclosure under the self-incrimination clause of the Fifth Amendment of the United States Constitution, it is well settled law that the Fifth Amendment protection against self-

incrimination does not apply to corporate entities. *Bell v. Maryland*, 378 U.S. 226, 263 (U.S. 1964).

31. I&E strongly contends that this information is not privileged and should not be confidential. However, I&E recognizes that Uber believes the trip data to constitute commercially sensitive information. Therefore, I&E will agree to treat the trip data as “confidential,” if so ordered.<sup>3</sup>

32. Moreover, Uber apparently is not concerned that I&E will disclose the trip data to others, namely, competitors, or use the trip data for any other purpose aside from the enforcement proceeding. Uber has proposed that it would provide I&E with the trip data, **but only if** I&E is restricted in its use of such information for settlement discussions. I&E cannot accept the unreasonable condition that it be precluded from using trip data against Uber in litigation in the Complaint proceeding, especially since Uber has already been ordered to provide this information without this condition.<sup>4</sup>

**C. The Trip Data Is Not Discoverable By Any Other Reasonable Means Due To Uber’s Intentional Defiance Of Orders Directing Its Disclosure**

33. The trip data is not available to I&E by any other reasonable means. As

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<sup>3</sup> Uber and/or its affiliates did not seek a Protective Order in the Complaint proceeding at C-2014-2422723 until February 4, 2015. Instead, the Respondents apparently decided to simply ignore orders to disclose any information for the past eight (8) months. I&E will file a separate response to Uber’s Motion for Protective Order. In short, I&E does not oppose Rasier-PA’s request to treat the trip data as confidential, but cannot agree to the restricted usage of such trip data as proposed by Uber in its Motion for Protective Order.

<sup>4</sup> See Uber’s Motion for Scheduling of Settlement Conference and Assignment of Settlement Judge dated January 24, 2015; Uber’s Motion for Protective Order dated February 4, 2015, and Uber’s Motion for Reconsideration of Interim Order Regarding Scheduling Settlement Conference and Assignment of Settlement Judge dated February 4, 2015 at Docket No. C-2014-2422723.

noted above, Uber and its affiliates have ignored the following directives to provide discoverable information, including trip data, to I&E in the Complaint proceeding:

- The Commission's July 28, 2014 Secretarial Letter;
- The Interim Order on Motion to Compel and Motion for Continuance dated October 3, 2014;
- The Interim Order on Petition for Certification dated October 17, 2014;
- The Interim Order on Motion to Compel Set II Interrogatories dated November 25, 2014; and
- The Interim Order on Motion for Sanctions dated November 26, 2014.<sup>5</sup>

34. Moreover, the imposition of sanctions has not acted as an incentive to compel production of discoverable information, including trip data, to I&E. Uber was directed to pay a civil penalty in the amount of \$500 per day for each and every day it fails to answer I&E's discovery until the conclusion of the evidentiary hearing in the Complaint proceeding. *See* Interim Order on Motion for Sanctions dated November 26, 2014. Uber and its affiliates have not only failed to respond to I&E's discovery, but also they have failed to pay any civil penalty money. Simply stated, Uber has consistently and intentionally defied this Court's orders.

35. Uber has only agreed to provide the trip data to I&E if I&E promises not to use the trip data against Uber in litigation in the Complaint proceeding.<sup>6</sup> This is contrary to all theories and rationale for discovery.

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<sup>5</sup> Significantly, in their Answer to I&E's Amended Complaint, Uber and its affiliates point to the fact that trip data has been provided to the Commission at Docket Nos. A-2014-2416127 and A-2014-2424608 in response to I&E's allegation in the Amended Complaint that Uber has defied the aforementioned directives to disclose such information. *See* Answer of Uber Technologies Inc. to the Amended Complaint of the Bureau of Investigation and Enforcement, C-2014-2422723 (Filed on February 2, 2015) at ¶ 39. Therefore, Uber and its affiliates should have no problem consenting to release the trip data to I&E on a confidential basis without restrictions.

<sup>6</sup> *See* Uber's Motion for Scheduling of Settlement Conference and Assignment of Settlement Judge dated January 24, 2015; Uber's Motion for Protective Order dated February 4, 2015, and Uber's Motion for

36. In summary, I&E has exhausted every administrative and procedural remedy to compel production of the trip data that it deserves to possess. Clearly, the actions of Uber and its affiliates undermine the integrity of the adjudicatory process and mock the Commission's authority.

37. Disclosing Attachment B of Rasier-PA's confidential Compliance Plan is necessary to preserve I&E's right to due process in the Complaint proceeding.

38. The Commission has concluded that a party's refusal to answer reasonable and relevant discovery questions is prejudicial to other parties' due process. *See Application of Walter J. Jackson III t/a Jackson's Moving*, 2014 Pa. PUC LEXIS 299, Docket No. A-2014-2401884 (Order entered June 17, 2014). A failure to comply with the rules of discovery directly affects the due process rights of the promulgating party, and thus prevents orderly and fair litigation. *Nippes v. PECO Energy*, 2013 Pa. PUC LEXIS 573, Docket No. C-2013-2363324 (Initial Decision Issued August 20, 2014; Final Order Entered September 30, 2013).

39. Due to the refusal of Uber and its affiliates to respond to I&E discovery and abide by the directives of the Commission and ALJs, I&E has been deprived of the right to conduct meaningful discovery. I&E's right to a fundamentally fair proceeding has been jeopardized. Therefore, disclosing the Attachment B of the confidential version of Rasier-PA's Compliance Plan is necessary to preserve I&E's due process rights.

WHEREFORE, for the foregoing reasons, the Bureau of Investigation and Enforcement respectfully requests that Attachment B of the Confidential Compliance Plan of Rasier-PA LLC at Docket Nos. A-2014-2424608 and A-2014-2416127 be disclosed to I&E, on a confidential basis, for use in the Complaint proceeding at C-2014-2422723.

Respectfully submitted,



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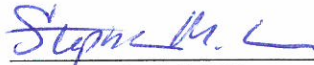
Dated: February 6, 2015

## 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) and § 5.41(b) (relating to service of petitions).

### **Service by First Class Mail and Email:**

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Date: February 6, 2015