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February 26, 2015

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Bureau of Investigation and Enforcement v. Uber Technologies, Inc.
Docket No. P-2015-2466136

Dear Secretary Chiavetta:

On behalf of Uber Technologies, Inc., I have enclosed for electronic filing the Answer of Uber Technologies, Inc. to Petition For Disclosure of Trip Data, in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Sincerely,

Karen O. Moury

KOM/bb
Enclosure
cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT	:	
	:	**Docket No. P-2015-2466136**
v.	:	
UBER TECHNOLOGIES, INC., *ET AL.*	:	

ANSWER OF UBER TECHNOLOGIES, INC. TO PETITION FOR DISCLOSURE OF TRIP DATA

TO PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 1.74 and 5.61, by and through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, Uber Technologies, Inc. ("UTI"), *et al.*, hereby files this Answer to the Petition of the Bureau of Investigation and Enforcement ("I&E") for Disclosure of Trip Data requesting access to confidential information that was submitted by Rasier-PA LLC ("Rasier-PA"), a wholly owned subsidiary of UTI, as part of the Compliance Plans filed pursuant to the Commission's Orders entered December 5, 2014 at Docket Nos. A-2014-2416127 and A-2014-2424608 ("*December 5 Orders*"), and in support hereof sets forth as follows:

1. Through its Petition for Disclosure of Trip Data ("Petition"), I&E is attempting to improperly use Section 1.74 of the Commission's regulations, 52 Pa. Code § 1.74, which restricts the public disclosure of confidential information, to obtain proprietary data upon which it may rely to amend its complaint to seek the imposition of a civil penalty on the basis of that data.[1] As these unprecedented efforts to gain access to proprietary data for the purposes intended by I&E are unlawful and unnecessary, its Petition must be dismissed in its entirety.

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[1] *Bureau of Investigation and Enforcement v. Uber Technologies, Inc., et al.*, Docket No. C-2014-2422723.

2. Since the sought-after trip data constitutes a trade secret, Rasier-PA submitted it to the Commission under seal on a confidential basis for review only by the Commissioners and advisory staff who have duties to determine compliance with the *December 5 Orders*.[2] In doing so, Rasier-PA noted its understanding that the Commission would safeguard its confidentiality pursuant to its existing regulations and procedures, consistent with the commitment made by the Commission in its *December 5 Orders*. Any disclosure of that proprietary data to I&E that allows it to amend the complaint and recommend a civil penalty on the basis of that data would go well beyond the purposes for which it was provided and would be improper.[3]

3. Notably, UTI has not refused to provide the trip data in the complaint proceeding as directed by the Commission's July 28, 2014 Secretarial Letter. The complaint proceeding is still pending and an evidentiary hearing has not yet been held. The July 28, 2014 Secretarial Letter did not require UTI to provide the information to I&E through discovery or otherwise dictate the timing or manner in which the trip data should be provided. Rather, the July 28, 2014 Secretarial Letter expressly indicated that the specified trip data would create a complete record and aid in the formulation of a final order in this proceeding.[4]

4. The dispute leading to the filing of I&E's pending Petition is not whether UTI will provide the trip data but rather centers on the timing and manner in which the trip data will

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[2] Although it appears that the Commission recognizes the proprietary nature of this information, UTI expressly incorporates herein by reference its attached response filed on September 3, 2014 to I&E's Motion to Compel. See Appendix A. This response fully explains UTI's legal reasons for safeguarding the confidentiality of this information. Following the issuance of an Order granting I&E's Motion to Compel, UTI filed a Petition for Certification to have this ruling reviewed by the Commission, which was denied by the administrative law judges ("ALJs").

[3] UTI further notes that the data would be of limited value to I&E for its intended purposes of amending the complaint and recommending a civil penalty since it covers the period of time through December 5, 2014, including almost four months of data after Rasier-PA LLC obtained emergency temporary authority for Allegheny County from the Commission. *Application of Rasier-PA LLC for Emergency Temporary Authority*, Docket No. 2014-2429993 (Order entered July 24, 2014) (Certificate issued August 21, 2014).

[4] Secretarial Letter issued July 28, 2014, Docket No. C-2014-2422723, Paragraph 2.

be produced. Through I&E's Petition, it is essentially seeking interlocutory review of a discovery and sanctions dispute that is being addressed by the Administrative Law Judges ("ALJs") presiding over the complaint proceeding. While I&E desires to receives the trip data through discovery, UTI has identified alternative means of and times for producing this information.

5. On January 21, 2015, in response to an Application for Subpoena filed by I&E seeking the service of a subpoena on Mr. Travis Kalanick, UTI identified Mr. Jonathan J. Feldman as the person who is responsible for all matters of regulatory compliance in connection with the Commission's Pennsylvania operations and who has access to the trip data that is the subject of the July 28, 2014 Secretarial Letter. If discussions regarding factual stipulations are not successful, and an evidentiary hearing is necessary, Mr. Feldman will testify and provide this evidence on a confidential basis for the Commission's use, as relevant and appropriate in the formulation of a final order for this proceeding, and to establish a complete record, as required by the July 28, 2014 Secretarial Letter.[5]

6. Besides identifying a witness who will produce this proprietary data at an evidentiary hearing, UTI has made two offers to provide the trip data to I&E on a confidential basis prior to the evidentiary hearing, both in the context of structured settlement discussions. I&E has declined both offers.

7. Through a Motion for Scheduling of Settlement Conference and Assignment of Settlement Judge ("Settlement Motion") filed on January 14, 2015, UTI noted its willingness to provide the trip data sought by I&E on a confidential basis in the context of a structured settlement conference, where it is understood and agreed that the information is to be used only

[5] UTI will seek the issuance of a protective order to ensure that this information is provided confidentially as part of an evidentiary hearing.

to aid in settlement discussions.[6] I&E refused to accept the data under these parameters, and the Administrative Law Judges ("ALJs") issued an Interim Order denying the Settlement Motion on January 23, 2015, largely based on I&E's opposition to engaging in settlement discussions with UTI due to its failure to provide trip data through discovery.

8. Making another attempt to provide the trip data in the context of settlement discussions, UTI filed a Motion for Reconsideration of the January 23, 2015 Interim Order on February 4, 2015, proposing to provide the trip data confidentially to I&E only for the purposes of aiding in settlement discussions to I&E on February 13, 2015 and to hold a structured settlement conference on February 18, 2015. UTI believed that providing the data in advance would result in more productive settlement discussions and was responsive to desires expressed by I&E to obtain this information before engaging in settlement discussions. I&E also opposed these proposals.

9. UTI suggests that there is no downside to I&E accepting the information on the basis that it be used for settlement purposes only. If a settlement is not achieved and UTI continues to not provide the information for litigation or other purposes, I&E still has its procedural rights to pursue sanctions. However, if a settlement is achieved, this matter can be concluded without the need for further motions, pleadings, hearings, rulings and decisions, saving the parties and the Commission valuable resources.

10. Importantly, and contrary to I&E's arguments, the trip data is not needed to move forward with an evidentiary hearing on the complaint.[7] The number of trips that were provided

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[6] By contrast, providing this information through discovery would expose it to public disclosure if it ends up being the basis for an amended complaint and a Commission decision. *See* 66 Pa.C.S. § 335(d); *Pennsylvania Public Utility Commission v. Seder*, No. 2254 C.D. 2013 (Opinion filed December 3, 2014) (documents relied upon by the Commission in reaching a determination must be made part of the public record).

[7] UTI expressly incorporates herein by reference its attached response filed on November 12, 2014 to I&E's Motion for Sanctions, which fully explains the obligation that I&E as the complainant in this proceeding bears the burden of

by a UTI subsidiary prior to the grant of emergency temporary authority to Rasier-PA has nothing to do with the factual or legal issues involved in the complaint proceeding.

11. Regarding a factual record, I&E has already cited specific examples in its complaint, as amended on January 9, 2015, where its enforcement officer manager allegedly arranged rides using the UTI Internet or mobile application ("App"). Presumably, I&E is prepared to offer testimony in support of those factual allegations. Moreover, in Rasier-PA's application proceeding, its witness identified its affiliate, Rasier LLC, as operating in Allegheny County prior to the grant of ETA.[8]

12. As Rasier LLC is one of the respondents named in the amended complaint, the only real remaining issues in the complaint proceeding are: a) whether the activities engaged in by Rasier LLC required Commission authority and therefore violated the Public Utility Code; and b) if so, what an appropriate civil penalty should be.

13. The actual number of trips provided by Rasier LLC prior to August 21, 2014, if it is relevant at all in the complaint proceeding, is only pertinent in the determination of an appropriate civil penalty. Rasier LLC will argue that basing a civil penalty in the complaint proceeding on the number of trips would be inconsistent with Section 3301(b) of the Public Utility Code, 66 Pa.C.S. § 3301(b) (relating to continuing offenses, which contemplate a per day civil penalty), and would expose UTI's proprietary trade secrets to public disclosure.[9] Notwithstanding that argument, regardless of when or how trip data is introduced into the record

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proof and is required to present evidence in support of its allegations, and it is not incumbent upon a responding party to produce information that allows it to substantiate or even expand its complaint. See Appendix B.

[8] *Rasier-PA LLC Application for Experimental Authority*, Docket Nos. A-2014-2416127 and A-2014-2424608 (Orders entered December 5, 2014); N.T. 80-84.

[9] *Seder, supra.*

of the complaint proceeding, I&E will be free to argue in its brief for the imposition of a civil penalty that considers the number of trips that were provided.

14. Any discussions regarding sanctions are not properly before the Commission at this time. Those matters are currently at the ALJ level, and at the appropriate time, UTI will present its legal arguments concerning the imposition of sanctions and explain that their purpose is only as necessary to move a case to prompt disposition. However, since I&E has noted the failure of UTI to pay the $500 civil penalty purportedly assessed by the ALJs' Interim Order dated November 26, 2014 for each day when discovery responses are not provided after December 12, 2014, a brief response is warranted.

15. Section 3301(a) of the Public Utility Code only authorizes the Commission to impose civil penalties and only for violations of Commission orders. 66 Pa.C.S. 3301(a). In this instance, the ALJs' November 26, 2014 Interim Order has not been adopted by the Commission, and therefore payment of the civil penalty is not enforceable.[10] Moreover, the ALJs' Interim Order improperly seeks to impose a civil penalty for a violation of a prior ALJ Interim Order, not a Commission order.

16. I&E's Petition is an improper attempt to use the Commission's regulations, which restrict the public disclosure of confidential information, to obtain proprietary data upon which it may rely to amend its complaint to see the imposition of a civil penalty on the basis of that data. UTI has not refused to provide the trip data in the ongoing complaint proceeding in which no evidentiary hearing has yet been held. UTI has identified a witness to present this information at a hearing and has offered on multiple occasions to provide the trip data within the context of settlement discussions. The trip data sought by I&E is not needed to move forward with the

[10] This situation is different than when an ALJ issues an Initial Decision assessing a civil penalty, which is either expressly adopted by the Commission or adopted without further Commission action if no exceptions are filed and the Commission declines to call the matter up for review at a public meeting. *See* 66 Pa.C.S. § 332(h).

complaint, and regardless of when trip data is presented, I&E will be free to argue in its brief that the Commission should consider the number of trips in reaching a final order in this proceeding.

WHEREFORE, Uber Technologies, Inc. respectfully requests that the Commission deny the Bureau of Investigation and Enforcement's Petition for Disclosure of Trip Data and permit the complaint proceeding and settlement discussions to continue along their normal course.

Respectfully submitted,

February 26, 2015

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Attorneys for Uber Technologies, Inc, et al.

APPENDIX A

Buchanan Ingersoll & Rooney PC
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September 3, 2014

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Bureau of Investigation and Enforcement v. Uber Technologies, Inc.
Docket No. C-2014-2422723

Dear Secretary Chiavetta:

On behalf of Uber Technologies, Inc., I have enclosed for electronic filing the Answer of Uber Technologies, Inc. to Motion to Compel of Bureau of Investigation and Enforcement relating to Interrogatories and Requests for Production of Documents, Set I, in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Sincerely,

Karen O. Moury

KOM/tlg
Enclosure
cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT	:	
	:	Docket No. C-2014-2422723
v.	:	
UBER TECHNOLOGIES, INC.	:	

ANSWER OF UBER TECHNOLOGIES, INC. TO MOTION TO COMPEL OF BUREAU OF INVESTIGATION AND ENFORCEMENT RELATING TO INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS – SET I

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES LONG AND WATSON:

Pursuant to 52 Pa. Code § 5.342(g)(1), through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, Uber Technologies, Inc. ("UTI") hereby files this Answer to the Motion to Compel filed by the Bureau of Investigation and Enforcement ("I&E") on August 28, 2014 and amended on August 29, 2014, seeking an order dismissing UTI's objections to Interrogatories and Requests for Production – Set I ("Interrogatories") propounded by I&E on August 8, 2014 and directing UTI to provide the information sought by those Interrogatories.

I. INTRODUCTION

Simply put, I&E seeks to compel UTI to produce customer and trip information that is protected from disclosure by the Commission's discovery rules and well-established case law. UTI's customer information contains confidential data about trips taken and fares paid by customers. As UTI's customers do not want such information disclosed, UTI is obligated to protect its customers' legitimate expectations of privacy. Moreover, UTI's trip information constitutes a trade secret that would lose any existing protection if it were produced to I&E. Therefore, I&E's Motion to Compel must be denied.

I&E's Interrogatories specifically request UTI to identify the number of rides provided to persons via connections made with drivers through UTI's website, mobile application or digital software ("App") during distinct time periods; to identify the entity that "provided rides to persons" via connections through the App if the entity was not UTI; and to provide invoices, receipts, e-mails, records and documents sent to individuals in relation to rides they received via connections through the App. The Commission's regulations do not permit parties to ask interrogatories that seek privileged information, and in this situation, a protective order would not be helpful since the information is so confidential and commercially-sensitive so as to justify outright prohibition of its disclosure.

The privileged material sought by the Interrogatories entails private confidential customer information, including their email addresses and payment information, the disclosure of which would be harmful to riders and violate their rights to privacy without any advance notice or opportunity to prevent such disclosure. The privileged material sought by the Interrogatories also includes highly sensitive commercial data, which qualifies as a trade secret, especially due to its narrow focus with respect to time periods and the fact that results would cover a limited geographic region. As disclosure of this information would diminish the value of this UTI asset and be competitively harmful to UTI's business by allowing competitors to mine historical data to give them a future competitive advantage, it is not discoverable under the Commission's rules.

The Interrogatories further seek the disclosure of information about past practices that is irrelevant to this proceeding. These requests represent nothing more than an attempt by I&E to seek the imposition of additional civil penalties upon an entity that has been granted emergency temporary authority to provide a service for which the Commission has found an immediate need in Allegheny County so that people can access safe, reliable and affordable transportation

options to get to school, to work and to the hospital to visit dying relatives. Finally, the Interrogatories would cause undue annoyance and burden to UTI, particularly with respect to the extensive customer information that would have to be carefully and thoroughly scrubbed to ensure protection of private data.

Consistent with the Commission's Secretarial Letter dated July 28, 2014 issued at this docket, UTI is prepared to share information about the number of rides arranged between points in Allegheny County through the UTI App during specific time periods with the Commissioners. Due to the pending complaint proceeding, UTI is working to identify a time and means through which disclosure of this information would be appropriate in a manner that does not violate the rules regarding *ex parte* communications and that would allow UTI to avoid leaving documents behind that that could later be requested and possibly retrieved through a request submitted to the Commission under Pennsylvania's Right-to-Know Law. UTI continues, however, to object to the Interrogatories, as described in more detail below.

II. ARGUMENT

A. I&E's Interrogatories Seek the Disclosure of Privileged Matter in the Form of UTI Trade Secrets and Confidential Customer Information.

Under the Commission's regulations, a party may not ask interrogatories that "relate to matter which is privileged." 52 Pa. Code § 5.361(a)(2). *See also* 52 Pa. Code § 5.321 (relating to permissible scope of discovery). I&E's Interrogatories seek the disclosure of privileged material relating to confidential customer information, including email addresses and payment information, as well as privileged matter relating rides provided through the UTI App, which qualifies as a trade secret and is protected from unlawful taking under the Fifth and Fourteenth Amendments of the United States Constitution.

The release of personal information about riders poses serious dangers for the public and liability concerns for UTI. *See Interim Guidelines for Eligible Customer Lists*, Docket No. M-2010-2183412 (Final Order on Reconsideration adopted on November 10, 2011) ("*ECL Order*"). In deciding on the scope of information that electric distribution companies should provide to electric generation suppliers about customers, the Commission found that customers should be permitted to restrict the release of all personal information about their account. The Commission observed that "[m]any customers have valid reasons for not wanting to disclose their customer information, and in terms of reasonable privacy expectations, customers should have the right and a reasonable means to maintain the confidentiality of their account information." *ECL Order* at 10. In the present proceeding, customers would not even have a say about the information regarding their accounts that might be shared or with whom it might be shared.

It is well established in Pennsylvania that a trade secret consists of a compilation of information which is used in one's business, and which gives one's business an advantage over competitors who do not know or use it. *See Sperry Rand Corp. v. Pentronix, Inc.*, 311 F. Supp. 910 (1970), 1970 U.S. Dist. LEXIS 12473; *see also* Restatement of Torts, Section 757. The crucial indicia for determining whether certain information constitutes a trade secret are "substantial secrecy and competitive value to the owner." *Den-Tal-Ez, Inc. v. Siemens Capital Corp.*, 389 Pa. Super. 219, 566 A.2d 1214, 1228 (1989). Lists containing customer names and contact information have been found to be trade secrets. *See O.D. Anderson, Inc., d/b/a Anderson Coach and Tour, and Anderson Coach and Travel v. Benjamin Cricks, Richard Koewacich and Premier Tour & Travel Inc.*, 2003 Pa. Super 13, 815 A.2d 1063 (2003) (customer lists containing names addresses and phone numbers of customers were valuable assets since they helped to target the most likely customers for future tours); *Morgan's Home*

Equip. Corp. v. Martucci, 390 Pa. 618, 624, 136 A.2d 838, 842 (1957) (lists of confidential and valuable customer data constituted trade secrets).

The trip and customer data sought by I&E's Interrogatories is information that UTI has spent considerable time and effort to collect. As such, it is a valuable asset that belongs to UTI, the disclosure of which would diminish its market value. Particularly since data provided in response to the Interrogatories would reveal the number of trips provided through the UTI App in a very limited geographic area of Allegheny County over distinct relatively short time periods, it would be possible for UTI's competitors to determine the size of the business and how lucrative it is. UTI uses this information for making decisions about growth or expansion of the business. If it ends up in the hands of competitors, it could be used as a basis for allocating their resources differently or changing their business models in a way that is injurious to UTI's business.

The Fifth and Fourteenth Amendments prohibit the government from depriving anyone of "property, without due process of law," or taking property "for public use, without just compensation." U.S. Const. Amend V; U.S. Const. Amend. XIV. The United States Supreme Court has long recognized that the Fifth Amendment protects intangible property. *See The West River Bridge Company v. Dix et al.*, 77 U.S. 507, 533 (1848) (no meaningful distinction between real property and "incorporeal property" for the purposes of the takings clause.) Specifically, trade secrets have been recognized as property under the Fifth Amendment. *See Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1003 (1984). The regulatory taking of a trade secret causes the value of the asset to diminish, which results in awards of damages in the form of compensation. *See Gully v. Sw. Bell Tel. Co.*, 774 F.2d 1287, 1293 (5th Cir. 1985).

Particularly given the broad scope of Pennsylvania's Right-to-Know Law, 65 P.S. §§ 67.101-67.3104, UTI submits that written disclosure of the information requested by the Interrogatories, even subject to a protective order, may eventually lead to public disclosure of this highly proprietary information in a way that is harmful to both UTI and its customers. The sweeping amendments to the Right-to-Know Law that went into effect on January 1, 2009 were designed to promote access to official government information in order to prohibit secrets and establish a rebuttable presumption that documents in the possession of a Commonwealth agency are public records. *See Commonwealth of Pennsylvania, Pennsylvania Gaming Control Board v. Office of Open Records*, 48 A.3d 503, 2012 Pa. Commw. LEXIS 174 (2012); 65 P.S. §67.305. The burden of proving that a record is exempt from public access is on the Commonwealth agency. 65 P.S. § 67.708(a)(1).

A "record" is broadly defined by the Right-to-Know Law to include "information" that is created in "connection with a transaction, business or activity of the agency." 65 P.S. §67.102. Although the Right-to-Know Law also contains several exemptions to the definition of "record," including two that could be applicable here – namely a record that constitutes or reveals a trade secret or confidential proprietary information (65 P.S. § 67.708(b)(11)) and a record relating to a noncriminal investigation (65 P.S. § 67.708(b)(17)), those exemptions would protect UTI and its customers only if the Commission agrees that they are applicable and the Pennsylvania Office of Open Records or appellate courts ultimately agree.

The language of the Right-to-Know Law and its recent application by the Office of Open Records demonstrate that even providing information on a confidential basis subject to a protective order is not sufficient to guard against disclosure of that information. To have any hope of ultimately protecting information marked as proprietary from disclosure by the

Commission, UTI would have five business days after receiving notice of the Right-to-Know law request to "provide input on the release of the record." 65 P.S. § 67.707(b). The Commission would not be bound by that input, and even if the Commission would decline to produce the information on the basis of its confidentiality, the Office of Open Records may require its disclosure. *See In the Matter of Scott Kraus and the Morning Call v. Pennsylvania Public Utility Commission,* Docket No. AP 2013-1986 (documents submitted confidentially as part of a Commission staff investigation were ordered to be publicly released).[1]

The Commission has previously found that a party is not required to provide commercially sensitive data as part of discovery. In the *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670, ALJ Barnes issued an Order Denying the Retail Energy Supply Association's Motion to Compel on that very basis (Order dated March 16, 2012). Refusing to require the companies to disclose confidential information, ALJ Barnes prevented the mining of historical data by competitors to in an effort to obtain a competitive advantage in the future. Order at 6. The ALJ emphasized that even the existence of a protective order did not provide a basis for the companies to disclose confidential information. Order at 8.

I&E claims that the information sought by its Interrogatories is similar to the daily log sheets that call and demand carriers are required to complete and make available to the Commission upon request under the Commission's regulations at 52 Pa. Code § 29.313(c) and

[1] Decision is available on Office of Open Records website. http://dced.state.pa.us/open-records/final-determinations/FileHandler.ashx?FileID=12318. Decision is currently on appeal in *Pennsylvania Public Utility Commission v. Scott Kraus/The Morning Call*, 2254 C.D. 2013.

that limousine carriers must maintain under the Commission's regulations at 52 Pa. Code § 29.335. However, these regulations have nothing to do with whether UTI should be directed to provide aggregate trip data in a narrow geographic region over distinct relatively short-time periods. Neither UTI nor its subsidiary has sought or received authority to operate as a call and demand carrier or a limousine provider. Further, the Commission made no mention of any duty to complete daily log sheets as part of its grant of emergency temporary authority to operate an experimental ride-sharing network service between points in Allegheny County to UTI's subsidiary, Rasier-PA LLC ("Rasier-PA"). *See Application of Rasier-PA LLC for Emergency Temporary Authority to Operate an Experimental Ride-Sharing Network Service Between Points in Allegheny County, PA*, Docket No. A-2014-2429993 (Order adopted July 24, 2014).

Clearly, the purpose of the requirement for call and demand and limousine carriers to maintain log sheets, which contain information about origin and destination, the number of passengers and the fares collected, is to ensure that they are following their tariffs and other Commission rules applicable to such carriers. Recognizing the benefits of bringing needed transportation alternatives to riders in Allegheny County, the Commission has granted authority, on an experimental basis, for Rasier-PA to operate a ride-sharing network service and has accepted a tariff that explains the rate calculation methods without specifying actual rates.[2]

Additionally, the log sheets maintained by existing carriers are far different than the information that I&E is seeking through the Interrogatories. Most notably, the regulations cited by I&E require carriers to maintain individual trip data but does not require the carriers to compile or provide information showing total number of trips over distinct time periods or to

[2] Rasier-PA's proposed tariff is available on the Commission's website: http://www.puc.pa.gov/pcdocs/1302328.pdf, along with the Secretarial Letter noting its acceptance: http://www.puc.pa.gov/pcdocs/1306394.doc.

provide private customer data. In any case, by the very nature of the service being new and innovative, thereby qualifying for classification as experimental service that is separate and apart from call and demand service and limousine service, data about rides arranged through the UTI App is commercially sensitive, and its disclosure would be harmful to UTI and its customers.

B. I&E's Interrogatories Seek Information That Is Not Admissible at Hearing Nor Would Be Reasonably Calculated to Lead to the Discovery of Admissible Evidence.

Under the Commission's regulations, a party may only seek discovery that is relevant to the subject matter involved in the pending action and which appears reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code §5.321(c). By seeking information about other transactions beyond those referenced in the complaint, including the number of rides arranged through the UTI App and the name of an entity that provided these services if UTI did not, I&E has requested information that is irrelevant to this proceeding and which does not appear reasonably calculated to lead to the discovery of admissible evidence.

The complaint filed by I&E in this proceeding contains allegations about a launch of Uber X on March 13, 2014 and eleven occasions on which Officer Bowser was allegedly transported by drivers that he requested using the UTI App. Information about any other transactions is irrelevant to those specific allegations, and the interrogatory is an impermissible fishing expedition. The Commission has previously concluded that the standard for discovery is relevance, not curiosity. *See Pennsylvania Public Utility Commission, et al. v. Pennsylvania American Water Company*, Docket No. R-2011-2232243 (Order on Motion to Compel dated July 21, 2011 at 21-22).

I&E claims that the information requested by the Interrogatories is relevant to its request for relief in the complaint – namely that a civil penalty of $1,000 be imposed on UTI for each

day it has allegedly illegally operated since March 13, 2014. However, the complaint does not contain any allegations about continued operations. Moreover, I&E has not cited any authority under which it may seek production of documents from a respondent that are intended to be used against the respondent for purposes of requesting a civil penalty in excess of what is sought to address the specific allegations outlined in the complaint. Likewise, I&E has not offered any authority to support its request for UTI to implicate another entity that may have been involved in arranging rides through the UTI App. In short, I&E has not explained why it expects UTI to provide information to support and supplement allegations in the complaint that it has the burden to prove.

In addition, I&E has failed to explain the relevance of any information about trips arranged through the UTI App prior to the issuance of a Cease and Desist Order by the ALJs on July 1, 2014 in response to the Petition for Interim Emergency Relief, Docket No. P-2014-2426846, which was adopted by the Commission on July 24, 2014. Upon receipt of I&E's complaint on June 6, 2014 containing allegations about unauthorized service, UTI was under no obligation to stop licensing its software to riders and entities contracting with drivers. Absent an adjudication as to whether the Commission has jurisdiction over an entity licensing a software product or that any activities were in violation of the Public Utility Code, I&E had no right to expect any change in UTI's operations merely upon the filing of a complaint. Similarly, UTI had no obligation to alter its operations upon the receipt of a letter from the Commission's advisory staff in July 2012.

Moreover, UTI is protected by the Fifth Amendment of the United States Constitution from disclosing this information, and therefore the Interrogatories seek information that would neither be admissible at hearing nor reasonably calculated to lead to the discovery of admissible

evidence. Specifically, since UTI could not be compelled to offer testimony about the number of rides that were provided or disclose any affiliated or wholly-owned entities to whom it licensed its App, it is inappropriate to seek this information through discovery.

The United State Supreme Court has found that the Fifth Amendment privilege may be asserted in an administrative proceeding and protects against disclosures that the party reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used. *See Kastigar et al. v. United States*, 406 U.S. 441 (1972). Section 3310 of the Public Utility Code ("Code") provides that any person or corporation operating as a broker, without a license issued by the Commission "shall be guilty of a summary offense, and any subsequent offense by such person or corporation shall constitute a misdemeanor of the third degree." 66 Pa.C.S. § 3310. Given the allegations in the complaint about unlawful brokering, which have not been proven and the Commission has not yet adjudicated, disclosure of information about rides that were arranged through the UTI App could result in prosecution under Code Section 3310 and therefore is protected by the Fifth Amendment.

I&E claims that the Fifth Amendment protections are not available to corporations. However, I&E fails to recognize, however, that corporations can only act through their agents. Therefore, officers and agents of a corporation can claim the benefits afforded by the Fifth Amendment in responding to a complaint or answering interrogatories, even when acting on behalf of the corporation. *Kohn v. State*, 336 N.W. 2d 292, 298-99 (Minn. 1983). Moreover, if a corporation can be charged with criminal offenses for violations of Code Section 3310, it makes sense that they or their agents can assert the Fifth Amendment privilege. This analysis is bolstered by the 2010 Supreme Court decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010),

in which the Court held for the first time that a corporation enjoys First Amendment rights of association and free speech.

C. I&E's Interrogatories Would Cause Unreasonable Annoyance and Burden to UTI.

The Commission's regulations do not permit discovery which "[w]ould cause unreasonable annoyance, embarrassment, oppression, burden or expense." 52 Pa. Code § 5.361(a)(2). I&E's Interrogatories seeking transaction data and customer information would cause unreasonable annoyance and burden to UTI. This is particularly true when UTI's subsidiary, Rasier-PA, has complied with the Commission's ETA Order and is lawfully providing ride-sharing network services in response to an immediate public need in Allegheny County. Assuming that compliance with the Commission's regulatory and statutory requirements was the primary goal of the complaint, that has been achieved, and efforts to gather additional information through discovery in this proceeding about past practices cause unreasonable annoyance and burden to UTI.

In addition, disclosure of the extensive private customer information sought by I&E's Interrogatories would impose unreasonable burden on UTI. The documentation requested by I&E would be voluminous and would require UTI to commit significant resources to compile every single communication to passengers regarding rides offered in Pennsylvania. In order to ensure protection of customer information, UTI would be required to proactively review any document to be produced in order to remove or redact such privileged information. This would be an unduly burdensome exercise, especially in view of the limited, if any, probative value this information would produce.

WHEREFORE, for the reasons set forth above, Uber Technologies, Inc. respectfully requests that its objections to the Bureau of Investigation and Enforcement's Interrogatories and Request for Production of Documents – Set I be sustained and that I&E's Motion to Compel be denied.

Respectfully submitted,

September 3, 2014

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Attorneys for Uber Technologies, Inc.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT	:	
	:	**Docket No. C-2014-2422723**
v.	:	
UBER TECHNOLOGIES, INC.	:	

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 § 1.54 (relating to service by a party).

Via Email and First Class Mail

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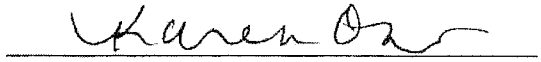
Dated this 3rd day of September, 2014.



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APPENDIX B

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November 12, 2014

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Bureau of Investigation and Enforcement v. Uber Technologies, Inc.
Docket No. C-2014-2422723

Dear Secretary Chiavetta:

On behalf of Uber Technologies, Inc., I have enclosed for electronic filing the Answer of Uber Technologies, Inc. to Motion for Sanctions in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Sincerely,

Karen O. Moury

KOM/tlg
Enclosure
cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT	:	
	:	**Docket No. C-2014-2422723**
v.	:	
UBER TECHNOLOGIES, INC.	:	

ANSWER OF UBER TECHNOLOGIES, INC. TO MOTION FOR SANCTIONS

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to Section 5.371(b) of the Commission's regulations, 52 Pa. Code § 5.371(b), Uber Technologies, Inc. ("UTI"), by and through its counsel, Karen O. Moury and Buchanan Ingersoll & Rooney PC, files this Answer opposing the Motion for Sanctions filed by the Commission's Bureau of Investigation and Enforcement ("I&E") on November 7, 2014, and in support thereof, avers as follows:

I. INTRODUCTION

1. I&E's Motion for Sanctions must be denied in its entirety because: a) UTI has lodged valid objections to the discovery, which have not been reviewed by the Commission; b) UTI's discovery responses are not necessary for I&E to prosecute the complaint it filed on June 5, 2014; c) the sanctions proposed by I&E go well beyond what is permitted for failure to comply with a discovery order; and d) the imposition of the proposed sanctions would exceed the Commission's statutory authority and violate fundamental principles of due process. The proposed sanction to use arbitrary "proxy" evidence, without objection or cross-examination by UTI, is unprecedented, tramples UTI's rights in defending the complaint and exceeds the harshest allowable sanction condoned by courts for failure to comply with a discovery order.

2. By Order adopted on July 24, 2014, the Commission granted emergency temporary authority ("*ETA Order*") to Rasier-PA LLC ("Rasier-PA"), a UTI subsidiary, to provide ridesharing network services in Allegheny County in response to a critical and immediate public need arising from the complete inadequacy of existing transportation alternatives. *Application of Rasier-PA LLC for Emergency Temporary Authority*, Docket No. A-2014-2429993. On August 21, 2014, following the certification of adequate liability insurance coverage by UTI's insurance carrier, the Commission issued a certificate of public convenience to Rasier-PA. As a result, UTI's subsidiary is lawfully providing the same ridesharing network services in Allegheny County that are the subject of the complaint.

3. With Rasier-PA providing Commission-approved ridesharing network services, the pressing concerns highlighted by I&E regarding public safety and adequate liability insurance have been fully addressed. No useful public purpose is served by dwelling on past practices and attempting to expand the parameters of the complaint that was filed on June 5, 2014. It is fully within I&E's control to move forward with prosecution of that complaint or to engage in settlement discussions with UTI to bring this matter to a prompt disposition.[1]

II. BACKGROUND

4. On June 5, 2014, I&E filed a complaint against UTI alleging that it announced the launch of ridesharing services in Pittsburgh, Pennsylvania on March 13, 2014 and that I&E Motor Carrier Enforcement Manger Charles Bowser ("Office Bowser") arranged eleven rides using UTI's Internet, mobile application or digital software ("App") between March 31, 2014 and April 21, 2014. UTI filed an answer on June 26, 2014, admitting the licensing of its App,

[1] I&E has refused to engage in settlement discussions without having access to the confidential trip data requested through discovery.

which connects passengers and drivers in select cities throughout the world, and denying that the licensing of software by a software company requires a brokerage license from the Commission.

5. On August 8, 2014, I&E served Interrogatories and Requests for Production of Documents – Set I ("Interrogatories") upon UTI. These Interrogatories sought the number of transactions/rides provided to passengers in Pennsylvania via connections made with drivers through the App during specific time periods, and customer data including invoices, receipts, e-mails, records and documents sent to individuals in relation to rides they received via the App.

6. On August 18, 2014, UTI filed objections to the Interrogatories, noting that the customer and trip information is protected from disclosure by the Commission's discovery rules and well-established case law. UTI argued that the customer information is confidential and that the commercially sensitive and proprietary trip data constitutes a trade secret, especially due to its narrow focus with respect to time periods and the limited geographic region. UTI also highlighted concerns with the broad scope of Pennsylvania's Right-to-Know Law, 65 P.S. §§ 67.101-67.3104. Additionally, UTI contended that the discovery was not relevant to the allegations in the complaint and that its production would not lead to the discovery of admissible evidence.

7. I&E filed an Amended Motion to Compel on August 29, 2014, and UTI filed an Answer to I&E's Motion to Compel on September 3, 2014. In its Answer to the Motion to Compel, UTI reiterated its earlier objections, while also arguing that production of the data would cause an unreasonable burden, particularly when UTI's subsidiary, Rasier-PA, has complied with the Commission's *ETA Order* and is lawfully providing ridesharing network services in response to a critical and immediate public need in Allegheny County. As compliance

with the Commission's regulatory and statutory requirements has been achieved, UTI contended that the production of documents relating to past practices is unduly burdensome.

8. On October 3, 2014, the presiding administrative law judges ("ALJs") issued an Interim Order granting I&E's Motion to Compel ("*Interim Discovery Order*") and directing UTI to serve responses to the Interrogatories within ten days.

9. On October 6, 2014, UTI filed a Petition for Certification requesting interlocutory review by the Commission of the *Interim Discovery Order*.

10. On October 14, 2014, UTI filed a Brief in Support of the Petition for Certification and I&E filed a Brief in Opposition to the Petition.

11. On October 17, 2014, the ALJs issued an Interim Order denying the Petition for Certification. On the same date, the ALJs issued an Interim Order amending the *Interim Discovery Order* to permit UTI to redact credit card numbers, social security numbers, e-mail addresses, telephone numbers or other personal identifying information for the trip-related documents requested by I&E.

12. UTI has not served responses to the Interrogatories on I&E for the same reasons as expressed in its Objections, Answer to Motion to Compel, Petition for Certification and Brief in Support of Petition for Certification. These filings are fully incorporated herein by reference.

13. By the pending Motion for Sanctions, I&E seeks: a) imposition of a civil penalty in the amount of $1,000 per day for each day going forward from October 17, 2014 to the date when UTI complies with the *Interim Discovery Order*; b) permission to use a proxy number of rides taken using the App during the specified time periods without objection or cross examination; c) prohibition on UTI from asserting a defense that a subsidiary brokered or provided transportation services; and d) any other sanction that the ALJs deem appropriate.

14. By this Answer opposing the Motion for Sanctions, UTI contends that the proposed sanctions are inappropriate because: a) UTI has lodged valid objections to the discovery, which have not been reviewed by the Commission; b) UTI's discovery responses are not necessary for I&E to prosecute the complaint it filed on June 5, 2014; c) the sanctions proposed by I&E go well beyond what is permitted for failure to comply with a discovery order; and d) the imposition of the proposed sanctions would exceed the Commission's statutory authority and violate fundamental principles of due process.

III. APPLICABLE LEGAL STANDARDS

15. Under Section 5.371(a)(1) of the Commission's regulations, the presiding officer may make an appropriate order if a party fails to respond to discovery requests. 52 Pa. Code § 5.371(a)(1). Section 5.371(d) of the Commission's regulations provides that a failure to comply with an order may not be excused on the ground that the discovery sought is objectionable, unless the party failing to act has filed an appropriate objection. 52 Pa. Code § 5.371(d).

16. The specific sanctions available to presiding officers include those set forth in Section 5.372(a) of the Commission's regulations, as follows:

> (1) An order that the matters regarding which the questions were asked, the character or description of the thing or land, the contents of the paper, or other designated fact shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.
>
> (2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing in evidence designated documents, things or testimony.
>
> (3) An order striking out pleadings or parts thereof, staying further until the order is obeyed, or entering a judgment against the disobedient party or individual advising the disobedience.
>
> (4) An order with regard to the failure to make discovery as is just.

52 Pa. Code § 5.372(a).

17. Sections 5.371 and 5.372 of the Commission's regulations, 52 Pa. Code §§ 5.371-5.372, are patterned after Pennsylvania Rules of Civil Procedure ("Pa.R.C.P.") Rule 4019. Section 5.372(a)(4) of the Commission's regulations, 52 Pa. Code § 5.372(a)(4), which allows a presiding officer to issue and order "as is just," mirrors Pa.R.C.P. 4019(c)(5).

18. In determining whether lower courts properly exercised judicial discretion to formulate an appropriate sanctions order pursuant to Pa.R.C.P. 4019(c)(5), reviewing courts consider whether the lower court struck the appropriate balance between the procedural need to move the case to prompt disposition and the substantive rights of the parties. A central question in those cases is whether the party's noncompliance is egregious enough to warrant the harshest allowable sanction of a "default" or final determination, or if a lesser sanction strikes a better balance. *See Marshall v. SEPTA,* 76 Pa.Cmwlth. 205, 463 A.2d 1215 (1983) (failure of a party to respond to interrogatories in over five months, without making an objection, warranted a sanction order prohibiting the party from entering a defense and presenting evidence); *Gonzales v. Procaccio Brothers Trucking Company*, 268 Pa. Super. 245, 407 A.2d 1338 (1979) (failure to answer an interrogatory that asks for information that is not determinative of the entire controversy would seldom, if ever, warrant the harshest allowable sanction of a default judgment); *Brown v. Ferroni*, 25 Phila. 580 (Pa. Com. Pl. 1993) (precluding a party from offering testimony of a particular expert witness is an appropriate sanction for failure to provide sufficient responses to interrogatories since it does not prevent party from presenting other evidence).[2]

[2] *See also The Florida Bar Journal*, May 2009, Volume 83, No. 5, "Review of Orders Dismissing or Defaulting for Discovery Violations: The Evolution of the Abuse of Discretion Standard," citing *Mercer v. Raine*, 443 So. 2d 944 (Fla. 1983) (mere failure to comply with discovery order, by itself, is insufficient to justify a default or dismissal, which is a severe sanction that should be employed only in extreme circumstances).

IV. ARGUMENT

19. I&E has failed to demonstrate that any sanctions are warranted, including the harshest allowable sanction of sustaining the complaint, let alone the sanctions that it has proposed which go well beyond the permissible and appropriate range of sanctions. I&E's Motion for Sanctions must be denied in its entirety because: a) UTI's responses are not necessary in order for I&E to prosecute the complaint it filed on June 5, 2014; b) UTI has lodged valid objections to the Interrogatories, which have not been reviewed by the Commission; c) the sanctions proposed by I&E go well beyond what is permitted for addressing a failure to respond to discovery; and d) the imposition of the proposed sanctions would exceed the Commission's statutory authority and violate fundamental principles of due process. The proposed sanction to use arbitrary "proxy" evidence, without objection or cross-examination by UTI, is unprecedented, tramples UTI's rights in defending the complaint and exceeds the harshest allowable sanction condoned by courts for failure to comply with a discovery order.

20. At the outset, I&E has not shown that a sanctions order is necessary. The purpose of a sanctions order is to move a case to prompt disposition. *Marshall, supra.* A sanctions order is not needed to move this case to prompt disposition and would trample UTI's substantive rights. This is especially true given UTI's pending Motion for Judgment on the Pleadings, which demonstrates that the complaint does not even set forth factual allegations that, if proven, would result in a finding that UTI has violated the Public Utility Code, 66 Pa.C.S. §§ 101 *et seq.* ("Code").

21. I&E does not need the responses to the Interrogatories to move forward with the prosecution of the complaint, which alleged the announcement of a launch of ridesharing services in Allegheny County and eleven rides obtained by Officer Bowser using the UTI App.

Presumably when I&E filed its complaint on June 5, 2014, it was prepared to substantiate those allegations. A complaining party is expected to put forth the support for its allegations or have the complaint dismissed. The Commission expects no less even of *pro se* complainants. *See, e.g., Scheffer v. Columbia Gas of Pennsylvania, Inc.*, Docket No. C-2010-2153353 (September 22, 2011).

22. Further, a party that has initiated a legal proceeding through the filing of a complaint should be prepared at the time the complaint is filed to substantiate those allegations and move forward with the proceeding. *See Pa. Public Util. Comm., Bureau of Investigation and Enforcement v. Glacial Energy of Pennsylvania, Inc.*, Docket No. C-2012-2297092 (Order Granting Motion for Prehearing Conference dated November 1, 2012 and Prehearing Order #2 dated January 2, 2013). Rather than fulfill its burden to prosecute the complaint that it filed over five months ago, and present the evidence it gathered to substantiate those allegations, I&E is improperly seeking to obtain additional information from UTI that goes well beyond the parameters of the complaint. If I&E is not prepared to prosecute the complaint it filed, it should be dismissed outright.

23. Seeking to expand the scope of the complaint is unwarranted and does not justify a sanctions order, especially since I&E's original objectives have been fulfilled. When I&E filed its complaint on June 5, 2014, it followed shortly thereafter with the filing of a Petition for Interim Emergency Order at Docket No. P-2014-2426846 on June 20, 2104. In that Petition, I&E focused on public safety and adequate liability insurance as its key concerns for initiating the prosecution. As those issues have been fully addressed by the Commission through the *ETA Order*, the continued use of enforcement resources by I&E is futile and is a waste of utility

ratepayer resources, especially when those efforts are geared at expanding rather than concluding the pending complaint proceeding.

24. Besides being unnecessary to move the case to a prompt disposition, a sanctions order is inappropriate at this time because UTI has lodged valid objections to the Interrogatories. *See* 52 Pa. Code § 5.371(d). Although the ALJs dismissed those objections in granting I&E's Motion to Compel, the Commission has not reviewed this ruling because the ALJs refused to certify the *Interim Discovery Order* to the Commission. Moreover, by raising objections to the Interrogatories and seeking Commission review of the *Interim Discovery Order*, UTI has not simply ignored the Interrogatories, as did the noncompliant party in *Marshall, supra*, but rather has attempted in good faith to utilize the tools that are available when Interrogatories are objectionable.

25. Even if any sanctions are appropriate at this stage of the proceeding, the sanctions proposed by I&E are unprecedented, unauthorized and inconsistent with the letter or spirit of Section 5.372 of the Commission's regulations. 52 Pa. Code § 5.372. The regulations specify sanctions that involve limitations on the ability of the noncompliant party to participate in the proceeding and contemplate the possible issuance of a final determination against a noncompliant party. Although Section 5.372(a)(4) of the Commission's regulations, 52 Pa. Code § 5.372(a)(4), is a more general provision, a review of the case law interpreting the same civil procedural rule demonstrates that it simply affords a court or presiding officer some flexibility to fashion an appropriate sanction that may not be specifically mentioned in the rule. In fashioning an appropriate sanction, courts and presiding officers are expected to avoid where possible imposing the harshest sanction available – *i.e.* the issuance of a final determination against a noncompliant party. *See Marshall, Gonzales*, and *Brown, supra.*

26. The sanctions proposed by I&E exceed the harshest sanction condoned by courts for failure to comply with a discovery order. Neither the Commission's regulations nor the case law interpreting the same rule of civil procedure authorize or contemplate the issuance of a sanction order that allows the moving party to expand the allegations of its complaint, to have proxy evidence admitted into the record or to have civil penalties imposed for each day when responses to Interrogatories are not served.

27. Particularly when UTI's subsidiary has been providing critically needed Commission-approved ridesharing services to the public in Allegheny County due to the complete inadequacy of existing transportation options pursuant to the *ETA Order*, it is puzzling why I&E is seeking greater sanctions than are envisioned by the Commission's regulations or permitted by the courts. I&E explains that it is seeking a "severe" sanction because of UTI's alleged "blatant disregard and continued defiance of the orders of the presiding ALJs and the Commission." Motion at p. 1. However, despite making that bald assertion at the outset of the Motion, I&E never provides any support for it – because it is simply not true. To the contrary, UTI has not been found to be in violation of any Commission order. Further, as noted above, the purpose of a sanctions order is to move the case to prompt disposition (*Marshall, supra*), not to penalize a party for any prior (or ongoing) alleged transgressions.

28. In addition to exceeding the harshest sanction condoned by courts for failure to comply with a discovery order, any sanction which would allow the complaining party to expand the allegations and rely on arbitrary proxy evidence in support of them, particularly without any ability of the respondent to object to its introduction or cross examine the witness providing the testimony, violate fundamental principles of due process. It is well settled that for matters coming before an administrative agency, a party must be afforded reasonable notice of the issues

raised and have an opportunity to present any response or objection. *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa. Cmwlth. 2000); *Honey Brook Water Co. v. Pennsylvania Public Utility Commission*, 167 Pa. Cmwlth. 140, 647 A.2d 653 (1994). The use of proxy evidence, or allowing I&E to arbitrarily decide the number of rides that were arranged through the App, is antithetical of due process principles. I&E has offered no case law to support such a proposition, and the Commission would have no lawful basis upon which to impose civil penalties.

29. As the complainant, I&E bears the burden of proving its case. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy its burden of proof, I&E must demonstrate by a preponderance of the evidence that UTI engaged in the activities set forth in the complaint and that it is entitled to the relief it is seeking. *Patterson v. Bell Telephone Company*, 72 Pa. P.U.C. 196 (1990); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.* 602 A.2d 863 (Pa. 1992). To meet its burden of proof, I&E must present evidence more convincing, by even the smallest amount, than that presented by UTI. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Nothing in the Code, the Commission regulations or prior Commission decisions allow a party to use proxy evidence to carry its burden of proof. In fact, since I&E's complaint does not even allege ongoing activities (other than to seek a civil penalty for any additional days on which UTI is found to have violated the Code), the proxy evidence I&E is seeking to permission to present - without objection or challenge - would result in an inappropriate expansion of the complaint's allegations. *See O'Toole v. Metropolitan Edison Company*, Docket No. C-2008-2045487, 2009 Pa. PUC LEXIS 907 (2009) (issues not raised in complaint may not be raised in hearing).

30. Further, I&E's proposed sanction for a civil penalty of $1,000 per day for each day that UTI does not serve responses to the Interrogatories is not authorized by Code Section 3301, which empowers the Commission to impose a $1,000 civil penalty only for a violation of the Code, Commission regulations or Commission orders. 66 Pa.C.S. § 3301(a). As the *Interim Discovery Order* is not a Commission order, a civil penalty for failure to comply with it is not permitted by the statute. Moreover, the proposed sanction fails to consider the factors and standards for evaluating the amount of a civil penalty that is imposed for the violation of a Commission order, regulation or statute, as prescribed by the Commission's policy statement at 52 Pa. Code § 69.1201. *See also Scheffer, supra.*

31. The only sanction proposed by I&E that is of the nature contemplated by the Commission's regulations and that is consistent with the case law is the request for UTI to be prohibited from asserting a defense that a UTI subsidiary actually brokered or provided transportation services. However, even that sanction is inappropriate since I&E, as a Commission representative, has access to the transcript that was produced as part of the application proceedings of Rasier-PA LLC ("Rasier-PA"), a UTI subsidiary, for experimental authority to provide ridesharing network services throughout the Commonwealth and between points in Allegheny County, at Docket Nos. A-2014-2424608 and A-2014-2416127. In that transcript, Rasier-PA's witness identified the name of the UTI subsidiary that was contracting with operators to provide transportation service through the UTI App in Allegheny County prior to the grant of emergency temporary authority. Therefore, contrary to I&E's assertions that UTI is seeking to prevent it from naming the correct party in the complaint, I&E could have opted at any time since that testimony was offered on August 18, 2014 to amend the complaint to name that entity.

32. As I&E filed the complaint on June 5, 2014 and it is within I&E's control to move this case forward to a prompt disposition, without responses to the Interrogatories from UTI, a sanctions order is unwarranted. Given that I&E does not need this information to prosecute the complaint, neither the Commission's regulations nor the case law support the imposition of any sanctions on UTI for declining to provide responses to Interrogatories that go well beyond the parameters of the complaint.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, Uber Technologies, Inc. respectfully requests that the Commission deny the Motion for Sanctions filed by the Bureau of Investigation and Enforcement and grant such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: November 12, 2014

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Attorneys for Uber Technologies, Inc.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT	:	
	:	**Docket No. C-2014-2422723**
v.	:	
UBER TECHNOLOGIES, INC.	:	

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 § 1.54 (relating to service by a party).

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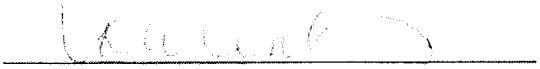
Dated this 12th day of November, 2014.



Karen O. Moury, Esq.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT	:	
	:	**Docket No. P-2015-2466136**
v.	:	
UBER TECHNOLOGIES, INC.	:	

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 § 1.54 (relating to service by a party).

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Dated this 26th day of February, 2015.

Karen O. Moury, Esq.