PENNSYLVANIA

PUBLIC UTILITY COMMISSION

Harrisburg, PA 17105-3265

Public Meeting held June 9, 2016

Commissioners Present:

Gladys M. Brown, Chairman

Andrew G. Place, Vice Chairman

John F. Coleman, Jr.

Robert F. Powelson

Pennsylvania Public Utility Commission

Bureau of Investigation and Enforcement C-2014-2422723

v.

Uber Technologies, Inc., Gegen, LLC,

Rasier LLC, and Rasier-PA, LLC

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Rehearing and Reconsideration (Reconsideration Petition) filed by Uber Technologies, Inc., Gegen, LLC, Rasier LLC, and Rasier-PA, LLC (collectively Uber) on May 25, 2016, seeking reconsideration of the Opinion and Order entered May 10, 2016 (*May 2016 Order*), relative to the above-captioned proceeding. Also before the Commission is the Petition for Supersedeas filed by Uber on May 25, 2016, seeking a stay of the *May 2016 Order* pending resolution of the Reconsideration Petition, any subsequent appellate proceedings, and any required Commission proceedings on remand (Stay Petition).[[1]](#footnote-1) The Bureau of Investigation and Enforcement filed Answers to both petitions on June 6, 2016.

Pursuant to Rule 1701 of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. Rule 1701, the Commission must act to grant a petition for reconsideration within thirty days of the date of entry of the order for which reconsideration is sought, or otherwise lose jurisdiction to do so if a petition for review is timely filed. The thirty‑day period within which the Commission must act upon the Petition for Reconsideration in order to preserve jurisdiction ends on June 9, 2016. Accordingly, we shall grant reconsideration, within the meaning of Pa. R.A.P. Rule 1701(b)(3), pending review of, and consideration on, the merits of the Reconsideration Petition.

In addition, Uber seeks a stay or supersedeas of the *May 2016 Order* pending the resolution of Uber’s Reconsideration Petition, any subsequent appellate proceedings, and any required Commission proceedings on remand. Specifically, Uber requests a stay of the directive that it pay the civil penalty of $11,364,736 by June 9, 2016.

Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. As to its claims, the burden of proof is therefore on Uber. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

In determining whether to grant a stay or supersedeas, the Commission generally applies the standards set forth in *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921 (D.C. Cir. 1958) (*Virginia Jobbers*) and reiterated in *Pa. PUC v. Process Gas Consumers Group*, 502 Pa. 545, 467 A.2d 805 (1983) *rev’d on other grounds by* 511 Pa. 88, 511 A.2d 1315 (1986). Based on the unique circumstances of this case, however, we need not engage in an analysis of these standards at this time.

The Commission’s Regulation at 52 Pa. Code § 1.15 states, in pertinent part:

Except as otherwise provided by statute, whenever under this title or by order of the Commission, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended.

We shall consider the portion of Uber’s Stay Petition, requesting a stay pending the disposition of the Petition for Reconsideration, as a request to extend the deadline for the payment of the civil penalty pursuant to 52 Pa. Code § 1.15. In order to afford due process to the Parties and to give the Commission an opportunity for thorough consideration of all the Parties’ filings in this proceeding, and in light of the short time frame between the filing of the Answers to the above referenced Petitions (June 6, 2016) and the due date for the payment of the civil penalty (June 9, 2016), the Commission finds good cause to grant the request. Thus, we shall extend the deadline stated in Ordering Paragraph No. 5 of the *May 2016 Order* pending final disposition of the Reconsideration Petition. We shall defer consideration of the remainder of Uber’s Stay Petition until we address the merits of the Reconsideration Petition; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Rehearing and Reconsideration filed by Uber Technologies, Inc., Gegen, LLC, Rasier LLC, and Rasier-PA, LLC on May 25, 2016, is hereby granted, pending further review of, and consideration on, the merits.

2. That the Request for an Extension of Time to comply with Ordering Paragraph No. 5 of the Opinion and Order entered May 10, 2016, is granted, consistent with this Opinion and Order.

3. That the Petition for Supersedeas filed by Uber Technologies, Inc., Gegen, LLC, Rasier LLC, and Rasier-PA, LLC on May 25, 2016, is deferred, consistent with this Opinion and Order.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: June 9, 2016

ORDER ENTERED: June 9, 2016

1. On June 2, 2016, Uber filed correspondence with the Commission requesting that the Commission act prior to its scheduled public meeting on June 9, 2016, to grant an extension of the due date for payment of the civil penalty.  Due to the short time frames in the present matter and the obligation to ratify a notational vote at the next regularly scheduled public meeting, we decline to act on this matter by notational vote. [↑](#footnote-ref-1)