

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Harrisburg, Pennsylvania 17120**

**Uber Technologies, Inc., et al. v. Pa. Public  
Utility Commission, No. 1617 C.D. 2016**

**Public Meeting April 6, 2017  
2569511-LAW  
Docket No. B-2016-2569511**

**STATEMENT OF COMMISSIONER ROBERT F. POWELSON**

Before us today for approval is a Settlement Agreement (Settlement) between Uber Technologies, Inc., *et al.* (Uber) and the Pennsylvania Public Utility Commission (PUC or Commission). The Settlement arises out of the Commission's May 10, 2016, Final Order imposing an \$11.4 million civil penalty on Uber for engaging in unauthorized Transportation Network Company (TNC) service in 2014.<sup>1</sup> I did not support that determination, and today, I continue to be troubled by the final resolution of this matter, which requires Uber to pay a civil penalty of \$3.5 million.

I have consistently stated throughout this proceeding that I do not agree with imposing such a high penalty on a company that caused no harm to consumers and, in fact, was providing a much needed service in the Commonwealth. Even at \$3.5 million, the fine against Uber is disproportionately high compared to other Commission decisions. During a virtually identical timeframe in 2014, Uber's competitor, Lyft, also operated as a TNC without a certificate. However, for reasons that continue to confound me, Lyft was able to settle with the Commission's Bureau of Investigation and Enforcement (I&E) for \$250,000, while I&E refused to conduct similar settlement discussions with Uber.

These two cases were extraordinarily similar, and yet Uber and Lyft received extraordinarily different treatment from the Commission. Both companies operated illegally for virtually the same period in 2014 (with Uber's activity lasting 5 days longer than Lyft's illegal operations). Uber did provide more trips during that time, but I would argue that this is evidence of nothing more than Uber's popularity, as opposed to some greater malicious intent by Uber. Regardless, Uber did not provide so many more trips as to warrant the vastly different penalties imposed by the Commission.

The real difference between the proceedings was that Lyft complied with I&E's request to turn over confidential trip data during the hearing process, while Uber refused, citing the proprietary nature of this information. I do not condone Uber's decision to withhold its trip information in disregard of the judges' orders. However, Uber's lack of cooperation was more than adequately addressed through a \$72,500 discovery sanction issued by the Commission.

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<sup>1</sup> On September 30, 2016, Uber filed a Petition for Review with the Commonwealth of Pennsylvania challenging the Commission's Final Order. On March 28, 2017, the Commonwealth Court stayed the appeal to allow the Commission to review and consider approval of the Settlement.

Despite this, the Administrative Law Judges (ALJ) recommended an additional civil penalty of \$49 million for Uber.<sup>2</sup>

Let's stop for a minute to think about that - \$49 million. Excluding Uber, the highest penalty ever imposed by the Commission is \$1.8 million.<sup>3</sup> That case involved an Electric Generation Supplier (EGS) that engaged in *intentionally deceptive* practices and caused a great deal of *actual* financial harm to a *large* number of customers. Uber's activities harmed no one, and in fact, its services were actively sought out by customers who were unhappy with traditional taxi service. The Commission, in the course of business, has not infrequently dealt with matters of life and death – natural gas pipeline explosions, electrocutions, and service issues that cause people to be without basic utility service – and we have never issued a fine over \$2 million. Yet, for a company that provided a new and innovative transportation service to customers who voluntarily requested rides, the ALJs recommended the highest fine in Commission history.

On paper, the rationale for recommending a \$49 million penalty was the number of illegal trips that Uber provided, along with the argument that a substantial fine was necessary to deter future violations. While Uber did give more ride rides than Lyft, it was certainly not enough more to justify a fine that is almost 200 times the penalty paid by Lyft. Nor is it persuasive to argue that a multi-million dollar penalty was necessary to deter future violations, because apparently the Commission believed \$250,000 was enough to deter Lyft, a company that engaged in virtually identical activity. In my view, the \$49 million penalty was an indirect way to punish Uber for its lack of cooperation during the hearing process, which is an unacceptable way for the Commission to do business. Regardless of our dislike for how Uber conducted itself before the Commission, the punishment must still fit the crime.

The Commission ultimately reduced the civil penalty amount to \$11.4 million, a decision to which I dissented because the fine continued to be disproportionate to the offense. Today's Settlement further reduces Uber's penalty to \$3.5 million, but even that amount is too high. In comparison to \$49 million, a \$3.5 million penalty may seem reasonable, but we cannot overlook that this is fine of over \$18,000 per day. I am not suggesting that Uber's path to certification was without fault or that the company should not pay a penalty. It is the Commission's job to ensure that motor carrier service in Pennsylvania is safe and reliable and I take that duty very seriously. However, given the mitigating factors that existed in this case, the fine should be reasonable and consistent with Commission precedent.

We cannot forget that when Uber and Lyft began offering TNC service, it was not clear that the companies were in fact operating illegally. In 2014, no Pennsylvania law or portion of the Commission's regulations addressed TNC service. The PUC offered certificates for traditional taxicab service, as well as broker licenses, which Uber's subsidiary applied for and obtained in 2013.<sup>4</sup> However, neither of these categories fully encompassed TNC service, which is why the Commission ultimately granted Uber a certificate for "experimental authority." In a

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<sup>2</sup> The ALJs recommended a civil penalty of \$49,852,300.

<sup>3</sup> See *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Opinion and Order entered December 3, 2015).

<sup>4</sup> See *Application of Gegen, LLC for a Brokerage License*, Docket No. A-2012-2317300 (Order entered January 24, 2013).

situation like this, where the law was ambiguous, it is not appropriate to punish the wrongdoer in the extreme.

Additionally, the Commission must take into consideration Act 164, which limits the penalties for TNCs operating *prior* to the passage of the law to \$1,000 per day, or a total of \$250,000. In Uber's instance, this limits any Commission-imposed fine to \$191,000. Although some argue that Act 164's penalty cap applies only prospectively, that interpretation is not consistent with the plain language of the statute. In my view, the Legislature was clear in stating that the penalty cap applies retroactively. That, combined with the letter from Governor Wolf requesting the Commission to reconsider its penalty against Uber, reinforces that the fine here should be well below \$3.5 million.

However, in making my decision today, I am cognizant of the fact that the Commission has a history of encouraging settlement agreements. Here, Uber agreed to pay \$3.5 million to settle and resolve this issue. In the interest of supporting parties who want to amicably settle disputes and avoid the costs, delays, and uncertainty associated with litigation, I will vote to ratify the Settlement. Yet, I will concur in result only because I am disappointed with how we have reached this point, and that includes the Commission's handling of this case – from the issuance of the cease and desist order to how settlement discussions were conducted. While I recognize the importance of reaching a resolution in this matter and will reluctantly vote to approve the Settlement, I believe that the penalty ultimately agreed to continues to be excessive and disproportionate to the violation.

Date: April 6, 2017

  
ROBERT F. POWELSON  
COMMISSIONER