**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :

Bureau of Investigation and Enforcement :

:

 v. :C-2014-2422723

 :

Uber Technologies, Inc. :

**INTERIM ORDER**

**MOTION FOR SANCTIONS**

 On June 6, 2014, the Commission’s Bureau of Investigation and Enforcement (BIE), filed a complaint against Uber Technologies, Inc. (Uber). The complaint alleges, among other things, that Uber is acting as a broker of transportation without a certificate of public convenience and that its actions constitute a violation of the Public Utility Code. The complaint seeks civil penalties in the amount of $95,000 and an additional $1,000 per day for each day that Uber continues to operate after the date of filing. Uber filed an answer on June 23, 2014.

 BIE also filed a petition for emergency relief at Docket No. P-2014-2426846. Following an evidentiary hearing, the petition was granted by order dated July 1, 2014 and Uber was ordered to cease and desist its operations in Pennsylvania utilizing its digital platform to facilitate transportation for compensation to passengers utilizing non-certificated drivers in their personal vehicles. By order entered July 24, 2014, the Commission approved that order. Further, the Commission determined that additional information would aid in the formulation of a final order in this complaint proceeding. Accordingly, by Secretarial Letter dated July 28, 2014, Uber was directed to address the following questions:

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:
2. From the initiation of Uber’s service in Pennsylvania to June 5, 2014 (the date I&E filed the Complaint against Uber);
3. 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;
4. From June 5, 2014, to July 1, 2014 (the date the *Cease and Desist Order* became effective); and
5. From July 1, 2014, to the date on which the record in this Complaint proceeding is closed.
6. Should there be a finding that Uber’s conduct in any one or all of the periods in question (1), above, was a violation of the Public Utility Code, whether refunds or credits to customers would be an appropriate remedy.
7. Whether either evidence of prior unlawful operations or contumacious refusal to obey Commission orders negates the need for the proposed service and/or the fitness of the applicant as a common carrier such that no certificate of public convenience can be issued by the Commission.

 On August 8, 2014, BIE served interrogatories and a request for documents upon Uber, intended to elicit the information directed by the July 28 Secretarial Letter.

 BIE’s interrogatories sought (1) the number of trips for the time periods consistent with those requested by the July 28 Secretarial Letter; (2) the name of the affiliate that provided the trips if they were not provided by Uber Technologies; and (3) supporting documentation including invoices, receipts, e-mails or other documents generated by Uber Technologies or the affiliate responsible for the distribution of the supporting documentation. Uber objected to each of the interrogatories and document requests on the grounds that the discovery (1) seeks privileged material; (2) calls for irrelevant information; (3) seeks information that is not admissible at hearing and is not reasonably calculated to lead to admissible evidence; and (4) providing the information would cause unreasonable annoyance and burden to Uber.

 Uber objected to the interrogatories on a variety of grounds. After attempts to resolve the dispute were unsuccessful, BIE filed a motion to compel on August 29, 2014. Uber filed a timely response, which repeated the objections. By order dated October 3, 2014 (October 3 Order), we rejected Uber’s arguments and directed it to answer the discovery within 10 days of entry of the order.[[1]](#footnote-1) Uber filed a petition for certification of the order for interlocutory review by the Commission. That petition was denied by order dated October 17, 2014.

 On November 7, 2014, BIE filed a motion for sanctions because Uber has continued to refuse to respond to BIE’s discovery as directed by the October 3 Order. BIE contends that Uber’s continued refusal to provide the trip data and other information sought in discovery, BIE has been unable to discover the scope of Uber’s transportation activities and has not been able to fully prepare its case. Uber filed a response to the motion.

 The Commission’s regulations permit the presiding officer to impose sanctions when a party willfully fails to comply with discovery and the orders of the presiding officers:

(a) The presiding officer, when acting under § 5.371 (relating to sanctions—general) may make one of the following:

(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 proceedings 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.[[2]](#footnote-2)

The failure to comply with the rules of discovery directly affects the due process rights of the promulgating party and therefore prevents orderly and fair litigation.[[3]](#footnote-3) The Commission has held that the orders of an administrative law judge must be complied with and that a failure to do so is a sufficient basis to support dismissal of the matter.[[4]](#footnote-4) Uber’s conduct concerning this matter involves not just failing to comply with an order of the administrative law judges, but involves a failure to comply with a directive of the Commissioners as required by the July 28 Secretarial Letter.

 BIE proposes several possible sanctions for our consideration, including the imposition of civil penalties for each day Uber continues to fail to answer the discovery; grant BIE permission to use a “proxy” number of trips taken while Uber lacked Commission authority without objection or cross-examination; and prohibiting Uber from asserting the defense that transportation was provided by an affiliate of Uber Technologies, rather than by Uber itself.

 Typical discovery sanctions include precluding a party from offering evidence or a defense which is related to the discovery which a party was directed to provide. However, in this case, we agree with BIE that an unconventional sanction is more appropriate here.[[5]](#footnote-5) Given the unique circumstances related to the advent of transportation network companies, a robust presentation of the facts supporting the contentions of both BIE and the Defendant, Uber Technologies is in the public interest. Precluding Uber from presenting evidence hampers our ability to create a complete record and rendering a decision on the substance of the allegations made in BIE’s complaint and any defense Uber may have. A decision based on substance rather than a decision based upon a procedural default, in this case, more properly serves the public interest. Therefore, we decline to prevent Uber Technologies from offering evidence, at this time.

 However, Uber’s willful and repeated failure to comply with our orders cannot go unanswered. To do so undermines the integrity of the adjudicatory process.[[6]](#footnote-6) Uber takes the position that BIE should be prepared to support its complaint without the information sought in discovery. Therefore, according to Uber, it has no obligation to provide responses to BIE’s discovery.

 This argument, of course, misses the point. Uber’s arguments have been rejected by the presiding officers. Although Uber may disagree with our order, it nevertheless is required to comply with that order. We also soundly reject the notion that Uber should be relieved from complying with our order here because “[Uber’s] subsidiary has been providing critically needed Commission-approved ridesharing services to the public . . . .”[[7]](#footnote-7)

 Therefore, we agree with BIE that a civil penalty is appropriate. Section 3301 of the Public Utility Code permits the assessment of a civil penalty to “refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the Commission.” Section 5.372(a)(4) of the Commission’s regulations permits us to impose any sanction which is just. As we explained above, we do not believe that it serves the public to preclude Uber from offering evidence which might explain its conduct. We will provide Uber with one more opportunity to comply with the October 3 Order. If it continues to refuse to comply, we shall impose a civil penalty of $500 per day for each day thereafter that it fails to serve discovery responses until the conclusion of the evidentiary hearing on the complaint. This penalty shall be in addition to any penalties which we may impose if BIE is successful in proving the violations of the Public Utility Code alleged in its complaint.

 THEREFORE,

IT IS ORDERED:

1. That the motion for sanctions by the Bureau of Investigation and Enforcement is GRANTED.
2. That Uber Technologies, Inc. shall serve full and complete answers to all outstanding discovery requests on or before **December 12, 2014**.
3. In the event that Uber Technologies, Inc. fails to serve answers to discovery on or before December 12, 2014, it 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.
4. Penalties are due and payable each day. Payment shall be made by certified check or money order payable to the Commonwealth of Pennsylvania and sent to:

Secretary

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA, 17105-3265

Date: November 26, 2014

 Mary D. Long

 Administrative Law Judge

 Jeffrey A. Watson

 Administrative Law Judge

**C-2014-2422723- Pennsylvania Public Utility Commission, BUREAU OF INVESTIGATION AND ENFORCEMENT V. UBER TECHNOLOGIES, INC.**

STEPHANIE M WIMER esquire

MICHAEL L SWINDLER ESQUIRE

PA PUC BUREAU OF INVESTIGATION & ENFORCEMENT

PO Box 3265

Harrisburg PA 17105-3265

***Accepts e-Service***

karen o moury esquire

buchanan ingersoll & rooney pc

409 north second street suite 500

harrisburg pa 17101-1357

**717.237.4820**

*(Representing Uber Technologies, Inc.)*

***Accepts e-Service***

1. The order was amended on October 17, 2014, to permit Uber to redact confidential customer information such as email addresses, credit card numbers and social security numbers. [↑](#footnote-ref-1)
2. 52 Pa.Code § 5.372. [↑](#footnote-ref-2)
3. *Nippes v. PECO Energy Co.,* Docket No. C-2013-2363324 (Initial Decision August 20, 2014, Final Order dated September 30, 2013). [↑](#footnote-ref-3)
4. *Snyderville Community Development Corporation v. Philadelphia Gas Work*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006). [↑](#footnote-ref-4)
5. 52 Pa.Code § 5.372(a)(4). [↑](#footnote-ref-5)
6. We note further that the Commission’s rules permit the revocation of the privilege of appearing or practicing before it due to repeatedly failing to following Commission or presiding officer directives. 52 Pa.Code § 1.27(a)(4). See also Rule of Professional Conduct Nos. 3.1 and 3.2. [↑](#footnote-ref-6)
7. Answer to Motion for Sanctions at ¶ 27. [↑](#footnote-ref-7)