



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

IN REPLY PLEASE
REFER TO OUR FILE

December 12, 2014

Via e-filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Answer of the Bureau of Investigation and Enforcement to the Motion of Uber Technologies, Inc. for Stay of Effective Date of Interim Order on Motion for Sanctions in the above-referenced proceeding.

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

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Stephanie M. Wimer
Prosecutor
PA Attorney I.D. No. 207522

Enclosure

cc: ALJ Mary D. Long and ALJ Jeffrey A. Watson
As per certificate of service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant,	:	
	:	
v.	:	C-2014-2422723
	:	
Uber Technologies, Inc.,	:	
Respondent	:	

**ANSWER OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT
TO THE MOTION OF UBER TECHNOLOGIES, INC.
FOR STAY OF EFFECTIVE DATE OF INTERIM ORDER
ON MOTION FOR SANCTIONS**

TO THE HONORABLE MARY D. LONG AND HONORABLE JEFFREY A. WATSON:

Pursuant to 52 Pa. Code § 5.103(c), the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission), Complainant in the above-docketed matter, by and through its prosecuting attorneys, hereby files this Answer to the Motion of Uber Technologies, Inc. (Uber or Respondent) for Stay of Effective Date of Interim Order on Motion for Sanctions. For the reasons explained below, Uber's Motion should be denied.

1. On November 26, 2014, the presiding Administrative Law Judges (ALJs) entered an Interim Order granting I&E's Motion for Sanctions (hereinafter referred to as November 26 Interim Order). I&E had filed a Motion for Sanctions due to Uber's refusal

to respond to *any* discovery requests in the above matter despite being directed by the ALJs to do so.¹

2. In the November 26 Interim Order, the ALJs provided the following pertinent directives:

That Uber Technologies, Inc. shall serve full and complete answers to all outstanding discovery requests on or before December 12, 2014; and

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.

See Ordering Paragraphs 2 and 3 of the November 26 Interim Order.

3. Approximately 90 minutes prior to the close of business on December 12, 2014, Uber filed the instant Motion seeking a stay of the effective date of the November 26 Interim Order.

4. Through its most recent Motion, Uber again seeks to obstruct I&E's ability to discover information that Uber was directed to provide, while at the same time attempting to shield it from being penalized from its continuing refusal to abide by the

¹ *See Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Uber Technologies, Inc.*, Docket No. C-2014-2422723 (Interim Order on Motion to Compel and Motion for Continuance entered October 3, 2014). *See also Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Uber Technologies, Inc.*, Docket No. C-2014-2422723 (Interim Order on Motion to Compel Set II Interrogatories entered November 25, 2014). Uber's refusal to provide information that I&E requests also violates a Secretarial Letter issued by the Commission. *See Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Uber Technologies, Inc.*, Docket No. C-2014-2422723 (Secretarial Letter dated July 28, 2014).

Commission's discovery regulations, the ALJs' orders and a Secretarial Letter issued by the Commission.

5. Uber provides three unpersuasive reasons to support its request to stay the effective date of the civil penalty violation and prevent disclosure of discoverable information to I&E.

6. First, Uber avers that it "makes sense" to "sync" the timing of the due date for the disclosure of the trip data in this instant proceeding and in a separate proceeding at the Commission. Trip data was only a portion of the information that Uber is directed to provide to I&E in discovery. Uber provides no reason as to why no other discovery was provided. In addition, the fact that Uber has to provide trip data in a separate proceeding by a date certain is not relevant to the instant matter. Uber's trip data in this proceeding is past due. Initiating sanctions that are effective immediately is entirely appropriate.²

7. Secondly, Uber uses the fact that the parties are engaging in settlement discussions as a reason to delay the provision of the court-ordered information. However, Uber did not apprise I&E that it did not intend to abide by the December 12 deadline in providing outstanding discovery. Similarly, I&E was not aware that Uber intended to file this Motion seeking a stay of the effective date of sanctions outlined in the November 26 Interim Order. It is inappropriate for Uber to use the fact that the parties are engaging in settlement discussions as a reason to delay providing court-ordered responses to I&E's discovery.

² Given Uber's flagrant disregard of the presiding ALJs' orders during this entire proceeding, it is doubtful that Uber will provide such trip data by January 5, 2015 – the "new" date that Uber suggests.

8. Lastly, Uber argues that ALJs are without authority to impose a civil penalty pursuant to 66 Pa.C.S. § 3301(a) because the Commission has not reviewed or adopted the November 26 Interim Order. Uber essentially argues that the ALJs' interim orders are unenforceable until the Commission approves them. This is simply not true. Further, it is clear that ALJs have the authority to impose sanctions on a disobedient party who fails to respond to discovery. 52 Pa. Code § 5.372. Section 5.372(a)(4) gives the ALJs broad discretion to impose a sanction with regard to the failure to make discovery "as is just." The ALJs determined that a civil penalty in the amount of \$500 per day for each day beginning on December 12 that I&E's discovery remains unanswered is just.

9. In response to Uber's argument that civil penalties cannot be imposed for violations of interim orders, I&E disagrees. Uber's action violates an "order or decree made by any court," and as such, is subject to a civil penalty pursuant to 66 Pa. C.S. § 3301(a). Uber's actions in failing to disclose discovery also violate the Commission's regulations pertaining to discovery. The ALJs and the Commission certainly have the statutory authority to impose civil penalties for violations of the Commission's regulations.

10. Uber's frivolous arguments do not overcome I&E's right to possess discoverable information that was ordered to be disclosed. As the ALJs correctly stated in the November 26 Interim Order, "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." See November 26 Interim Order at 4, citing *Nippes v. PECO Energy*

Co., Docket No. C-2013-2363324 (Initial Decision issued August 20, 2014; Final Order entered September 30, 2013).

11. Uber's actions are unfair and violate I&E's due process rights. Retaining the December 12 effective date regarding the November 26 Interim Order is entirely appropriate.

12. I&E further asserts that the November 26 Interim Order should be interpreted to impose a civil penalty in the amount of \$500 per day for each day that Uber fails to answer each interrogatory or document production request as set forth in I&E Set I and Set II discovery.

WHEREFORE, for the reasons set forth above, the Bureau of Investigation and Enforcement respectfully requests that the Motion of Uber Technologies, Inc. for Stay of Effective Date of Interim Order on Motion for Sanctions be denied; and that a civil penalty in the amount of \$500 per day for each day that Uber fails to answer *each* interrogatory or document production request be effective immediately.

Respectfully submitted,



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Dated: December 12, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail and Email:

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Dated: December 12, 2014