



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

IN REPLY PLEASE  
REFER TO OUR FILE

December 17, 2015

*Via Electronic 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., *et al.*  
Docket No. C-2014-2422723  
**Reply Exceptions**

Dear Secretary Chiavetta:

On behalf of the Bureau of Investigation and Enforcement, enclosed please find the Replies to the Exceptions of Uber Technologies, Inc., *et al.* 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,

A handwritten signature in black ink, appearing to read "Step M Wimer", with a long horizontal stroke extending to the right.

Stephanie M. Wimer  
Prosecutor

Enclosure

cc: As per certificate of service  
Honorable Mary D. Long  
Honorable Jeffrey A. Watson  
[ra-OSA@pa.gov](mailto:ra-OSA@pa.gov)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

v.

Uber Technologies, Inc., Rasier-PA LLC,  
Rasier LLC and Gegen LLC

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: Docket No. C-2014-2422723  
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BUREAU OF INVESTIGATION AND ENFORCEMENT  
REPLIES TO EXCEPTIONS OF  
UBER TECHNOLOGIES, INC., *ET AL.*

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Dated: December 17, 2015

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## I. INTRODUCTION AND BACKGROUND

On November 17, 2015, the Initial Decision (I.D.) of presiding Administrative Law Judges (ALJs) Mary D. Long and Jeffrey A. Watson was issued in the instant proceeding regarding the Bureau of Investigation and Enforcement's (I&E) Amended Complaint against Uber Technologies, Inc., Rasier LLC (Rasier), Gegen LLC (Gegen) and Rasier-PA LLC (Rasier-PA) (collectively referred to as "Uber" or "Respondents"). The presiding ALJs correctly found that I&E sustained its burden of proving that Uber violated the Public Utility Code (Code) by providing passenger transportation for compensation without authority from the Pennsylvania Public Utility Commission (Commission).<sup>1</sup> The ALJs also correctly concluded that each unauthorized trip constituted a separate and distinct violation of the Code and as such, is subject to a civil penalty.<sup>2</sup> Further, the ALJs appropriately assessed Uber a civil penalty for such violations as well as a civil penalty for failing to comply with discovery orders.<sup>3</sup>

On December 7, 2015, Uber filed Exceptions to the ALJs' Initial Decision.<sup>4</sup> Uber advances five unconvincing arguments, which I&E will individually address and reject herein.

### A. Factual Background

From February 11, 2014 through and including August 20, 2014, Respondents provided widespread unauthorized transportation for compensation in Allegheny County.<sup>5</sup> Respondents were aware that such services violated the Code because they were notified by Commission

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<sup>1</sup> Conclusion of Law No. 3.

<sup>2</sup> Conclusion of Law Nos. 4-5. The number of trips provided is deemed by Uber to be protected as proprietary information in this proceeding and is available in Appendix A of the Proprietary Version of the I.D.

<sup>3</sup> Conclusion of Law No. 6.

<sup>4</sup> Consistent with the *modus operandi* of Uber throughout this entire proceeding, Respondents once again ignore the rules of this Commission by filing Exceptions that greatly exceed the page limit set forth at 52 Pa. Code § 5.533(c). Although addressed in detail in I&E's Motion to Strike, filed concurrently herewith, I&E wants to note its consternation at the outset of this responsive pleading that it has once again been disadvantaged by Uber's disregard for this Commission's regulations as I&E attempts to respond to Exceptions that exceed the acceptable limit by over twenty-five percent with a reply that stays within the permissible 25-page limit.

<sup>5</sup> I.D. at 8; Finding of Fact No. 30.

advisory staff to apply for authority,<sup>6</sup> and were directed by the presiding ALJs and the Commission to cease and desist on July 1, 2014 and July 24, 2014, respectively.<sup>7</sup> Uber made a calculated business decision to defy the cease and desist orders and continue to operate.<sup>8</sup> Uber's decision was made at the expense of public safety as the Commission is mandated to ensure that the travelling public is transported safely and Uber refused to submit to the Commission's oversight.<sup>9</sup>

During the litigation of this proceeding, Uber interfered with I&E's ability to properly prepare its case. Uber unfairly hampered I&E's ability to obtain information that was judicially determined to be discoverable by refusing to provide any answers to discovery requests, despite the granting of Motions to Compel and the imposition of sanctions. Outstanding discovery requests remain at the present time. As such, the presiding ALJs properly imposed a civil penalty sanction.<sup>10</sup>

#### B. Significance of Case

This matter not only pertains to the underlying merits of furnishing unauthorized transportation and the important public safety concerns related thereto; it also pertains to upholding the sanctity of the Commission's administrative and judicial functions. The broad, regulated community will closely monitor how this Commission reacts to Uber's blatant refusal to furnish discovery responses to prosecutors, repeated defiance of the directives of presiding officers, chronic refusal to be sanctioned and then its pompous submission of exhibits after the

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<sup>6</sup> I.D. at 7; Finding of Fact No. 21.

<sup>7</sup> *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for an Interim Emergency Order requiring Uber Technologies, Inc. to immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania*, Docket No. P-2014-2426846 (Order entered July 1, 2014) (Order entered July 24, 2014) (hereinafter referred to as "July 1, 2014 Cease and Desist Order" or "July 24, 2014 Cease and Desist Order").

<sup>8</sup> I.D. at 7, Finding of Fact No. 25; I.D. at 8, Finding of Fact No.27; I.D. at 26.

<sup>9</sup> I.D. at 24.

<sup>10</sup> Conclusion of Law No. 6.

record has long been closed.<sup>11</sup> I&E urges the Commission to send a swift and severe message that such behavior will not be tolerated and the type of tactics in which Uber engaged in the instant matter are risks not worth taking at the Commission.

I&E hereby incorporates by reference its Main Brief that was filed on July 8, 2015, and Reply Brief, which was filed on August 14, 2015, in this proceeding.<sup>12</sup>

## II. MOTION TO STRIKE

On December 17, 2015, I&E filed a Motion to Strike Uber's Exceptions in their entirety. The Motion to Strike was filed separately, but concurrently, with the instant replies to Uber's Exceptions. I&E hereby incorporates by reference the Motion to Strike and presents its Replies to Uber's Exceptions should the Commission deny I&E's Motion and elect to entertain Uber's Exceptions.

## III. I&E'S REPLIES TO EXCEPTIONS

### A. **UBER EXCEPTION NO. 1: The Civil Penalty Set Forth In The Initial Decision Is Clearly Not Unlawful, Arbitrary And Capricious Since It Is Based Upon A Mathematical Calculation Multiplying The Number Of Violations By A Certain Monetary Amount Per Violation In Accordance With 66 Pa.C.S. § 3301.**<sup>13</sup>

For reasons that are greater explained in response to Uber's fourth Exception, *infra.*, the ALJs' imposition of a civil penalty for each trip provided by Uber when it did not have a Certificate of Public Convenience is completely lawful and consistent with 66 Pa.C.S. § 3301. The ALJs multiplied a certain lower civil penalty amount by the number of trips<sup>14</sup> that took place from Uber's launch of service on February 11, 2014 to July 1, 2014 (the date of the issuance of

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<sup>11</sup> See I&E's Motion to Strike that was filed concurrently with its Replies to Uber's Exceptions.

<sup>12</sup> Additionally, I&E notes that Uber repeats the same arguments throughout its Exceptions. For the sake of brevity, I&E will only respond to each of Uber's arguments once. See 52 Pa. Code § 5.535(a) (requiring replies to exceptions to be concise).

<sup>13</sup> Conclusion of Law No. 5; Appendix A of the Proprietary Version of the I.D.

<sup>14</sup> The calculation of the civil penalty is set forth in Appendix A of the Proprietary Version of the I.D.

the ALJs' Cease and Desist Order).<sup>15</sup> The ALJs multiplied a larger civil penalty amount by the number of trips that took place from July 1, 2014 to August 20, 2014, the date that Uber became certificated to provide motor carrier service.<sup>16</sup> As the ALJs correctly noted, the total resulting civil penalty is unprecedented "due solely to the sheer number of violations which occurred."<sup>17</sup>

Contrary to Uber's assertion, nothing could be further from "arbitrary and capricious" than a mathematical calculation. The ALJs' civil penalty was also not "arbitrary and capricious" in that it distinguished trips that occurred prior to the issuance of the July 1, 2014 Cease and Desist Order from those that took place in defiance of that Order. In fact, by imposing a lower civil penalty for trips occurring prior to July 1, 2014, the ALJs gave credence to Uber's claim of regulatory uncertainty with respect to its transportation network.<sup>18</sup>

1. Commission Review Of Initial Decisions

I&E does not dispute that the Commission has the authority to review an initial decision and the exceptions and replies made thereto.<sup>19</sup> However, Uber's actions in this enforcement proceeding, which include initiating unauthorized transportation on a widespread basis, continuing such transportation in defiance of cease and desist orders and failing to abide by the ALJs' orders regulating this proceeding, offer no reason to mitigate the civil penalty. Uber encourages the Commission to thoroughly review the record below.<sup>20</sup> I&E concurs. Uber's obstructive tactics, from the frivolous arguments it advanced to the unwillingness of its witness to respond to questions, will become readily apparent to the Commission and support the imposition of the ALJs' civil penalty.

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<sup>15</sup> July 1, 2014 Cease and Desist Order; *See also* I.D. at 26.

<sup>16</sup> *See* Appendix A of the Proprietary Version of the I.D.

<sup>17</sup> I.D. at 22.

<sup>18</sup> Uber Exceptions at 9.

<sup>19</sup> 66 Pa.C.S. § 332(a), (h).

<sup>20</sup> Uber Exceptions at 7.



2. Uber's Reliance On Settled Outcomes Is Misplaced

Uber desperately attempts to compare the civil penalty imposed in this litigated proceeding to prior cases where a civil penalty was agreed-upon by the parties in a settlement. The entirety of the cases cited by Uber on pages 12 and 13 of its Exceptions involves matters that were amicably settled. It is not appropriate to consider a settlement, which is intended to be an amicable resolution of disputed claims, as precedent in any subsequent proceeding, much less a litigated one. *See Pa. Pub. Util. Comm'n, v. Bell Telephone Co. of Pa.*, Docket No. R-811819, 1988 Pa. PUC Lexis 572 (Order entered November 10, 1988) at \*19 (where the Commission made it clear that “we vigorously, and without equivocation, reject considering a settlement as precedent, as to *any* subsequent issue, in *any* proceeding”). (Emphasis added). Exactly two weeks ago, the Commission reiterated this concept in *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Order entered December 3, 2015) (HIKO Order), Order at 52, by stating that “as to the precedential value of settlements, while the facts in *Bell* are different, that does not diminish the well-established legal principle often invoked by and before this Commission that settlements do not set precedent.” The Commission reasoned that settled cases are “often incomparable in many ways,”<sup>21</sup> including the compromise of positions, substantially different evidence and no admission of wrongdoing. The Commission’s Policy Statement at 52 Pa. Code § 69.1201(b) further indicates that the factors and standards for evaluating the appropriateness of a civil penalty for violations of the Code, Commission regulations and orders in settled cases “will not be applied in as strict a fashion as in a litigated proceeding.” No leniency is afforded in litigated proceedings such as this one.

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<sup>21</sup> *Id.*

Aside from being settled matters, the cases cited by Uber on pages 12-14 of its Exceptions are not analogous to the instant case because they involve utility types other than motor carriers and transportation brokers, different facts and entities subject to a different statutory civil penalty scheme. For instance, Section 3301(c) of the Code,<sup>22</sup> provides a maximum cap on civil penalties pertaining to pipeline safety violations and, as such, is irrelevant to violations involving motor carriers and transportation brokers where no such limit applies.

Furthermore, Uber's reliance on *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Lyft, Inc.*, Docket No. C-2014-2422713 (Order entered July 15, 2015) is inappropriate not only because the matter was settled but also because Lyft, Inc.'s compliant conduct in providing I&E with trip data was entirely opposite to Uber's defiance in ignoring discovery orders.<sup>23</sup> Uber did not provide trip data which constituted the crux of I&E's case until the time of the evidentiary hearing. I&E cannot be expected to engage in a settlement discussion with a party that refused to comply with direct orders from the ALJs to produce information that was judicially determined to be discoverable, but was intentionally withheld for the purpose of sabotaging I&E, the party with the burden of proof. No amicable resolution could be reached due to Uber's deplorable conduct. Moreover, for purely practical reasons, I&E cannot propose to the Commission that a settlement is in the public interest when I&E does not know the extent of the unlawful act being investigated or prosecuted. No substantial evidence would ever be available to support such a settlement.

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<sup>22</sup> 66 Pa.C.S. § 3301(c).

<sup>23</sup> Uber Exceptions at 10-11. Uber's disregard of the ALJs' numerous orders regarding discovery is thoroughly discussed in the I.D. on pages 47-51 and herein in response to Uber's fifth Exception.

### 3. Deterrence Remains Necessary

Uber claims that since a subsidiary is now certificated, a civil penalty designed to deter future misconduct is unnecessary.<sup>24</sup> However, Rasier-PA's authority is only valid for two-years<sup>25</sup> and it is certainly feasible that Uber may again encounter a period of time in which its transportation service is not certificated. Further, Uber is required to comply with a multitude of regulations and a message should be sent to Respondents now that the Commission will not take lightly any future regulatory violations.

Beyond Uber, the Commission has concluded that deterrence may apply to the industry as a whole.<sup>26</sup> "Doing so is an effective means of assuring the industry understands the importance of compliance with our Regulations . . . ."<sup>27</sup> In the instant case, the ALJs correctly determined that deterrence is significant because it "serves a wider public purpose of deterring other entities who may wish to launch an innovative utility service without Commission approval."<sup>28</sup> It is imperative that the Commission send a stern message to every public utility in the Commonwealth of Pennsylvania that defiance of cease and desist orders will not be tolerated.

In addition, Uber's argument that it complied by applying for authority while it continued to operate must be rejected.<sup>29</sup> Prior to rendering service, a utility must obtain the Commission's approval.<sup>30</sup> Operating during the pendency of the Commission's review of an application for authority is not "compliance." Similarly, Uber's unverifiable claims that it took measures to

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<sup>24</sup> Uber Exceptions at 16.

<sup>25</sup> See *Application of Rasier-PA LLC, a limited liability company of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of shared-ride network for passenger trips between points in Allegheny County*, Docket No. A-2014-2416127 (Order entered December 5, 2014); *Application of Rasier-PA LLC, a limited liability company of the State of Delaware, for the right to begin to transport, by motor vehicle, persons in the experimental service of shared-ride network for passenger trips between points in Pennsylvania, excluding those which originate or terminate in the Counties of Beaver, Clinton, Columbia, Crawford, Lawrence, Lycoming, Mercer, Northumberland and Union*, Docket No. A-2014-2424608 (Order entered December 5, 2014) (collectively referred to as "Applications of Rasier-PA").

<sup>26</sup> HIKO Order at 44.

<sup>27</sup> *Id.*

<sup>28</sup> I.D. at 33.

<sup>29</sup> Exceptions at 16.

<sup>30</sup> 66 Pa.C.S. § 1101.

ensure the safety of the public during the period of its unauthorized transportation<sup>31</sup> should carry no weight because, as this Commission has already stated, “Uber’s refusal to submit to the Commission’s oversight [prevented] the Commission from enforcing safety regulations pertaining to motor carriers and from helping to prevent possibly catastrophic accidents involving injury or death.”<sup>32</sup>

4. Uber’s Argument That The Public Benefitted From Its Unlawful Conduct Lacks Merit

Uber next argues that the civil penalty imposed by the ALJs is too severe when compared to the alleged public need that Uber provided by facilitating unauthorized passenger transportation through its mobile application (the Uber App). The ALJs appropriately disregarded arguments related to public need because, first, the instant matter is an enforcement proceeding and not an application proceeding where public need is examined.<sup>33</sup> Secondly, Uber’s argument lacks any legal basis. It is well settled law that “the argument that a violation of law can be a benefit to the public is without merit. When the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public.”<sup>34</sup>

5. Uber Acted In Bad Faith In Providing Unauthorized Transportation

Uber cannot credibly claim that it provided the unauthorized transportation under a “good faith belief that no authority was required.”<sup>35</sup> Prior to launching on February 11, 2014, Uber undertook an evaluation of the transportation market in Allegheny County, as well as the regulatory status of the market.<sup>36</sup> Then, Uber engaged in discussions with Commission staff regarding the type of authority that would permit its transportation service before filing Rasier-

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<sup>31</sup> Uber Exceptions at 18-19.

<sup>32</sup> July 24, 2014 Cease and Desist Order at 21.

<sup>33</sup> 52 Pa. Code § 41.14.

<sup>34</sup> *Pa. Pub. Util. Comm'n v. Israel*, 52 A.2d 317, 321 (Pa. 1947).

<sup>35</sup> Uber Exceptions at 20.

<sup>36</sup> I.D. at 25.

PA's Applications in April 2014.<sup>37</sup> Uber nevertheless launched its service against advice from Commission staff, continued to provide unauthorized transportation after the issuance of the July 1, 2014 Cease and Desist Order and flagrantly disregarded Commission authority by operating after the issuance of the July 24, 2014 Cease and Desist Order.

Moreover, as discussed in greater detail in response to Uber's second Exception, Uber is barred under *judicial estoppel* from continuing to assert that it is not a motor carrier<sup>38</sup> since it has applied for and prevailed in receiving motor carrier authority in a previously litigated proceeding before the Commission.

6. The ALJs Properly Did Not Accept Uber's Version Of The Facts and Legal Arguments

The ALJs did not mischaracterize facts as Uber claims.<sup>39</sup> Rather, they appropriately gave little weight to Uber's excuses and legal gymnastics. The ALJs have discretion to evaluate "the credibility of witnesses and the weight of their testimony . . . ."<sup>40</sup>

Contrary to Uber's argument, the ALJs properly inferred that Uber did not want to comply with the cease and desist orders.<sup>41</sup> Uber's own witness testified that the decision to continue operating in response to the cease and desist orders was a business decision.<sup>42</sup> Further, the ALJs did not misconstrue the testimony of Uber's witness regarding Uber's discussions with Commission advisory staff regarding the requirement to obtain operating authority.<sup>43</sup> Uber's witness testified that "it was Commission advisory staff who suggested that we file that application . . . ."<sup>44</sup> Finally, the ALJs appropriately found that there were *at least* (and not only) nine accidents during Uber's provision of unauthorized transportation that could lead to an

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<sup>37</sup> I.D. at 26.

<sup>38</sup> Uber Exceptions at 20.

<sup>39</sup> Uber Exceptions at 21.

<sup>40</sup> *Danovitz v. Portnoy*, 161 A.2d 146, 149 (Pa. 1960).

<sup>41</sup> Uber Exceptions at 21; I.D. at 26.

<sup>42</sup> (May 6, Tr. 178).

<sup>43</sup> Uber Exceptions at 22; I.D. at 26.

<sup>44</sup> (May 6, Tr.135).

insurance claim<sup>45</sup> because when questioned about the specifics of those accidents, Uber’s witness lacked knowledge<sup>46</sup> and admitted that he did not know how many insurance claims were filed.<sup>47</sup> In sum, the ALJs’ civil penalty, which is based upon a mathematical calculation, is not arbitrary and capricious and Uber advanced no convincing argument to mitigate its inexcusable conduct.

**B. UBER EXCEPTION NO. 2: The Initial Decision Properly Concluded That Respondents Engaged In Activity Requiring Authority From The Commission During The Time Period Covered In The Amended Complaint.**<sup>48</sup>

Uber continues to advance the incredible argument that its operations do not require Commission authority,<sup>49</sup> largely relying on the fact that transportation is arranged through the Uber App and provided by driver-partners, which is a distinction without a difference. Simply stated, the Commission regulates those who hold themselves out to provide the transportation of passengers between points within the Commonwealth for compensation<sup>50</sup> and those that hold themselves out to sell or offer for sale motor carrier transportation.<sup>51</sup>

In the same breath, Rasier-PA is currently arguing before the Commonwealth Court of Pennsylvania that the Commission properly determined that Rasier-PA is a “common carrier by motor vehicle” in granting Rasier-PA’s application for authority to provide Transportation Network Services (TNC).<sup>52</sup> Conveniently, in an enforcement proceeding where I&E alleges that Uber Technologies, Inc., *et al.*, including Raiser-PA, provided passenger transportation as a motor carrier between points in the Commonwealth for compensation without first holding Commission authority, Uber makes an argument diametrically opposed to the one it is

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<sup>45</sup> Uber Exceptions at 22; I.D. at 8, Finding of Fact No. 32.

<sup>46</sup> (May 6, Tr. 143-144).

<sup>47</sup> (May 6, Tr. 159).

<sup>48</sup> I.D. at 12-17; Conclusion of Law No. 3.

<sup>49</sup> Uber Exceptions at 31.

<sup>50</sup> 66 Pa.C.S. § 102 (related to the definition of “Common carrier by motor vehicle”).

<sup>51</sup> 66 Pa.C.S. § 2501 (relating to the definition of “Broker”).

<sup>52</sup> *Capital City Cab Serv., Inc. v. Pa. Pub. Util. Comm’n*, No. 238 C.D. 2015; *Keystone Cab Serv., Inc., et al. v. Pa. Pub. Util. Comm’n*, No. 240 C.D. 2015; and *Executive Transp. Co., et al., v. Pa. Pub. Util. Comm’n*, No. 253 C.D. 2015 (Rasier-PA Brief Filed on August 19, 2015) at 11. Rasier-PA’s brief is a publicly available document.

simultaneously advancing before Commonwealth Court and one that it previously advanced before the Commission. Uber's argument that the type of service it provides through the Uber App is not common carrier by motor vehicle is barred by the doctrine of *judicial estoppel*. See *Newman Dev. Group v. Genuardi's Family Market*, 98 A.3d 645 (Pa. Super. 2014) (Holding that a party to an action is estopped from assuming a position inconsistent with his or her assertion in a previous action, if his or her contention was successfully maintained).<sup>53</sup> Unfortunately, such lack of candor is precisely the type of behavior that I&E has come to expect of Uber.

In addition, Section 1103 of the Code states, in pertinent part, that "any holder of a certificate of public convenience, exercising the authority conferred by such certificate, shall be deemed to have waived any and all objections to the terms and conditions of such certificate."<sup>54</sup> Rasier-PA, a respondent in this proceeding, holds a Certificate of Public Convenience issued by the Commission to provide transportation service by connecting passengers to drivers through the Uber App – the precise type of service it now argues is not subject to the Code.<sup>55</sup> Pursuant to Section 1103 of the Code,<sup>56</sup> Rasier-PA is prohibited from objecting to the Commission's jurisdiction over its service.

In the instant matter, the ALJs properly determined that from February 11, 2014, when Uber launched, until August 20, 2014, when the Commission issued a Certificate of Public Convenience for temporary emergency authority to Rasier-PA,<sup>57</sup> Uber's activities violated the Code as either an unlicensed broker, pursuant to 66 Pa.C.S. § 2505, or an uncertificated motor carrier, pursuant to 66 Pa.C.S. § 1101.<sup>58</sup> Uber held neither a certificate of public convenience

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<sup>53</sup> Over numerous protests, the Commission granted Rasier-PA's applications to become a certificated motor carrier with authority in Allegheny County and statewide. See Applications of Rasier-PA.

<sup>54</sup> 66 Pa.C.S. § 1103.

<sup>55</sup> See Applications of Rasier-PA.

<sup>56</sup> 66 Pa.C.S. § 1103.

<sup>57</sup> *Application of Rasier-PA LLC for Emergency Temporary Authority in Allegheny County*, Docket No. A-2014-2429993 (Commission Order entered July 24, 2014).

<sup>58</sup> I.D. at 12-17.

nor a brokerage license to facilitate, arrange or provide passenger transportation between points within the Commonwealth for compensation. Since Uber had neither, the Code was violated with each and every trip facilitated by the Uber App from February 11, 2014 through and including August 20, 2014.

Uber's argument that its service does not constitute "common carrier" service because it is only open to a segment of the public since it requires downloading the Uber App, accepting the terms and conditions of the Uber App and providing payment information, defies logic.<sup>59</sup> The cases again cited by Uber support the proposition that Uber's service is open to the public at large and not just a segment. In *Aronimink Transportation Co. v. Pub. Serv. Comm'n*, 170 A. 375, 377 (Pa. Super. 1934) (emphasis added), the Superior Court stated that "a common carrier of passengers is one who undertakes for hire to carry all persons indifferently **who may apply for passage**, so long as there is room, and there is no legal excuse for refusing." In *Brink's Express Co. v. Pub. Serv. Comm'n*, 178 A. 346, 349 (Pa. Super. 1935), the Superior Court indicated that the test for distinguishing whether a carrier is engaged in offering a public or private service is:

. . . whether or not a person holds himself out, expressly or impliedly, as engaged in the business of supplying his product or service to the public, as a class, or to any limited portion of it, as contradistinguished from holding himself out as serving or ready to serve only particular individuals.

*Id.* The Court in *Brinks* further noted that "the fact that only a limited number of persons may have occasion to use it does not make of it a private undertaking if the public generally has a right to such use."<sup>60</sup>

The decision in *Drexelbrook Associates v. Pa. Pub. Util. Comm'n*, 212 A.2d 237 (Pa. 1965) is also distinguishable from the facts here. In *Drexelbrook*, the Supreme Court of

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<sup>59</sup> Uber Exceptions at 24.

<sup>60</sup> *Id.*



Pennsylvania determined that water, gas and electricity service available only to tenants of an apartment village were not furnished “to or for the public.”<sup>61</sup> The service offered in *Drexelbrook* was private in nature as it was only available to a definite class of persons – tenants.

With regard to the instant matter, any member of the public who chooses to avail himself or herself of Uber’s transportation service by downloading the Uber App, accepting the terms and conditions of the Uber App and providing payment information may receive transportation service from Uber. The sheer number of rides provided during a 6-month period in Allegheny County, as admitted by Uber, further evidences that Uber’s transportation service was open to the public. In fact, Uber reasons that it ignored orders directing it to cease and desist due to “the tremendous need for the service” in transporting persons in Pittsburgh, which is completely inapposite to its disingenuous claim that the service was not available to the general public.<sup>62</sup> Therefore, the transportation provided by Uber has always required authority from the Commission, from the time that Uber unlawfully launched in Allegheny County on February 11, 2014 to the present.

**C. UBER EXCEPTION NO. 3: The ALJs Thoroughly And Properly Considered The Factors Used By The Commission To Evaluate A Civil Penalty Pursuant To 52 Pa. Code § 69.1201(c).**

The ALJs appropriately found that an application of the factors and standards towards Uber’s misconduct warrants the imposition of a very large civil penalty. With regard to the first two factors, both the conduct at issue, providing unauthorized transportation, and the resulting consequences of Uber’s conduct, posing a risk to public safety, were serious.<sup>63</sup> The ALJs properly determined that I&E “need not present evidence of actual harm;”<sup>64</sup> unlawful conduct is

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<sup>61</sup> *Drexelbrook*, 212 A.2d at 241.

<sup>62</sup> Uber Exceptions at 31.

<sup>63</sup> 52 Pa. Code § 69.1201(c)(1)-(2); I.D. at 23-24.

<sup>64</sup> I.D. at 24.

per se injurious to the public.<sup>65</sup> Further, Uber's own witness testified that accidents occurred while Uber operated without authority and when questioned, was not certain about the number or specifics of the accidents.<sup>66</sup> Thus, it is feasible that personal injury and property damage occurred during this time and the Commission would not be aware of these incidents because Uber refused to submit to the Commission's regulatory oversight.<sup>67</sup>

With regard to the third factor, Uber admits that its conduct was intentional, but argues that it continued to operate based on its perception of public need.<sup>68</sup> Uber arrogantly placed itself in the position of the decision-maker. In directing Uber to cease and desist, the Commission expressly rejected Uber's argument and concluded that "the higher goal of public safety" outweighed the limitation of transportation options.<sup>69</sup>

Concerning the fourth factor, the ALJs properly concluded that Uber's compliance with the Commission's technical directives in its application proceedings only mitigate the civil penalty by a "small measure."<sup>70</sup> This compliance occurred well after Uber provided months of unauthorized transportation.<sup>71</sup> Had Uber wished to modify internal practices and procedures during the period of time at issue in the Amended Complaint, it would have ceased providing unauthorized transportation services.

Contrary to Uber's argument, the record supports the ALJs' conclusion that many customers were affected in relation to the fifth factor.<sup>72</sup> The ALJs properly accepted the testimony of Officer Bower, who explained that each of these trips impacted not just the

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<sup>65</sup> *Pa. Pub. Util. Comm'n v. Israel*, 52 A.2d 317 (Pa. 1947). The cases cited by Uber on page 30 of its Exceptions are not comparable to the instant proceeding because they involve no allegation that the companies refused to submit to the Commission's oversight by operating without authority and then continued to operate in defiance of cease and desist orders.

<sup>66</sup> I.D. at 24-25. (Tr. 143-144, 159).

<sup>67</sup> See 52 Pa. Code § 29.44 (relating to the filing of accident reports).

<sup>68</sup> 52 Pa. Code § 69.1201(c)(3); Uber Exceptions at 31.

<sup>69</sup> July 24, 2014 Cease and Desist Order at 24.

<sup>70</sup> 52 Pa. Code § 69.1201(c)(4); I.D. at 29.

<sup>71</sup> *Id.*

<sup>72</sup> 52 Pa. Code § 69.1201(c)(5); I.D. at 30.

passengers and the driver, but also the general public such as other motorists and pedestrians due to the fact that the Commission was unable to oversee the safety of the operation.<sup>73</sup>

In finding that Uber's service is new, the ALJs appropriately gave no weight to compliance history, the sixth factor, due the absence of historical behavior at the Commission.<sup>74</sup>

Uber's exception to the ALJs' conclusion regarding the seventh factor, cooperation with a Commission investigation,<sup>75</sup> is irrational. On one hand, Uber accepts the ALJs' finding that this factor does not apply to a litigated prosecution.<sup>76</sup> On the other hand, Uber apparently asserts that this factor should apply because it cooperated with I&E during litigation.<sup>77</sup> Should the Commission determine that this factor applies, it is an aggravating factor to Uber's civil penalty for the reasons explained in I&E's response to Uber's fifth Exception.

The ALJs' properly concluded that deterrence, the eighth factor,<sup>78</sup> serves a "wider public purpose of deterring other entities"<sup>79</sup> for the reasons explained in I&E's response to Uber's first Exception. It is also important to note that the Initial Decision cited to by Uber<sup>80</sup> has been overturned by the Commission<sup>81</sup> on the narrow principle that deterrence is industry wide and not utility specific.

Regarding the ninth factor, past Commission decisions in similar situations,<sup>82</sup> the ALJs properly excluded consideration of settled matters<sup>83</sup> for the reasons set forth in I&E's response to Uber's first Exception. Settled matters are not "similar situations" to litigated proceedings.

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<sup>73</sup> I.D. at 30.

<sup>74</sup> 52 Pa. Code § 69.1201(c)(6); I.D. at 31.

<sup>75</sup> 52 Pa. Code § 69.1201(c)(7).

<sup>76</sup> Uber Exceptions at 38; I.D. at 32.

<sup>77</sup> Uber Exceptions at 38.

<sup>78</sup> 52 Pa. Code § 69.1201(c)(8).

<sup>79</sup> I.D. at 33.

<sup>80</sup> *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Initial Decision issued August 21, 2015).

<sup>81</sup> HIKO Order at 44.

<sup>82</sup> 52 Pa. Code § 69.1201(c)(9).

<sup>83</sup> I.D. at 34.

Further, the ALJs did not err in considering cases<sup>84</sup> involving “traditional transportation services,” as Uber states, because Uber is a motor carrier.<sup>85</sup> Therefore, the ALJs’ analysis of the factors and standards for evaluating a civil penalty supports the penalty that was imposed.

**D. UBER EXCEPTION NO. 4: The Initial Decision Properly Concluded That The Commission Is Authorized To Impose Civil Penalties On A “Per Trip” Basis When An Entity Provides Transportation For Compensation Without Authority From The Commission.<sup>86</sup>**

Uber’s argument that Section 3301 of the Code<sup>87</sup> does not authorize the assessment of a civil penalty per trip is without merit. Section 3301(a) of the Code permits the imposition of a civil penalty in an amount up to \$1,000 for each violation of the Code.<sup>88</sup> The seminal case on this point is *Newcomer Trucking, Inc. v. Pa. Pub. Util. Comm’n*, 531 A.2d 85 (Pa. Cmwlth. 1987), in which the Commonwealth Court held that Section 3301 of the Code authorizes the Commission to impose a civil penalty of up to \$1,000 for each and every discrete violation, *regardless* of the number of violations.

In *Newcomer*, the carrier’s certificate prohibited it from transporting the goods of more than one consignor on one truck at any time. *Newcomer* was found to have violated its certificate restriction 184 times on 128 separate days. The Commonwealth Court affirmed the Commission’s Order and found that since 184 unlawful shipments were identified, each shipment constituted a violation. The Court disagreed with the carrier’s argument that the shipments could be characterized as a continuing offense of an ongoing nature because the

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<sup>84</sup> I.D. at 34.

<sup>85</sup> Applications of Rasier-PA.

<sup>86</sup> Conclusion of Law No. 5.

<sup>87</sup> 66 Pa.C.S. § 3301.

<sup>88</sup> 66 Pa.C.S. § 3301(a).

shipments could be feasibly segregated into discrete violations so as to impose separate penalties.<sup>89</sup> The Court stated:

Interpreting Section 3301(a) of the Code in the fashion proposed by Newcomer, however, would be both absurd and unreasonable. Under Newcomer's argument, no matter how many times a Code provision or PUC regulation is violated, be it once or 100 times, the maximum penalty that the PUC could levy would be \$1,000. Clearly, this could not have been the intent of the legislature, and we decline to so find.

*Newcomer*, 531 A.2d at 86.

In addition, the presiding ALJs correctly noted<sup>90</sup> that the Court in *Newcomer* interpreted Section 3301 of the Code by relying on Section 1930 of the Statutory Construction Act, which states, “whenever a penalty or forfeiture is provided for the violation of a statute, such penalty or forfeiture shall be construed to be for each such violation.”<sup>91</sup>

Consistent with Commonwealth Court’s determination regarding the number of unlawful shipments in *Newcomer*, the ALJs appropriately concluded that “each trip provided by Uber when it did not have a certificate of public convenience from the Commission constituted a distinct, identifiable and separate violation” of the Code.<sup>92</sup> The total number of trips provided by Uber during this time period was first revealed by Uber’s witness at the evidentiary hearing<sup>93</sup> and the number of trips is listed in the proprietary version of the Initial Decision in Appendix A.

Again ignoring the Commission’s rules and regulations, Uber brazenly asserts that the Commission should determine whether transportation through the Uber App violates the Code starting on July 24, 2014 on a “per day” basis because Uber “did not know until the Commission issued a cease and desist order on July 24, 2014 that the Commission viewed the use of a digital

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<sup>89</sup> *Newcomer*, 531 A.2d at 87.

<sup>90</sup> I.D. at 20.

<sup>91</sup> 1 Pa.C.S. § 1930.

<sup>92</sup> I.D. at 21.

<sup>93</sup> (May 6, Tr. 89).

platform to facilitate transportation of passengers required Commission authority.”<sup>94</sup> Not surprisingly, Uber’s argument is contrary to the law. Interim emergency orders become effective when issued by a presiding officer.<sup>95</sup> The interim emergency order entered by the presiding ALJs on July 1, 2014 directed Uber to “**immediately** cease and desist from utilizing its digital platform to facilitate transportation to passengers utilizing non-certificated drivers in their personal vehicles until such time as it secures appropriate authority from the Commission.”<sup>96</sup> Furthermore, Uber admits that as early as April 2014, Commission staff advised Uber to file an application for authority to cover their operations.<sup>97</sup> Therefore, Uber’s argument that it was unaware prior to July 24, 2014 that its service required authority is disingenuous.

Moreover, even if one were to give Uber the benefit of the doubt and accept its “belief” that its services were not subject to Commission oversight prior to the entry of the July 1, 2014 Cease and Desist Order, the ALJs’ Initial Decision makes such a distinction in levying a lower civil penalty for trips that took place between February 11, 2014 (the date Uber initiated service) and July 1, 2014 (the issuance of the ALJs’ Cease and Desist Order).<sup>98</sup>

Uber also complains that in I&E’s Amended Complaint, I&E changed the structure of the requested penalty and that this approach is “arbitrary.”<sup>99</sup> However, Section 1.81 of the Commission’s regulations permits “an amendment to a submittal or pleading [to be] tendered for filing at any time . . . .”<sup>100</sup> The amendment, revising the civil penalty to be based on a “per trip” penalty and not a “per day” penalty, is legally supported by *Newcomer* and justified due to the fact that Uber continued to operate after the filing of I&E’s original Complaint and the issuance of both cease and desist orders, and because Uber waited until nearly the conclusion of the

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<sup>94</sup> Uber Exceptions at 45.

<sup>95</sup> 52 Pa. Code § 3.10.

<sup>96</sup> July 1, 2014 Cease and Desist Order, Ordering Paragraph No. 2 (emphasis added).

<sup>97</sup> (May 6, N.T. 135).

<sup>98</sup> I.D. at 29; Appendix A of the Proprietary Version of the I.D.

<sup>99</sup> Uber Exceptions at 46.

<sup>100</sup> 52 Pa. Code § 1.81.

evidentiary hearing in this matter to produce the long-awaited trip data.<sup>101</sup> Further, I&E's "per trip" civil penalty structure in this case is no different than the "per trip" civil penalty that I&E routinely requests in "jitney" cases. *See Pa. Publ. Util. Comm'n, Bureau of Transp. and Safety v. Corey Transport, LLC*, Docket No. C-2010-2155103 (Initial Decision issued January 19, 2012) (Final Order entered March 22, 2012) (sustaining the enforcement bureau's complaint requesting the imposition of a \$1,000 civil penalty for each instance of providing or holding itself out to provide passenger transportation service while uncertificated).

In fact, the cases cited by Uber *support* the imposition of a "per trip" civil penalty for each instance of uncertificated transportation. The maximum civil penalty was imposed in each of the following cases, even when the parties were not in defiance of cease and desist orders. In *Pa. Pub. Util. Comm'n, Bureau of Transp. and Safety v. Ira Davis Transfer Storage t/a A-Apollo Transfer, Inc.*, Docket No. A-00098529C0501 (Order entered October 7, 2015), the Commission imposed a \$10,000 civil penalty based upon ten separate instances of transporting household goods without authority. In *Pa. Pub. Util. Comm'n, Bureau of Transp. and Safety v. J & E Transp. Service, LLC*, Docket No. A-00122121C0601 (Order entered September 15, 2006) the Commission imposed a \$2,000 civil penalty for the enforcement bureau's finding that the motor carrier transported persons without authority on two separate trips in Lancaster County. Similarly, in *Pa. Pub. Util. Comm'n, Bureau of Transp. and Safety v. M&G Trucking, Inc.*, Docket No. A-00114371C0601 (Order entered July 20, 2006), the Commission imposed a \$3,000 civil penalty in sustaining the enforcement bureau's allegations that the motor carrier transported property without authority on three separate occasions.

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<sup>101</sup> The distinction between this proceeding and the proceeding involving Lyft, Inc., *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Lyft, Inc.*, Docket No. C-2014-2422713, is that Lyft complied with I&E's discovery requests and furnished trip data. On the other hand, Uber's lack of cooperation with prosecutory staff is clearly and succinctly explained in I&E's Amended Complaint in the instant matter.

The civil penalty imposed in the other case cited by Uber, *Pa. Pub. Util. Comm'n, Bureau of Transp. and Safety v. S.S. Sahib Cab Co.*, Docket No. A-00121184C0601 (Order entered March 6, 2007), can be distinguished from the instant matter. First, the motor carrier was certificated and did not operate in defiance of an order directing it to cease and desist. Second, the enforcement bureau alleged that the motor carrier operated while its authority was under suspension due to a failure to maintain evidence of insurance, failed to complete trip log sheets and failed to retain completed trip log sheets for two years. Because the violations could not be feasibly segregated, unlike the present case, the Commission imposed a civil penalty that was based, in part, on the number of days that the motor carrier operated while under suspension.

In response to Uber's argument that I&E presented no evidence of safety concerns to support the imposition of a "per trip" civil penalty, nothing could be further from the truth.<sup>102</sup> The presiding ALJs recognized the lengthy testimony of I&E's witness, Officer Bowser, including the testimony incorporated from the Petition for Interim Emergency Relief hearing, regarding public safety concerns due to the fact that the Commission did not inspect the vehicles of Uber drivers or review records related to the driving history or criminal background of Uber drivers.<sup>103</sup> In addition, Officer Bowser testified that the Commission could not verify whether Uber maintained adequate insurance coverage.<sup>104</sup> Common sense dictates that each trip in a motor vehicle can result in an accident and none of the trips Uber provided between February 11, 2014 through August 20, 2014 were subject to the Commission's oversight, which is designed to protect public safety.

The ALJs' finding that I&E "was not required to prove that its public safety concerns were realized by actual events" is supported by the Supreme Court of Pennsylvania in *Pa. Pub.*

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<sup>102</sup> Uber Exceptions at 46.

<sup>103</sup> I.D. at 22.

<sup>104</sup> I.D. at 23.



*Util. Comm'n v. Israel*, 52 A.2d at 321, wherein the Court stated that “[w]hen the Legislature declares conduct to be unlawful it is tantamount in law to calling it injurious to the public. For one to continue such unlawful conduct constitutes irreparable injury.” Thus, for all the foregoing reasons, the ALJs’ determination that each trip is a discrete violation of either 66 Pa.C.S. § 1101 or 66 Pa.C.S. § 2505 and subject to a separate monetary civil penalty is appropriate.<sup>105</sup>

**E. UBER EXCEPTION NO. 5: The ALJs’ Imposition Of A Civil Penalty For Discovery Violations Is Appropriate.<sup>106</sup>**

The presiding ALJs properly imposed civil penalty sanctions for discovery violations in the amount of \$500 per day from the initial due date of discovery responses of December 12, 2014 through the conclusion of the evidentiary hearing on May 6, 2015, for a total of \$72,500.<sup>107</sup> It is imperative that the civil penalty sanction be upheld. The Commission should be aware of the incredibly difficult position in which I&E was placed to prepare its case against an insubordinate and obstinate opposing party, and a message should be sent that a mockery of the Commission’s judicial process will not be tolerated.

Recognizing that I&E bears the burden of proof in this proceeding,<sup>108</sup> I&E first propounded discovery upon Uber on August 8, 2014 essentially requesting three items: (1) the number of unauthorized trips Uber provided;<sup>109</sup> (2) the name of the affiliate responsible for the provision of such transportation; and (3) documentation to support the number of unauthorized trips. Over Uber’s objections to the entirety of I&E’s discovery requests, the ALJs granted

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<sup>105</sup> I.D. at 21.

<sup>106</sup> Conclusion of Law No. 6.

<sup>107</sup> I.D. at 51.

<sup>108</sup> 66 Pa.C.S. § 332(a).

<sup>109</sup> The trip data requested by I&E was identical to what the Commission directed be provided in its Secretarial Letter dated July 28, 2014, for the stated purpose of creating “a complete record in the Complaint proceeding.”

I&E's Motion to Compel and directed Uber to answer the discovery requests within ten days.<sup>110</sup>

Uber did not comply.

On November 7, 2014, I&E filed a Motion for Sanctions that was granted by the ALJs' Interim Order dated November 26, 2014, in which Uber was directed to "serve full and complete answers to all outstanding discovery requests on or before December 12, 2014" or "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 . . . ."<sup>111</sup> The civil penalty was due and payable each day. Uber did not respond to any outstanding discovery request by the deadline. Uber did not pay even one cent towards a civil penalty for its non-compliance with the ALJs' orders.

In fact, I&E received the first response to any discovery request on March 6, 2015, when Uber provided the name of the subsidiary allegedly responsible for performing the unauthorized transportation in Allegheny County between February 11, 2014 and August 20, 2014.<sup>112</sup> Uber first provided the trip data at the evidentiary hearing on May 6, 2015. Uber never provided any documentation sought by I&E to support the trip data.

The ramifications of Uber's refusal to provide supporting documentation to substantiate the number of unauthorized trips are serious. I&E was unable to verify the accuracy of the trip data and was coerced into accepting it at hearing. Likewise, Uber has deprived this Commission of any ability to verify the trip data for the purpose of creating a complete and accurate record upon which the Commission can rule. Through Uber's misconduct, the Commission has been forced to blindly accept Uber's number at face value.

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<sup>110</sup> See October 3, 2014 Interim Order. Uber filed a Petition for Certification seeking interlocutory review of the October 3, 2014 Interim Order, which was denied by Interim Order dated October 17, 2014.

<sup>111</sup> Interim Order dated November 26, 2014 at Ordering Paragraph No. 3.

<sup>112</sup> I&E was unable to verify Uber's claim that Rasier performed the unauthorized transportation because Uber refused to provide any licensing agreements pursuant to I&E's second set of discovery requests, which is discussed in greater detail herein.

Uber's claim that withholding documentation to support the number of unauthorized trips because it contains private customer information is a distraction that should be ignored.<sup>113</sup> The ALJs permitted Uber to redact all confidential customer information.<sup>114</sup> The parties to this proceeding were also subject to a Protective Order<sup>115</sup> that was requested by Uber and would have maintained the privacy of this information if Uber designated it as being confidential. Further, the ALJs appropriately refused to entertain testimony from Uber during the evidentiary hearing regarding the alleged burdensome nature of producing the supporting documentation that it was ordered to provide because Uber's objection on this precise issue was denied.<sup>116</sup>

I&E propounded a second set of discovery on October 24, 2014. The second set of discovery requested, among other information, licensing agreements between Uber and any other entity, including affiliates, concerning passenger transportation services in the Commonwealth during the period of time when Respondents lacked authority to operate. Over Uber's objections to the entirety of I&E's discovery requests, the ALJs granted I&E's Motion to Compel and directed Uber to answer the discovery.<sup>117</sup> Again, Uber did not comply. In fact, Uber waited until March 6, 2015 to provide any responses to discovery and its responses to I&E's second set of discovery were partial and incomplete; Uber failed to provide any of the above-referenced licensing agreements.

On January 9, 2015, I&E filed a Second Motion for Sanctions regarding Uber's continued discovery violations. The ALJs granted, in part, I&E's Second Motion for Sanctions, and imposed a civil penalty of \$500 per day from December 12, 2014 to the date when Uber

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<sup>113</sup> Uber Exceptions at 48.

<sup>114</sup> Interim Order dated October 14, 2014.

<sup>115</sup> Protective Order entered April 21, 2015.

<sup>116</sup> See I.D. at 48 (discussing the ALJs' determination that I&E's discovery requests were relevant and not unduly burdensome). In addition, Uber faults I&E for not requesting the opportunity to examine the documentation at Respondents' offices. Uber Exceptions at 50. It is not I&E's obligation to request to examine documents at Respondents' place of business when Respondents were directed to supply such information to I&E.

<sup>117</sup> Interim Order dated October 25, 2014.

provides full responses to I&E's discovery or the conclusion of the evidentiary hearing, whichever is first met.<sup>118</sup> The civil penalty is due and payable each day.<sup>119</sup>

To this day, Uber has failed to provide the licensing agreements to I&E that it was directed to provide.<sup>120</sup> To this day, Uber has failed to pay even one cent to the Commission for its intentional refusal to comply with the ALJs' orders. Just like the trip data, Uber deprived I&E of any ability to substantiate its claim that Rasier performed the unauthorized transportation. Likewise, Uber has also hoodwinked this Commission into accepting its unsupported assertion that Rasier was the culpable corporate entity.

Uber's arrogance is prominently displayed in its Exceptions. Uber essentially placed itself in the role of "decision-maker" and determined that the remaining outstanding discovery responses were not needed for this case to be adjudicated.<sup>121</sup> It is not Uber's role to dictate what has already been judicially determined to be relevant and appropriate discovery requests.

Contrary to Uber's assertion, the ALJs properly exercised discretion in imposing a civil penalty sanction because such punishment "fits the crime."<sup>122</sup> Further, in imposing civil penalty sanctions for discovery violations and litigating in "bad faith," the ALJs properly relied on Commission precedent.<sup>123</sup>

If there was ever a case where a civil penalty sanction is necessary, this is it. Uber's conduct was unfair and undermined the integrity of the adjudicatory process. Uber's actions wasted precious administrative resources and unilaterally delayed holding an evidentiary hearing

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<sup>118</sup> Interim Order dated March 25, 2015, Ordering Paragraph No. 3.

<sup>119</sup> *Id.*

<sup>120</sup> Uber's implication that since the licensing agreements were confidential, no civil penalty should be imposed for failing to supply them, should be rejected. Uber Exceptions at 50. Again, Uber could have designated the licensing agreements as "confidential" pursuant to the Protective Order.

<sup>121</sup> Uber's Exceptions at 48.

<sup>122</sup> See *Marshall v. SEPTA*, 463 A.2d 1215 (Pa. Cmwlth. 1983); *Gonzales v. Procaccio Bros. Trucking Co.*, 407 A.2d 1338 (Pa. Super. 1979).

<sup>123</sup> I.D. at 43; *Application of K&F Medical Transp., LLC*, Docket No. A-2008-2020353 (Final Order entered July 8, 2008); see also I.D. at 50; *Raymond J. Smolsky v. Global Tel Link Corp.*, Docket No. C-20078119 (Order entered January 15, 2009).

in this matter, which had to be rescheduled a number of times due to Uber's refusal to respond to discovery. As illustrated above, the ALJs' conclusion that "[t]his conduct by Uber, a party represented by experienced legal counsel, was knowing and intentional and warrants a serious penalty to deter future violations"<sup>124</sup> is unequivocally warranted. Finally, this case represents a crossroad in the future of administrative judicial practice before the Commission. In that regard, a failure to hold Uber accountable will make future ALJ and Commission orders meaningless.

### III. CONCLUSION

For the reasons set forth above, I&E respectfully requests that the Commission strike the Exceptions of Uber Technologies, Inc., *et al.*, and alternatively, if not stricken, deny the Exceptions of Uber Technologies, Inc., *et al.*, and affirm the Initial Decision of the Administrative Law Judges.

Respectfully submitted,



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Stephanie M. Wimer  
Prosecutor  
PA Attorney ID No. 207522

Dated: December 17, 2015

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<sup>124</sup> I.D. at 48.

## 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).

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