

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

**Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement**

v.

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

Public Meeting – April 21, 2016

2422723 – OSA

Docket No. C-2014-2422723

STATEMENT OF
COMMISSIONER PAMELA A. WITMER

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Uber Technologies, Inc., Gegen, LLC, Rasier, LLC and Rasier-PA, LLC (collectively, Uber or Company) on December 7, 2015, to the Initial Decision (I.D.) of Administrative Law Judges (ALJs) Mary D. Long and Jeffrey A. Watson, issued on November 17, 2015, in the above-captioned proceeding. Also before the Commission is the Motion to Strike the Exceptions of Uber (Motion) filed by the Commission's Bureau of Investigation and Enforcement (I&E) as well as I&E's Replies to Exceptions, both filed on December 17, 2015.

In the I.D., the ALJs determined the following: (1) Uber met the definition of a common carrier and was required to have authority from the Commission in order to operate pursuant to Section 1101 of the Public Utility Code (Code); (2) Uber clearly held out its service to the public; and (3) the drivers who provided the transportation did not hold valid certificates of public convenience. Next, the ALJs found that each trip provided by Uber without a certificate of public convenience constituted a distinct, identifiable and separate violation of the Code and that the Commission was authorized to assess a civil penalty of up to \$1000 for each violation. The ALJs then set forth the ten factors of the Commission's policy statement, at 52 Pa. Code § 69.1201(c), warranting consideration of an appropriate civil penalty. While I do not believe it is necessary to discuss all of these factors at length, I agree at the outset that a per-trip penalty is warranted in this proceeding.

The entrance of Uber into the marketplace provided an immediate and substantial benefit to customers as a competitive alternative to traditional call and demand service. Uber provides wide ranging, fast and user-friendly transportation, often to underserved areas. As I have previously stated, this innovative use of the public space should be encouraged in a way that is consistent with the Commission's mission to protect the public interest, further economic development, and foster new technologies. As part of our mission and as new technologies develop, we are obligated to periodically review our regulations to determine whether or not they have kept pace with current industry standards and practices; this includes transportation.

Against this backdrop, I agree that Uber meets the definition of a common carrier and was obligated to obtain Commission authority to operate prior to offering transportation service in the Commonwealth. Admittedly, Uber's compliance with our prior orders and our regulations has been, at the very least, uneven. Providing transportation without requisite authorization from the Commission is

a serious violation of the Code and removes the Commission's ability to fulfill its responsibility of regulating the safety and reliability of common carriers. Similarly, Uber's decision to violate our July 1, 2014 Cease and Desist Order constitutes intentional conduct that ignored an explicit Commission directive. For these reasons, a substantial civil penalty is warranted.

However, this case also presents mitigating factors that should be considered and weighed in assessing a civil penalty. First, there is little evidence to demonstrate that Uber's actions resulted in actual harm. While nine accidents are documented during the time Uber was noncompliant with the Code and operating without a certificate of public convenience, none of these crashes involved bodily harm and no evidence was presented that any of the drivers were uninsured or that Uber refused any insurance claims relating to the accidents. Another mitigating factor to be considered in this case is the number of customers affected by Uber's conduct. From February 11, 2014, when Uber entered the marketplace and began offering transportation services until August 20, 2014, when the Commission granted Uber Emergency Temporary Authority, the Commission received not one customer complaint regarding Uber's services and the customers who used the platform sought out and willingly requested the service. Customers using Uber's application freely entered into a contract with the Company and agreed on both the terms of service and the price of the transportation services being offered. By all accounts customers received exactly the service they requested.

Finally, in considering additional relevant factors, I believe the recommended civil penalty is egregious, especially when compared to other cases in which the Commission has assessed substantial civil penalties for violations of the Code. Several Commission cases wherein we assessed substantial civil penalties involved incidents of serious bodily injury, fatalities, significant property damage, and/or patterns of unsafe business practices that jeopardized the public safety. I think these prior cases should instruct the civil penalty assessed in the instant case and guide us to a more measured and reasonable outcome. As one example, the largest civil penalty ever levied by the Commission was \$1.8 million¹ against an electric generation supplier (EGS) for deceptive marketing practices of variable rate products, resulting in significant financial harm to customers. Although EGS and TNC cases are not directly analogous, the stark contrast in outcomes between these two cases is striking; particularly when considering that, in the EGS case, action was taken against the will of customers and resulted in actual harm. In the instant case, the Company was responding to market demand by providing a requested service about which the Commission received no consumer complaints. Yet, our action today levies a penalty several times higher than the largest fine assessed on a company whose conduct caused actual harm to customers. I cannot support such a grossly disproportionate outcome.

For these reasons, I respectfully dissent.

DATE: April 21, 2016


PAMELA A. WITMER
COMMISSIONER

¹ *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) (*HIKO Order*).