

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

UBER TECHNOLOGIES, INC., :
RASIER, LLC, GEGEN LLC and :
RASIER-PA LLC, :
Petitioners :
 : NO. 1617 C.D. 2016
v. :
 :
PENNSYLVANIA PUBLIC UTILITY :
COMMISSION, :
Respondent :

SETTLEMENT AGREEMENT

On May 10, 2016, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) entered a final order imposing on Uber Technologies, Inc., Gegen, LLC, Rasier, LLC, and Rasier-PA, LLC (collectively “Uber”) a civil penalty of \$11,364,736 based on the Commission’s finding that Uber had engaged in unauthorized Transportation Network Company (“TNC”) activities in Pennsylvania between February 2014 and August 2014. *See* PUC Docket No. C-2014-2422723. On September 1, 2016, the PUC issued an Order denying reconsideration on the merits of the May 10, 2016 Order. *Id.*

On September 30, 2016, Uber timely filed a Petition for Review (“Petition”) with the Commonwealth Court of Pennsylvania challenging those Orders on a variety of grounds. *See* Case No. 1617 C.D. 2016 (the “Appeal”). By Order dated March 28, 2017, the Commonwealth Court stayed the Appeal to allow the Commission, pursuant to Pa.R.A.P. 1701(b)(5), to take further action necessary for the Commission to review and consider approval of this Settlement Agreement.

As more fully set forth in the Petition and Uber’s brief in the Appeal, Uber maintains that the civil penalty set forth in the May 10, 2016 Order and reaffirmed in the September 1, 2016 Order exceeds the PUC’s lawful authority for multiple reasons. More specifically, Uber maintains that the Orders should be reversed for at least the following reasons:

- The Commission exceeded its jurisdiction in entering the Orders. The Commission’s authority extends only to “public utilities,” which at the time of the alleged conduct, in the context here, extended only to “transportation companies” that were “common carriers.” Uber was neither a “transportation company” nor a “common carrier” as those terms were then defined, meaning the PUC lacked jurisdiction over Uber’s activities.
- Even if the PUC did have jurisdiction, the civil penalty the Commission imposed exceeded the Commission’s powers for a host of reasons. First, recently enacted 66 Pa.C.S. §2609(b) expressly applies to TNC activities that occurred prior to the effective date of the statute (like the conduct alleged here), and limits the civil penalty for such activities to \$1,000 per day, up to a maximum penalty of \$250,000. Second, the alleged activities here, to the extent unlawful at all, constitute a “continuing offense” under 66 Pa.C.S. §3301(b), and thus gave rise to a maximum penalty of \$1,000 per day, or \$190,000 for the period at issue. Third, the Commission exceeded its authority by increasing the per-ride fine amount for rides that occurred after the Commission entered a cease and desist Order in July 2014. Fourth, the penalty that the Commission imposed is so unreasonable and disproportionate in light of the alleged conduct at issue that it exceeds the Commission’s authority and violates constitutional provisions prohibiting excessive fines. That is particularly true as there is no evidence suggesting that any of the more than 120,000 rides addressed in the Orders were in any way unsafe, or that anyone in the public suffered harm in connection with them. To the contrary, the TNC services that Uber facilitates provide a benefit to the public, as the Commission recognized in granting operating authority to Uber, and as the legislature confirmed in expressly authorizing such activities by statute.

The Commission maintains that the civil penalty set forth in the May 10, 2016 Order and reaffirmed in the September 1, 2016 Reconsideration Order is both lawful and appropriate for the following reasons.

- First, the Commission maintains that it had jurisdiction over Uber’s transportation service

at all relevant times and substantial evidence supports the Commission's determination that Uber provided unauthorized common carrier transportation service to the public without first obtaining a certificate of public convenience, as required by Section 1102 of the Public Utility Code.

- Second, the Commission maintains that it properly exercised its discretion in imposing an \$11.4 million civil penalty which reflects the 122,998 trips that Uber provided without Commission authority, each of which was subject to a maximum civil penalty of \$1,000 under Section 3301 of the Public Utility Code. Of those trips, 41,724 trips occurred after the Commission properly issued a cease and desist order.
- Finally, the Commission maintains that newly enacted Section 2609(b), added as part of Act 164 of 2016, is prospective in nature, as confirmed by the legislative history and debate during its passage. Moreover, if read to be retroactive, that section would then be unconstitutional special legislation applicable only to Uber in violation of Article III, Section 32 of the Pennsylvania Constitution, as well as a violation of separation of powers principles.

While neither Uber nor the PUC concedes the merits of the other party's legal positions and arguments set forth above, both Uber and the PUC desire to avoid the costs, delays and uncertainty associated with further litigation. Accordingly, Uber and the Commission have agreed to settle the issues raised in the Appeal on reasonable and equitable terms, as follows:

- Uber agrees that it will pay to the Commonwealth of Pennsylvania the amount of \$3.5 million, to be deposited into the general fund (the "Settlement Payment").
- The Commission agrees that Uber's payment of the Settlement Payment shall discharge any obligations that Uber has with regard to the alleged violations and conduct set forth in the Commission's Order entered May 10, 2016 at Docket No. C-2014-2422723 (the "May 10, 2016 Order"), and reaffirmed in the Order entered September 1, 2016 in that same docket (the May 10, 2016 Order and the September 1, 2016 Order collectively referred to as the "Challenged Orders").
- The Commission agrees that, beyond Uber's payment of the Settlement Payment, the

Commission shall not enforce or seek to enforce the civil penalty amount set forth in the Challenged Orders, and that the Commission will accept Uber's payment of the Settlement Payment as full satisfaction of the civil penalty set forth in those orders.

- The Commission agrees that it shall not seek to impose any additional penalties or obligations upon Uber beyond payment of the Settlement Payment based on the alleged violations and conduct at issue in the Challenged Orders.
- Uber shall pay the Settlement Payment within 45 days after Commission approval of this Settlement Agreement at a public meeting. Uber shall pay the Settlement Payment by wire transfer to such account as the Commission specifies.
- Uber shall file a praecipe to discontinue the Appeal with the Commonwealth Court within 45 days after Commission approval of this Settlement Agreement at a public meeting.
- If this Settlement Agreement is invalidated for any reason, Uber and the Commission will cooperate and jointly take such steps as are necessary to restore the parties to their positions before the Commission's approval of this Settlement Agreement, including seeking reimbursement of the Settlement Payment to Uber and reinstating Uber's ability to appeal the Challenged Orders.

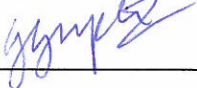
Both Uber and the Commission agree that this Settlement Agreement is in the public interest for the following reasons:

- The Settlement Payment is substantial and serves the Commission's deterrence interests.
- Both parties agree that Uber has been operating lawfully in Pennsylvania since August 21, 2014 and has demonstrated a commitment to ensuring driver qualifications, vehicle safety, and adequate insurance.
- On December 21, 2016, Uber filed an Application for a TNC license at Docket No. A-2016-2580821 pursuant to Act 164 of 2016. The Commission approved that Application on January 26, 2017, finding that Uber satisfied each of the requirements set forth in Act 164 to ensure driver qualifications, vehicle safety and adequate insurance.
- Uber's compliance history since receiving operating authority in August, 2014, has been

satisfactory. There are no outstanding Bureau of Investigation and Enforcement complaints before the Commission regarding Uber's service to the public in the areas of PA subject to the Commission's jurisdiction.

WHEREFORE, Uber and the Commission agree to be bound to the terms of this Settlement Agreement, which will be effective upon execution by both parties, with the Commission's execution of this Settlement Agreement to occur only after approval of this Settlement Agreement by the Commission at a public meeting.

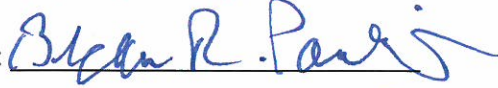
On behalf of Uber:

By: 

Print Name: Gautam Gupta
Vice President - Finance

Date: April 4, 2017

On behalf of the Commission:

By: 

Print Name: BOHDAN R. PANKIW
CHIEF COUNSEL

Date: APRIL 6, 2017