

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



**FILED**  
1-21-15  
04:59 PM

Order Instituting Rulemaking on Regulations  
Relating to Passenger Carriers, Ridesharing, and  
New Online-Enabled Transportation Services.

Rulemaking 12-12-011  
(Filed December 20, 2012)

**THE SAFETY AND ENFORCEMENT DIVISION'S  
OPENING BRIEF TO RASIER-CA, LLC'S  
ORDER TO SHOW CAUSE IN RULEMAKING 12-12-011**

**VALERIE KAO**  
**BREWSTER FONG**  
Analysts  
Safety and Enforcement Division

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Telephone: (415) 703-1341  
E-mail: [valerie.kao@cpuc.ca.gov](mailto:valerie.kao@cpuc.ca.gov)  
E-mail: [brewster.fong@cpuc.ca.gov](mailto:brewster.fong@cpuc.ca.gov)

January 21, 2015

**SELINA SHEK**  
Attorney  
Safety and Enforcement Division

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Telephone: (415) 703-2423  
E-mail: [selina.shek@cpuc.ca.gov](mailto:selina.shek@cpuc.ca.gov)

# TABLE OF CONTENTS

Page

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>II.</b>	<b>RASIER DID NOT COMPLY WITH DECISION 13-09-045'S VARIOIUS REQUIREMENTS .....</b>	<b>2</b>
	A. RASIER'S WITNESS MR. TING CONFIRMED RASIER HAS NOT COMPLIED WITH REQUIREMENTS G, J, & K .....	2
	B. RASIER WAS EXCEEDINGLY LATE IN EXPRESSING TO SED AT ALL ANY PROBLEMS WITH COMPLIANCE.....	3
<b>III.</b>	<b>RASIER'S REASONING FOR NON-COMPLIANCE RELIES WRONGLY ON ITS BELIEF IN SUBSTANTIAL COMPLIANCE.....</b>	<b>4</b>
	A. RASIER'S HEAT MAPS' LACK OF USEFULNESS .....	5
	B. REQUIREMENTS G & K AND RASIER'S SUBSTANTIAL COMPLIANCE ARGUMENTS .....	6
	C. THE COMMISSION SHOULD NOT PLACE ANY WEIGHT ON RASIER'S PROPOSED OPTIONS FOR SED.....	7
<b>IV.</b>	<b>RASIER'S OTHER REASONS FOR NON-COMPLIANCE RELY ON EXCUSES THAT RASIER SHOULD RESERVE FOR ARGUMENT IN OTHER FORUMS .....</b>	<b>8</b>
<b>V.</b>	<b>THE CALIFORNIA PUBLIC UTILITIES COMMISSION'S BROAD AUTHORITY OVER RASIER.....</b>	<b>9</b>
	A. P.U. CODE SECTION 701 .....	9
	B. RASIER IS A CHARTER PARTY CARRIER OF PASSENGERS AND SUBJECT TO SECTION 5411 .....	10
<b>VI.</b>	<b>RASIER DESCRIBED ITS COMMUNICATIONS WITH SED INACCURATELY.....</b>	<b>10</b>
<b>VII.</b>	<b>THE COMMISSION SHOULD PENALIZE RASIER FOR ITS NON-COMPLIANCE..</b>	<b>13</b>
<b>VIII.</b>	<b>CONCLUSION .....</b>	<b>15</b>

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on Regulations  
Relating to Passenger Carriers, Ridesharing, and  
New Online-Enabled Transportation Services.

Rulemaking 12-12-011  
(Filed December 20, 2012)

**THE SAFETY AND ENFORCEMENT DIVISION'S  
OPENING BRIEF TO RASIER-CA, LLC'S  
ORDER TO SHOW CAUSE IN RULEMAKING 12-12-011**

**I. INTRODUCTION**

Pursuant to the Assigned Administrative Law Judge's orders at the Order to Show Cause ("OSC") hearing,<sup>1</sup> held on Thursday, December 18, 2014, the Safety and Enforcement Division ("SED") submits its Opening Brief to Rasier-CA, LLC's Order to Show Cause in Rulemaking 12-12-011.

SED's Staff Report, Exhibit #1 demonstrates that Rasier did not comply with a Commission order for data. Since Rasier's Statement<sup>2</sup> as well as its hearing testimony confirms that Rasier has not provided complete information that Decision ("D.")13-09-045 requires, the Commission has substantial reason to assess penalties on Rasier for its failure to comply with a Commission order.

During interactions with SED regarding compliance with the data requirement, as well as in this OSC proceeding, Rasier has attempted to make SED justify or otherwise defend a Commission order. SED is not a party in the quasi-legislative portion of this Rulemaking, and its role is not to justify or otherwise defend reporting requirements that the Commission

---

<sup>1</sup> R.12-12-011 Ruling of Assigned Administrative Law Judge Ordering Rasier-CA, LLC to Appear for Hearing and to Show Cause Why it Should Not be Found in Contempt, Why Penalties Should Not be Imposed, and Why Rasier-CA, LLC's License to Operate Should Not be Revoked or Suspended for Failure to Comply With Commission Decision 13-09-045, filed November 14, 2014, accessible at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M141/K888/141888401.PDF>.

<sup>2</sup> Exhibit #10, R.12-12-011 Verified Statement of Rasier-CA, LLC Responding to Order to Show Cause in Rulemaking 12-12-011 ("Statement"), filed December 4, 2014, accessible at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M143/K524/143524787.PDF>.

adopted. Through the quasi-legislative portion of this rulemaking, the Commission directed SED to analyze the data that D.13-09-045 requires each Transportation Network Company (“TNC”) to submit.

Additionally, Rasier has attempted to unilaterally define the purposes for which the Commission ordered the TNCs to submit the data; it is inappropriate for any one party as well as for any Staff division to do so.

Lastly, the Commission’s authority over Rasier is broad. Public Utilities Code Section 701 requires public utilities to submit any and all information the Commission deems necessary in order to fulfill its regulatory obligations with respect to those entities. The Commission adopted the TNC data reporting requirements in a September 2013 Commission Decision, but Rasier never expressed formal opposition until its recent Petition for Modification filed on December 4, 2014.

## **II. RASIER DID NOT COMPLY WITH DECISION 13-09-045’S VARIOIUS REQUIREMENTS**

### **A. Rasier’s witness Mr. Ting confirmed Rasier has not complied with Requirements G, J, & K**

As SED stated in its November 14, 2014 Report, Exhibit #1, Rasier has not complied with specifically three requirements included in Decision 13-09-045, which all TNCs must comply with: Requirements G, J, & K. And two months later, Rasier has still not submitted the required data. Therefore, the Commission should penalize Rasier for this non-compliance.<sup>3</sup>

For Requirement G, when SED asked if Rasier’s September 19<sup>th</sup> or October 20<sup>th</sup> annual report submissions included the number or percentage of customers who requested accessible vehicles, Mr. Ting stated Rasier included only an accessibility plan versus actual figures. (Tr.Vol. 3, Ting/Rasier, p.392-393.)

Requirement J requires TNCs to report various zip code information, such as number of rides requested and accepted within each zip code. Mr. Ting stated: “It did not include the

---

<sup>3</sup> R.12-12-011 Ruling of Assigned Administrative Law Judge Ordering Rasier-CA, LLC to Appear for Hearing and to Show Cause Why It Should Not be Found in Contempt, Why Penalties Should not be Imposed, and Why Rasier-CA, LLC’s License to Operate Should not be Revoked or Suspended for Failure to Comply with Commission Decision 13-09-045 (“OSC Ruling”), filed November 14, 2014, Attachment (Safety and Enforcement Division Staff Report) pp. 4-5. Accessible at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M141/K888/141888401.PDF>.

number of rides. It did include information in aggregate...” . (Tr.Vol. 3, Ting/Rasier, p.393.) He confirmed too that Raiser did not provide the number of rides requested and instead “supplied the percentage of rides that were – the percentage of acceptance rate by zip code –in its place.” (Id at. 394.)

Regarding information on the date, time, and zip code of each ride, Mr. Ting confirmed Rasier did not provide this information, citing unspecified “legitimate business and trade secret reasons.” (Id at. 395.) For additional hearing questions on trip data, he stated that it did not provide total numbers, but instead provided acceptance rate percentages by zip code, which is not what the Commission decision directs. (Id. at 396.)

Lastly, regarding Requirement K, Mr. Ting stated Rasier did not provide the cause of each incident as required, but instead attributed and provided fault information. SED reviewed Rasier’s data and confirmed that Rasier did not provide information representing or under the heading of “Fault.” Mr. Ting also confirmed that it “did not provide the amount paid by third parties because they did not have that data.” (Id. at 397.)

Mr. Ting’s testimony only confirms the SED Report’s findings on lack of compliance with the Rulemaking Decision and serves as strong evidence to assess fines or penalties against Rasier. Despite Mr. Ting’s assertions of trade secret or business reasons for not complying with D.13-09-045, Rasier never filed a formal document with the Commission asserting these reasons until it filed its Petition for Modification on December 4, 2014.

**B. Rasier was exceedingly late in expressing to SED at all any problems with compliance**

As SED stated in its October 2014 Report on the Failure of Rasier-CA, LLC To Comply with the Reporting Requirements of Decision (D.) 13-09-045, Rasier had multiple opportunities to raise concerns regarding the reporting requirements, but failed to notify SED until September 4, 2014, which was the date Rasier requested a meeting for the following week, and eight working days before the submission deadline. Even at that subsequent meeting, Rasier only verbally stated its concerns informally to SED staff.

Moreover, SED stated in its Report that on October 23, 2013, Rasier filed an Application for Rehearing of D.13-09-045 and no part of that application raised concerns with D.13-09-045’s reporting requirements. Nor did Rasier file a Petition for Modification of

D.13-09-045 within the timeframe specified by the Commission's Rules of Practice and Procedure (Rule 16.4). Lastly, Rasier did not file a motion for a protective order with the Commission to prevent it from having to submit the reports as required. Although, templates for the required reports were available on the Commission's website since, at the latest, February 12, 2014. Rasier still did not raise concerns regarding the submission until approximately one week before the reports were due.<sup>4</sup>

When instituting its orders, the Commission expects full compliance. Here, Rasier failed and continues to fail to comply with D.13-09-045, with its only reasons or "excuses" made formally in its recent Petition for Modification. The issues raised in the Petition for Modification are all issues that should be appropriately dealt with in that Petition proceeding as well as in Phase 2 of Rulemaking 12-12-011. Nevertheless, the issue before the Commission now is Rasier's on-going non-compliance, which cannot be addressed without an order of immediate compliance and penalties instituted for such continued non-compliance.

### **III. RASIER'S REASONING FOR NON-COMPLIANCE RELIES WRONGLY ON ITS BELIEF IN SUBSTANTIAL COMPLIANCE**

Rasier's Statement, Exhibit #10, states that the "Commission should find that Rasier has, at a minimum, substantially complied with [the Regulatory Requirements] identified in the SED Report and thus did not violate [D.13-09-045]." The Statement continues by referencing a number of court cases and a Commission decision adopted in 1978, suggesting that Rasier's submissions provide sufficient "substance essential to every reasonable objective of the statute," and that it "enables the Commission to achieve the policy goals of the underlying decision, or if the party's failure to strictly comply with the letter of the decision is justified."<sup>5</sup>

During hearings, Rasier suggested that it produced "a lot of information concerning rides requested and not accepted." The amount of information Rasier provided is irrelevant if none of that information provided responds to the Decision's actual reporting requirements. (Tr.Vol.3, Maguire/Rasier, p.324.)

---

<sup>4</sup> OSC Ruling, Attachment, p. 6.

<sup>5</sup> Statement, pp. 11 and 16-17.

SED maintains that Rasier has not substantially complied with Regulatory Requirement J., because Rasier has no basis to define the reasonable objective and policy goals underlying that Requirement, and therefore it cannot know, much less argue, whether its submission is in substantial compliance. Rasier’s Statement states: “The Commission apparently intended [Regulatory Requirement j.] to ensure TNCs do not discriminate against economically disadvantaged areas.”<sup>6</sup> Whether or not this is true, it is not Rasier’s place to unilaterally decide what the Commission intended or did not intend in adopting this requirement. Any interpretation Rasier may have used to determine that the information it provided was “responsive” to Regulatory Requirement J. was improper and prejudicial to all other parties, who should have the same opportunity to weigh in on the purpose(s) for which the Commission may use the required data.

SED notes that even the information Rasier provided, which it attempted to relate to “equal geographic access” and Requirement J, was not very helpful as Ms. Kao stated. “I don’t know that it was necessarily helpful without knowing, for instance, total number of rides accepted or rejected across the state.” (Tr.Vol.3, Kao/SED, p.367)

She earlier stated that the data Rasier provided for Requirement J did not satisfy “what the Decision specifically requires.” (Id. at 325.) Thus, Rasier’s data production for Requirement J does not further its argument for substantial compliance when it did not provide data specifically required by the Decision or that was even useful.

As part of Rasier’s attempt to suggest that uses for the data include congestion or pollution concerns were created by SED only after issuance of the OSC, Mr. Fong confirmed that the Commission articulated those concerns in Decision 13-09-045.. (Tr.Vol.3, Maguire/Rasier, p.359)

#### **A. Rasier’s Heat Maps’ lack of usefulness**

During hearings, Rasier also attempted to suggest that the “heat maps” included in its submission were somehow additive to the percentage data it provided in response to Requirement J. When asked, however, by the Assigned Administrative Law Judge to define a heat map, Mr. Maguire confirmed that it was simply “a graphic representation of the line by

---

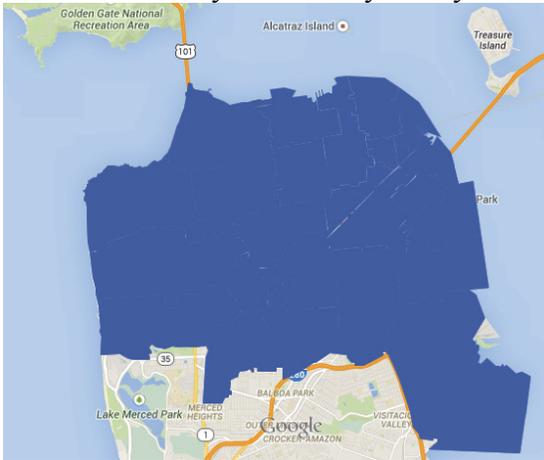
<sup>6</sup> Statement, page 15.

line data that was produced.” (Tr. Vol. 3, Maguire/Rasier, p. 329). Thus a heat map, by Rasier’s own definition, only depicts as much information as the underlying data used to produce it. If the only data provided is one number for each zip code over the course of approximately one year, such a heat map will look very different than if the data provided includes several numbers for each zip code, for every hour in which a ride was requested, over the course of one year.

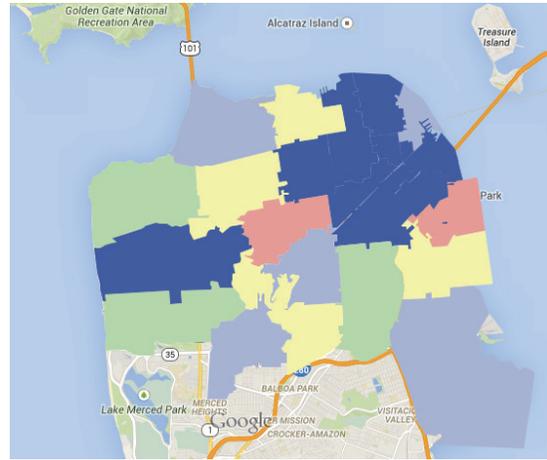
Examples of heatmaps that may be created with the data required in D.13-09-045 (date, time, zip code of each request)

- Example 1

San Francisco from Oct. 2013 to Aug. 2014  
(no differentiation by time of day or day of week)



San Francisco at 1 am on Saturdays



- Example 2: Differences within one zip code by time of day, week

number of rides, passenger zip code = 94102 (by weekday, hour of request)																								
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
Sunday	Red	Red	Red	Green	Yellow																			
Monday	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green										
Tuesday	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green										
Wednesday	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red										
Thursday	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red										
Friday	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red										
Saturday	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red										

Note: the above depictions are illustrative only; they are not intended to portray any actual data received by any of the TNCs.

**B. Requirements G & K and Rasier’s substantial compliance arguments**

Regarding the information required by Regulatory Requirement G., SED acknowledges that Rasier reported that the wheelchair accessible vehicle feature would not become available on the Uber app until October 2014. Rasier also stated it could not report on the cause of each

accident because it could not easily compile it. SED acknowledges that Rasier expressed a willingness to “work with” SED to figure out how to compile that information for submission, but also that Rasier would require a significant amount of time to do so. And finally regarding the amounts paid by parties other than TNC’s insurance company that Rasier states it could not report because it did not possess them, SED acknowledges that Rasier cannot submit information it does not possess, but SED maintains that Rasier had ample opportunity to raise these concerns to the Commission and other parties, or to adjust its own processes to ensure the collection and submission of the required information, at any point following the issuance of D.13-09-045, but chose not to raise concerns until after the Assigned ALJ issued this OSC.

Rasier’s portrayal of its compliance with Requirements G and K do not further its substantial compliance argument given again its belatedness in expressing its concerns/problems with compliance in these areas.

**C. The Commission should not place any weight on Rasier’s proposed options for SED**

Rasier’s Statement, Exhibit #10, page 5 states: “Rasier has worked in good faith to achieve a mutually acceptable resolution with the SED. It has offered to pay for an SED retained third party to audit the information it has already produced, and to allow the SED to inspect its electronic data, providing even trip-level information, at a third-party site. Inspection is a well-established alternative means of providing information in response to discovery requests...” The Statement does not include the fact that the Commission, not SED, directed the TNCs to submit the data. And SED confirmed it is not its role to explain the Commission’s stated or likely purposes for the data. (Tr.Vol.3, Kao/SED, p.355) This is really an attempt to divert attention away from its failure to comply with a Commission order, and to shift the OSC’s focus onto whether SED did or did not respond appropriately to Rasier’s proposals.

Even those offered alternatives, in addition to the information Rasier did actually submit, do not further its “substantial compliance” argument for non-compliance of a Commission order.

Lastly, despite attempting to argue that SED has interpreted or has the ability to interpret the Decision to assess compliance, SED has not done so. Mr. Maguire asked Ms. Kao

about the terms “average” and “mean” as part of the TNCs’ compliance. She explained that SED requested the TNCs to include both the average and the mean for miles versus making an interpretation of the Decision. (Tr.Vol.3, Kao/SED, p.308-309.)

#### **IV. RASIER’S OTHER REASONS FOR NON-COMPLIANCE RELY ON EXCUSES THAT RASIER SHOULD RESERVE FOR ARGUMENT IN OTHER FORUMS**

Rasier’s Statement, Exhibit #10, page 2 states: “[T]he only request truly in dispute... is [regarding Regulatory Requirement j.].” There is no actual dispute because Rasier admits in its Statement and in its Petition for Modification that it did not comply with D.13-09-045.

Rasier’s real dispute is with the Commission over whether specific items of information should be required, not with SED over whether Rasier provided the items of information that SED’s Report explains Rasier did not provide.

Despite Rasier’s disagreement with the Commission order, this is not the focus of the OSC. Rasier subsequently filed a Petition for Modification in the quasi-legislative portion of R.12-12-011, which is the appropriate venue to raise these issues.

Rasier’s Statement again states: “[t]his individual trip-level information is not relevant to the Commission’s primary public safety purpose,[footnote omitted] and the SED has not argued otherwise. Rasier further states that SED does not need individual trip-level information to fulfill the only policy objective Rasier accepts for that data request—to ensure Rasier does not engage in “redlining.”” Exhibit #10, p.2. SED has argued otherwise, and this is not the only purpose for the data requirement, as the requirement also includes items additional items of information such as the amount paid, and the zip code where each ride ended. It is SED’s understanding that the current TNC rules are subject to further modification, and the Commission included the data reporting requirements in D.13-09-045 to further assess what might need to be revised one year after the effective date of the current TNC regulations.

Much of Rasier’s Statement focuses on repeating the arguments made in its Petition for Modification of D.13-09-045 for why Rasier should not be required, going forward, to provide the data required in Regulatory Requirement J., as well as why it should be excused now for failing to provide that information for the initial reporting period. SED maintains that any and all discussion regarding modifications to D.13-09-045, and the grounds for such modifications,

are more appropriately addressed in the quasi-legislative portion of this rulemaking, where the Commission can have the benefit of meaningful contributions from all interested parties.

The Commission should disregard all of Rasier's arguments in support of its Petition for Modification because the issues in the Petition are not within the scope of the OSC. Any value placed on them here would provide an unfair advantage to Rasier's arguments without the benefit of other parties' responses to such arguments. It is inappropriate for Rasier to advocate modifying the reporting requirements in this OSC component of the proceeding.

Lastly, addressing the "justified non-compliance" of one TNC calls into question the fairness of such treatment with respect to the TNCs that complied with the reporting requirements.

Rasier must keep its arguments within the more appropriate forum of the Rulemaking that can really address such issues. None of these arguments change the fact that Rasier is not in compliance with D.13-09-045.

## **V. THE CALIFORNIA PUBLIC UTILITIES COMMISSION'S BROAD AUTHORITY OVER RASIER**

The Commission has broad authority over all TNCs, including Rasier. Specifically, but not to serve as the entire list of authority over TNCs, Public Utilities Code Sections 701 and 5411 provide the Commission's key statutory authority over Rasier.

### **A. P.U. Code Section 701**

P.U. Code Section 701 states: "The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

Rasier argued that "The Commission's regulation of TNCs under Public Utilities Code Section 701 does not subject TNCs to the Commission's broader power to impose rate and financial regulations over a 'public utility.'"<sup>2</sup> Rasier has misinterpreted Section 701. As stated above, Section 701 does not require the Commission to assert a "public safety" justification to require the unaggregated data ordered in D.13-09-045. Similarly, the Commission did not

---

<sup>2</sup> Exhibit #10, Rasier Statement, page 21.

assert any rate or financial regulation over Rasier. Instead, it merely seeks the unaggregated data that all the other TNCs provided, pursuant to and ordered by D.13-09-045.

**B. Rasier is a Charter Party Carrier of Passengers and subject to Section 5411**

As a TNC, Raiser holds authority to operate as a charter-party carrier of passengers under Section 5384(b) and is subject to Section 5411. This section requires Rasier to comply with any order, decision, rule, regulation, direction, demand or requirement of the Commission. Therefore, Rasier is out of compliance with Section 5411 as it has failed to comply with D.13-09-045 by refusing to provide the data ordered by the Commission.

Moreover, the Commission should disregard Rasier when it asserts “The Commission and SED lack authority to demand information from TNCs that does not fulfill the public policy purposes underlying the Commission’s TNC regulations—ensuring public safety and preventing discrimination.”<sup>8</sup> Nowhere is Rasier able to cite that the Commission is limited to its regulation based only on “policy purposes” of its TNC regulations. Sections 701 and 5411 are just a couple of the examples of statutory authority the Commission holds over Rasier.

**VI. RASIER DESCRIBED ITS COMMUNICATIONS WITH SED INACCURATELY**

Rasier’s Statement and hearing testimony present Rasier as acting reasonably and in good faith regarding its actions to comply with the reporting requirements in D.13-09-045. Those assertions that occurred since September 2014, however, are inaccurate. Rasier, had no intention of complying with specific reporting requirements ordered in D.13-09-045 until it indicated its willingness to “negotiate” a “settlement” with SED as a result of the Assigned Administrative Law Judge’s (“ALJ”) enforcement action (i.e., the OSC).<sup>9</sup> Rasier has only been engaged and communicative with SED to the extent that an action taken by SED or the Commission prompted Rasier to engage. Again SED as SED did in its Reply to Rasier’s

---

<sup>8</sup> Statement, page 22.

<sup>9</sup> By describing the discussion that occurred between Rasier and SED on November 24, 2014, Rasier’s Statement indicates its agreement that such communications are not privileged or otherwise protected under Rule 12.6 of the Commission’s Rules of Practice and Procedure (see Appendix 2 of Rasier’s Statement, Declaration of Steven F. Greenwald). Therefore SED should have the same opportunity as Rasier took, to describe (more accurately) the details of its discussions with Rasier during November 19 and 24, 2014.

Statement, Exhibit #4, includes the following summary to complete the record of communications with Rasier following the issuance of the OSC:

- November 17, 2014: Rasier’s outside counsel requested a copy of the confidential version of SED’s staff report. SED fulfilled this request and reminded Rasier’s counsel of the four outstanding data requests that required Rasier to respond. To summarize fairly, SED provides the following table, which identifies each data request SED has sent to Rasier/Uber, and the status of Rasier’s response to each request.

<b>SED Data Request number</b>	<b>Issues/topics addressed</b>	<b>Date issued</b>	<b>Due date specified in request</b>	<b>Status of Rasier’s response (as of December 9, 2014)</b>
001	Questions related to June 10, 2014 Proposed Decision.	Aug. 21, 2014	Sep. 4, 2014	Response received on September 12, 2014 (extension to this date was requested and granted)
002	Complaint contact information	Sep. 12, 2014	Sep. 26, 2014	Response received on September 26, 2014
003	Deficiency letter identifying the specific items of information that Rasier did not provide in its September 19, 2014 submission pursuant to the reporting requirements in D.13-09-045.	Oct. 6, 2014	Oct. 10, 2014	Incomplete responses received October 17, 2014 and October 20, 2014 (extension to October 17, 2014 was requested and verbally accepted)
004	Uber drivers cited during October 8, 2014 airport inspection	Oct. 14, 2014	Oct. 24, 2014	Extension to November 1, 2014 was requested and verbally accepted, but Response received on November 26, 2014
005	Safe Rides Fee, Airport Fee Toll	Oct. 16, 2014	Oct. 30, 2014	No response
006	Complaint contact information	Oct. 21, 2014	Nov. 3, 2014	No response
007	Drivers’ vehicle identification numbers	Oct. 24, 2014	Oct. 31, 2014	No response

- November 18, 2014: SED’s counsel and Acting Director received a meeting / conference call request from Rasier’s outside counsel.<sup>10</sup>
- November 19, 2014: Representatives from SED and Rasier participated in a conference call, during which Rasier’s outside counsel stated that they read SED’s staff report, conceded that they should have filed a Petition for

<sup>10</sup> It is SED’s understanding that earlier that same day, during a meeting of the National Association of Regulatory Utility Commissioners (“NARUC”), a Commission decision-maker communicated with Rasier/Uber representatives regarding their non-compliance with D.13-09-045’s reporting requirements.

Modification, and were now planning to do so. With respect to their outstanding non-compliance, the possibility of Rasier either paying for a third-party auditor to conduct the analysis or making the data available to SED at a location other than Commission premises was discussed. Importantly, the Program Manager of SED's Transportation Enforcement Branch was sick and unable to participate in the meeting.

- November 24, 2014:
  - 11:15 AM: SED received an email from Rasier's outside counsel with an attached document titled "SED Settlement Agreement."
  - 2:30 – 3:30 PM: Representatives from SED and Rasier participated in a meeting (including another Rasier representative by phone). During this meeting SED maintained that it must uphold the plain language of D.13-09-045, which states that "each TNC shall submit [to SED] a verified report..."<sup>11</sup> and thus could not negotiate any outcome that deviated from the decision. Rasier challenged SED's assertion that it lacked the flexibility to re-interpret the plain language of a Commission decision, and requested that SED query the assigned ALJ as to whether SED and Rasier could jointly ask him about options to consider in the OSC going-forward.
- November 25, 2014:
  - 4:56 PM: SED received an email from Rasier's outside counsel with an attached document titled "Rasier First Set of Data Requests to SED". Rasier requested that SED respond by December 3, 2014 (i.e., within four business days).
  - 5:40 PM: SED informed Rasier that the assigned ALJ had responded to their procedural question, stating "no, Uber and SED may not speak to him together about OSC options."
- December 3, 2014: SED emailed its response to Rasier's first set of data requests at 2:52 PM.

---

<sup>11</sup> See D.13-09-045 Regulatory Requirements g., j., k., and l., pp. 30 – 33.

- December 4, 2014: SED's Acting Director and counsel received an email from Rasier's outside counsel, with an attached document titled "Letter to SED," at 4:08 PM. This is the same letter included as Appendix 5 to Rasier's Statement.

As confirmed during hearings, Rasier's late-filed Petition for Modification is the first formal written submission by Rasier to explain why Regulatory Requirement J of D.13-09-045 should be modified. Rasier's representatives had verbally explained to SED during meetings or conference calls why they did not agree with the reporting requirements and, essentially, why SED should excuse Rasier from complying fully with those requirements. (Tr. Vol 3, Kao/SED, p. 337)

SED's response to such arguments has consistently been that Rasier could have filed a Petition for Modification of D.13-09-045 but, since the Decision is currently in effect, Rasier must fully comply with the Decision. During an October 27, 2014 meeting between Rasier and SED, which Rasier requested discussing its UberPool service, Rasier's counsel claimed to SED's Acting Director that it had explained its concerns regarding Regulatory Requirement J. in response to SED's follow-up data request. SED staff countered this claim, stating that Rasier's response did not include any such explanation, but instead represented that the information Rasier had already provided in its September 19, 2014 submission was responsive to Regulatory Requirement J.,<sup>12</sup> to which Uber's/Rasier's counsel conceded that SED staff was correct to explain Rasier's response did not describe its real concerns on Requirement J.

## **VII. THE COMMISSION SHOULD PENALIZE RASIER FOR ITS NON-COMPLIANCE**

SED recommends that the Commission assess a penalty of \$248,000 for Rasier's failure to comply with a Commission order based on 124 days multiplied by \$2,000 per day.

P.U. Code §5415 states: "Every violation of the provisions of this chapter or of any order, decision, decree, rule, direction, demand, or requirement of the commission by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof is a separate and distinct offense." Therefore, SED counts each

---

<sup>12</sup> Rasier response to SED deficiency letter (data request #003), received on October 17, 2014. The letter was marked as confidential; it is included in Attachment C of the confidential version of SED's staff report.

day following September 19, 2014 as a separate offense. As of the date of this filing, Rasier has failed to provide data required by D.13-09-045 for 124 days.

P.U. Code §5378(b) states in part “The commission may levy a civil penalty of up to seven thousand five hundred dollars (\$7,500) upon the holder of an operating permit or certificate issued pursuant to this chapter, for any of the grounds specified in subdivision (a), as an alternative to canceling, revoking, or suspending the permit or certificate.” Given the nature of the violation (i.e., it did not apparently pose or result in any immediate physical harm), SED selected an amount substantially below the maximum allowable by P.U. Code §5378(b). SED’s recommended daily penalty amount of \$2,000 reflects its consideration of a number of factors:

- [Number and scope of violations] Rasier failed to provide various items of information D.13-09-045 required. The information that Rasier failed to provide pertained to requests for wheelchair accessible vehicles; details of ride requests, including further details for completed rides; and cause of each incident and any amount paid by third parties.
- [Degree and nature of wrongdoing] Rasier’s failure to provide the data was deliberate. Rasier requested to meet with SED on September 11, 2014 to discuss their objections to providing the data.
- [Severity of the offense] Actual harms (physical, economic, and/or harm to the regulatory process): unknown/immeasurable – absence of the data prevented the Commission from being able to fully assess TNCs’ impact on congestion, pollution, pricing, etc.
- [Actions to prevent or remedy the violations] SED gave Rasier an opportunity to cure the deficiency, with a follow-up data request / deficiency letter sent October 6, 2014, identifying the specific items of information Rasier had failed to provide in its September 19, 2014 submission. Rasier’s response to that letter did not address the itemized list of information detailed in SED’s deficiency letter, but instead maintained that the information Rasier had already provided (i.e., in its September 19, 2014 submission) was “responsive to” the decision’s requirements.

- Rasier offered two “alternatives,” but not until November 17, 2014, which was nine days after the ruling expanding the scope of the rulemaking (to include the OSC). Neither of the “alternatives” are explicitly allowed by D.13-09-045.

Arguably, each item of information that Rasier failed to provide may constitute a separate and distinct violation. If the Commission determines to cite each item of information that Rasier failed to provide as a separate violation, then it may assess a penalty that is 15 times greater than SED’s recommended amount, or \$3.72 million. Exercising this option, however, may make the Commission consider the relative weight or importance of each item of information, which SED does not recommend since such determinations are somewhat subjective/subject to debate. SED has considered both the aggravating and mitigating factors in developing its recommended daily penalty amount of \$2,000 and suggests that its proposed calculation method is efficient and straightforward, while still reflecting due consideration for the relevant circumstances of this case.

## VIII. CONCLUSION

The Commission should find that Rasier failed, and as of the date of this filing continues to fail, to comply with D.13-09-045, and should proceed to determine the appropriate penalty/penalties to impose on Rasier for such failure.

Respectfully submitted,

/s/ SELINA SHEK  
SELINA SHEK

Attorney for  
The Safety and Enforcement Division

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Telephone: (415) 703-2423  
E-mail: [selina.shek@cpuc.ca.gov](mailto:selina.shek@cpuc.ca.gov)

January 21, 2015

**VERIFICATION**

I, Selina Shek, am counsel of record for the Safety and Enforcement Division in proceeding **R.12-12-011**, and am authorized to make this verification on the organization's behalf. I have read the **THE SAFETY AND ENFORCEMENT DIVISION'S OPENING BRIEF TO RASIER-CA, LLC'S ORDER TO SHOW CAUSE IN RULEMAKING 12-12-011** filed on January 21, 2015. I am informed and believe, and on that ground allege, that the matters stated in this document are true.

I declare under penalty of perjury that the foregoing are true and correct.

Executed on January 21, 2015, at San Francisco, California.

/s/ SELINA SHEK  
SELINA SHEK