



FILED

10-26-16

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)

**PHASE III.A. SCOPING MEMO AND RULING
OF ASSIGNED COMMISSIONER**

Summary

In accordance with Ordering Paragraph 19 of Decision (D.) 16-04-041, this Scoping Memo and Ruling opens a Phase III in this proceeding. Phase III will be broken into two sub phases.

Phase III.A. will address the definition of a personal vehicle that is utilized to provide transportation services as a Transportation Network Company (TNC) vehicle, and will clarify the Commission's continuing jurisdiction, in light of the passage of Assembly Bill (AB) 2763 (Gatto).

Phase III.B. will address the other issues reserved from Phase II of the proceeding including, but not limited to:

- What is Uber Technology, Inc.?
- Should all TNC drivers be fingerprinted?
- Evaluation of TNC plans on handling incidental transportation of minors;
- Any new issues that develop by way of legislative action such as the adoption of new background check standards.
- Evaluation of the public and /or research value of a website, database, or other publicly accessible means to host data about transportation for hire in California that is

under the Commission's jurisdiction. This evaluation will consider examples of third-party hosted websites providing data about Commission programs, funding for such sites, customer privacy, confidentiality, and sensitivity of market data.

A subsequent Phase III.B. Scoping Memo and Ruling will be issued after the Commission has issued its Phase III.A. decision.

1. Background

1.1. The Commission's Jurisdiction Over TNCs

Decision (D.) 13-09-045 created a new sub-category of transportation charter party carrier of passengers called Transportation Network Companies (TNCs) that are subject to this Commission's jurisdiction pursuant to Article XII of the California Constitution and the Passenger Charter-party Carriers' Act (Public Utilities Code Sections (Pub. Util. Code §) 5351, et seq.).¹ In Finding of Fact 9, a TNC was defined as an organization that provides prearranged transportation services for compensation using an online-enable application or platform to connect passengers with drivers using their personal vehicles. Finding of Fact 10 used the term private vehicles. Yet D.13-09-045 did not define either personal vehicles or private vehicles.²

¹ The Commission's jurisdiction over TNCs was confirmed by the passage of AB 2293 (Bonilla), which was signed into law on September 17, 2014, and added §§ 5430 through 5443 to the Public Utilities Code. Specifically, while acknowledging its oversight authority and authority to enact legislation to adjust Commission authority, the Legislature added § 5441 which states that the "Legislature does not intend, and nothing in this article shall be construed, to prohibit the commission from exercising its rulemaking authority in a manner consistent with this article, or to prohibit enforcement activities relate to transportation network companies." Of note is the fact that while AB 2293 also used the term personal vehicle, AB 2293 did not expressly define the term.

² Following a grant of limited rehearing via D.14-04-022, the Commission issued D.14-11-043 which modified D.13-09-045. Neither the grant of rehearing nor the modification provided any further explication of the term personal vehicle.

1.2. Phase II and the Concept of Personal Vehicle

In response to the Phase II Scoping Memo and Ruling, the Amended Scoping Memo and Ruling, and the Assigned Commissioner's Ruling(s), San Francisco Municipal Transportation Agency requested that the Commission amend the scope to clarify the definition of personal vehicles. This request was driven by the fact that some TNCs had entered into contractual arrangements with non-regulated entities in order to provide vehicles on a short-term basis to drivers wishing to provide TNC services.

In light of this development in TNC business model, I determined that it was appropriate to conduct a further analysis of the personal vehicle concept. On June 6, 2016, I issued a ruling and invited the parties to comment on how expansively the term personal vehicle should be defined, and what ancillary safety considerations should be taken into account in formulating that definition. The parties served and filed opening comments on June 27, 2016, and reply comments on July 11, 2016.

While the Commission was investigating how best to define personal vehicle in a way that recognized the expanded TNC business model, and also promoted both public safety and efficient regulatory administration, the Legislature began considering Assembly Bill (AB) 2763, which also sought to define personal vehicle. Passed by the Legislature and signed into law on September 28, 2016, AB 2763 added § 5431(b) to the Pub. Util. Code and defined personal vehicle as follows:

(b) "Personal vehicle" means a vehicle that is used by a participating driver to provide prearranged transportation services for compensation that meets all of the following requirements:

(1) Has a passenger capacity of eight persons or less, including the driver.

(2) Is owned, leased, rented for a term that does not exceed 30 days, or otherwise authorized for use by the participating driver.

(3) Meets all inspection and other safety requirements imposed by the commission.

(4) Is not a taxicab or limousine.

I believe it will be helpful to the Commission's continuing jurisdiction over the TNC industry to render a decision on the personal vehicle question that conforms with the plain language of AB 2763. I believe that the Commission should set forth its role in interpreting and enforcing the newly added Pub. Util Code § 5431(b)(2).

2. Scope of Phase III.A.

Based on the parties' comments, as well as the enactment of AB 2763, the following issues are within the scope of Phase III.A. of this proceeding:

1. What is meant by AB 2763's definition of personal vehicle as a vehicle that is "owned, leased, rented for a term that does not exceed 30 days, or otherwise authorized for use by the participating driver"?
2. What is the extent of the Commission's authority to interpret and enforce AB 2763?

As the parties have already had an opportunity to offer their opinions on the term personal vehicle, I do not believe it will be necessary to set forth a briefing schedule prior to the Commission's decision regarding AB 2763. Instead, it is within the province of the Commission to issue a proposed decision that conforms to the meaning of AB 2763, and to explain the Commission's ongoing responsibility to enforce the Legislature's will. Of course, once the Commission issues its proposed decision, the parties will be able to serve and file comments.

3. Categorization

In the Order Instituting Rulemaking, issued on December 20, 2012, the Commission preliminarily determined that the category of the proceeding is quasi-legislative. The Scoping Memo and Ruling from Phase I of this proceeding, issued on April 2, 2013, confirmed the categorization.

4. Need for Hearing

The Commission in the Order Instituting Rulemaking also preliminarily determined that hearings are not required.

5. Ex Parte Communications

In a quasi-legislative proceeding such as this one, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors and the Administrative Law Judge (ALJ) are permitted without restriction or reporting as described at Pub. Util. Code § 1701.4(b) and Article 8 of the Commission's Rules of Practice and Procedure (Rules).

6. Assigned Commissioner

Liane M. Randolph is the assigned Commissioner and Robert M. Mason III is the assigned ALJ.

7. Filing, Service, and Service List

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocols set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings

using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded, when serving copies of documents, the document format must be consistent with the requirements set forth in Rules 1.5 and 1.6. Additionally, Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents.

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. Parties can find information about electronic filing of documents at the Commission's Docket Office at www.cpuc.ca.gov/PUC/efiling. All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

8. Discovery

Discovery may be conducted by the parties consistent with Article 10 of the Commission's Rules. Any party issuing or responding to a discovery request shall serve a copy of the request or response simultaneously on all parties. Electronic service under Rule 1.10 is sufficient, except Rule 1.10(e) does not apply to the service of discovery and discovery shall not be served on the ALJ. Deadlines for responses may be determined by the parties. Motions to compel or limit discovery shall comply with Rule 11.3.

9. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

10. Schedule for Completion

It is the Commission's intent to complete this proceeding within 18 months of the date of this Ruling is filed. This deadline may be extended by order of the Commission pursuant to Pub. Util. Code § 1701.5(a).

IT IS RULED:

1. The category of this proceeding continues to be quasi-legislative.
2. The scope of the issues for Phase III.A. of this proceeding is as stated in Section 2 of this Ruling.
3. A subsequent Phase III.B. Scoping Memo and Ruling will be issued after the Commission has issued its Phase III.A. decision.
4. Hearings are not necessary.
5. *Ex parte* communications are permitted without restriction or reporting as described at Public Utilities Code Section 1701.4(b) and Article 8 of the Rules.

Dated October 26, 2016, at San Francisco, California

/s/ LIANE M. RANDOLPH

Liane M. Randolph
Assigned Commissioner