BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking 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 RESPONSE TO RASIER-CA, LLC'S APPEAL OF THE PRESIDING OFFICER'S DECISION FINDING RASIER-CA, LLC, IN CONTEMPT, IN VIOLATION OF RULE 1.1 OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE, AND THAT RASIER-CA, LLC'S LICENSE TO OPERATE SHOULD BE SUSPENDED FOR FAILURE TO COMPLY WITH COMMISSION DECISION 13-09-045

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

CPUC Decisions

Statutes

Cal. Public Utilities Code

Cal. Evidence Code

Cal. Government Code

Rules

I. INTRODUCTION

Pursuant to the Commission's Rules of Practice & Procedure, Rule 14.4 and Administrative Law Judge ("ALJ") Robert Mason's approval on August 19, 2015 of the Safety & Enforcement Division's ("SED") motion for an extension, SED hereby submits its Response to Rasier-CA, LLC's ("Rasier") Appeal Of The Presiding Officer's Decision Finding Rasier-CA, LLC, In Contempt, In Violation of Rule 1.1 of the Commission's Rules of Practice And Procedure, And That Rasier-CA, LLC's, License to Operate Should Be Suspended For Failure To Comply With the Commission Decision("D.") 13-09-045 ("Appeal").

SED fully supports the Presiding Officer's Decision ("POD") and argues it is incorrect for Rasier to assert the following: 1) the Commission cannot apply Public Utilities Code Section 5411 to the charter- party carriers over which it has jurisdiction; 2) the POD abridged Rasier's due process rights by taking judicial notice of various documents; 3) the POD expands Reporting Requirement G's accessibility data; 4) the POD wrongly pierces the corporate veil between Rasier and Uber Technologies, Inc., Rasier's parent company; 5) the POD wrongly determines Rasier's zip code data are not trade secrets; 6) the POD wrongly determines that Rasier's actions during this proceeding constitute Rule 1.1 violations; and 7) the POD's total fine amount against Rasier is disproportionate to what SED settled with Lyft, Inc. in SED's Order To Show Cause ("OSC") proceeding against Lyft for similar data production issues. (See Rasier Appeal, pp. 2-3.)

Specifically, SED will address Rasier's main arguments that, despite Rasier's assertions to the contrary: 1) the POD's judicially-noticed documents did not deprive Rasier of its due process; 2) the POD's determinations on compliance and non-compliance are correct; 3) the Commission should hold Rasier in contempt; 4) Rasier *did* violate Rule 1.1; 5) the POD's reasoning supports the fines and penalties against Rasier; and 6) the Commission has not deprived Rasier of due process in this proceeding.

SED concedes, however, that it received the "correct concomitant data" on March 6, 2015. Thus, the POD should revise the overall fine against Rasier to reflect that SED received this data. (See Rasier Appeal, pp. 2 & 27.)

Rasier makes various arguments throughout its Appeal regarding why it could not comply fully. Most importantly, despite all of Rasier's many excuses for not providing the information sooner or at all, Rasier consistently maintained that the aggregated data provided on the deadline for its Annual Report in September 2014 was "responsive." (See Rasier Appeal, p.6 & 35.) It was not until November 19, 2014 - well after the Commission issued this Order to Show Cause – that Rasier offered its self-lauded proposals for SED to analyze the data at Rasier's offices or for a third-party audit. (See Rasier Verified Statement, pp. 3, 9, 19 and 27.)

Substantial compliance is only a viable defense if Rasier had *formally* requested relief from the Commission – *before* its submission of what Rasier now claims represents "substantial compliance" and whether aggregated data would constitute "substantial compliance" with D.13-09-045's reporting requirements. At no time between the issuance of D.13-09-045 and September 19, 2014 did Rasier formally raise any concerns with the Commission. Substantial compliance cannot be asserted as an *after-the-fact* excuse for non-compliance. Therefore, SED maintains, the Commission should disregard all of Rasier's arguments asserting substantial compliance. (See Exhibit #4, SED Verified Reply Statement, p. 11.)

Further, Decision 13-09-045's Requirement J specifically directs Rasier to provide trip-level information. SED could neither derive nor validate the required information from the aggregated data Rasier provided and claimed was "responsive." (See POD, p. 55.) Thus, Rasier cannot legitimately claim substantial compliance here when it did not even attempt to comply and instead provided "aggregate data." (Id.) The POD rightly rejects this claim. (*Id*. at 53.)

Perhaps in Rasier's haste to grow its burgeoning business, Rasier did not realize or care about the regulatory requirements and orders for Transportation Network Companies ("TNCs") contained in D.13-09-045. This haste, however, is not an excuse for Rasier to

defy Commission orders after the company failed to timely exercise its due process opportunities to contest the submittal of such information initially with a Petition for Modification ("PFM"). Pursuant to the Commission's Rules of Practice & Procedure, Rule 16.4, Rasier could have filed a PFM up to one year after the Commission issued D.13-09-045.

As the POD correctly noted, Rasier curiously did not raise any objections to the data submittals required by D.13-09-045 in its Application for Rehearing of the decision, filed October 23, 2013. Rasier did not file its Petition for Modification of D.13-09-045 until December 4, 2014 - less than a month after issuance of the OSC, just a week before it was scheduled to appear before the Commission for evidentiary hearings in this OSC proceeding, and almost 15 months after the Commission adopted TNC rules and requirements in D.13-09-045. (See p. 32)

II. RASIER HAS RADICALLY MISREPRESENTED FACTS TO THE COMMISSION

In its Appeal, Rasier exceeds the scope of responding to the POD's specific determinations and, instead, continues its practice of creative reconstruction of the past. Further, Rasier manipulates SED's words in an attempt to somehow support Rasier's general defense of "substantial compliance." What results is a mix of fact and fiction that defies basic logic. Rasier would have the Commission believe a variety of falsehoods.

First, Rasier would have the Commission believe Rasier properly notified the Commission of its objections to D.13-09-045's reporting requirements.[1] Rasier did not properly notify the Commission of its objections to D.13-09-045's reporting requirements. Instead, Rasier requested a meeting with SED and the Policy and Planning Division ("PPD"), and then attempted to persuade SED on September 11, 2014 in an in-person meeting, not to enforce the reporting requirements. SED advised Rasier to file a Petition for Modification if it did not agree or wish to comply with D.13-09-045.

[1] Rasier Appeal, p. 6 stating "Before the September 19, 2014, data production deadline, Rasier-CA informed the SED that some data reporting requirements sought confidential and trade secret information."

Importantly, in its December 8, 2014 Emergency Motion to defer the evidentiary hearings in this OSC, Rasier openly admitted that "Petition to Modify proceedings are a more appropriate forum to address such changes" (i.e., changes to the reporting requirements). The ALJ denied the motion, and Rasier has never again conceded that it should have raised its "concerns" about the reporting requirements through a Petition for Modification. Rasier's defense going-forward has been to assert "substantial compliance."

SED notes that Rasier brought *three* attorneys to the September 11, 2014 meeting, suggesting that the company had adequate legal resources and advice. Even if Rasier could claim that it did not know the proper means for seeking relief from a Commission requirement, such a claim equates to an admission of incompetence, which calls into question Rasier's fitness to operate.

Second, Rasier would have the Commission believe Rasier did not *believe* that SED would hold it accountable for refusing to provide specific items of information required by D.13-09-045.[2] [3] [4] [5] SED gave no indication to Rasier that SED would not hold it accountable for refusing to comply with D.13-09-045's reporting requirements.

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[2] Rasier Appeal, pp. 5-6. As before, in its Verified Statement and briefs, Rasier takes various statements attributed to the Commission and/or Staff wildly out of context in order to fit them into its tortuously-assembled defense.

[3] Rasier Appeal, p. 6 stating "Rasier-CA reasonably anticipated the Commission's data needs were continuing to evolve and that it was possible to reach compromises with staff concerning the interpretation of the Reporting Requirements." Based on the timing of its Motion to Amend Phase II Scoping Ruling, Rasier did not "anticipate" any of the above until December 4, 2014 – well after this OSC was initiated and likely only as a ploy to delay and potentially avoid evidentiary hearings, as evidenced by the Emergency Motion filed four days later.

[4] Rasier Appeal, p. 9 stating "it was difficult for Rasier-CA to understand if the information it was providing addressed the Commission's policy purposes." This is a particularly imaginative re-telling of SED's clear instructions and Rasier's categorical refusal to comply with those instructions.

[5] Rasier Appeal, p. 37 stating "Rasier-CA did not contend it need not produce trip data unless the SED disclosed its regulatory purposes. Rather, Rasier-CA sought to ascertain the purpose of the information to show that the trip-date it produced would permit the SED to satisfy the Commission's regulatory purposes—i.e., substantial compliance." To reiterate, Rasier flat out refused to provide the required data and then, adding insult, claimed that the information they did provide was "responsive" to the Decision's reporting requirements.

In fact, after further discussion with PPD staff following the September 11, 2014 meeting with Rasier, SED immediately confirmed D.13-09-045's reporting requirements to Rasier and instructed Rasier to comply with those requirements. Rasier acknowledged SED's instruction, albeit tersely, stating "[t]hank you for your email." (*See* Attachment 1).

Even after SED's deficiency letter explained, in meticulous detail, the items of information that Rasier had failed to provide, Rasier continued to dismiss SED's efforts for Rasier to comply by replying that the grossly aggregated information it had provided was "responsive" to the reporting requirements. (*See* Exhibit #2, SED's Confidential Report, Attachment C.)

Rasier all but admits that it anticipated it may face an enforcement action for its non-compliance, when it states when referencing other TNCs' decisions to comply: "[t]he other TNCs' decisions may reflect only a determination that the cost of asserting their legal rights and the risk of a substantial fine…were too great to pursue." (See Rasier Appeal, p. 46.) If Rasier speculated that, the other TNCs anticipated an enforcement action for non-compliance, Rasier must have anticipated the same, which directly contradicts its suggested belief that it did not expect SED to hold it accountable for its non-compliance.

Third, Rasier would have the Commission believe Rasier attempted to negotiate in "good faith" with SED.[6] [7] [8] Rasier did not "negotiate" in "good faith" with SED. The

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[6] Rasier Appeal, p. 7 stating "After the SED raised concerns that it needed the underlying raw data, Rasier-CA offered the SED full access…" This is grossly inaccurate. SED first notified Rasier on September 11, 2014 that the raw data was what the decision required. Rasier did not offer "full access" until November 19 – well after the OSC was issued. To reiterate, neither of the two options Rasier offered were consistent with the Decision.

[7] Rasier Appeal, p. 37 stating "[a]s to the factual record, Rasier-CA offered the SED full access to ***all*** data requested and offered to pay a third party auditor of the SED's selection to audit the information Rasier-CA produced." Again, Rasier did not offer "full access" until November 19 – well after the OSC was issued – and again, neither of the two options Rasier offered was consistent with the Decision.

[8] Rasier Appeal, p. 61 stating "it is undisputed that Rasier-CA offered the SED full access to all data sought under Reporting Requirement (j) at a neutral third-party site, and to run queries across that data." Again, Rasier did not offer "full access" until November 19 – well after the OSC was issued – and again, neither of the two options Rasier offered was consistent with the Decision.

timeline does not support Rasier's "good faith" narrative because Rasier disregarded the Commission's directives until well after the Commission issued the OSC ruling.

Fourth, Rasier would have the Commission believe Rasier provided information that it "believed" fulfilled the Commission's "only legitimate" purpose of assessing redlining.[9] [10] Even though SED maintains, as Rasier correctly characterizes, that the only relevant issue here is strict compliance, Rasier cannot claim that it actually believed the highly aggregated data it provided would enable SED to "provide the same material analysis" as the trip-level information D.13-09-045 requires. During the September 11, 2014 meeting, SED provided several examples of the types of analysis that SED could only perform with the trip-level data as opposed to the aggregated data Rasier proposed. The examples included in SED's Opening Brief are reflective of the examples SED provided during the September 11, 2014 meeting.[11]

And in what can best be described as a sort of "Plan B" or back-up defense, Rasier attempts to paint SED/Staff as unreasonable and, separately, to blame for its (Rasier's) failure to understand the Commission's requirements.

First, Rasier suggests that SED has the authority to interpret and accept a regulated entity's interpretation of a Commission order. (See Rasier Appeal, p.7-8 & 10.) While SED may advocate an interpretation to the CPUC, the Commission speaks through its orders, and SED does not speak for the California Public Utilities Commission ("CPUC"). Regarding due process, affording that level of flexibility to SED (i.e., to interpret a Commission order so liberally) would have prejudiced all other parties in the Rulemaking. SED has a duty to uphold every Commission order to the fullest extent

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[9] Rasier Appeal, p. 9, stating "Rasier-CA believed the SED could provide the same material analysis using Rasier-CA's proposed production method (aggregate data with inspection and audit of the underlying data) without jeopardizing Rasier-CA's trade secret protections. "

[10] Rasier Appeal, p. 7 stating "SED did not dispute that either of these productions would have allowed it to confirm Rasier-CA does not geographically discriminate (the apparent policy objective of Reporting Requirement (j)), or to assess the data for any other purpose."

[11] R.12-12-011 The Safety and Enforcement Division's Opening Brief to Rasier-CA, LLC's Order to Show Cause in Rulemaking 12-12-011, filed January 21, 2015, http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M146/K375/146375967.PDF, pp. 5-6.

possible, and must respect the limits on its authority, which include enforcing the Commission's orders for regulated entities to comply.

Second, Rasier insinuates that SED is responsible for keeping regulated entities informed of their rights and responsibilities.[12] SED has no such obligation. The Commission regulates over 10,000 carriers including approximately 9,500 of charter-party carriers, 250 passenger stage corporations, and more than 1,000 household goods movers.[13] It is not SED's responsibility to keep each and every carrier informed of their rights and responsibilities. Rather, it is incumbent on each regulated entity to be aware of the duties and obligations that accompany its license to provide service in California.

Third, Rasier attempts to argue that SED has a duty or obligation to explain every specific way in which it may intend to use any data that the Commission requires. (*See* Rasier Appeal, p. 8.) In any context, this notion is preposterous. Certainly, Staff should be able to articulate the general purpose(s) for which the Commission requests information from regulated entities, as outlined in a Commission order. But, as SED has pointed out time and again, the reporting requirements are not data requests, but rather conditions of Rasier's *privilege* (not right) to operate in California.

Borrowing from Rasier's Appeal, SED provides this more complete summary: "**[After attempting to persuade SED to accept only aggregated data and then receiving and acknowledging SED's confirmation of D.13-09-045's reporting requirements,]** Rasier-CA produced the aggregate data **[on the deadline and then insisted that the data was "responsive" to the reporting requirement until well after the OSC was issued]**; offered to make individual trip-level data available for inspection

[12] Rasier Appeal, p. 8 / footnote 39 stating "[t]he SED has also argued that if Rasier-CA has any issues with the TNC Decision's data requests, it should file a Petition For Modification." To reiterate, SED first asserted the need for a Petition For Modification on September 11, 2014. Rasier did not file its petition until (1) nearly three months later; (2) well after the OSC Ruling was issued; and (3) well over a year after D.13-09-045 was adopted. And it is irrelevant whether and when SED stated the need for a Petition for Modification, because Rasier is ultimately responsible for its actions and inactions as a regulated entity of the Commission.

[13] As of September 10, 2015, the number of active and suspended carriers in the Commission's transportation carrier database were: 9,529 charter party carriers, 246 passenger stage corporations, and 1,051 household goods movers.

at Uber's offices **[on November 19, 2014, well after the OSC was issued]**; and even offered to pay for a third party auditor selected by staff to assist with evaluating the data **[also on November 19, 2014, well after the OSC was issued]**." (See Rasier Appeal, p. 53.) In this context, Rasier's claims of "good faith" and "substantial compliance" amount to mere puffery.

Throughout its refusal to comply with a Commission order, Rasier has exhibited outright defiance, which SED's staff report demonstrated. SED communicated clearly to Rasier (and therefore Rasier knew) that SED had no choice but to enforce a Commission order. Thus, Rasier should not have wasted Staff's time producing nonresponsive datasets and submitting data request responses that claimed that those nonresponsive datasets were responsive.

At best, Rasier's response may be considered indifference to the Commission's rules, but such indifference by a regulated entity subject to the Commission's rules is unacceptable. At worst, Rasier's behavior constitutes an attempt to bypass/circumvent the Rules of Practice and Procedure, and avoid facing the ramifications of its non-compliance.

III. JUDICIALLY-NOTICED DOCUMENTS DID NOT DEPRIVE RASIER OF ITS DUE PROCESS

Rasier argues that the POD's inclusion of judicially-noticed documents after evidentiary hearings and post-hearing briefing deprives Rasier of its due process rights. (See Rasier Appeal, pp. 12-20.)[14] What Rasier fails to acknowledge is that, with the opportunity to comment on the POD once it was issued, Rasier exercised its due process rights by expressing its position regarding the POD's official judicial notice of certain documents. Rasier's due process rights in this proceeding remain intact, and Rasier was not deprived of any opportunity to comment. In fact, Rasier recently filed its Appeal of the POD on August 14, 2015.

[14] Pursuant to the Commission's Rules of Practice and Procedure Rule 13.9, the Commission takes official notice of facts.

And even before the Presiding Officer issued the POD and took official notice, pursuant to Evidence Code Section 455(a), he provided SED and Rasier an opportunity to present their positions on the propriety of taking judicial notice of the documents as well as the tenor of the matter to be noticed. [15]

Rasier states that a basic tenant underlying Evidence Code Section 450 provides that "an opportunity…to know what the deciding tribunal is considering and to be heard with respect to both law and fact is guaranteed by due process." (*See* Rasier Appeal, p.14.) Rasier had this opportunity throughout the OSC process, and well before the Presiding Officer issued the POD, and thus the POD does not deprive Rasier of its due process. SED notes that the Commission is not bound by the Evidence Code and instead may look to it as a source of guidance. (*See* Commission's Rules of Practice & Procedure Rule 13.6(a)[16] and Public Utilities Code Section 1701.[17])

Additionally, if the Commission adopts the POD, Rasier has the further opportunity to assert its due process rights with an application for rehearing. The POD's use of judicially-noticed documents does not abridge Rasier's due process rights despite Rasier's arguments to the contrary.

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[15] R.12-12-011 Email of Assigned Administrative Law Judge regarding consideration of taking judicial notice, sent June 9, 2015; and subsequent Email extending deadline to June 23, 2015, sent June 10, 2015, for Presiding Officer's Decision regarding 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 ("Rasier OSC"), issued November 14, 2014, http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M141/K888/141888401.PDF.

[16] Commission Rules of Practice and Procedure, Rule 13.6(a) Although technical rules of evidence ordinarily need not be applied in hearings before the Commission, substantial rights of the parties shall be preserved.

[17] Public Utilities Code Section 1701 states (a) All hearings, investigations, and proceedings shall be governed by this part and by rules of practice and procedure adopted by the commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision or rule made, approved, or confirmed by the commission.

A. The POD's Judicially-Noticed Documents

Pursuant to Evidence Code Section 452(a), the POD took judicial notice of the following decision:

> *Notice of Decision*, dated January 6, 2015, from the Taxi & Limousine Tribunal, A Division of the Office of Administrative Trials and Hearings, City of New York, in the matter of *Taxi and Limousine Commission against Weiter LLC*, Summons Number FC0000332.

Pursuant to Evidence Code Section 452(d), the POD took judicial notice of the following pleadings, documents, and rulings from:

> *National Federation of the Blind of California and Michael Hingson v. Uber Technologies, Inc*. ("National Federation of the Blind v. Uber"), (USDC: Northern District of California 2014), Case No. 3:14-cv-4086:
>
> - The Complaint and First Amended Complaint, filed September 9, 2014 and November 12, 2014, respectively;
> - Proof of Service on Uber Technologies, Inc., filed September 25, 2014;
> - Stipulation to Extend Time for Defendant Uber Technologies, Inc. to File a Responsive Pleading, filed October 9, 2014;
> - Defendant Uber Technologies, Inc.'s Notice of Motion and Motion to Dismiss; Memorandum of Points and Authorities in Support Thereof, filed October 22, 2014;
> - Declaration of Michael Colman in Support of Defendant Uber Technologies, Inc.'s Motion to Dismiss, filed October 22, 2014;
> - Order Denying Motion to Dismiss, filed April 17, 2015; and
> - Defendants' Answer to Plaintiffs' First Amended Complaint, filed May 1, 2015.

Pursuant to Evidence Code Section 452(d), the POD took judicial notice of the following pleadings, documents, and rulings from:

Douglas O'Connor and Thomas Colopy v. Uber Technologies, Inc. ("O'Connor and Colopy v. Uber") (USDC: Northern District of California 2013), Case No. 13-03826-EMC:

- Defendant Uber Technologies, Inc.'s Answer to Plaintiffs' Class Action Complaint, filed December 19, 2013;
- Order Granting Defendant's Motion for Judgment on the Pleadings, filed September 4, 2014;
- Declaration of Michael Colman in Support of Defendant's Motion for Summary Judgment, filed December 4, 2014; and
- Order Denying Defendant Uber Technologies, Inc.'s Motion for Summary Judgment, filed March 11, 2015.

Pursuant to Evidence Code Section 452(h), the POD took judicial notice of information from Uber's website regarding its operations, particularly the following blogs from Uber's website:

- *4 YEARS IN*, dated June 6, 2014 and posted by Travis Kalanick; and
- *Driving Solutions To Build Smarter Cities*, dated January 13, 2015, and posted by Justin Kintz.

The POD takes judicial notice of the documents and information under the following parameters: 1) the existence of pleadings, findings of fact, and conclusions of law in other proceedings, and 2) the truth of certain matters Uber has asserted in other proceedings (e.g. through Uber's pleadings and declarations) which are undisputed, and certain findings of fact and conclusions of law that are based on matters asserted by Uber, put into evidence by Uber, stipulated by Uber, or where the matter is not reasonably subject to dispute. The POD does not take judicial notice of the truth of the matters asserted or found in the pleadings, findings of fact, and conclusions of law if they were matters that were reasonably subject to dispute in other proceedings. (See POD, p. 20.)

Additionally, the POD states that, because Uber's blogs do not contain information subject to interpretation, but instead represent "Uber's assessment of its

operations, growth, revenue, and interactions with government agencies," it is proper to take judicial notice of this information. (*Id*. at 21.)

B. The POD's use of Judicially-Noticed Documents or Information Addressed the Same Issues Included in the Order to Show Cause Proceeding and Therefore does not Harm Rasier's Due Process.

As SED stated in its Response to the Presiding Officer's Consideration of Taking Judicial Notice of Certain Documents in Order to Show Cause in Rulemaking 12-12-011 ("SED Response"), it is proper to take judicial notice of documents or information if it relates in any way to Rasier's failure to comply with a Commission order. (*See* SED Response, p. 2.)

Thus, the POD's notice of the *National Federation of the Blind vs. Uber* case is proper because it illustrates Rasier's non-compliance with Regulatory Requirement G on accessibility. (*See* POD, pp. 23-24.) The POD states that, despite Uber's knowledge of the Blind Federation's lawsuit, Uber did not revise its report on Regulatory Requirement G to reflect information from the lawsuit. (*Id*.)

The POD also correctly utilizes the Blind Federation lawsuit, as well as the Douglas O'Connor & Thomas Colopy v. Uber Technologies, Inc. proceedings, to help establish the appropriate penalty amounts in this OSC proceeding by looking at Uber's parent company role with respect to Rasier. All of this relates to the OSC's review of Rasier's non-compliance and therefore does not violate Rasier's due process. (*Id*. at pp. 68-70, 73-75, & 77.)

And the POD utilizes the "Driving Solutions To Build Smarter Cities" blog on Uber's website to help establish that Rasier was able to comply with Regulatory Requirement J regarding trip data, but did not comply. (Id. at 33-34.) This again involves Rasier's non-compliance with the Reporting Requirements, which is the OSC's focus. Therefore, Rasier's due process is not harmed with the POD's use of these judicially-noticed documents.

Lastly, the POD uses the "4 Years In" blog on Uber's website to help assess penalties against Rasier for non-compliance through Uber's revenues. Again, since this

information addresses Rasier's compliance, the POD's reliance on it does not deprive Rasier of due process. (*See* POD, p. 76.)

The POD's use of judicially-noticed documents and information addressed the same issues included in the OSC and therefore does not harm Rasier's due process rights in this proceeding.

C. The Commission is not Bound by the California Administrative Procedures Act ("APA"), but in any Event, did not Violate the APA.

As Rasier acknowledges in its Appeal, the Commission is not bound by the APA. Further, California Government Code Section 11515, a provision of the APA, allows an agency to take "official notice…of any fact which may be judicially noticed by the courts of this State," and requires that parties "be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority."[18] (*See* Rasier Appeal, p.15.) Rasier further cites Franz v. Board of Medical Quality Assurance to state an agency's notification must be complete and specific enough to give an effective opportunity for rebuttal. (See id.)

Here, even if the Commission were to apply the CA APA's Section 11515, the Presiding Officer specifically gave SED and Rasier the opportunity in writing to support or object to taking judicial notice of the various documents and information before including them in the POD. And the POD, stating how the judicially-noticed items would be used, when issued, Rasier had additional opportunity to provide a rebuttal in its Appeal based on "complete and specific" notification of the judicially-noticed documents and information. As Rasier pointed out, these opportunities to express opposition are opportunities a party should be afforded "to present information which might challenge the fact." (*See* Oneida Indian Nation of New York v. State of New York, 691 F.2d 1070, 1086(2ND Cir. 1982) and Rasier Appeal, p. 15.) Thus, the POD does not violate the APA

[18] CPUC Rule 13.9 contains the same language regarding "official notice" as appears in Section 11515.

with its judicially-noticed material by allowing the Parties to comment both before and after the Presiding Officer issued the POD.

IV. THE POD'S DETERMINATIONS ON COMPLIANCE AND NON-COMPLIANCE ARE CORRECT

The POD correctly determines both Rasier's compliance and non-compliance with D.13-09-045's reporting requirements on: 1) Accessibility- Reporting Requirement G; 2) Zip Codes- Requirement J; and 3) Driver Problems-Requirement K.

A. Rasier's Incomplete Reporting Requirement G Report On Accessibility

Rasier contends that the POD's fine of $2,790,000 as of June 30, 2015 with continuing fines of $10,000 per day is inappropriate because the POD: 1) omits portions of the record supporting Rasier's good faith belief it had complied with Requirement G; 2) adopts an expanded interpretation of Requirement G; and 3) takes judicial notice of information in a pending lawsuit without providing Rasier a chance to address the substance of the matter to be noticed. (See Rasier Appeal, pp. 20 & 21.)

Rasier claims that the POD omits portions of the record supporting Rasier's belief it had complied with Requirement G. This claim is inaccurate, because the POD instead emphasizes that, though Rasier did not have an accessible vehicle feature on its application, this "does not lead to the conclusion that it lacked any information responsive to Reporting Requirement g." (*See* POD, p. 23.) Thus, the POD properly concludes that Rasier's compliance with Requirement G was incomplete.

The POD states that as of September 9, 2014, the National Federation of the Blind of California sued Uber, Rasier, LLC, and Rasier-CA, LLC for discrimination against blind individuals who use service dogs. The POD states the complaint alleges reports of Uber X drivers denying service to blind customers with service dogs - all well before Rasier's September 19, 2014 reporting deadline. (Id.)

The POD properly concludes that as of September 24, 2014, which was when Uber received the formal complaint from the National Federation of the Blind, Uber Technologies, Inc. ("Uber"), Rasier's parent company, was aware of the allegation of

complaints from disabled people receiving Uber X service, and thus should have supplemented its September 19, 2014 report on accessibility. (*Id*. at 24.)

As of August 13, 2015, however, Rasier produced to SED a report with disabled individuals' alleged complaints in response to the POD's contentions on accessibility. Thus, this production of information represents Rasier's effort to satisfy what it labels as an expanded interpretation of Requirement G. (*See* Rasier Appeal, p. 20, Footnote #98.)

The POD's expanded view of accessible vehicles and of Requirement G is proper. The POD further states the Americans with Disabilities Act ("ADA") prohibits discrimination against persons with disabilities regarding public accommodation, specified public transportation service, and travel service, and concludes that Rasier's service falls within this definition, particularly pertaining to persons with vision impairment, which is within the ADA's definition of disability. (*Id*. at 24.)

Rasier, in contrast, tries to attack the ADA regulations as they fit under the POD's arguments on why Rasier should be held accountable for not reporting information on alleged complaints from the blind. (*See* Rasier Appeal, p.23-24.) Here, Rasier tries to deflect the blame of not complying with the reporting requirements by stating that the POD wrongly assumes that any request by a visually-impaired rider with a service animal is a request for an accessible vehicle. (*See* Rasier Appeal, p.24.) This shifts the focus to whether a vehicle is accessible or not. However, the POD is correct in pointing out that if Rasier was aware of allegations of complaints by persons with disabilities regarding their claimed inability to utilize TNC service provided by UberX, Rasier, Uber's subsidiary, should have supplemented its September 19, 2014 report regarding Reporting Requirement G to include the above allegations. (*See* POD, p. 24.)

Lastly, Rasier inaccurately states that the POD takes judicial notice of information in a pending lawsuit without providing Rasier a chance to address the substance of the matter to be noticed regarding Rasier's compliance with Accessibility Requirement G. Through its Appeal of the POD, Rasier has the opportunity to address the judicially-noticed material. Rasier's Appeal serves as its chance to state whether it objects to taking

judicial notice and the relative propriety to do so before the Commission approves a final Decision on Rasier's OSC.

B. Rasier's Reporting Requirement J Report on Trip Data

Regarding Requirement J, Rasier contends that: 1) it produced the correct concomitant data; 2) the POD wrongly rejects Rasier's trade secret assertion for zip code data; and 3) the POD wrongly determines that the Commission has authority over Rasier to collect fare information. (*See* Rasier Appeal, p. 27.)

Rasier explains that it *did provide* concomitant data on zip codes, which the POD values at a $1,420,000 fine for non-submission. (*Id*. at 27-29.) SED confirms here that Rasier provided this concomitant data on March 6, 2015. Thus, the POD should revise its total fine amount for this data by $1,084,000 (i.e., subtracting the $1.42 million for non-compliance but adding $336,000 for late submission).

Next, Rasier criticizes the POD for rejecting Rasier's trade secret status assertions regarding its fare information, and emphasizes that SED never challenged or addressed Rasier's trade secret evidence. (*See* Rasier Appeal, pp. 29-30.) The fact that SED not dispute this purported trade secret status, does not evidence SED's belief that the fare information *is* a trade secret. Throughout this OSC proceeding, SED has emphasized that Rasier should have made arguments such as those regarding trade secret status in a Petition for Modification ("PFM") of D.13-09-045. (See Exhibit #4, SED's Verified Reply Statement, p. 5.) Had Rasier done so, it could have avoided being non-compliant with D.13-09-045's data requirements via a timely-filed PFM.

Additionally, Rasier now asserts that, had it had known the claim of trade secret status was in dispute, it could have provided more evidence demonstrating how Rasier's rides are trade secrets. Instead, Rasier now cites to its investment in software tracking rides, that Uber keeps trip data confidential even within its own company, that it uses the data information for many reasons, and the data would be very valuable to competitors for prioritizing markets for expansion without having to conduct market research. (*See* Rasier Appeal, p. 31.) All of this new information, which Rasier did not offer during evidentiary hearings or in opening and closing briefs, could have been included in a

Petition for Modification, which Rasier should have filed to attempt to remove what it considers objectionable data from a report to the Commission.

Rasier also contends that the Commission does not have jurisdiction over fares. (*See* Rasier Appeal, p.32-34.) SED disagrees. The Commission has broad authority over charter-party carriers and thus has a right to fare information from TNCs like Rasier. (*See* Exhibit #4, SED's Verified Reply Statement, p. 5.[19]) Again, Rasier should have included any arguments limiting fare information in a Petition for Modification**.** (*Id*.)

Lastly, in its fare appeal discussion, Rasier claims that, because the Commission no longer requires detailed financial information from Passenger Stage Corporations, charter-party carriers also are not required to provide such information, and therefore the Commission does not have oversight of Rasier's fares. (*See* Rasier Appeal, p. 34.)

The Commission has broad authority to request and review information about and from the entities subject to its jurisdiction, in the absence of explicit statutory authority to regulate fares. Rasier has not cited to any statutory basis for its claim that the Commission's jurisdiction over TNCs does *not* extend to collecting fare information, because there is no statutory basis.

Further, any question about the CPUC's "latitude" over pricing does not equate to a passenger carrier's right to withhold trip-level fare information from the Commission. As Rasier correctly states in its Appeal, the Commission "may do all things…which are necessary and convenient in the exercise of [its] power and jurisdiction" so long as those things are not inconsistent with the Charter-Party Carriers Act. (*See* p. 32.) Rasier is not correct, however, in asserting that "section 5401…prohibits the Commission from regulating TCP rates" in that this somehow leads to a prohibition from *analyzing* charter-party carrier rates. A lack of an explicit Commission authority to regulate TCP rates does not equate to a lack of authority to monitor and supervise this industry – including the

[19] The Statement fails to acknowledge that the Commission, not SED, directed the TNCs to submit the data. Here, Rasier attempts to divert attention away from its failure to comply with a Commission order. The Commission order is not a discovery request.

charges assessed by carriers -- which the Commission expressly possesses by virtue of the Charter-Party Carriers' Act.

C. Rasier's Incomplete Reporting Requirement K Report on Driver Problems

Reporting Requirement K seeks the number of drivers who received a violation or suspension, the outcome of the investigation into those complaints, accidents or incidents involving TNC drivers, the cause of any such accidents and amount paid to any party, and the date, time, and amount paid by the "driver's insurance, the TNC's insurance, or any other source." (*See* D.13-09-045, p. 32.)

The POD agrees that Rasier does not have access to insurance amounts paid by other insurance companies and therefore is not in violation of Requirement K, except for the portion that pertains to "cause of each incident." Thus, the POD imposes a fine of $1,420,000 through June 30, 2015 with continuing fines of $5,000 per day for failing to produce cause information. (*See* POD, pp. 29 & 82 and Rasier Appeal, p. 35.)

Rasier argues that the $1.4 million fine is inappropriate because: 1) the POD wrongly ignores its substantial compliance with Requirement K; 2) cause was not a topic covered in SED's reporting template for Reporting Requirement K; and 3) there is uncertainty concerning the meaning of cause. (See Rasier Appeal, p. 35.)

As of the filing of its Appeal on August 14, 2015, Rasier still had not provided the appropriate or adequate "cause" information. Thus, Rasier cannot assert it has substantially complied when it has not provided all the information to meet Requirement K, particularly pertaining to cause. The last section of SED's response discusses developments on Rasier's recent updates to its "cause information" Rasier provided in response to the POD.

Despite "cause" not being included in SED's reporting template, D.13-09-045 did include this issue as part of the data TNCs must provide in response to Requirement K**.**

(*See* Exhibit #4, SED Verified Reply Statement, p.6.)[20] Thus, Rasier is obligated to provide this information despite what may or may not have been included in the template.

Lastly, Rasier asserts that there is uncertainty regarding the meaning of cause, and that SED acknowledged Rasier had "expressed a willingness to 'work with' SED," on this issue. (*See* Rasier Appeal, p. 36.) Rasier's willingness to work with SED on the question of "cause" is not dispositive; Rasier is not excused from complying with the requirement.

Further, Rasier provided adequate cause information for only a portion of the incidents included in its Report on Problems with Drivers. Specifically, it provided enough information for SED to determine both the type and cause of the incidents Rasier identified. However, Rasier did not identify the type or cause for multiple other incidents.

V. THE COMMISSION SHOULD HOLD RASIER IN CONTEMPT

Rasier argues the Commission should not hold it in contempt pursuant to Public Utilities Code Section 2113 because, despite the POD's correct determination that Rasier knew about the reporting requirements and could have complied, these determinations should not form the basis for a finding of contempt against Rasier. (*See* Rasier Appeal, p.36-37.) Instead, Rasier asserts, the correct basis for evaluating a contempt finding should be whether its legal arguments for non-compliance were without merit, thus demonstrating contempt for a Rule 1.1 violation, as well as whether the underlying factual evidence demonstrates substantial compliance. (*Id*. at 37.)

Rasier asserts it is difficult for the Commission to find its actions in contempt when it "offered SED full access to ***all*** data requested and offered to pay a third party auditor of the SED's selection to audit the information Rasier-CA produced." SED notes again that Rasier made this "offer" to SED well after the Commission issued the OSC on

[20] "Although the website states that "TNCs must use the spreadsheets posted below for reporting data," SED confirmed during the September 11, 2014 meeting that Rasier may submit the required data in a different format if Rasier could not, for whatever reason, use the reporting templates, consistent with the format discussion contained in D.13-09-045."

November 19, 2015. (*See* Exhibit #10, p.20.) Previously, on September 11, 2014, SED had notified Rasier that D.13-09-045 plainly requires disaggregated data.

Rasier also complains that the POD finds Rasier's efforts to determine why the information was needed and how it would be used to support a finding of contempt. (*See* Rasier Appeal, p.37.) This argument simply begs the question: a regulated entity is still in contempt if it does not comply with a Commission order *even though* that entity might be attempting simultaneously to ascertain the Commission's purpose for the data. So long as the Commission's order remains in effect, the entity is bound to comply with the order. As SED has stated before, it is improper for Rasier to demand that Staff explain the Commission's purpose for and use of the required data, especially when the demand comes one year after adoption of an order that Rasier did not timely challenge and the Commission has not modified.

Rasier should have filed a PFM against D.13-09-045 early on, well before the data reporting deadline, so that all parties could weigh in on the issues Rasier claims lack clarity or are unreasonable. Had such a petition been filed and granted, it likely would apply to all TNCs, and then no TNC would be have been required to submit such data in their respective Annual Reports, initially due in September 2014.

The POD states: "Compliance with a Commission order may not be excused because a Respondent questions why the information is needed or how the required information may be used." (*See* POD, p. 36.) It adds that Public Utilities Code Sections 702 and 5381 require regulated entities to comply with Commission orders.

After the Commission afforded Rasier multiple opportunities to exercise its due process rights, the POD correctly finds Rasier in contempt. The POD has only made this contempt finding after Rasier responded to the OSC with its Verified Statement-Exhibit #10, and after evidentiary hearings, Opening and Reply briefs, and Rasier's August 14, 2015 Appeal. While Rasier may not agree with the POD, the contempt finding against Rasier has not deprived Rasier of its due process rights.

A. Rasier Should Have Included its Trade Secret Arguments in a Petition for Modification.

Rasier asserts the POD wrongly concludes that Rasier's trip-level data is not a protectable trade secret. In addition to past arguments Rasier has made regarding its trade secret arguments, it also includes new information on Rasier's investment in the material to demonstrate how it believes the data is a trade secret. (*See* Rasier Appeal, pp. 38-42.) Again, these are all arguments that Rasier should have included in a timely Petition for Modification of D.13-09-045. If it had done so, Rasier might not find itself in its current situation of being found in contempt for disobeying a Commission order.

B. Rasier Should Have Included its Fourth Amendment Arguments Against Undue Seizure in a Petition for Modification.

Rasier further disputes the POD's finding of contempt against it because, it claims, its Fourth Amendment arguments are legitimate and demonstrate that agencies seeking documents cannot reach "excessive" levels. (*See* Rasier Appeal, pp. 42-45.) Again, Rasier should have made such arguments earlier in a Petition for Modification to the Commission to assess and therefore not have Rasier violate a valid Commission order from D.13-09-045.

SED disagrees with Rasier's argument that providing its trip data pursuant to D.13-09-045 is excessive because again, that data is not discovery, but instead is a Commission order despite Rasier's characterization of this requirement otherwise. Rasier states: "Thus, the Fourth Amendment prevents a state agency from making an excessive inspection demand." (See Rasier Appeal, p. 43.) SED reiterates that the data it expected Rasier to provide was not under discovery, but a requirement from a Commission Order. The POD rightfully states it was not a request for an R.S.V.P. "The Commission's orders are not party invitations where the Respondent may R.S.V.P. as it sees fit." (See POD, p. 35.) As stated earlier Public Utilities Code Section 702 mandates compliance.

Rasier also criticizes SED for having admitted they had never considered Rasier's Fourth Amendment rights and did not believe they needed to so. (See Rasier Appeal, p. 43.) As SED has stated, SED did not need to consider those arguments, as SED's

function when faced with Rasier's lack of cooperation was to determine whether the regulated entity complied with the current, non-modified Commission Decision. Since Rasier did not bother to file a PFM of the Rulemaking Decision to dispute the data requirement Rasier considers objectionable, Rasier is still responsible to provide that data unless and until the Commission revises the Decision.

C. Rasier Should Have Included its Fifth Amendment Arguments in a Petition for Modification.

Rasier again argues that its ride data is trade secret information and should be protected from disclosure and production under the Fifth Amendment's protections. (*See* Rasier Appeal, pp. 47-50.) Again these are all arguments Rasier should have made in a Petition for Modification for the Commission to fully review and determine whether ordering Rasier to provide that information would harm its Fifth Amendment rights and create a taking.

D. Rasier did Wrongly Compare the Commission's Orders for Data to a Discovery Proceeding.

Despite Rasier's arguments to the contrary, it has wrongly compared the Commission's orders for data pursuant to a Commission decision to a discovery proceeding. (*See* Rasier Appeal, p. 51.) In fact, on page 3 of its Verified Statement on December 4, 2014, it couched the disagreement with SED about providing the data as follows: "Rather, this case presents a garden variety discovery dispute about the unduly burdensome, cumulative, and overly broad scope of data production request (j), and the form and manner in which TNCs may satisfy that request."

Further down the page, Rasier states: "As parties would in any other discovery dispute, Rasier has worked in good faith to achieve a mutually acceptable resolution with the SED."

Rasier claims now that it was only making a comparison to help serve as "guiding principles for resolution," but such a clear comparison is wholly inappropriate because it minimizes a Commission order to mandate data production, whereas discovery disputes include possible room for compromise in production. With Rasier's characterization of

the dispute as discovery, it is nothing more than an attempt to minimize the Commission's authority and shows an intent to diminish the severity of the infraction as it relates to Rasier's non-compliance with a Commission order. (*See* Exhibit #4, SED Verified Reply Statement, p. 6.) This substantiates why the Commission should hold Rasier in contempt.

E. Rasier's Substantial Compliance Arguments are Invalid.

Rasier states its many substantial compliance arguments demonstrate why the Commission should not hold it in contempt. (See Rasier Appeal, pp. 51-53)

SED agrees with both the POD and Rasier that substantial compliance means actual compliance in respect to the substance. (*See* Rasier Appeal, p.52 and POD, p.53) Here, however, Rasier cannot legitimately claim substantial compliance when from the very start of providing the required data, Rasier repeatedly emphasized what it was providing was "responsive" and not "all the data" which Rasier later offered to make available for inspection at Uber's offices or to a third party auditor- an offer that came only after issuance of the OSC. (*See* Exhibit #4, SED Verified Reply Statement, pp. 2, 4, 9, 13, 16, & 28 and Exhibit #1, pp. 3-4.) Until the OSC, Rasier only provided aggregate information to SED.

SED agrees with Rasier that the data was not in such a form as to be unusable, as the POD describes. (*See* Rasier Appeal, p.53 and POD, p. 55.) But the aggregate information Rasier provided was useless to the Commission in that the data (1) only provided one "acceptance" rate for each zip code for the entire reporting period; and (2) suffered from a serious lack of precision.[21] Useless data does not substantiate Rasier's argument that it satisfies substantial compliance with its argument of "substance" in form. Here, Rasier did not comply at all with Requirement J because the information it claimed was responsive early on only included aggregate data that fell far short of even "substantial" compliance.

[21] (Tr.Vol.3, Kao/SED, p. 327.)

Rasier argued that in a meeting on September 11, 2014, it could provide SED with more user-friendly, relevant, and meaningful information, and it could do so in a way that would avoid disclosing confidential and proprietary business information and trade secrets, such as by providing certain information in the aggregate. (See Exhibit #1, SED Report, p. 3.) - SED disagreed. As SED stated in its Reply to Rasier's Verified Statement:

> There is no dispute. Rasier admits in its Statement, and as further evidenced by its Petition for Modification, that it did not comply with D.13-09-045. Rasier's 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. Any and all mention of a "dispute" should be disregarded as Rasier openly concedes that it has not provided the information required by Regulatory Requirement j. (*See* Exhibit #4, SED Verified Reply Statement, p. 7.)

VI. RASIER VIOLATED RULE 1.1

The POD correctly found that Rasier violated Rule 1.1 of the Commission's Rules of Practice and Procedure by disobeying D.13-09-045's reporting requirements. (*See* POD, pp. 58-60.) Rule 1.1 of the Commission's Rules of Practice and Procedure states:

> Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission or its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

Violations of Rule 1.1 can occur when persons or entities do not maintain respect for the Commission, Commissioners, or its staff, including Administrative Law Judges. If persons or entities mislead the Commission or staff with artifice or factual or legal false statements, they also may be found to have violated Rule 1.1. No finding of intent to disobey a Commission Rule, Order or Decision is required for a violation of Rule 1.1. "Instead, in D.01-08-019, the Commission ruled that intent to violate Rule 1.1 was not a prerequisite but that 'the question of intent to deceive merely goes to the question of how much weight to assign to any penalty that may be assessed. The lack of direct intent to deceive does not necessarily, however, avoid a Rule 1 violation.'" (*See* POD, p. 58.)

The POD also states that D.13-12-053 reasoned that a Rule 1.1 violation occurs too when there has been a "lack of candor, withholding of information, or failure to correct information or respond fully to data requests" and how this standard was recently affirmed by the California Appellate Court. (*Id*. at 58-59.) Thus, being less than straight-forward in communications to the Commission, withholding information, failure to correct incorrect information, and not fully responding to data requests all can constitute Rule 1.1 violations.

Here, as the POD states, Rasier failed to comply with Reporting Requirements G, J, and K. Rasier was aware of information responsive to Reporting Requirement G, but attempted to argue that its application needed to be updated to track accessible vehicle requests and therefore withheld information on complaints from blind riders. Rasier also chose to withhold trip-level information, which violated Reporting Requirement J under D.13-09-045. Lastly, Rasier failed to provide the remaining information on the cause of incidents for Reporting Requirement K. (*Id*. at 59-60.)

These conscious failures in production of information for D.13-09-045 are examples of a regulated entity appearing before the Commission exhibiting disrespect towards the Commission. This is a violation of Rule 1.1. And as stated above, whether Rasier intended to disrespect the Commission is moot because intent is not necessary to find a Rule 1.1 violation.

Only a "preponderance of the evidence" is required to demonstrate a Rule 1.1 violation. (Id. at 59.) Here again, this standard is easily met because Rasier misled the Commission and its staff initially with how its initial submissions were "responsive," regarding aggregated data it provided before the Commission issued the OSC. And there is also a preponderance of evidence that Rasier disrespected the Commission and its staff with its consistent refusal to provide the Commission-ordered data. These points demonstrate a Rule 1.1 violation.

1. Rasier wrongly applies General Order 167.

Rasier wrongly applies the Commission's General Order ("G.O.")167 to substantiate its argument that a party has a right to object to a Commission order without

being penalized for that objection. (*See* Rasier Appeal, p. 55.) G.O. 167 pertains only to SED requests made to Generating Asset Owners for information. Here, Rasier has objected to an actual Commission order- not a request from Commission staff. (*See* G.O. 167, Section 10.1.) Thus, this is an entirely different issue. There are no compromises with complying with a Commission order. This again is another example of Rasier attempting to diminish the seriousness of a Commission order in comparing it to Commission staff requests for information.

VII. THE POD SUPPORTS THE FINES & PENALTIES AGAINST RASIER

A. Public Utilities Codes Section 2107 is applicable to TNCs.

Rasier argues that the POD cannot apply Public Utilities Code Section 2107 against it because that section pertains only to public utilities, and charter party carriers like Rasier are not public utilities, which Rasier notes the POD acknowledges. What Rasier fails to mention in its Appeal, is that the POD further elaborates that nothing in CPUC decisions or California statutes prevent the Commission from obtaining fare information from charter-party carriers. (*See* Rasier Appeal, p.57 and POD, pp. 28-29.)

In fact, the POD cites to Public Utilities Code Section 5381 in demonstrating that the Commission "may supervise and regulate every charter-party carrier of passengers 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." (*See* POD, p. 29.)

Thus, the POD's discussion of Section 5381 allows the Commission in its regulation of charter-party carriers the power whether "specifically designated" or not to exercise its jurisdiction over regulated entities, which includes obtaining fare information.

B. The Commission can Apply Public Utilities Code Section 5411 Against Rasier.

Rasier argues that the POD cannot apply Public Utilities Code Section 5411 against it because Section 5411 includes "a criminal offense and penalty and the Commission does not have the authority to prosecute criminal offenses." Rasier further

states that the Commission may only enforce civil penalties, and asserts that Section 5413 with a maximum fine of $2,000 per offense is more appropriate than Section 5411's $5,000 per offense. (*See* Rasier Appeal, p. 58.)

Rasier notes the Commission determined that because a fine in Public Utilities Code Section 2114 is dependent upon a guilty conviction and therefore within the "exclusive jurisdiction of the courts," the Commission cannot create "an independent basis for <the Commission to impose> a stand-alone fine upon a utility." (*See* Rasier Appeal, p. 58.)

Rasier adds that Section 5411 is similar because it contains the "guilty of a misdemeanor" language. What Rasier, however, fails to mention is that this is just an "option" within the statute pursuant to which the Commission could prosecute an entity. There is no mention in the statute that the civil penalty of $5,000 per day is dependent upon receiving a misdemeanor conviction first.

Thus, it is correct to utilize Section 5411 in calculating Rasier's fine in this OSC proceeding. Rasier states that the Commission cannot enforce criminal penalties, and that is true. But here SED is not trying to enforce the *criminal* portion of Section 5411; instead, SED is just focusing on *civil* penalties. Without any precedent or statutory language that civil penalties are dependent on criminal convictions, the Commission may enforce the $5,000-per-offense provision against Rasier. In fact, this section is in the Public Utilities Code, and the CPUC is the agency with authority to interpret and apply the Public Utilities Code.

Lastly, a quick Lexis-Nexis search shows that the Commission has applied Section 5411 in other proceedings against charter-party carriers. For example, in an "Order Instituting Investigation into whether to revoke the operating authority issued to Felipa Garza Fuentes, an individual, doing business as Fuentes' Tours (TCP 7591P)," the Commission investigated "whether respondent violated PU Code Section 5411 by aiding and abetting an illegal carrier." (*See* D.99-01-040; 84 CPUC2d 720, *4.) Ms. Fuentes admitted to violating Section 5411 in addition to other Public Utilities Codes. (*Id*. at 8.) And under Conclusions of Law #1 in that decision, the Commission found that Ms.

Fuentes violated Section 5411 amongst other Commission rules and regulations. (*Id*. at 11.)

C. The POD Correctly Applies Public Utilities Code Section 5413's Factors in Determining the Fine Against Rasier.

Rasier does not object to the POD's application of Section 5413 despite stating that the code section does not apply to charter party carriers because it understands the Commission took these factors from various cases in assessing penalties at the Commission. (*See* Rasier Appeal, p. 60.)

1. Severity of the Offense

The "severity of the offense" considers whether the violation resulted in physical harm, economic harm, or harm to the regulatory process, and the number and scope of the violations. Rasier states that the POD misapplies the "severity of the offense" factor when calculating the fine against Rasier because it does not consider how having less than strict compliance may not "harm the regulatory process." (*See* POD, pp. 64-65 and Rasier Appeal, p. 60.)

Rasier adds that the POD did not present any evidence of harm to the regulatory process. (*See* Rasier Appeal, pp. 60-61.) SED notes though that the POD's determination of harm to the regulatory process is inaccurate. SED's struggles with Rasier to get compliance with D.13-09-045's reporting requirements diverted resources from other regulatory and enforcement endeavors, and frustrated the regulatory functions between the Commission, the regulator, and Rasier, the regulated entity. For the regulatory relationship to work efficiently, the regulated entity must comply with Commission orders and decisions.

As SED cited in its Verified Reply Statement, Exhibit #4, p.3, it spent a substantial amount of time trying to get Rasier to comply**.** To summarize, SED met with Rasier and confirmed the reporting requirements before the reporting deadline; sent a meticulously detailed deficiency letter to give Rasier an opportunity to comply; met again with Rasier several times and reminded the company of the outstanding requirements; and prepared a detailed staff report explaining exactly how Rasier failed to comply with the

Commission's reporting requirements. Were it not for Rasier's and Lyft's incomplete submissions, SED would have been able to use this time to analyze the trip-level data in order to prepare a more substantial and meaningful summary report for the November 4, 2014 En Banc versus what SED actually presented that day. (*Id*. and Exhibit #1, pp. 3-4)

SED only seemed to get Rasier's attention on compliance after the Commission issued the OSC. Until then, Rasier consistently insisted that the data it did provide was "responsive." Only after the OSC issued did Rasier present its much-touted options it has tried to extol as substantial compliance: inspection at Uber's offices or 3rd party audit.

2. Conduct of the Utility

The "conduct of the utility" factor considers the utility's actions to prevent, detect, disclose and rectify the violation. Rasier argues it is unfair for the POD to address this factor simply by noting that Rasier had the ability to comply with the Reporting Requirements, but declined by using "unsound legal arguments and objections." (*See* Rasier Appeal, p. 61.)

SED disagrees with Rasier's assessment of the POD's consideration of this factor because, as emphasized earlier, Rasier consistently stated that it provided "responsive" data to address "data requirements." Thus, Rasier could have complied or rectified the violation just by providing the required data. This is what the POD determined Rasier could have done, but chose not to do, which goes directly toward Rasier's conduct.

Further, Rasier also tried to argue that the reporting requirements were too onerous and burdensome. However, it also did nothing to address these concerns as Rasier admittedly failed to file a Petition For Modification of D.13-09-045 that would allow the Commission to address Rasier's concerns.

3. Financial Resources

Rasier argues that the POD wrongly considers the financial resources of Uber Technologies, Inc. ("Uber") Rasier's parent company, when assessing fines against Rasier by piercing the corporate veil and concluding Rasier is the alter-ego of Uber. Rasier uses various reasons to assert why it is wrong to pierce the corporate veil, but

emphasizes most that piercing the corporate veil is particularly wrong if the sole purpose is to "enable the plaintiffs to obtain an increased aware [sic] of punitive damages because of the substantial net worth of the parent." (*See* Rasier Appeal, pp. 62-64.)

Here, the POD does not pierce the corporate veil for the sole purpose of allowing the Commission to obtain increased penalties for Rasier's violations of D.13-09-045. Rather, the POD pierces the corporate veil because Rasier's operations and existence are so dependent on Uber's direction and control. Uber truly is the entity fully responsible for Rasier's actions or lack of actions, i.e., non-compliance with Commission orders.

a. Rasier is a "mere agent" of Uber.

Also, the POD reiterates this emphasis on how it is correct to hold Uber responsible when it states that, "if the subsidiary is a mere agency or instrumentality of the parent, then the parent is responsible for the actions of the subsidiary." (*See* POD, p.68 and Northern Natural Gas Company v. Superior Court (1976) 64 Cal.App.3d 983, 994) Another factor substantiating the responsibility of the parent company for a subsidiary's actions is if there is complete management and control by the subsidiary's parent. (*See* POD, p. 68 and Marr v. Postal Union Life Insurance Company (1940) 40 Cal.App.2d 673, 681.)

The POD correctly describes that Uber's financial viability is dependent on Rasier's operations and further, that despite Uber's efforts to couch itself as a "technology company or wireless service," it is nothing more than a provider of transportation services. For instance, its website and advertising refers to Uber as an "On-Demand Car Service" and a tagline of "Everyone's Private Driver," which is also a trademark Uber owns. (*See* POD, pp. 72-73.)

The POD notes as well that Uber does not generate revenue from selling its application ("app"), but instead when drivers and passengers use the app to facilitate transportation. (*Id*. at 73.) Uber charges an amount for a ride to a customer and provides a percentage to the driver. Thus, without Uber's role in this transaction, Rasier would not be able to collect or distribute funds from customers or to drivers.

The POD further cites examples of Uber's direct control over Rasier's transportation services that Rasier purports to operate so independently of its parent Uber:

1. Transportation Network Company ("TNC") drivers who want to obtain passengers from Uber must enter into a Software License and Online Services Agreement with Uber or a Transportation Provider Service Agreement with Rasier, LLC, an Uber Subsidiary;
2. Any passenger wishing transportation service with Rasier-CA via the Uber App must download the passenger version of the Uber App to a smartphone and create an account with Uber;
3. Uber ensured that its TNC subsidiary Rasier LLC (together with Rasier-CA, LLC) procured a commercial insurance policy with $1 million in coverage per incident;
4. Wayne Ting, Uber's General Manager, verified Rasier-CA's Verified Statement in this OSC proceeding;
5. Uber sets fares it charges riders unilaterally;
6. Uber bills its riders directly for the entire amount of the fare charged;
7. Uber claims a proprietary interest in its riders, and prohibits its drivers from answering rider queries about booking future rides outside the Uber app, or otherwise soliciting rides from Uber riders;
8. Uber exercises control over the qualification and selection of its drivers;
9. Uber terminates the accounts of drivers who do not perform up to Uber standards; and
10. Uber deactivates accounts of passengers for low ratings or inappropriate conduct.

(Id. at 74-75.) All of these examples demonstrate how Uber's control over Rasier is so specific as to relegate Rasier into being an "agent or instrumentality" of Uber.

Rasier tries to discredit the POD's piercing of Uber's corporate veil with Rasier by stating it is not adequate for the POD to do so by citing how Uber and Rasier share the

same office location, website, law firm, and telephone number, but as described above the POD goes much further than these points in demonstrating Rasier is simply an instrument of Uber. (*See* Rasier Appeal, pp. 65-66.)

Additionally, SED also notes various other examples of Uber's control over its subsidiary Raiser that demonstrates how it is simply an instrument or agent of Uber. First, a simple search for "Rasier" in the Commission's online database of passenger carriers returns the results for Rasier-CA, LLC. The contact name that Rasier has filed with the Commission is Travis Kalanick, who identifies solely with Uber on his LinkedIn profile. Moreover, the passenger carriers' database also shows that Rasier does not hold workers compensation insurance on file with the Commission, and any passenger carrier that does not file workers compensation insurance with the Commission is instructed to submit a signed declaration that they have no employees.[22]

Uber's counsel also confirmed in an email on July 7, 2015 to SED that Rasier does not have any employees "in operations regulated by the CPUC." Thus, he explained that there are no applicable workers compensation insurance policies. (*See* Attachment 2.)

Lastly, Uber has been directly involved in Rasier's compliance with D.13-09-045's requirements. When discussing compliance, SED has met exclusively with Uber's attorneys and regulatory representatives who work only for Uber itself. Specifically, the only in-house attorney representing Rasier in this OSC, and the only "Rasier" attorney that SED has been consistently communicating with since issuing Rasier's TCP permit, identifies Uber – not Rasier -- as his employer.[23]

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[22] See CPUC Form TL-706-K Workers Compensation Declaration Form, accessible at: http://www.cpuc.ca.gov/NR/rdonlyres/1CDEEDBF-F38F-496A-8529-5E419D96537/0/TL706KWorkersCompensationDeclaration_09152014.pdf

[23] For example, on December 24, 2014, Krishna Juvvadi wrote to SED's Acting Director to request clarification of the Commission's vehicle inspection rules (SED's response to Mr. Juvvadi's letter is accessible on the CPUC website: http://www.cpuc.ca.gov/NR/rdonlyres/B88797F8-F425-4708-AF73-380ED40A4B0D/0/SEDResponsetoRasier122414letter.pdf). Mr. Juvvadi identifies himself as Senior Counsel for Rasier but his business card and a simple search on LinkedIn show that he is Senior Counsel for Uber Technologies, Inc..

And most recently, SED met with Rasier to discuss its current leasing business to help drivers obtain personal vehicles to drive for Rasier. SED met with Andrew Chapin- Strategic Finance Senior Manager and Todd Hamblet- Corporate Managing Counsel**,** who all are Uber employees. Thus, if the only individuals associated with Rasier are the founder and CEO of Uber and Uber attorneys, essentially Rasier and Uber are one and the same. This further shows how Rasier is an instrument of Uber.

4. Totality of the Circumstances

The totality of the circumstances factor considers the degree of wrongdoing and the harm, "evaluated from the perspective of the public interest" as well as any mitigating factors.

Rasier objects to the POD's conclusion that Rasier's "actions impeded the Commission's staff from exercising its obligations to analyze the required data so it could advise the Commission of the regulations imposed on the TNC industry were protecting the public interest." (*See* Rasier Appeal, p. 68 and POD, pp. 77-78.) Rasier adds that it did not harm the public interest. (*See* Rasier Appeal, pp. 68-69.)

SED argues that the aggregate data and access to the raw data in the manner Rasier offered was not adequate to provide meaningful reports to the Commission. In fact, Rasier claims SED did admit to the aggregate data being adequate. This is wholly inaccurate, as SED has explained multiple times that even the aggregate data Rasier provided was not adequate for analyzing ridership at the level of detail specified in D.13-09-045. (See SED's Opening Brief, pp. 5-6.) Rasier attempts to equate 'adequate for the Commission's only legitimate regulatory purposes (which only Rasier itself knows)' with 'adequate for the purposes of compliance (substantial or otherwise)'.

Lastly, Rasier also objects to the POD not acknowledging any purported mitigating factors Rasier asserts the Commission should give them credit for, specifically as those factors may relate to its substantial compliance defenses. The POD properly disregarded any arguments Rasier states demonstrates as mitigating the violations because these efforts only came after the OSC was issued on November 7, 2014**.** Rasier could have avoided this entire situation if it had filed a Petition for Modification to

formally request relief from data requirements it objected to within a year after the Commission approved D.13-09-045.

The ALJ correctly cites D.15-04-008, p.2 with: "the integrity of the regulatory process relies on the accurate and prompt reporting of information." He further quotes D.15-04-008: "Utility compliance with Commission rules is absolutely necessary to the proper functioning of the regulatory process. Disregarding a statutory or Commission directive, regardless of the effects on the public, merits a high level of scrutiny as it undermines the integrity of the regulatory process." (*Id*. at 6.)

And the ALJ correctly states as well that the Legislature enacted Public Utilities Code Sections 702 and 5381 to ensure regulated utilities obey every Commission order, direction, or rule. Here, Rasier's behavior has harmed the public interest in protecting the public with the regulations for this new TNC industry.

5. Role of Precedent

Rasier criticizes the POD for utilizing cases only applicable to Public Utilities when trying to look at precedent when calculating fines against Rasier. And Rasier continues to argue that Section 5413 is the correct statute to apply when calculating fines against Rasier. (*See* Rasier Appeal, p. 69.) Section 5411 is most appropriate to apply against Rasier because it includes a misdemeanor option and a more substantial fine, which reflects how egregious Rasier' behavior and violations have been with D.13-09-045's data requirements.

The POD correctly considers past Commission decisions involving Rule 1 violations by regulated entities that spanned multiple days: 1) Cingular Investigation, D.04-09-062; 2) Qwest, D.02-10-059; and 3) Southern California Edison's Performance-Based Ratemaking OII: D.08-09-038. (*See* POD, pp. 78-79.)

D. Rasier Wrongly Criticizes the POD's Proposed Fine When Comparing it to Lyft, Inc. and SED's Settlement

Rasier criticizes the POD's proposed fines against Rasier compared to SED's recommended fine and SED's recent settlement with Lyft, Inc. (*See* Rasier Appeal, p. 70.) SED recommended in its February 5, 2015 Reply Brief that the Commission impose

a $278,000 penalty against Rasier for failing to comply with Commission orders. SED based this recommendation on 139 days of non-compliance at $2,000 per day. (*See* SED Reply Brief, p.8.) In recommending this fine, SED relied on two statutes: Public Utilities Code §5415, which allowed a fine to be counted as a separate offense for each day following the due date of September 19, 2014; and Public Utilities Code §5378(b), which allows the Commission to levy a civil penalty of up to $7,500 per day. (*Id*.)

The POD calculated that Rasier committed five separate offenses of failing to comply with the Commission order, at a daily rate of $5,000 per day and the total number of days at the time of the POD's issuance was 279 days. (*See* POD, pp. 81-82.)

In its Appeal, Rasier admitted that it "took approximately four times longer than Lyft to strictly comply." (*See* Rasier Appeal, p.71.) However, Rasier's calculation is incorrect. Rasier still hasn't fully complied, but the date SED recommends the Commission stop calculating penalties is August 26, 2015. In contrast, Lyft completed compliance on the September 19, 2014 reporting requirements on November 24, 2014 or 71 days after it was due. Therefore, the Commission should not attach any value to Rasier stating it has only taken four times longer than Lyft to comply.

Rasier's appeal also balked at the excessiveness of the POD's $7,326,000 recommended fine and described it as disproportionate, unreasonable and contrary to due process. (*Id*. at 70.) First, the fine is not disproportionate. When SED developed the fine, Rasier still failed to completely comply with the reporting requirements. Further, §5378(b) allows the Commission to issue a fine "up to $7,500 per day" and §5415, authorizes the fine to be counted as a separate offense for each day.

This is exactly what the POD did, calculate the number of days Rasier failed to comply with the Commission orders, which at that time was only 279 days, multiplied by $5,000 per day, multiplied by five separate offenses. The rationale behind the $5,000 per day fine includes: "Rasier-CA's conduct and the specious legal arguments it raised that we have addressed above, we believe that a fine much greater than the one proposed by SED should be imposed in order to deter such conduct." Moreover, the $5,000 per day

fine is also below the maximum amount of $7,500 allowed by statute. (*See* POD, p .81.) These points demonstrate that the fine is not excessive.

Next, Rasier attempts to compare the entire amount of its violations to Lyft's settlement and states the recommended fines are unreasonable and more than 240 times the Lyft settlement. (*See* Rasier Appeal, p. 71.) This is misleading and nothing more than an apples and oranges comparison. Lyft complied with the reporting requirements within 71 days after it was due. SED agreed to settle with Lyft through a compromise negotiated by the parties and resulted in a settlement reasonable in light of the whole record, consistent with law and in the public interest.

Additionally, settlements do not serve as precedent for other proceedings. The Commission's Rules of Practice & Procedure Rule 12.5 states: "Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding."

In contrast, the POD fined Rasier for five separate offenses ranging from $1,395,000 to $1,420,000 based on its deliberate attempts to justify its failure to comply with the Commission's order for 279 days. Rasier still has not fully complied, but SED recommends the Commission stop calculating penalties as of August 26, 2015. Therefore, it would be 341 days from September 19, 2014.

Finally, Rasier argued that the fine is contrary to due process. This is incorrect. The POD gives Rasier and SED the opportunity to provide comments either supporting or objecting to the decision. Further, pursuant to the Commission's Rules of Practice & Procedure, Rule 16.1, Rasier can file an application for rehearing within 30 days if it is unhappy with the final decision. Furthermore, pursuant to the Commission's Rules, Rule 16.4, Rasier still can file a Petition for Modification to have the Commission revise an issued decision.

VIII. THE OSC PROCEEDING HAS PROVIDED RASIER MANY DUE PROCESS OPPORTUNITIES

Rasier asserts that this proceeding and the POD deprive Rasier of its due process rights because it did not have "the opportunity to fully develop the record at the evidentiary hearing…" with its substantial compliance defense that would also help substantiate its trade secret defenses. (*See* Rasier Appeal, p. 71.)

When Rasier's counsel inquired about being able to ask further questions related to substantial compliance and his concern in not being able to develop a factual record for this defense, ALJ Mason explained Rasier's due process rights are not harmed with Rasier not asking additional questions during evidentiary hearings because Rasier had already addressed many factual issues during the hearings that would help support Rasier's substantial compliance defense. He stated:

> What I'm telling you is you've already gone there. We've already talked about the reports that Rasier has provided. We've gone through them. We've gone through the Excel files. We've gone through the heat map. We've gone through the data. I think that's all spelled out in your verified statement, and we've certainly been talking about it in this morning. I don't know that we need to go in any further with respect to the witness on that point. I think you've made your point, and it is on the record and it's in the briefing that's been served and filed in the proceeding. (Tr.Vol.3, ALJ Mason, pp. 333-334.)

Thus, the ALJ described how Rasier had already had an opportunity earlier to establish the record to substantiate Rasier's substantial compliance defense by addressing Rasier's reports, Excel files, heat maps, and overall data it did submit for this defense. SED emphasizes again that one cannot substantially comply if one has not complied in any capacity at all, i.e. has not provided any information to SED when Rasier first claimed substantial compliance.[24]

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[24] SED maintains that Rasier has not substantially complied with Regulatory Requirement j. because, as discussed in Section II.A.1 above, it is not Rasier's role to define the reasonable objective and policy goals underlying that Requirement . Rasier's Statement at page 15 reveals this presumptiveness: "The Commission apparently intended [Regulatory Requirement j.] to ensure TNCs do not discriminate against economically disadvantaged areas."21 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

(continued on next page)

Again, the Commission satisfied Rasier's due process rights when: 1) Rasier filed its Verified Statement, Exhibit #10; 2) participated in evidentiary hearings on December 18, 2014; 3) filed opening and closing briefs; 4) filed comments on possible judicially-noticed documents; and 5) filed an appeal of the POD.

And regarding Rasier's arguments on how a more developed substantial compliance evidentiary record would have augmented its trade secret assertions, Rasier again should have included these arguments in a Petition for Modification long before the data it objects to was due to be submitted to the Commission way back on September 14, 2015.

Rasier further adds that it planned on obtaining "admissions" from SED to demonstrate how Rasier's substantial compliance arguments were valid by demonstrating that the options Rasier offered with inspection and third party auditing would allow SED to create meaningful reports to the Commission. (*See* Rasier Appeal, pp. 71-72.) What Rasier does not acknowledge here is how it only "hoped" to obtain admissions from SED on these points.

There was no guarantee as to how SED would respond to such questions. Simply because Rasier was unable to ask particular questions, does not automatically mean Rasier's due process rights were abridged. As previously stated, Rasier had many opportunities to exercise its due process rights in this OSC proceeding with other outlets to demonstrate its purported defenses and positions on why Rasier should not be fined or found in contempt for disobeying a valid, non-appealed Commission order.

Lastly, Rasier objects to the POD's judicially-noticed items and information under due process arguments because it claims it did not have a "meaningful notice or opportunity to respond to the alleged facts." (*Id*. at 72.) The ALJ allowed both SED and Rasier to comment on the proposed items and information the ALJ considered taking

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Rasier may have considered 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. (Exhibit #4, SED Verified Reply to Statement, p. 11.)

judicial notice of, and Rasier once again had another opportunity to comment on what the POD eventually did take judicial notice of with Rasier's Appeal it filed on August 14, 2015. All of these opportunities to comment on the judicially-noticed information and items allowed Rasier to exercise its due process in this proceeding. Thus, Rasier's due process rights have not been harmed.

IX. RASIER'S SUBSEQUENT DATA SUBMITTAL AFTER THE COMMISSION ISSUED THE POD

On August 13, 2015, SED received a letter and flash drive containing several files that Rasier stated was "to supplement its 2014 Annual Report." SED describes several of those files below in order to establish whether Rasier is now compliant with the 2014 reporting requirements.

A. Supplemental Report on Providing Service by Zip Code

This file includes a column displaying the amount paid for each ride that was requested and accepted. There was no column displaying the zip code in which each ride began, so Staff asked Rasier to confirm or deny whether the zip code ("ZCTA") in which a request is made is always the same as the zip code ("ZCTA") in which the ride began. Rasier confirmed that the two are always the same. Therefore, SED considers Rasier's Report on Providing Service by Zip Code complete for the 2013-2014 reporting period.

B. Supplemental Report on Providing Accessible Vehicles

This report utilized SED's reporting template;[25] the report displayed zeros across all data fields, consistent with Rasier's past statements that it did not implement the wheelchair accessible vehicle feature in its app until after the 2014 reporting deadline had passed. The report included a second tab, which listed the date, alleged issue, and "Resolution" of each complaint regarding refusal of service relating to wheelchairs or service animals. SED defers to the Commission to determine whether this report satisfies Regulatory Requirement G. SED recommends, however, that penalties related to this

[25] http://www.cpuc.ca.gov/PUC/Enforcement/TNC/TNC+Required+Reports.htm

report stop accruing as of August 13, 2015, since the information appears responsive to the POD's determination that Rasier should have included such information in this report.

C. Supplemental Report(s) on Problems with Drivers

A number of Rasier's incidents included explanations/details that SED found inadequate for identifying the cause of the incident. SED's position is that each explanation of "cause" should include sufficient detail so as to enable anyone reviewing the material to identify (1) what the incident was and (2) what caused the incident. However, D.13-09-045 does not provide much guidance as to what constitutes an adequate explanation of "cause" and SED believes it is appropriate for the Commission to provide such guidance now. Therefore, while SED does not consider Rasier to be in full compliance given its above perspective on "cause," SED recommends that penalties for Rasier stop accruing as of August 26, 2015 (the date of Rasier's 2nd submission) and defers to the Commission as to what constitutes an adequate explanation of "cause."

X. CONCLUSION

SED fully supports the Presiding Officer's Decision, and the Commission should adopt the POD. Despite Rasier's assertions to the contrary: 1) the POD's judicially-noticed documents did not deprive Rasier of its due process; 2) the POD's determinations on compliance and non-compliance are correct; 3) the Commission should hold Rasier in contempt; 4) Rasier *did* violate Rule 1.1; 5) the POD's reasoning supports the fines and penalties against Rasier; and 6) the Commission has not deprived Rasier of due process in this proceeding.

Respectfully submitted,

/s/ SELINA SHEK

Selina Shek

Attorney for the Safety and Enforcement Division

California Public Utilities Commission
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San Francisco, CA 94102
Phone: (415) 703-2423
E-mail: selina.shek@cpuc.ca.gov

September 14, 2015

ATTACHMENT 1

Kao, Valerie

From: Prabhakaran, Vidhya <VidhyaPrabhakaran@dwt.com>
Sent: Thursday, September 11, 2014 4:58 PM
To: Fong, Brewster; Greenwald, Steven
Cc: Zafar, Marzia; Beck, Valerie; Kao, Valerie; Foley, Shanna; Shek, Selina; Mulqueen, April; Lakhanpal, Manisha
Subject: RE: TNC Reporting Requirement

Brewster,

Thank you for your email.

-- Vid

Vidhya Prabhakaran | Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800 | San Francisco, CA 94111
Tel: (415) 276-6568 | Fax: (415) 489-9068
Email: vidhyaprabhakaran@dwt.com | Website: www.dwt.com
Find me on: Twitter | LinkedIn | Facebook
Follow our Energy & Environmental Blog: http://www.energyenvironmentallaw.com/

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

From: Fong, Brewster [mailto:brewster.fong@cpuc.ca.gov]
Sent: Thursday, September 11, 2014 4:20 PM
To: Prabhakaran, Vidhya; Greenwald, Steven
Cc: Zafar, Marzia; Beck, Valerie; Kao, Valerie; Foley, Shanna; Shek, Selina; Mulqueen, April; Lakhanpal, Manisha
Subject: TNC Reporting Requirement

Steve/Vidhya,

Following our earlier meeting today, staff has had an opportunity to meet and discuss your request to provide aggregated zip code data instead of the raw data that Decision (D.) 13-09-045 ordered as stated in "Regulatory Requirements' subsection j on pages 31 and 32 of D.13-09-045. Staff has fully discussed this issue and has determined that aggregated data alone would be insufficient for our purposes. Staff needs the un-aggregated, raw data that is required in the decision. In addition to the raw data, if you also want to provide additional information that is in the aggregate, like heat maps, we would accept that as well.

Please rest assured that pursuant to Public Utilities Code Section 583 and General Order 66-c, the Commission and its staff are legally prohibited from disclosing this data.

Let me know if you have any questions.

Thanks,

Brewster

ATTACHMENT 2

Jeremiah F. Hallisey

Hallisey and Johnson

300 Montgomery Street, Suite 538

San Francisco, CA 94104

Telephone: (415) 433-5300

From: Beck, Valerie [mailto:valerie.beck@cpuc.ca.gov]
Sent: Tuesday, July 07, 2015 10:50 PM
To: Jeremiah F. Hallisey
Cc: Malashenko, Elizaveta I.; Hernandez, Jesse; Krishna Juvvadi (krishna@uber.com); salle@uber.com; nancy.allred@uber.com; patty.robbins@uber.com
Subject: Re: Uber/License Section

Hi Jerry:

Thanks for the email. As we discussed last week, and as described by the Notice, Rasier must send the Transportation Branch a letter stating why it believes the workers compensation requirement does not apply.

Please feel free to contact me with any questions or concerns.

Best,

Valerie

On Jul 7, 2015, at 4:56 PM, Jeremiah F. Hallisey <JFHallisey@h-jlaw.com> wrote:

Please find enclosed a Notice of Impending Suspension received by Rasier-CA LLC. This is to notify you that Rasier-CA LLC has no employees that are in operations regulated by the CPUC. As a result of the non-applicability of the Notice, there are no workers compensation insurance policies that are applicable.

Jerry

Jeremiah F. Hallisey

Hallisey and Johnson

300 Montgomery Street, Suite 538

San Francisco, CA 94104

Telephone: (415) 433-5300

<2015 06 22 Notice re License.pdf>