



ALJ/RIM/smt 7/27/2020

FILED
07/27/20
02:52 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Rulemaking 12-12-011

ADMINISTRATIVE LAW JUDGE'S RULING DIRECTING UBER TECHNOLOGIES, INC TO SHOW CAUSE WHY IT SHOULD NOT BE SANCTIONED BY THE COMMISSION FOR REFUSING TO ANSWER QUESTIONS REGARDING SEXUAL ASSAULTS AND SEXUAL HARASSMENT CLAIMS AND FOR REFUSING TO SUBMIT THE INFORMATION UNDER SEAL

This *Ruling* orders Uber Technologies, Inc (Uber or Respondent) to appear for an Order to Show Cause Evidentiary Hearing (OSC Hearing) and to show cause, if any, why Uber should not be fined, penalized, and receive other regulatory sanctions for refusing to answer questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. of the *December 19, 2019 Ruling* regarding sexual assaults and sexual harassment claims, and for refusing to submit the information under seal as required by the *January 27, 2020 Ruling*. The specific allegations that Uber must address in its written submission and at the upcoming OSC hearing are discussed below.

As part of its written submission and at the upcoming OSC hearing, Uber is ordered to address the following authorities: Rule 1.1 of the Commission's Rules of Practice and Procedure, as well as Pub. Util. Code §§ 701, 2107, 2108, 5411, 5415, and 5378(a) and (b).

1. Background

1.1. Factual Background

On December 20, 2012, the Commission opened Rulemaking (R.) 12-12-011 to determine the extent and the manner it would assert jurisdiction over and regulate newly formed transportation providers known as Transportation Network Companies (TNCs). Throughout the years that R.12-12-011 has remained open, the Commission has issued numerous decisions that adopted regulations to cover TNC operations, and imposed reporting requirements with the goal of ensuring that TNCs provided a safe and reasonable mode of transportation to the riding public.

Beyond issuing decisions, the Commission's staff have investigated complaints against TNC drivers, particularly those that alleged that drivers behaved in a manner that endangered the TNC passenger and other members of the driving and riding public. As complaints against TNC drivers of a sexual nature were brought to the Commission's attention, the scope of this proceeding was expanded so the Commission could best determine how TNCs were investigating TNC driver-related sexual assaults and sexual harassment, and what additional regulations and reporting requirements should be adopted.

On December 5, 2019, Uber released its *US Safety Report* which detailed mainly motor vehicle fatalities, fatal physical assaults, and sexual assault and sexual harassment claims that occurred in 2017 and 2018. The total number of sexual assault and sexual harassment claims for 2017 and 2018 total 5,981.

1.2. Procedural Background

1.2.1. The December 19, 2019 Ruling

Consistent with the Commission's authority to investigate sexual assault and sexual harassment complaints in order to promote optimal rider safety, on December 19, 2019, the assigned Administrative Law Judge (ALJ) issued a *Ruling*

(December 19, 2019 Ruling) ordering Uber to file and serve the *US Safety Report* and to answer questions regarding sexual assault and sexual harassment claims relevant to Uber's California transportation operations. The first set of questions dealt with the drafting of the *US Safety Report*:

1. Identify (*i.e.* provide the persons full name, job title, contact information, and job responsibilities) all persons employed by Uber who drafted any part of the Safety Report (Question 1.1).
2. If more than one person wrote the Safety Report, identify which portions of the Safety Report each person drafted (Question 1.2).
3. Identify all consultants, independent contractors, and/or third parties who drafted any part of the Safety Report (Question 1.3).
4. Identify all persons who approved the final version of the Safety Report for public dissemination (Question 1.4).

The second set of questions dealt with the sexual assault and sexual harassment claims:

1. For each incident of sexual assault and sexual misconduct that occurred in California in 2017, 2018, and 2019,
 - State the date, time, and place of each incident (Question 2.4.1).
 - Give a detailed description of the circumstances of each incident (Question 2.4.2).
 - Identify (*i.e.* provide the person's full name and contact information) each witness to each incident (Question 2.4.3).
 - Identify (*i.e.* provide the person's full name, job title, contact information, and job responsibilities) each person to whom each incident was reported (Question 2.4.4).

Uber was given until January 30, 2020 to file and serve answers to the questions and to file and produce the *US Safety Report*. Parties could file and serve responses to Uber's answers by February 20, 2020.

On January 10, 2020, Uber filed a copy of its *US Safety Report* along with a *Motion for Reconsideration* of the *December 19, 2019 Ruling*.

1.2.2. Uber's Motion for Reconsideration

In its *Motion for Reconsideration*, Uber raised four major points:

- Uber objects to having to “*publicly* identify and provide (emphasis from Uber)” specific details on every incident of sexual assault in a rulemaking.¹
- The *December 19, 2019 Ruling* fails to acknowledge that the data is extremely sensitive, and Uber alleges that untrained individuals will attempt to conduct sexual assault investigations.²
- The *December 19, 2019 Ruling* singles out Uber whereas it should be directed at the entire industry.³
- Ordering Uber to file and serve the *US Safety Report* that is already public is unnecessary.⁴

Uber provided the following arguments in support of its four major reasons for not providing the sexual assault and sexual harassment information required by the *December 19, 2019 Ruling*: First, there is no stated legitimate regulatory purpose for demanding specific incident information in the

¹ *Motion for Reconsideration* at 1.

² *Id.*, at 2.

³ *Id.*

⁴ *Id.*

proceeding.⁵ The Commission is not a law enforcement agency that investigates or has experience in sexual assaults.⁶

Second, for a variety of reasons, there should not be public disclosure of, and stakeholder comments on, sexual assaults or information on those who performed the investigations since:

- Victims can be the witnesses and public disclosure may put them in danger and be traumatic for the survivors.⁷
- It is contrary to Penal Code § 293(a) and (b) which requires law enforcement agencies to document in writing that a victim making a report of a sexual offence may request that their name not become a matter of public record.⁸
- Uber may not have a complete accounting of the incident (*e.g.*, only one side of the story).⁹
- Public disclosure may discourage other victims from coming forward.¹⁰
- The *US Safety Report* does not “assess or take any position on whether any reported incidents actually occurred, in whole or part.” The safety report may include incidents where the attacker may not have committed any sexual assault as reported.¹¹

Uber also asserts that individuals working on the *US Safety Report* and on Uber’s Safety Team have “a reasonable expectation of privacy, and that not

⁵ *Id.*, at 4.

⁶ *Id.*

⁷ *Id.*, at 5.

⁸ *Id.*

⁹ *Id.*, at 6.

¹⁰ *Id.*

¹¹ *Id.*

regulatory purpose would be achieved by publicly disclosing the identities of these persons.¹²

Third, any additional Commission staff investigation contravenes victim's rights and may cause additional trauma to survivors. The names would be given to Commission staff without the victim's consent. Some of the victims did not file the report of sexual assaults and confronting an unwilling or unsuspecting victim with past trauma may exacerbate that trauma.¹³ As an example, Penal Code § 13823.95(b)(1) states that victims who seek an examination in connection with a sexual assault shall not be required to or agree to participate in the criminal justice system.¹⁴

Finally, there is no guarantee of confidentiality of this sensitive data.¹⁵

1.2.3. Assigned ALJ's Ruling on Uber's Motion for Reconsideration

On January 27, 2020, the assigned ALJ denied Uber's *Motion for Reconsideration*. The *January 27, 2020 Ruling* stated that Uber could have raised its confidentiality concerns by filing a motion for leave pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure but, inexplicably, chose not to pursue this option. Nonetheless, as a means of accommodating Uber's concerns regarding the sensitivity and potential confidentiality of some of the information sought by the *December 19, 2019 Ruling*, the *January 27, 2020 Ruling* ordered Uber to file under seal the following information:

- The date, time, and location of each assault.
(Question 2.4.1.)

¹² *Id.*, at 7.

¹³ *Id.*, at 8.

¹⁴ *Id.*

¹⁵ *Id.*, at 10.

- A description of the circumstances of each assault. (Question 2.4.2.)
- The name and contact information for each witness. (Question 2.4.3.)
- The name and contact information of each person to whom the assault was reported. (Question 2.4.4.)

That way, the names and circumstances surrounding the alleged victims of sexual assaults and sexual harassment that occurred in connection with an Uber-facilitated trip in California would remain confidential. As for the balance of the information sought by the *December 19, 2019 Ruling*, Uber was ordered to file and serve that information publicly.

1.2.4. Uber's Response to the December 19, 2019 Ruling

On January 30, 2020, Uber filed its *Response to the December 19, 2019, ALJ Ruling Ordering Uber Technologies, Inc. to File and Serve its US Safety Report (Response)*. In its *Response*, Uber stated it received 1,243 reports within California,¹⁶ meaning that California accounted for 21 percent of the 5,981 sexual assault and sexual harassment complaints reported to Uber in 2017-2018 and included in the *US Safety Report*. Uber also objected to a number of the questions and instead filed a second *Motion for Reconsideration* that raised many of the same arguments that it raised in its first *Motion for Reconsideration*, along with a *Motion for Ruling Staying Certain Requirements of the December 19, 2019 ALJ Ruling Ordering Uber Technologies, Inc. to File and Serve its US Safety Report (Motion to Stay)*.

¹⁶ Uber's *Response* at 5.

2. Uber's Refusal to Answer Questions from the December 19, 2019 Ruling

2.1. The identity of the persons involved in drafting and approving the *US Safety Report*

Uber objected to Questions 1.1., 1.2., and 1.4 (identity of the persons involved in drafting and approving the *US Safety Report*) on the grounds that “employees have a reasonable expectation of privacy to not have their names and contact information shared on an almost 300 person service list.”¹⁷ Uber also objected on the grounds that the Commission “has failed to even attempt to articulate a regulatory purpose by publicly disclosing and having stakeholders comment on their names, titles, contact information, and how these employees performed their jobs related to the drafting of the Safety Report.”¹⁸

2.2. Data on Sexual Assault and Sexual Harassment Complaints

Uber objected to Questions 2.4.1., 2.4.2., 2.4.3., and 2.4.4. which required specific data on the witnesses, including the identity of victims, date, time, and location of each incident, a detailed description of the circumstances of each incident, each witness to each incident, and the persons at Uber or elsewhere to whom each incident was reported. Uber asserted, as it did in its first *Motion for Reconsideration*, that public disclosure of this information would be “unconscionable” as it would “further violate people who have already been victimized.”¹⁹ Uber further asserts that identifying witnesses would put the victims “in additional danger from their attackers, invites public scrutiny into potentially traumatic and serious episodes for these victims, and would result in

¹⁷ Uber's *Response* at 2.

¹⁸ *Id.*

¹⁹ *Id.*, at 6.

ruinous consequences to recovering survivors.”²⁰ The balance of Uber’s objections are a repetition of the objections raised in its first *Motion for Reconsideration*, which are identified above in Section 1.2.2. of this OII.

3. Uber Refused to Submit the Information Responsive to Questions Under Seal as Required by the January 27, 2020 Ruling

In response to Uber’s claim that the public disclosure information regarding sexual assaults and sexual harassments may have harmful consequences for the alleged victims, the *January 27, 2020 Ruling* instructed Uber to file its responses to Questions 2.4.1., 2.4.2., 2.4.3., and 2.4.4. under seal. Uber refused to follow this order and avail itself of a process that the Commission has utilized for decades to protect alleged confidential information.

4. Motion to Stay

Uber filed a *Motion to Stay* having to comply with the *December 19, 2019 Ruling’s* questions on the details of the sexual assaults and witness identities, and the identities of the persons that worked and approved *US Safety Report*. Uber stated that it meets the four-part test for a stay that the Commission established in Decision 07-08-034:

- Uber will likely prevail in its Motion for Reconsideration due to the merits of its arguments,
- Sexual assault victims, Uber employees, and the public will suffer irreparable harm without the stay,
- “[T]he balance of harms strongly favors the granting the stay pending the full Commission review for the Motion of Reconsideration,” and

²⁰ *Id.*

- Finally, there are other relevant factors in favor of a stay, including Uber's being singled out when the Commission did not make similar request to the other TNCs.

5. Fine/Penalty Analysis

The Commission's authority to fine or penalize a public utility not in compliance with a Commission rule, order, ruling, regulatory requirement, *etc.*, is set forth in Pub. Util. Code § 2107 (penalties range from \$500 to \$100,000)²¹ and 2108 (which provides that every violation is a separate offense and that each day's continuance shall be a separate and distinct offense).²² In addition, there are separate fine or penalty ranges for TCPs, which would include a TNC such as Uber. Pursuant to Pub. Util. Code § 5411, TCPs can be fined between \$1,000 and \$5,000,²³ and each day's continuance thereof is a separate and distinct offence

²¹ Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than one hundred thousand dollars (\$100,000) for each offense.

²² Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

²³ Every charter-party carrier of passengers and every officer, director, agent, or employee of any charter-party carrier of passengers who violates or who fails to comply with, or who procures, aids, or abets any violation by any charter-party carrier of passengers of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit or certificate issued to any charter-party carrier of passengers, or who procures, aids, or abets any charter-party carrier of passengers in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit or certificate, is guilty of a misdemeanor and is punishable by a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment.

pursuant to Pub. Util. Code § 5415.²⁴ Pub. Util. Code § 5378(b) also provides that a TCP can be fined up to \$7,500 for a violation of the provisions set forth in Pub. Util. Code § 5378(a).²⁵

6. Additional Regulatory Sanctions—Permit Suspension, Revocation, and Additional Regulatory Requirements

Uber's refusal to comply with the *December 19, 2019 Ruling* and the *January 27, 2020 Ruling* potentially exposes Uber to additional regulatory sanctions. First, there is authority to suspend or revoke any operating permit pursuant to Pub. Util. Code § 5378(a).²⁶ Second, the Commission has additional,

²⁴ Every violation of the provisions of this chapter or of any order, decision, decree, rule, direction, demand, or requirement of the commission by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof is a separate and distinct offense.

²⁵ (b) The commission may levy a civil penalty of up to seven thousand five hundred dollars (\$7,500) upon the holder of an operating permit or certificate issued pursuant to this chapter, for any of the grounds specified in subdivision (a), as an alternative to canceling, revoking, or suspending the permit or certificate. The commission may also levy interest upon the civil penalty, which shall be calculated as of the date on which the civil penalty is unpaid and delinquent. The commission shall deposit at least monthly all civil penalties and interest collected pursuant to this section into the General Fund.

²⁶ (a) The commission may cancel, revoke, or suspend any operating permit or certificate issued pursuant to this chapter upon any of the following grounds:

- (1) The violation of any of the provisions of this chapter, or of any operating permit or certificate issued thereunder.
- (2) The violation of any order, decision, rule, regulation, direction, demand, or requirement established by the commission pursuant to this chapter.
- (3) The conviction of the charter-party carrier of passengers of any misdemeanor under this chapter while holding operating authority issued by the commission or the conviction of the carrier or its officers of a felony while holding operating authority issued by the commission, limited to robbery, burglary, larceny, fraud, or intentional dishonesty for personal gain.
- (4) The rendition of a judgment against the charter-party carrier of passengers for any penalty imposed under this chapter.

Footnote continued on next page.

broadly worded authority to impose regulatory penalties and requirements pursuant to Pub. Util. Code § 701. Thus, Pub. Util. Code §§ 701 and 5378(a) provide a template for the Commission to consider imposing additional regulatory penalties and requirements to ensure greater compliance on Uber's part.

7. Order to Show Cause and Issues to Address

Uber's admitted refusal to comply with Questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. of the *December 19, 2019 Ruling*, and its admitted refusal to file alleged confidential information under seal as required by the *January 27, 2020 Ruling* establishes sufficient grounds for the instant OSC and subsequent OSC hearing.

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- (5) The failure of a charter-party carrier of passengers to pay any fee imposed upon the carrier within the time required by law.
 - (6) On request of the holder of the permit or certificate.
 - (7) Failure of a permit or certificate holder to operate and perform reasonable service. That failure may include repeated violations of the Vehicle Code or of regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety, by employees of the permitholder or certificate holder, that support an inference of unsafe operation or willful neglect of the public safety by the permitholder or certificate holder.
 - (8) Consistent failure of the charter-party carrier of passengers to maintain its vehicles in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety, as shown by the records of the commission, the Department of Motor Vehicles, the Department of the California Highway Patrol, or the carrier. This paragraph does not apply to a charter-party carrier of passengers engaged in the provision of a hired driver service when a rented motor vehicle is being operated by the hired driver.
 - (9) The knowing and willful filing of a false report that understates revenues and fees.
 - (10) Failure of a permit or certificate holder, or of any of its employees, to follow any order, decision, rule, regulation, direction, demand, ordinance, or other requirement established by the governing body of an airport, including solicitation practices.

The OSC hearing is the proper forum for Uber to be heard and submit evidence, information, or documents on its behalf. Pursuant to Pub. Util. Code § 2107, the Commission may impose penalties up to \$100,000 per offense. Pursuant to Pub. Util. Code § 5411, the Commission may impose fines up to \$5,000 per offense. Pursuant to Pub. Util. Code 5378(a), the Commission has the authority to suspend or revoke the operating permit of a TCP, which would include a TNC such as Uber. Pursuant to Pub. Util. Code § 5378(b), the Commission may impose penalties up to \$7,500 per day per offense in lieu of suspension or revocation for on-going violations of the Public Utilities Code. Pursuant to Pub. Util. Code § 701, the Commission may impose additional regulatory penalties.

The issues that Uber must address in its written statement in advance of the OSC hearing and at the OSC hearing are as follows:

1. Whether Uber's refusal to answer Questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. violated the *December 19, 2019 Ruling*.
2. Whether Uber's refusal to file alleged confidential information under seal violated the *January 27, 2020 Ruling*.
3. Whether Uber's refusal to answer Questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. of the *December 19, 2019 Ruling*, violated Rule 1.1 of the Commission's Rules of Practice and Procedure.
4. Whether Uber's refusal to file alleged confidential information under seal as required by the *January 27, 2020 Ruling*, violated Rule 1.1 of the Commission's Rules of Practice and Procedure.
5. Whether Uber's refusal to answer Questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. of the *December 19, 2019 Ruling*, should subject Uber to any penalties, fines, or other regulatory sanctions (e.g. permit suspension or revocation) pursuant to Pub. Util. Code §§ 701, 2107, 5378(a), 5378(b), and 5411.

6. Whether Uber's refusal to file alleged confidential information under seal as required by the *January 27, 2020 Ruling*, should subject Uber to any penalties, fines, or other regulatory sanctions (e.g. permit suspension or revocation) pursuant to Pub. Util. Code §§ 701, 2107, 5378(a), 5378(b), and 5411.
7. Whether Uber's refusal to answer Questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and 2.4.4. of the *December 19, 2019 Ruling*, should be considered a continuing offense or multiple continuous offenses pursuant to Pub. Util. Code §§ 2108 and 5415.
8. Whether Uber's refusal to file alleged confidential information under seal as required by the *January 27, 2020 Ruling*, should be considered a continuing offense or multiple continuous offenses pursuant to Pub. Util. Code §§ 2108 and 5415.
9. Whether Uber's *Motion for Stay* excuses compliance with the *December 19, 2019 Ruling* and/or the *January 27, 2020 Ruling*.
10. Whether Uber's second *Motion for Reconsideration* excuses compliance with the *December 19, 2019 Ruling* and/or the *January 27, 2020 Ruling*.

8. Ex Parte Prohibition

As provided in Rule 1.3(a) and 8.2(b) of the Commission's Rules of Practice and Procedure, the OSC portion of this proceeding, including the OSC hearing, is categorized as adjudicatory and *ex parte* communications are prohibited. The determination as to category is appealable pursuant to Rule 7.6 of the Commission's Rules of Practice and Procedure.

IT IS RULED that:

1. Respondent is ordered to appear at the Order to Show Cause hearing to be scheduled as described below, and therein to show cause why the Commission should not fine, penalize, and/or impose other regulatory sanctions against Respondent for refusing to answer questions 1.1., 1.2., 1.4., 2.4.1., 2.4.2., 2.4.3., and

2.4.4. of the *December 19, 2019 Ruling* regarding sexual assaults and sexual harassment claims, and for refusing to submit the information under seal as required by the *January 27, 2020 Ruling*.

2. Respondent shall appear and show cause why it should not be fined, penalized, and/or incur other regulatory sanctions at the following evidentiary hearing:

September 1, 2020, commencing at 1:30 P.M.

California Public Utilities Commission

505 Van Ness Avenue, San Francisco, California, 94102

WebEx information to be provided separately

3. A quorum of the Commission may attend the hearing.

4. At the hearing, Respondent shall cause to appear a representative (either Respondent's counsel of record or a senior executive) who will be capable of addressing all the issues identified in this *Ruling*, as well as the facts and arguments contained in Respondent's verified statement. Such representative shall speak under oath and may be subject to questioning by the assigned Administrative Law Judge and Commissioners who may be present.

5. No later than the close of business on **August 21, 2020**, Respondent shall file and serve a verified statement responding to the issues identified in Section 7 of this *Ruling*. The statement shall include all facts, arguments, and legal authorities that support Respondent's position. A word version of the statement shall be e mailed to the assigned Administrative Law Judge.

6. A copy of all authorities (case law, Commission decisions, statutes, General Orders) cited in Respondent's statement shall be provided to the assigned Administrative Law Judge no later than the close of business on **August 21, 2020**. The authorities shall be placed in a three-ring binder,

alphabetized, and marked or highlighted so that the relevant portion of each authority can be identified.

7. Should Respondent fail to appear, the allegations in this *Ruling* will be deemed admitted although the assigned Administrative Law Judge may allow additional evidence or information for good cause shown.

8. The Order to Show Cause portion of this proceeding, including the OSC hearing, is categorized as adjudicatory and *ex parte* contacts are prohibited. The determination as to category is appealable pursuant to Rule 76. of the Commission's Rules of Practice and Procedure.

9. This *Ruling* shall be served on the service list for this proceeding. Additionally, a copy shall be served on

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10. This Ruling is effective today.

Date July 27, 2020, at San Francisco, California.

/s/ ROBERT M MASON III

Robert M. Mason III
Administrative Law Judge