

PUBLIC UTILITIES COMMISSION

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SAN FRANCISCO, CA 94102-3298

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TO PARTIES OF RECORD IN RULEMAKING 12-12-011:

This is the proposed decision of Commissioner Matthew Baker. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's August 1, 2024 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ MICHELLE COOKE
Michelle Cooke
Chief Administrative Law Judge

MLC:smt
Attachment

Decision **PROPOSED DECISION OF COMMISSIONER MATTHEW BAKER**
(Mailed 6/28/2024)

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

**DECISION MODIFYING DECISION 13-09-045's DEADLINE
FOR SUBMITTAL OF TRANSPORTATION NETWORK
COMPANY ANNUAL REPORTS**

Summary

This decision modifies the deadline for Transportation Network Companies to submit their Annual Reports to the Commission from September the 19th of each year, to January the 30th of each year, so that the deadline coincides with the submittal deadline for their Clean Miles Standard Annual Reports. We make this modification in response to the concerns raised by Transportation Network Companies that having to create two Annual Reports each year, but at different times, for two separate Commission proceedings would be a burdensome and inefficient exercise that might not achieve any beneficial regulatory purpose.

This proceeding remains open.

1. Procedural and Factual Background

1.1. Decision (D.) 13-09-045 (Transportation Network Company Proceeding)

On December 20, 2012, the Commission opened Rulemaking (R.) 12-12-011 to determine whether and how to assert regulatory jurisdiction over a new form of app-enabled transportation mode in a manner that encouraged innovation yet promoted equal access and public safety. D.13-09-045 (*Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry*) found that the Commission did have jurisdiction over these new companies as they were operating as a type of Charter-party carrier over which the Commission has regulatory authority. In order to have an up to date overview of these entities' operations, which the Commission designated as Transportation Network Companies (TNC), D.13-09-045 ordered that one year after D.13-09-045's effective date, and annually thereafter, each TNC operating in California submit its Annual Report to the Commission's Safety and Enforcement Division.¹ As the effective date of D.13-09-045 was September 19, 2013, each subsequent Annual Report was due on September 19th or the next business day if the 19th fell on a holiday.

D.13-09-045 required that each Annual Report provide information regarding specific reporting categories that covered:

- ***Data on drivers:*** (number of drivers that became eligible and completed the TNC's driver training course; average and median number of hours and miles each TNC driver spent driving for the TNC);²
- ***Data on traffic incidents and accidents:*** (the cause of the

¹ D.13-09-045 at 31-32 (Regulatory Requirements j, k, and l). The reporting categories have been refined and expanded over the years with staff providing the TNCs with instructions on the cells of information to be included in the template and the level of detail required for each cell.

² D.13-09-045 at 27.

- incident, the amount paid, if any, for compensation to any party in each incident; date and time of the incident; amount that was paid by the driver's insurance, the TNC's insurance, or any other source; and the total number of incidents during the year);³
- ***Data on zero-tolerance complaints regarding drugs and alcohol:*** (number of drivers found to have committed a violation and/or suspended, including a list of zero-tolerance complaints and the outcome of the investigation into those complaints);⁴
 - ***Data on TNC trips*** (accepted requests): (the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates; the date, time, and zip code of each request; the concomitant date, time, and zip code of each ride that was subsequently accepted; for each ride accepted, the zip codes of where the ride began and ended, the miles traveled, and the amount paid/donated);⁵
 - ***Data on TNC trips*** (unaccepted requests): (the number of rides that were requested but not accepted by TNC drivers within each zip code where the TNC operates; concomitant date, time, and zip code of each ride that was not accepted);⁶ and
 - ***Data on accessibility:*** (the number and percentage of their customers who requested accessible vehicles, and how often the TNC was able to comply with request for accessible vehicles; description of any instances or complaints of unfair treatment or discrimination of persons with disabilities; and necessary improvements (if any), and additional steps to be taken by the TNC to ensure that

³ *Id.*, at 32.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

there is no divide between service provided to the able and disabled communities).⁷

Over time, the Commission has supplemented and revised the reporting categories, and established a protocol for TNCs wishing to claim that any data required by the Annual Reports was confidential or privileged.⁸ In addition, as needed, the Commission Consumer Protection and Enforcement Division (CPED) has supplemented the reporting requirements in D.13-09-045 and D.16-04-041 by propounding data requests and by supplying the TNCs with granular data categories in the annual report template and associated data dictionary that the TNCs must fill out each year as part of the annual report template. For example, with respect to data on traffic incidents and accidents, CPED asked each TNC to provide: the Waybill number of the trip,⁹ complaint identification number, name of driver and driver identification number, vehicle identification number, incident and accident location (by latitude, longitude, and zip code), date and time that complaints were filed and resolved, cause of the incident, outcome or status of investigation of each incident or accident, and whether an incident or accident occurred during a trip involving fare-splitting.

1.2. D.24-03-001 (Clean Miles Standard Proceeding)

On November 18, 2021, the Commission opened Rulemaking 21-11-014 (Order Instituting Rulemaking to Implement Senate Bill 1014-the California

⁷ *Id.*, at 30-31, 33-34, and 54.

⁸ See D.16-04-041 (*Decision on Phase II Issues and Reserving Additional Issues for Resolution in Phase III*), which requested information on driver suspensions, traffic incidents and accidents arising from the TNC fare-splitting services, zero-tolerance complaints, assaults and harassments, “Off-Platform” trip solicitations, and shared/pooled rides; and D.20-03-014 (*Decision on Data Confidentiality Issues Track 3*).

⁹ Required by General Order 157-E, Part 3.01.

Clean Miles Standard Program). The Clean Miles Standard (CMS) program was signed into law by Governor Newsom on September 13, 2018 with the signage of Senate Bill 1014 ([Skinner], Stats. 2018, ch. 369) which added Section 5450 to the Pub. Util Code to require the California Air Resources Board (CARB) to adopt, and for the Commission to implement, annual targets to reduce greenhouse gas (GHG) emissions by TNCs and certain other types of transportation providers. CARB submitted the Clean Miles Standard Final Regulation Order (CARB CMS Order) to the Office of Administrative Law which was approved on October 1, 2022.

Of note in the CARB CMS Order is §2490.3 (Compliance and Reporting) which requires each TNC to comply with the data submittal requirements to demonstrate compliance with the GHG annual targets and goals of Public Utility (Pub. Util.) Code §5450(b)(2).¹⁰ The CARB CMS Order set an annual compliance report requirement for the calendar year and is applicable to “[a]ny TNC that exceeds 5 million VMT [Vehicle Miles Traveled] in a single year of operation.”¹¹

¹⁰ Pub. Util. Code §5450 (b)(2) states:

By January 1, 2021, the board shall adopt, and the commission shall implement, annual targets and goals, beginning in 2023, for the reduction under the baseline established pursuant to paragraph (1) of emissions of greenhouse gases per passenger-mile driven on behalf of a transportation network company. These targets and goals shall include annual goals for increasing passenger-miles traveled using zero-emission vehicles. These targets and goals shall be consistent with the Zero-Emission Vehicle Action Plan, be consistent with the stated goals detailed in Executive Order B-48-18, be technically and economically feasible, and be based upon data reported by the transportation network companies to the commission.

¹¹ Small TNC’s that do not exceed 5 million VMT in a single reporting year of operation are exempt from the annual compliance report for that calendar year.

In its *Comments on the Order Instituting Rulemaking*, Lyft requested that the same reporting templates used for the R.12-12-011 proceeding be used to collect data for the CMS proceeding. Additionally, Lyft suggests that the Commission apply the same reporting period for both the TNC Annual Reports (September 1 to August 31) and the Clean Miles Reports (January 1 to December 31). In Lyft's view, by "requiring both reports reflect the same period, TNCs would be able to submit the reports using the same templates and the CPUC would be able to easily compare any related and overlapping data. This would increase efficiency and accuracy of the information received."¹²

On March 7, 2024, the Commission adopted D.24-03-001 (*Phase I Decision to Implement the Clean Miles Standard Program*) which included data reporting on an annual basis.¹³ In setting annual data reporting requirements, the Commission acknowledged the overlap of information required by the R.12-12-011 (TNC) and the R.21-11-014 (CMS) proceedings:

We agree with parties that CMS data reporting requirements should be streamlined to avoid double-reporting of data fields in existing TNC Annual Reports. The revised CMS data requirements in Attachment F relies more heavily on data from TNC Annual Reports and reduces CMS reporting requirements. TNC Annual Reports are currently submitted by September 19 of each year for the previous September 1st through August 31st reporting period, which is inconsistent with the January through December calendar year reporting period for CMS under CARB's CMS Order. While the data submission and reporting timelines for CMS and TNC Annual Report remain misaligned, we will require supplemental

¹² Lyft's *Comments* at 13.

¹³ D.24-03-001 at 95 ("It is reasonable to adopt the following reporting requirements:...Annual data reports shall be submitted to the Commission's staff within 30 days after the end of each calendar year[.]").

TNC Annual Report submissions when CMS data is due to ensure staff have complete datasets.¹⁴

Nonetheless, Attachment F (CMS Data Requirements) to D.24-03-001 anticipated a time when the reporting requirements for the TNC and CMS proceedings would be aligned:

CMS Regulated Entities are not required to resubmit already submitted TNC Annual Reports but will submit new reports to complete the calendar year or reporting (Sept-Dec) until the submission dates and reporting reports for TNC Annual Reports and CMS data reporting are aligned.

2. Discussion

We agree with the parties that the Commission should align the data reporting deadlines for the TNC and CMS proceedings for several reasons. First, such an approach will be helpful for Commission staff working on the TNC and CMS proceedings as they will receive and be able to analyze the same data that has been collected on an annual basis. This will enable staff working on the CMS proceeding to more accurately determine, as required by Pub. Util. Code § 5450(b)(3), the total miles completed by drivers, the percent share of miles completed by qualified zero-emission vehicles, average miles-weighted grams of carbon dioxide per mile to produce an estimate of the network-wide GHG emissions, and the total passenger-miles completed using average passengers-per-trip estimate. And for the Commission staff working on the TNC program and proceeding, they will receive that same years' worth of data to evaluate if TNC passenger services are being provided in a safe and non-discriminatory manner.

¹⁴ *Id.*, at 90.

Second, the alignment of the data reporting deadlines will be beneficial for TNC and CMS entities as it will streamline the number of times they must provide data that overlaps both proceedings. As Uber has pointed out in its comments to the proposed decision in the CMS proceeding, requiring two separate annual reports with overlapping field at different times during the year “would be inefficient, extremely burdensome, and completely avoidable.”¹⁵ For proof, Uber notes that a TNC must begin preparing its Annual Report approximately half a year in advance of the deadline because of the amount of work entailed. Even with overlapping data fields, Uber states “there is still an extensive amount of time required to run the reports, quality check the reports, reconcile any issues, upload the voluminous file, and more. It is an unjustifiable waste of time and resources to require annual reports in both January and September, when a single report would suffice.”¹⁶ Lyft makes a similar claim in its Comments: “[I]t takes Lyft employees several months to compile, review, and verify the data it submits with its Annual Reports.”¹⁷

We find Uber’s and Lyft’s Comments persuasive and agree that it will benefit both Commission staff and the TNC CMS Regulated Entities to submit their Annual Reports required by the TNC and CMS proceedings on the same annual basis. Accordingly, this decision modifies the reporting deadline in this proceeding so that it coincides with the January 30th deadline for TNCs and CMS

¹⁵ Uber’s Comments on Phase I Proposed Decision to Implement the Clean Miles Standard Program at 13.

¹⁶ *Id.*

¹⁷ Opening Comments of Lyft, Inc. to Proposed Phase I Decision to Implement the Clean Miles Standard Program at 12.

Regulated Entities to submit their Clean Miles Standard Annual Reports pursuant to D.24-03-001.

3. Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the “Public Comment” tab of the online Docket Card for that proceeding on the Commission’s website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

4. Comments on Proposed Decision

The proposed decision of Commissioner Matthew Baker in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

5. Assignment of Proceeding

Matthew Baker is the assigned Commissioner and Robert M. Mason III and Debbie Chiv are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. D.13-09-045 in proceeding R.12-12-011 requires each TNC to submit its Annual Report to Commission staff on September 19th of each year.
2. D.24-03-001 in proceeding R.21-11-014 requires each CMS Regulated Entity to submit its Annual Report to the Commission within 30 days after the end of each calendar year.
3. The CARB CMS Order requires annual compliance reporting for any TNC that exceeds 5 million vehicle miles traveled (VMT) in a single year of operation.
4. The data reporting categories required by the TNC and CMS proceedings contain data reporting overlaps.

Conclusions of Law

1. It is reasonable to conclude that the deadline for TNCs to submit their Annual Reports should be modified so that it is the same as the deadline for CMS Regulated Entities to submit their Annual Reports.

O R D E R

IT IS ORDERED that:

1. Except as provided in Ordering Paragraph 2, the deadline for Transportation Network Companies to submit their Annual Reports to the Commission shall be modified from September 19th so that it coincides with the January 30th deadline for Clean Miles Standard Regulated Entities to submit their Clean Miles Standard Annual Reports pursuant to Decision 24-03-001 (*Phase 1 Decision to Implement the Clean Miles Standard Program*) that was adopted in Rulemaking 21-11-014 (*Order Instituting Rulemaking to Implement Senate Bill 1014 – the California Clean Miles Standard Program*).

2. For their 2024 Annual Reports, each Transportation Network Company shall adhere to the September 19, 2024 submittal deadline covering the reporting period from September 1, 2023 to August 31, 2024, and then shall submit the remaining data covering the period of September 1, 2024 to December 31, 2024 at the same time they submit their Clean Miles Standard Annual Report data on January 30, 2025.

3. Rulemaking 12-12-011 remains open.

This order is effective today.

Dated _____, at San Francisco, California