PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Enforcement Division **RESOLUTION TL-19140**
Transportation Licensing and Analysis Branch **December 15, 2022**

R E S O L U T I O N

RESOLUTION DENYING SAN FRANCISCO'S APPEAL OF CPED'S DISPOSITION OF LYFT'S ADVICE LETTER 4B IN THE TNC ACCESS FOR ALL PROGRAM.

SUMMARY

On February 24, 2021, Lyft, Inc. ("Lyft") filed Advice Letter 4B requesting offsets for funds spent during the Second Quarter of 2020 ("AL 4B") to improve wheelchair accessible vehicle ("WAV") service in California. On March 12, 2021, the Consumer Protection and Enforcement Division ("CPED") approved AL 4B, allowing $531,452.40 in offsets. On March 22, 2021, San Francisco[1] appealed CPED's disposition, arguing that CPED erred in approving AL 4B.

In its appeal, San Francisco requested that CPED rescind the offsets in counties where it claims Lyft failed to demonstrate an improved level of service, as required by Decision (D.) 20-03-007, and where data provided by Lyft included negative values, suggesting that reported trips were accepted before they were requested.

On April 11, 2022, an Assigned Commissioner's Ruling on Track 5A issues in Rulemaking R.19-02-012 ruled that "for any pending or appealed Advice Letters that included pre-scheduled WAV trip data, Lyft is directed to file a supplemental Advice Letter that separately reports pre-scheduled WAV trip data and non-pre-scheduled WAV trip data," and that "any negative response time values shall be replaced with a

[1] San Francisco consists of the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability.

"0." Further, the Ruling stated that, "CPED is authorized to issue a disposition on the supplemental Advice Letters, or issue a proposed resolution if applicable, without consideration of any pre-scheduled WAV trip data."[2]

On May 27, 2022, Lyft submitted a supplemental Advice Letter 4C to address the Assigned Commissioner's Ruling. On June 24, 2022, Lyft submitted supplemental Advice Letter 4D due to a miscalculation contained in 4C specifically in its response time and Offset Time Standard data. After careful review of Lyft's subsequent submittals, we deny San Francisco's appeal of CPED's AL 4B disposition, and confirm that Lyft demonstrated the requisite improved level of service and complied with the Assigned Commissioner's Ruling in its Advice Letter 4D.

BACKGROUND

On September 22, 2018, Governor Brown signed Senate Bill ("SB")1376, also known as the Transportation Network Company ("TNC") Access for All Act, into law.[3] This law directs the California Public Utilities Commission to establish a program expanding accessibility for persons with disabilities, including wheelchair users who need a wheelchair-accessible vehicle ("WAV") for transportation. On February 21, 2019, the Commission opened Order Instituting Rulemaking ("R.") 19-02-012 to implement SB 1376. This proceeding is divided into five tracks: Track 1 culminated in D.19-06-033, Track 2 culminated in D.20-03-007, Track 3 culminated in D.21-03-005, Track 4 culminated in D.21-11-004, and Track 5 remains open.

Track 1 (D.19-06-033) addressed funding for this program. The Commission ordered TNCs to collect $0.10 (the "Access Fee") for each trip originating in a designated geographic area.[4] The TNCs must remit these Access Fees each quarter, beginning in the third quarter of 2019. In addition, the law allows TNCs to offset the amounts remitted to the Commission by the amounts spent developing or improving their own, on-demand WAV service.

Track 2 (D.20-07-003) adopted the requirements for offset eligibility and established the advice letter process as the appropriate process to approve offset requests. The applicable standard for receiving offset requests depend on the quarter at issue. Requests for the "retroactive" quarters (Q3 2019, Q4 2019, and Q1 2020, which were

[2] Track 5A Ruling, Ruling #4 at 19.
[3] The TNC Access for All Act is codified at Public Utilities Code § 5440.5.
[4] Geographic areas were defined as each county within the State of California.

completed before D.20-03-0073 was issued in March 2020) require only that TNCs demonstrate that response times for the 50th percentile of completed WAV trips improved quarter-over-quarter.[5]

For prospective offset requests (starting Q2 2020), the law required TNCs to meet two separate standards, using Q2 2020 performance as a baseline to demonstrate improvement starting in Q3 2020.

First, TNCs must demonstrate that their Level 1 (i.e., 50th percentile) or Level 2 (i.e., 75th percentile) response times for each county are within the required benchmark. Second, they must demonstrate that the percentage of completed trips responded to within the required response time benchmark (i.e., the Offset Time Standard ("OTS") percentage) improves when compared to the previous quarter. The Commission declined to impose these response time benchmarks on the "retroactive" quarters because the TNCs were unaware of these standards at the time these rides were performed. Table 1 below summarizes the Level 1 and Level 2 response time benchmarks for each geographic area and the corresponding percentage of completed trips that must meet these benchmarks.

Table 1: Interim Response Time Benchmarks and Offset Time Standard Adopted in D.20-03-007

Geographic Area/County	Level 1 – WAV Response Time (mins)	Level 2 - 2x WAV Response Time (mins)
San Francisco	15	30
San Diego, Santa Clara, Alameda, Sacramento, Contra Costa, Ventura, San Joaquin, Stanislaus, Santa Barbara, Solano, San Luis Obispo, Santa Cruz, Shasta, Imperial, Madera, Los Angeles, Orange County, San Mateo	25	50
Riverside, San Bernardino, Fresno, Kern, Sonoma, Tulare, Monterey, Placer, Merced, Marin, Butte, Yolo, El Dorado, Napa, Humboldt, Kings, Nevada, Sutter, Mendocino, Yuba, Lake, Tehama, San Benito, Tuolumne, Calaveras, Siskiyou, Amador, Glenn, Del Norte, Lassen, Colusa, Plumas, Inyo, Mariposa, Mono, Trinity, Modoc, Sierra, Alpine	30	60

[5] D.20-03-007 at 41.

Offset Time Standard	Offset Service	Offset Service
April 2020 until subsequent Commission decision	50%	75%

Lyft's Advice Letter

In support of its AL Q2 2020, Lyft submitted data outlined in Table 2 below:

Table 2: Lyft's Response Times ("RT") in Q2 2020

County	Level 1 RT Benchmarks (minutes)	Level 2 RT Benchmarks (minutes)	Level 1 RT Reported (minutes)	Level 2 RT Reported[6] (minutes)	Level Satisfied
LOS ANGELES	25	50	24.27	29.68-34.02	Both
SAN FRANCISCO	15	30	14.55	19.27-20.47	Both

These data show that Lyft demonstrated that it achieved either Level 1 or Level 2 response times in all counties in Q2 2020. Lyft did not submit data regarding its improvement in the OTS percentage of trips completed within the benchmark, quarter-over-quarter from Q3 2019 to Q1 2020, because it had not previously tracked this data, nor did these benchmarks exist before D.20-03-007 was issued in March 2020. Based on this filing, CPED approved AL 4B, and awarded offset amounts for Q2 2020 in the amounts set forth in Table 3 below:

Table 3: Lyft's Approved Offsets for Q2 2020

COUNTY	LYFTS'S APPROVED OFFSET AMOUNTS
LOS ANGELES	$452,762.60
SAN FRANCISCO	$78,689.80
TOTAL APPROVED FOR LYFT IN Q2 2020	**$531,452.40**

[6] Level 2 (75th percentile) response times are in ranges representing the response times for the 70th and 80th percentile of completed trips. TNCs report response times in deciles per D.20-03-007.

San Francisco's Appeal

In its appeal challenging the disposition of AL 4B, which has been supplemented with AL 4D, San Francisco argues that CPED failed to apply the second part of the Commission's two-part test that requires a comparison to the prior quarter's performance. They contend that because Lyft did not establish that it met the Commission's stated criteria for demonstrating improved level of service under the two-part test, CPED erred in approving AL 4B's offset request.

In addition, SF requests that Lyft resubmit AL 4B offset request data because response time data included negative values, suggesting trips were accepted before they were requested.[7]

DISCUSSION

As noted above, D.20-03-007 establishes two separate criteria for evaluating offset requests. One standard, referenced by San Francisco, was established in Section 3.1.2.5 and later Ordering Paragraph 4 of the Decision:

> To show "improved level of service" for a given quarter and geographic area for the interim period, a TNC shall demonstrate it achieved either the Level 1 or Level 2 Offset Time Standard. If a TNC received an offset in the prior quarter, the TNC shall also achieve an Offset Time Standard that exceeds the percentage achieved in the prior quarter. For example, in San Francisco County in the quarter beginning July 2020, a TNC must demonstrate that either (1) at least 50 percent of WAV trips originating in San Francisco had a response time of 15 minutes or less, or (2) at least 75 percent of WAV trips had a response time of 30 minutes or less. If the TNC received an offset in San Francisco County in the prior quarter with 50 percent of WAV trips having a response time of 15 minutes or less, the TNC must demonstrate that at least 51 percent of WAV trips had a response time of 15 minutes or less in the next quarter.

The Commission agrees that CPED should employ this two-step analysis when

[7] D.20-03-007 Ordering Paragraph 6 defines Response time as Period A plus Period B, where Period A is defined as the time elapsed from when a trip is requested until the trip is accepted and Period B is defined as the time elapsed from when a trip is accepted until the vehicle arrives.

evaluating Access Fund offset requests in the prospective advice letters (starting Q3 2020 forward unless and until a future Commission Decision modifies this standard). Eligibility for the offset depends on demonstrating that both:

> (1) WAV response times are within the Level 1 or Level 2 benchmarks in that county, and
>
> (2) the percentage of WAV trips completed within the Level 1 or Level 2 benchmarks (Offset Time Standard) improved when compared to the previous quarter.[8]

In addition, D.20-03-007 set criteria for Q3 2019, Q4 2019, and Q1 2020, the initial three quarters of SB 1376's TNC Access for All program completed before the standard offset criteria were established. D.20-03-07 emphasized that applying the newly established benchmark standards to these retroactive quarters would be unfair because the TNCs were not aware of the standards at the time. Instead, it developed an alternative retroactive criteria for Q3 2019, Q4 2019, and Q1 2020:

> A Transportation Network Company (TNC) may submit retroactive Offset Requests for each of the three quarters beginning July 1, 2019, October 1, 2019, and January 1, 2020. Requirements for retroactive Offset Requests shall be the same as the adopted Offset Request requirements, with the following exceptions.
>
> (a) A TNC need not comply with the response time benchmarks in Ordering Paragraphs 2 and 3. A TNC shall demonstrate improved level of service by showing that the 50th percentile of completed wheelchair accessible vehicle (WAV) trip response times in a geographic area improved over the previous quarter…[9]

D.20-03-007 does not explicitly identify the quarter in which this two-step analysis takes effect, though the decision was issued in March 2020, shortly before the start of Q2 2020 on April 1. As drafted, completing the two-step analysis depends on the existence of benchmarking data from the preceding quarter. Therefore, CPED lacks data to implement the second step of the two-part test. In the absence of a baseline quarter, CPED appropriately elected to apply only the first part of the two-part test in reviewing Lyft's AL 4B offset request for Q2 2020. It applied the full, two-part test to subsequent

[8] See Table 1 for adopted response time benchmarks and offset time standards.
[9] D.20-03-007 at 91.

TNC offset requests commencing Q3 2020.

CPED's evaluation of Lyft's AL 4D is consistent with other aspects of D.20-03-007. In particular, the Decision placed great emphasis on providing the TNCs advance notice of the benchmark (Offset Time Standards). These companies would not be expected to comply with these standards retroactively, only prospectively. To that end, the TNCs also were not required to submit data about whether they met these benchmarks for quarters that took place before D.20-03-007 was issued, including the first quarter of 2020. This omission is significant because this benchmark data is necessary to apply the second step of determining whether a TNC qualifies for an offset under the standard criteria.

San Francisco's challenge to CPED's disposition of AL 4B conflates the criteria for retroactive and standard offsets. For example, San Francisco asserts that Lyft did not demonstrate improvement in Los Angeles and San Francisco County because Lyft did not provide CPED data required to demonstrate that it has achieved an Offset Time Standard that exceeds the percentage achieved in the prior quarter (Q1 2020). This is not the applicable standard that Lyft was required to meet in Q2 2020. If there was an intention to make TNCs meet the two-part test in Q2 2020, the Commission would have required TNCs to report that performance in the preceding quarter (Q1 2020) to demonstrate improvement.

Indeed, Lyft's data submitted in support of AL 4B and AL 4D demonstrates improved level of service by showing that both Level 1 and Level 2 response times (see Table 2) are all within the benchmarks adopted in D.20-03-007. D.20-03-007 does not require Lyft to demonstrate improvement in the response time for the 50th percentile of trips for this Q2 2020 request. That requirement only applied to the three, discrete "retroactive" offset quarters ending in Q1 2020.

Furthermore, Lyft was not required to demonstrate the second step of the prospective offset criteria—improvement in the percentage of WAV trips completed within the Level 1 or Level 2 benchmarks (Offset Time Standard)—when compared to the prior quarter.[10] These standards were created in D.20-03-007 in March 2020, thus TNCs did not track or report OTS percentage data prior to Q2 2020 because the standard did not yet exist. Q2 2020 was intended to be the benchmark quarter for this new standard.

With regard to San Francisco's second argument that Lyft included negative response times, as directed in the Track 5A Ruling issued on April 11, 2022, any negative response

[10] See Table 1 for adopted response time benchmarks and offset time standards.

time values have been replaced with a "0", and all pre-scheduled WAV trip data have been excluded in staff's review process until a framework for pre-scheduled WAV is established.

CONCLUSION

After reviewing CPED's disposition of AL 4D and the offset eligibility requirements established in D.20-03-007, the Commission finds that CPED applied the appropriate criteria for offset eligibility and therefore, correctly approved Lyft's request for offsets in Q2 2020 as contained in AL 4D.

COMMENTS

In compliance with Public Utilities Code §311(g), a notice shall be emailed on November 10, 2022, informing all parties on the R.19-02-012 Service List of the availability of the Resolution at the Commission's website at http://www.cpuc.ca.gov/documents/. Comments on this draft resolution must be submitted no later than December 9, 2022. The notice also informed parties that the final Resolution adopted by the Commission will be posted and available at the same website.
No comments received.

FINDINGS

1. Lyft filed an offset request for the Second Quarter of 2020 (Q2 2020) via Advice Letter (AL) 4B on February 24, 2021.
2. CPED approved AL 4B on March 12, 2021.
3. Lyft requested a total offset amount of $531,452.40 for Q2 2020.
4. Lyft demonstrated that it met the offset eligibility criteria adopted in D.20-03-007.
5. San Francisco filed an appeal letter to CPED on March 22, 2021.
6. San Francisco argued that CPED erred in approving AL 4B by failing to compare performance in Q2 2020 to the prior quarter's performance (second of two-part test), and the data provided by Lyft included negative values, meaning the trips are accepted before they are requested.
7. As Assigned Commissioner's Ruling on Track 5A was issued on April 11, 2022.
8. Lyft filed supplement AL 4C in response to Commissioner's Ruling on Track 5A on May 27, 2022.
9. Lyft filed supplement AL 4D on June 24, 2022 due to miscalculation contained in AL 4C.
10. To evaluate quarter-over-quarter performance, a baseline quarter is necessary.
11. It is appropriate to evaluate only whether Lyft met either the Level 1 or Level

Offset Time Standard (first of two-part test) for the offset request for Q2 2020 because the prior quarter cannot be used to compare performance.

12. The two-part test can only be applied to offset requests beginning Q3 2020.
13. Any negative response time values have been replaced with a "0", and all pre-scheduled WAV trip data have been excluded in staff's review process.
14. It is reasonable to deny San Francisco's appeal of CPED's disposition of AL 4B.
15. It is reasonable to approve Lyft's offset request for AL 4D.

THEREFORE, IT IS ORDERED THAT:

1. San Francisco's appeal of CPED's approval of Lyft's AL 4B is denied.
2. Lyft's offset request for Q2 2020 as submitted in AL 4D is approved.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 15, 2022; the following Commissioners voting favorably thereon:

/s/ RACHEL PETERSON
Rachel Peterson
Executive Director

ALICE REYNOLDS
President

Commissioner John R.D. Reynolds recused himself and did not participate.

CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE HOUCK
Commissioners