

Decision No. R19-0755

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18G-0250TNC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

LYFT, INC.,

RESPONDENT.

PROCEEDING NO. 18G-0272TNC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

LYFT, INC.,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
GRANTING STIPULATED MOTION TO APPROVE
GLOBAL SETTLEMENT AGREEMENT AND APPROVING
SETTLEMENT AGREEMENT WITH CONDITIONS**

Mailed Date: September 16, 2019

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I. STATEMENT

A. Background

1. On April 23, 2018, the Colorado Public Utilities Commission (Commission) filed Civil Penalty Assessment or Notice of Complaint to Appear (CPAN) No. 121187, which alleges 123 violations by Lyft, Inc. (Lyft) of Rule 6708(a) of the Commission’s Rules Regulating Transportation by Motor Vehicle¹ from April 3, 2017 to December 20, 2017. The underlying basis for each count of the CPAN is that Lyft allegedly permitted a person to log into Lyft’s digital network who was not medically examined and certified to drive pursuant to Rule 6713. CPAN No. 121187 states that the civil penalty assessed for the alleged violations is \$307,500.00, plus an additional 15 percent surcharge applied to 29 of the 123 counts, for a total of \$318,375.00, but that if Lyft pays the civil penalty within ten calendar days of its receipt of the CPAN, the civil penalty will be reduced to \$159,187.50. The CPAN states that, if the Commission does not receive payment within ten days, the CPAN will convert into a Notice of

¹ Rule 4 *Code of Colorado Regulations* (CCR) 723-6.

Complaint to Appear and a hearing will be scheduled at which the Commission Staff will seek the “Total Amount” of 318,375.00² and an order directing Lyft to cease and desist from violating statutes and Commission rules.³ CPAN No. 121187 states that the Commission served the CPAN by delivering the CPAN to Lyft’s agent for service of process on April 23, 2018. The Commission assigned CPAN No. 121187 to Proceeding No. 18G-0250TNC.

2. On May 4, 2018, the Commission filed CPAN No. 121360, which alleges 34 violations by Lyft of Rule 6708(a) of the Commission’s Rules Regulating Transportation by Motor Vehicle⁴ from December 10, 2017 to April 29, 2018. The underlying basis for each count of the CPAN is that Lyft allegedly permitted a person to log in to its digital network without first obtaining and reviewing a criminal history record check as required by Rule 6712. CPAN No. 121360 states that the civil penalty assessed for the alleged violations is \$85,000.00, plus an additional 15 percent surcharge applied to 30 of the 34 counts, for a total of \$96,250.00, but that if Lyft pays the civil penalty within ten calendar days of its receipt of the CPAN, the civil penalty will be reduced to \$48,125.00. The CPAN states further that, if the Commission does not receive payment within ten days, the CPAN will convert into a Notice of Complaint to Appear and a hearing will be scheduled at which the Commission Staff will seek the “Total Amount” of 96,250.00⁵ and an order directing Lyft to cease and desist from violating statutes and Commission rules.⁶ CPAN No. 121360 states that the Commission served the CPAN by delivering the CPAN to Lyft’s agent for service of process on May 4, 2018. The Commission assigned CPAN No. 121360 to Proceeding No. 18G-0272TNC.

² CPAN No. 121187 at 11.

³ *Id.* at 11, 13.

⁴ Rule 4 *Code of Colorado Regulations* (CCR) 723-6.

⁵ CPAN No. 121360 at 5.

⁶ *Id.* at 4 and 5.

3. On May 16, 2018, the Commission referred Proceeding No. 18G-0250TNC to an Administrative Law Judge (ALJ) for disposition. The proceeding was subsequently assigned to the undersigned ALJ.

4. On May 23, 2018, the Commission referred Proceeding No. 18G-0272TNC to an ALJ for disposition. The proceeding was subsequently assigned to the undersigned ALJ.

5. On May 17 and 29, 2018, counsel for Trial Staff of the Commission entered their appearances in Proceeding Nos. 18G-0250TNC and 18G-0272TNC, respectively.

6. On May 24, 2018, and June 15, 2018, the ALJ issued Decision Nos. R18-0376-I and R18-0454-I that scheduled the hearings in Proceeding Nos. 18G-0250TNC and 18G-0272TNC for August 8, 2018 and September 6, 2018, respectively.

7. On June 15, 2018, the parties filed nearly identical Joint Stipulated Motions for Stay (Joint Motions) in each proceeding. In the Joint Motions, the parties stated that “[s]imilar issues are currently being litigated in another matter before the Commission, *PUC v. Rasier, LLC*, 17G-0783TNC”⁷ and those legal issues will be resolved in that earlier-filed proceeding. The parties requested a stay of this proceeding “pending resolution of 17G-0783TNC” and “[i]n the interest of efficiency for both the court and the Parties, and in an effort to maintain consistency in the litigation of these matters.”⁸ At the time, a Petition for Declaratory Order was pending before ALJ Steve Denman in Proceeding No. 17G-0783TNC that requested a decision on several legal issues.

8. On June 22, 2018, the ALJ issued Decision Nos. R18-0496-I and R18-0497-I that granted the Joint Motions, but also required the parties to file Joint Status Reports in Proceeding

⁷ Joint Motion at 1 (¶ 2).

⁸ *Id.* at 2 (¶ 3).

Nos. 18G-0250TNC and 18G-0272TNC within 14 days of the issuance of the decision in Proceeding No. 17G-0783TNC on the Petition for Declaratory Order. Specifically, the parties were required to explain in the Joint Status Reports: (a) why the stays should not be lifted once ALJ Denman issued his decision on Rasier's Petition for Declaratory Order filed in Proceeding No. 17G-0783TNC; and (b) if the parties contend that these proceedings should remain stayed after the issuance of ALJ Denman's decision, the subsequent event or circumstances (identified with specificity) that the parties believe should trigger the lifting of the stay.

9. On July 13, 2018, ALJ Denman issued Decision No. R18-0558-I in Proceeding No. 17G-0783TNC ruling on the Petition for Declaratory Order filed in that proceeding.

10. On July 27, 2018, the parties filed their Joint Status Report in which they stated that "they do not have a reason why the stay in this case should remain in place and have stipulated that the stay should be lifted."⁹ They stated further that they would file "a stipulated motion with the court to adopt a new procedural schedule for this case and may request a pre-hearing conference to address other matters."¹⁰

11. In Decision Nos. R18-0676-I and R18-0678-I issued on August 15, 2018 in Proceeding Nos. 18G-0250TNC and 18G-0272TNC, respectively, the ALJ lifted the stays and ordered the parties to file a joint motion in each of the proceedings proposing a schedule for each of the proceedings.

12. On August 22, 2018, the parties filed a Joint Motion for Procedural Schedule and Request for Scheduling Conference (Second Joint Motions) in each of the proceedings in which they requested that a prehearing conference be scheduled in November 2018 with an eye toward

⁹ Joint Status Report at 2 (¶ 6).

¹⁰ *Id.* at 2 (¶ 7).

scheduling the hearing in February 2019. The parties stated that the prehearing conference could be scheduled before November 2018 “due to Counsels’ Fall calendars.”¹¹ The parties also raised the possibility in the Joint Motions of consolidating the proceedings.

13. In Decision Nos. R18-0731-I and R18-0732-I issued on August 28, 2018 in Proceeding Nos. 18G-0250TNC and 18G-0272TNC, respectively, the ALJ scheduled a joint prehearing conference for November 1, 2018 to be held in both proceedings and established a prehearing schedule.

14. The ALJ held the joint prehearing conference on November 1, 2018 at which the parties and the ALJ discussed the consolidation of the proceedings, a dispositive motion deadline, and a hearing date.

15. On November 6, 2018, the ALJ issued Decision No. R18-0988-I that consolidated the two proceedings, established a dispositive motion deadline and briefing schedule, and scheduled the hearing for February 6 and 7, 2019.

16. On December 21, 2018, the parties filed a Stipulated Motion to Continue the hearing (Third Stipulated Motion). In the Third Stipulated Motion, the parties stated that the lead attorney for Respondent had a personal emergency that interfered with the ability of the Respondent to prepare for the hearing. In addition, the parties stated that they had been engaging in settlement discussions and would like more time to continue those discussions before the hearing. For both reasons, the parties requested that the ALJ vacate the hearing and reset it to a date on or after March 13, 2019.

17. In Decision No. R19-0025-I that issued on January 8, 2019, the ALJ granted the Third Stipulated Motion and vacated and rescheduled the hearing to March 21 and 22, 2019.

¹¹ Joint Motion at 3 (¶ 13).

18. On February 22, 2019, the parties filed a Stipulated Motion to Continue (Fourth Stipulated Motion). In the Fourth Stipulated Motion, the parties stated that they had “continued to engage in settlement negotiations,” “believe[d] that they are making good progress[,] and anticipate[d] that [they] may be able to resolve the case.”¹² They requested a continuance until June 2019 to allow them to focus on their settlement discussions.

19. By Decision No. R19-0216-I that issued on March 5, 2019, the ALJ granted the Fourth Stipulated Motion and scheduled the hearing for June 13 and 14, 2019.

20. The ALJ issued Decision No. R19-0358-I on April 23, 2019 that rescheduled the hearing to August 28 and 29, 2019 due to a scheduling conflict.

B. Settlement Agreement

21. On July 23, 2019, the parties jointly filed a Stipulated Motion to Approve Global Settlement Agreement, Vacate Hearing, and Waive Response Time (Stipulated Motion to Approve) and attached the Settlement Agreement to the Stipulated Motion to Approve. In the Stipulated Motion to Approve, the Parties request the Commission to approve the Settlement Agreement and vacate the hearing.

22. The Stipulated Motion to Approve states that Lyft and Staff have resolved the allegations in the CPANs. In return for Staff agreeing to waive all civil penalties alleged in CPAN Nos. 121187 and 121360 and to dismiss without prejudice this consolidated proceeding, Lyft has agreed to take measures to “enhance” its driver screening process by adding “safety

¹² Stipulated Motion at 3 (¶ 4).

procedures that go beyond what is required by Colorado law.”¹³ The enhancements to the driver screening process are described in Exhibit 1 to the Settlement Agreement. They are as follows:

1. Annual Reruns of Background Checks and Driving History Checks. Although Colorado law only requires criminal record checks to be conducted every five years, Lyft agrees to proactively conduct background checks (including criminal record checks and driving history checks) on an annual basis for all active drivers in Colorado.
2. Continuous Monitoring for New Convictions. Lyft agrees to go above and beyond the requirements of Colorado law by implementing “continuous criminal monitoring” for all active drivers in Colorado. Under this new program, Lyft will partner with a background check provider or consumer reporting agency to receive notifications when a driver has pled guilty to, nolo contendere to, or is convicted of a disqualifying criminal offense. Consistent with applicable law, and Lyft’s safety standards, Lyft will deactivate drivers with convictions surfaced through the continuous monitoring program.
3. Increased Communication with the PUC. Lyft agrees to create an open dialogue with the PUC to ensure that the PUC understands how Lyft’s background check processes are completed. To that end, Lyft may facilitate direct communication between the PUC and Lyft’s criminal record check and driving history check providers, as well as Lyft’s internal background check team.
4. Additional Quality Assurance Processes. Lyft agrees to institute quality assurance measures to enhance its processes for reviewing documents required by PUC rules. This will include an audit of required documents on at least a monthly basis, based on available technology and company methodology.¹⁴

23. In addition, the Parties agree Staff will conduct an audit as follows:

Lyft will provide to Staff the Driver-Partner screening process results for a sample of 50 Driver-Partners selected by Staff from among those Driver-Partners who have been subjected to the new system of continuous monitoring and Driver-Partner check system implemented by Lyft. Lyft will also participate in

¹³ Stipulated Motion, Attach. A, Ex. 1 at 3.

¹⁴ *Id.* at 3-4.

discussions with Staff to identify and address any alleged errors that Staff identifies in the Driver-Partner screening process results.¹⁵

The ALJ understands that the audit conducted by Staff is separate and distinct from the monthly audit “of required documents” that Lyft has agreed to perform.¹⁶

24. The Parties state that Lyft’s enhancements will improve public safety. Specifically, the annual criminal background and driving history check “will help Lyft to prevent ineligible drivers from driving on its platform,”¹⁷ the continuous monitoring process “will notify Lyft about new criminal pleas of guilty, nolo contendere, and convictions for disqualifying criminal offenses,”¹⁸ and the “quality assurance processes,” which includes the required audits, will “help ensure that all [drivers] have met the minimum requirements provided in the pertinent statutes and regulations.”¹⁹ The Parties believe that the Settlement Agreement serves the public interest, is just and reasonable, and should be approved.²⁰

25. Lyft and Staff estimate that implementing the foregoing enhancements will cost approximately \$1.5 million over the next five years.²¹ However, Lyft agreed to complete the implementation of the annual criminal background and driving history checks, the continuous monitoring process, and the quality assurance processes by August 1, 2019.²² Lyft also agreed to provide written confirmation of its “substantial compliance” with these requirements by August 1, 2019.²³ The Settlement Agreement specifies that “substantial compliance shall be

¹⁵ Stipulated Motion at 6 (¶ 9.a.).

¹⁶ See Stipulated Motion, Attach. A, Ex. 1 at 3-4.

¹⁷ Stipulated Motion, Attach. A at 10 (¶ 6.a.).

¹⁸ Stipulated Motion, Attach. A at 10 (¶ 6.b.).

¹⁹ *Id.* at 10 (¶ 6.c.).

²⁰ *Id.* at 10 (¶ 6).

²¹ *Id.* at 5 (¶ 4.a.).

²² *Id.* at 5-6 (¶¶ 4.a.-4.d.)

²³ *Id.* at 7-8 (¶¶ 4.f.i-4.f.iii).

understood and defined under the common law definition provided in Colorado case law,” which is that “the Party has performed the major aspects of the contract but has deviated from it in insignificant ways that do not detract from the benefit which the other party would derive from literal performance.”²⁴ In return, Staff agreed to provide “written acknowledgment of the receipt of the written confirmation from Lyft, as well as confirmation that Lyft is in substantial compliance with the requirement[.]” to implement the enhancements by August 1, 2019.²⁵ The Settlement Agreement states that “Lyft does not admit to any liability, and Lyft denies any liability for the allegations in the CPANs.”²⁶

C. Compliance with Settlement Agreement and Vacating of Hearing

26. On July 29, 2019, Lyft filed a written notice with the Commission stating that it had substantially complied with the requirements noted above (Lyft’s Notice of Written Confirmation). Specifically, Lyft stated:

Lyft is conducting criminal background checks on its Driver-Partners active on the Lyft application/platform on an annual basis;

Lyft has enrolled all Driver-Partners active on the Lyft application/platform in Colorado in the continuous monitoring system described in Paragraph 4(b) of the Settlement Agreement; and

Lyft has implemented a new quality assurance process for documents required of Driver-Partners as described in Paragraph 4(c) of the Settlement Agreement.²⁷

27. On August 8, 2019, Staff also filed a notice and accompanying letter confirming that Lyft has performed the obligations in the Settlement Agreement (Staff’s Notice of Written Acknowledgment). Specifically, Staff stated:

Staff has reviewed Lyft’s letter and has conferred with a Lyft representative about the statements made in its letter of July 26, 2019. Staff has concluded that based

²⁴ *Id.* at 2.

²⁵ *Id.* at 9-10 (¶ 5.c.).

²⁶ *Id.* at 11 (¶ 8).

²⁷ Lyft’s Notice of Written Confirmation at 2-3.

on its conversation with Lyft and its representations, Lyft is in compliance with the terms of in Paragraph 4(a)-(c) of the Settlement Agreement.²⁸

28. On August 12, 2019, the parties jointly filed a Motion to Continue requesting that the hearing be continued while the ALJ considers the Motion to Approve “in the interests of scheduling certainty for the Parties and efficiency for this docket.”²⁹

29. On August 20, 2019, the ALJ issued Decision No. R19-0692-I that granted the Motion to Continue and vacated the hearing.

II. DISCUSSION

A. Jurisdiction

30. The CPAN alleges the violations of the Commission’s rules noted above. Section 40-7-116, C.R.S., specifies that “[i]nvestigative personnel of the commission . . . have the authority to issue civil penalty assessments for the violations of,” among other things, the Commission’s rules. Accordingly, the Commission has subject matter jurisdiction over this proceeding.

31. In addition, Lyft was properly served with CPAN Nos. 121187 and 121360. The Commission thus has personal jurisdiction over Lyft.

B. Analysis

32. The ALJ finds good cause to grant the Stipulated Motion to Approve and accept the Agreement subject to the conditions specified below. Lyft’s agreement to annually rerun the background checks and driving history checks of its drivers, as well as to continuously monitor for new disqualifying criminal convictions of its drivers, will enhance public safety and

²⁸ Staff’s Notice of Written Acknowledgment at 2 (¶ 5).

²⁹ Motion to Continue at 3 (¶ 7).

protection of the traveling public. Taken together, they will provide a timelier method for the removal of drivers with disqualifying offenses from the roads in Colorado. These improvements in Colorado will continue in perpetuity.

33. In addition, the estimated \$1.5 million annual total cost of the improvements that Lyft has implemented exceeds the total amount of civil penalties assessed in the CPANs. As noted above, the total amount of the penalties sought in the CPANs is \$414,625. It is reasonable for Staff to trade these expenditures by Lyft on improvements to the safety and driver background check process in return for dismissal of the CPANs.

34. That Lyft is only required to “substantially comply” with the requirements of the Settlement Agreement does not raise concerns. The Settlement Agreement specifies that, as used therein, “substantial compliance” has the meaning attached to it by Colorado contract law. The purpose of this contract-based concept is to distinguish between “trifling” deviations from the requirements of a contract that do not support a breach of contract action, and material deviations that do. Lyft’s substantial compliance with the requirements of the Settlement Agreement, therefore, means that Staff (and thus the public) will receive all of the benefits of the bargain agreed to by Lyft.

35. There are two aspects of the Settlement Agreement, however, that raise concerns. The first revolves around the audit performed by Staff. While the parties have agreed to conduct the audit, the Settlement Agreement does not specify when the audit will take place. Moreover, the Settlement Agreement merely requires Lyft to “participate in good faith with Staff in an audit process,” which, as noted above, means that Lyft must provide to Staff the audit results

for a sample of 50 Driver-Partners selected by Staff from among those Driver-Partners . . . who have been subjected to the new system of continuous monitoring and Driver-Partner checks . . . and participate[] in discussions with

Staff to identify and address any alleged errors that Staff identifies in those Driver-Partner screening process results.³⁰

The Settlement Agreement does not state that Lyft must take any action to fix any problems in the systems that produce errors or take any action with respect to the drivers who are the subject of the errors.

36. The second area of concern is that the Settlement Agreement does not explicitly address the alleged failure of Lyft to comply with the requirement to ensure that its drivers have been medically examined and certified to drive pursuant to Rule 6713. As noted above, CPAN No. 121187 alleges that one of Lyft's drivers drove for Lyft over an extended period of time without being medically examined and certified to drive. Yet, the Settlement Agreement and other documents filed with the Stipulated Motion to Approve do not state whether any of the processes agreed to in the Settlement Agreement are designed to ensure that Lyft's drivers have been medically examined and correctly certified to drive.

37. To address these concerns, the ALJ will require the Parties to: (a) examine as part of Staff's audit whether the sample of "50 Driver-Partners selected by Staff" have been medically examined and correctly certified to drive pursuant to Rule 6713; and (b) file a report of the results of Staff's audit in this Proceeding within 60 days after the Commission's decision on the Stipulated Motion to Approve becomes final. The report must state: (a) the results of the annual criminal background and driving history check and the continuous monitoring for each of the "50 Driver-Partners selected by Staff" for the audit; (b) whether each of the 50 individuals has been medically examined and correctly certified to drive pursuant to Rule 6713; (c) whether the annual criminal background and driving history check and the continuous monitoring processes are operating as the Parties expected when they entered into the Settlement Agreement;

³⁰ Stipulated Motion, Attach. A at 7 (¶ 4.e.).

and (d) if the answer to the last question is “no” for one or both of the Parties, what actions Lyft is taking to address the deficiencies in the operation of the processes.

38. Based upon substantial evidence in the record as a whole, the ALJ finds and concludes that the Settlement Agreement, subject to the conditions noted above, is just and reasonable and not contrary to the public interest. The ALJ further finds it in the public interest to conserve valuable resources by adopting the terms of the Settlement Agreement with the conditions noted above. Accordingly, the Stipulated Motion to Approve will be granted.

39. The CPANs in Proceeding Nos. 18G-0250TNC and 18G-0272TNC will be dismissed without prejudice upon the completion of the conditions stated above and in the Order below.

40. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following Order.

III. ORDER

A. The Commission Orders That:

1. Response time to the Stipulated Motion to Approve Global Settlement Agreement, Vacate Hearing, and Waive Response Time (Stipulated Motion to Approve) filed on July 23, 2019 by Commission Staff is waived.

2. The Stipulated Motion to Approve is granted subject to the conditions specified above.

3. The Settlement Agreement is accepted and approved subject to the conditions specified above. A copy of the Settlement Agreement, attached hereto as Appendix A, is incorporated herein by reference. The parties shall comply with the terms of the Settlement Agreement and the conditions specified above.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a.) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b.) If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director