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Consumer Protection and Enforcement Division
Transportation Licensing and Analysis Branch
California Public Utilities Commission
505 Van Ness Avenue
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Service List: R.19-02-012

Re: Reply of Lyft, Inc. to Protests of the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and the Mayor's Office on Disability to Lyft Advice Letter AL-005

Dear CPED Staff:

By this Reply, Lyft, Inc. ("Lyft") responds to the protest submitted by the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and the Mayor's Office on Disability (collectively, "SF") to Lyft's Advice Letter AL-005 (the "AL5").

1. Preliminary Statement

SF's Protest of Lyft's AL5 is essentially identical to SF's protest of Lyft's ALs 001-004, combining improper objections to confidentiality with assertions regarding purported "errors" in Lyft's filing which Lyft has previously shown to be inaccurate. In the November 2, 2020, meet and confer with SF, Lyft proposed a stipulation whereby the parties could avoid unnecessary briefing and avoid burdening staff by agreeing to await resolution of Lyft's ALs 001-004 prior to filing any protest to AL5, but that proposal was rejected. Regardless, SF's Protest here should be rejected because it fails to comply with General Order 96-B ("GO 96-B") and fails to raise any pertinent objection to the substance of Lyft's AL5.

2. SF's Protest Does Not Comply with General Order 96-B and Should Be Disregarded

SF's Protest once again ignores the requirements of GO 96-B, which expressly identifies the grounds upon which a protest may be premised.¹ Section 7.4.2 limits the grounds for protest of an

¹ The allowable grounds for protest are: (1) The utility did not properly serve or give notice of the advice letter; (2) The relief requested in the advice letter would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies; (3) The analysis, calculations, or data in the advice letter contain material errors or omissions; (4) The relief requested in the advice letter is pending before the Commission in a formal proceeding; (5) The relief requested in the advice letter requires consideration in a formal hearing, or is otherwise inappropriate for the advice letter process; or (6) The relief requested in the advice letter is unjust, unreasonable, or discriminatory, provided that such a protest may not be made where it would require relitigating a prior order of the Commission.

advice letter to non-policy objections to the **substance** of the relief requested in the advice letter.² Those grounds do **not** include objections to a request for confidential treatment. Objections to confidentiality are governed by an entirely separate set of procedures set forth in GO 96-B, §10.5 *et seq.*, which requires SF to meet and confer with Lyft and the Consumer Protection and Enforcement Division ("CPED"), and if no informal resolution can be had, to seek relief from the Administrative Law Division -- as SF has done with respect to Lyft's Advice Letters 001 - 004. Yet, most of SF's Protest to Lyft's AL5 is addressed **solely** to purported objections to Lyft's claim for confidential treatment. SF's Protest thus fails to comply with GO 96-B.

Objections to claims of confidentiality cannot be resolved by Industry Division staff.³ It is therefore unclear why SF continues to try to short circuit the process set out in §10.5 *et seq.* by interjecting arguments regarding confidentiality into its Protest and asking CPED to deny Lyft's AL based upon those arguments. Regardless, neither GO 96-B, nor Decision (D.) 20-03-007, authorizes CPED staff to deny the relief requested in an advice letter based upon purported concerns regarding confidentiality. Nor do they authorize CPED staff to grant any of the other creative forms of relief requested by SF, such as continuing or re-opening the protest period, allowing for supplemental protest, or holding a hearing on SF's confidentiality objections.⁴

Granting such relief would not be appropriate in any event. Although the majority of SF's Protest focuses on SF having to evaluate Lyft's AL5 without all of the data, the fact that SF did not have the data in preparing its Protest is an issue entirely of SF's own making for several reasons. Just as it did with ALs 001-004, Lyft once again offered to provide SF with complete, unredacted access to **all of the data** supporting its AL5, subject only to a nondisclosure agreement. In fact, Lyft went further and offered to include language in the NDA that would release SF from any obligation to maintain confidentiality on either a final determination regarding confidentiality or Lyft's withdrawal of its request for confidentiality. SF once again rejected Lyft's offer of access to the data.⁵ In an effort to justify its refusal to accept the data, SF contends that because it does not subjectively believe that Lyft has "met its burden" of establishing a Public Records Act exemption, SF is precluded by its own San Francisco Sunshine Ordinance from entering into a nondisclosure agreement, as that "would prospectively prohibit it from meeting its statutory duty, and thereby expose it to potential liability."⁶

As Lyft understands the argument, SF contends that because it has unilaterally determined that the data should be public, SF would be required to publicly disclose the data regardless of what the Commission determines. Lyft is perplexed by this argument, which is not only self-serving, but entirely circular as well. It is unclear why SF believes it is appropriate for it to unilaterally pre-determine the confidentiality issue without awaiting a decision by the Commission -- assuming for itself authority vested in the Commission under GO 96-B.

Even more puzzling is why SF declined even to **consider** a NDA, and in so doing, closed off its own path forward to substantively review Lyft's data. There was nothing preventing SF from negotiating a reasonable NDA that would carve out an exception if the Commission subsequently ruled that Lyft's data, or certain portions thereof, should be disclosed. However, SF declined even to consider any form of nondisclosure agreement; prioritizing its own conclusion that the data is public over that of the

² Section 10.5 allows a party to object to a claim of confidentiality by meeting and conferring in an effort to resolve the dispute and, to the extent the dispute cannot be resolved, by CPED referring the issue to the Administrative Law Judge division for resolution.

³ GO 96-B, §10.5 (CPED must refer disputes regarding confidentiality to the Administrative Law Division).

⁴ SF Protest, p. 2.

⁵ SF Protest, p. 2-3.

⁶ *Id.*

Commission. It is this self-defeating determination that is the cause of SF's inability to conduct a substantive review of the data, not Lyft's decision to redact the data, which is expressly permitted by both GO 96-B and General Order 66-D.

Equally concerning, SF's current stance represents a one-hundred and eighty degree turnabout from its previously asserted views on the issue. SF has previously accepted TNC data in multiple instances subject to restrictions on disseminating or disclosing the data, notwithstanding the existence of the Sunshine Ordinance.⁷ Indeed, it did so despite explicitly maintaining its position that the documents should not be deemed confidential, stating in its appellate brief in *City and County of San Francisco v. Uber Technologies, Inc.*:

In rulemaking, the City has argued that the CPUC should share all CPUC Reports publically, because they are regulatory documents about the people's business. The City neither requested nor received such a ruling from the superior court, but instead agreed to the protective order.⁸

By now claiming that its hands are tied and it cannot accept data subject to a nondisclosure agreement, SF contradicts itself and leaves no room for a reasonable path forward to resolve the impasse.

SF was offered access to the data and could have worked with Lyft to agree upon an appropriate nondisclosure agreement. It chose instead to reject Lyft's proposal and to continue to decry its lack of access to the data. SF's protest should be rejected both because it fails to comply with GO 96-B and because SF cannot be heard to complain about a lack of access when that lack of access is entirely its own fault.

3. SF's Arguments that Lyft Failed to Establish Presence and Availability Lack Merit

At page 8 of its Protest, SF eventually gets around to addressing the substance of Lyft's AL5. Each of SF's arguments is entirely lacking in merit. SF first argues that:

"[R]esponse times" are not reported for trip requests made by people with disabilities that went unfulfilled because a driver with a WAV was not present or available. This makes the response time percentages look dramatically higher than they would if response times were measured in a way that reflected those occasions when a request for WAV service receives no response at all.⁹

As a threshold matter, it is not at all clear how one would calculate a "response time" for a ride that never took place. More to the point, however, Lyft calculated response times as directed in D.20-03-007 and as indicated in the templates provided by CPED staff. To the extent SF objects to the Commission's definition of response time, a protest is not a proper vehicle for raising that issue. GO 96-B, §7.4.2 expressly cautions that "a protest may not rely on policy objections to an advice letter where the relief requested in the advice letter follows rules or directions established by statute or Commission order applicable to the utility."

⁷ See Respondent's Brief, filed by City and County of San Francisco, available at 2018 WL 3860911 (Cal.App. 1 Dist.) ("Lyft produced its versions of the CPUC Reports, pursuant to an identical subpoena provision and subject to a protective order preserving any trade secrets the reports might contain.").

⁸ *City and County of San Francisco, Respondent, v. Uber Technologies, Inc., et al.*, Appellants., 2018 WL 3860911 (Cal.App. 1 Dist.), 30.

⁹ SF Protest, p. 10.

SF next takes issue with the Commission's determination in D.20-03-007 that TNCs can demonstrate presence and availability by submitting data on WAVs in operation by quarter, hour and day of the week and the number and percentage of trips completed, not accepted, or cancelled by the passenger and the number of driver and passenger no-shows.¹⁰ SF asserts that CPED cannot "simply write the statutory requirement for a demonstration of presence and availability out of their analysis for offset eligibility" and that "[m]ere submission of data does not 'demonstrate' presence and availability." Once again, however, SF takes issue not with Lyft's AL, but with D.20-03-007 and staff's interpretation of it. A protest is not the vehicle by which to express that disagreement.

Finally, SF argues that because Lyft's WAV pilot programs do not operate 24 hours a day every day, Lyft's request for reimbursement should be denied.¹¹ SF points to no statute, decision, or ruling, however, providing that only WAV programs that operate 24 hours a day are eligible for reimbursement. Second, Lyft has designed its initial pilot programs based upon feedback from the community that it serves and the data collected from the program, rather than arbitrary coverage targets. For example, Lyft initially offered WAV service between 7:00 am and 9:00 pm, but extended the hours of service to midnight based upon feedback from the disability community and observed demand, and to minimize the risk of stranded passengers. Given the extremely limited demand Lyft has observed for service outside of the current operating hours, and the enormous costs of providing such service, Lyft believes its current operating hours are appropriate. Lyft continues to monitor demand and solicit input from users and is prepared to make adjustments where appropriate. Nevertheless, SF's argument that only WAV programs that operate 24 hours a day are eligible for reimbursement should be rejected, as it is not a requirement and would not be a sound policy. Finally, to the extent SF believes this should be a requirement, a protest is not the appropriate forum to raise the issue.

4. SF's Assertion that Lyft Failed to Demonstrate Outreach to the Disability Community Is Unfounded

SF also claims that Lyft failed to demonstrate outreach to the disability community. First, SF claims that it "received constituent feedback that the "WAV" option is not readily available in the Lyft app unless a rider knows to activate 'Access mode' in the app settings."¹² Lyft appreciates and has considered this feedback, however, SF's criticism is not of Lyft's outreach efforts, but rather its product design. Suggested improvements in product design are not a basis for denying an offset request.

5. SF's Request for Relief Is Contrary to Law and Is Unsupported

SF requests "that the CPED reject Lyft's claims for confidentiality; . . . direct Lyft to re-serve unredacted Advice Letters on all parties; and issue a notice continuing or re-opening the protest period pursuant to General Order 96-B, Section 7.5.1, for an additional 20 days following service of the unredacted Advice Letters to allow the parties to analyze the Advice Letters and, if necessary, submit a supplemental protest."¹³ SF's request finds no support in the law and lacks any justification on the record here.

SF cites no authority that would authorize Staff to re-open the protest period specified in GO 96-B or permit SF an additional 20 days to submit a supplemental protest. Moreover, D.20-03-007 clearly sets out the schedule for Staff decisions on offsets requests, which are to be made within 30 days after submission of the offset request. No provision is made for extension of the briefing period. Finally, to the extent SF claims entitlement to additional time to evaluate Lyft's requests, its lack of diligence in

¹⁰ SF Protest, p. 10.

¹¹ *Id.*

¹² SF Protest, p. 11.

¹³ *Id.*

attempting to resolve those objections, and its unreasonable refusal to agree to receive the data, warrants denial of any additional time.

For all of the foregoing reasons, SF's protest should be rejected.

Very truly yours,



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