

**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
(Filed December 20, 2012)

**OPENING COMMENTS OF THE SAN FRANCISCO TAXI WORKERS
ALLIANCE (SFTWA) ON ASSIGNED COMMISSIONER'S RULING
INSTRUCTING COMMENT ON THE IMPACT OF PUBLIC UTILITY CODE
SECTION 5401 ON RIDESHARING FEATURES OFFERED BY
TRANSPORTATION NETWORK COMPANIES**

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I. INTRODUCTION

UberX, Lyft and Sidecar are charging individual fares for services (inappropriately referred to as “ridesharing” in the Commission’s Ruling requesting Comments on this subject)¹, in clear violation of PUC § 5401.² By initiating this round of Comments, the Commission is signaling a possible stamp of approval it has no authority to grant.

II. QUESTIONS POSED IN THE ASSIGNED COMMISSIONER’S RULING

A. *What was the purpose/intent behind the passage of Public Utilities Code (PUC) § 5401?*

PUC § 5401 requires charter-party carriers (“CPCs”) to charge passengers on a mileage or time-of-use basis, or a combination of the two. It further provides: “. . . no charter-party carrier of passengers shall . . . demand or receive compensation . . . that shall be computed, charged or assessed on an individual fare basis . . .”.³ The legislature originally enacted the section in 1961 as part of comprehensive legislation entitled the ““Passenger Charter-party Carriers' Act” (“Act”).⁴ The Act created a separate statutory scheme for CPCs, distinguishing them from passenger stage corporations (“PSCs”), which operate fixed-route services.⁵ One of the distinguishing features of fixed-route services is the ability to charge individual fares.⁶ If that

¹ TNCs have hijacked the term “ridesharing” and illegitimately put it to their own use. When these proceedings began, TNCs claimed to be qualifying ridesharing services under PUC § 5353(h), in an attempt to gain exemption from all regulation. Decision 12-12-011 rejected that claim and subjected them to the Commission’s jurisdiction. The definition of ridesharing contained in Vehicle Code § 522 broadly applies to all forms of transportation: “Ridesharing’ means two or more persons traveling by any mode, including, but not limited to, carpooling, vanpooling, buspooling, taxipooling, jitney, and public transit.” Confining the term to describe specific TNC services is confusing and misleading at best. These services are best described as “ridepooling”.

² This defiance of the rule of law is fully in keeping with the business model of these companies. They have broken the law time and again, in California, in many other places around the country, and in Uber’s case, around the world.

³ Schoolbus contractors and operators of round-trip sightseeing-tour services are excepted. Any further exceptions would have to be the result of legislative action.

⁴ PUC § 5351 *et seq.*

⁵ PUC § 1031 *et seq.*

⁶ PUC § 1035 provides in part: “Any act of transporting or attempting to transport any person or persons by stage, auto stage, **or other motor vehicle** upon a public highway of this state between two points not

distinction were no longer to hold, CPCs could provide much the same service as PSCs – clearly contrary to the legislative intent.

Furthermore, if time-and-distance charges are combined with individual fares pooled rides, it raises a red flag about fair and transparent pricing.⁷ Time-and-distance charges are quite different from the set fares charged by buses, rail services, airport shuttles and the like. When the fare is uncertain, and the driver must go out of the way to pick up or drop off a second passenger, pricing becomes far more complex and opaque. TNC charges are further complicated by the practice of “surge pricing”, where the cost of a ride can vary enormously depending on the time and location of the pickup.

In any event, these are questions for the legislature.⁸ The Commission lacks the authority to overturn the current statutory scheme.

B. *What public policy objectives are served by PUC § 5401?*

The public policy objectives behind PUC § 5401 are the same as those that apply throughout the Act, as expressed in PUC § 5352.⁹ Among those goals are preserving the use of the highways for the public “without unnecessary congestion or wear-and-tear”; “securing the unrestricted flow of traffic by motor carriers over the highways”; maintaining “adequate and dependable service by all necessary transportation

within the limits of a single city or city and county, **where the rate, charge or fare for such transportation is computed, collected or demanded on an individual fare basis, shall be presumed to be an act of operating as a passenger stage corporation** within the meaning of this part.” (Emphasis added.)

⁷ TNCs’ current flat-rate charges for ridepooling also violate the law.

⁸ AB 1360, introduced by Assemblyman Phil Ting, is an attempt to deal with them, but the bill, which SFTWA opposes, was postponed in committee and will not be passed or heard again this year.

⁹ “The use of the public highways for the transportation of passengers for compensation is a business affected with a public interest. **It is the purpose of this chapter to preserve for the public full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon the highways;** to secure to the people adequate and dependable transportation by carriers operating upon the highways; **to secure full and unrestricted flow of traffic by motor carriers over the highways** which will adequately meet reasonable public demands by providing for the regulation of all transportation agencies with respect to accident indemnity **so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public;** and to promote carrier and public safety through its safety enforcement regulations.” (Emphasis added.)

agencies”; and preserving the full use of the highways to the public. The provisions of PUC § 5401 contribute toward those goals by maintaining a distinction between PSCs and CPCs. Allowing the lines to be blurred and the services to overlap would be a recipe for unnecessary congestion, wear-and-tear and other pernicious effects, such as increased vehicle emissions and air pollution. This is of critical concern because TNCs – which are far inferior to bus, rail and taxis from an environmental standpoint – have appeared in numbers unimaginable to the legislators who enacted the Act.¹⁰

C. *What public safety objectives are served by PUC § 5401?*

While the impact of PUC § 5401 on safety may be debatable, it is abundantly clear that TNCs suffer from a huge safety deficit that will only get worse if their service is allowed to expand into new areas such as ridepooling. A host of allegations of serious criminal behavior on the part of Uber drivers have come to light, including multiple accusations of rape, assault and kidnapping.¹¹ In one local incident, a San Francisco passenger was struck in the eye and seriously injured by an Uber driver wielding a hammer.¹²

Furthermore, the inadequacy of TNC background checks is alarming. TNCs obstinately refuse to do “Live Scan” fingerprint checks through the Department of Justice that would reveal, among other things, if the driver is using an alias.¹³ The District Attorneys of San Francisco and Los Angeles have brought suit against Uber,

¹⁰ See Response F. below.

¹¹ The Taxicab, Limousine and Paratransit Association (TLPA) has documented 30 sexual assaults or harrassments, 16 assaults, six kidnappings and two deaths allegedly attributable to TNC drivers. <http://www.whosdrivingyou.org/>

¹² San Francisco Chronicle, 9/27/14. <http://www.sfgate.com/crime/article/Uber-driver-accused-of-hammer-attack-on-San-5783495.php>

¹³ As previous Comments have documented, a TNC driver in Houston who later underwent a fingerprint background check was found to be using no less than 24 aliases, five different dates of birth, 10 different social security numbers and had an outstanding arrest warrant. <http://www.houstonpress.com/news/uber-tells-texas-lawmakers-its-background-checks-are-totally-fine-7372997>

accusing it, among other things, of falsely portraying the safety of company's background checks. San Francisco District Attorney George Gascon identified an Uber driver who spent 26 years in prison on a murder conviction, one of 25 Uber drivers convicted of crimes – a total Gascon called “only really scratching the surface”, because the unearthed information came from a small sample of drivers cited at San Francisco and Los Angeles airports or by the L.A. Police Bandit Detail.¹⁴ Uber hired the driver who killed 6-year-old Sophia Liu in San Francisco despite a prior reckless driving conviction.¹⁵ The Commission cannot change state law on CPCs charging individual fares, but it can change its own rules on TNC background checks. In the interest of public safety, it must.

Another safety concern is the bad driving behavior seen on San Francisco streets, caused in major part by TNC drivers whose disregard for the rules of the road is encouraged by the culture of lawlessness their companies foster and promote. Until these matters are taken in hand, no expansion of TNC services should be allowed.

D. Does/Should PUC § 5401 apply to the TNCs' ridesharing (sic) operations known as “Uberpool”, “LyftLine”, “Shared Rides”, or any other ridesharing (sic) operation offered by a TNC?

The language of PUC § 5401 is extremely clear in its prohibition against CPCs charging individual fares.¹⁶ TNCs are CPCs. The Commission's Decision found them to be such¹⁷, and the legislature has adopted that Finding.¹⁸ There is no conceivable interpretation of PUC § 5401 that would exempt TNCs from this prohibition, and no way to write it out of the law, except by the legislature.

¹⁴ San Francisco Chronicle, 8/20/15. <http://www.sfgate.com/business/article/DA-major-flaws-in-Uber-background-checks-allow-6453865.php>.

¹⁵ San Francisco Business Times, 1/14/14. <http://www.bizjournals.com/sanfrancisco/blog/2014/01/uber-uberx-sofia-liu.html>.

¹⁶ Quoted on p. 1 above.

¹⁷ Decision 13-09-045, issued 9/23/13, Conclusion of Law 6, at 71.

¹⁸ PUC § 5440(a).

In *Golden Sedan Service, Inc. v. Airport Limousine Service* (1981) 121 Ca.App.3d 359, 175 Ca.Rptr. 317, the First District Court of Appeal held that a limousine service could collect damages against a competing service that was charging individual fares without a PSC permit. The court said the Commission's failure to enforce the law "cannot be construed as authority to conduct activities that violate statutes."¹⁹ It further stated "Where provisions of the Public Utilities Code and rules of the P.U.C. are in apparent conflict, the wider code provisions take precedence over Commission rules."²⁰ It went on to state "It is equally clear that section 5401 prohibits charter-party carriers such as Airport Limousine from charging passengers on an individual-fare basis."

Clear language leaves no room for interpretation. "It is a settled principle in California law that 'When statutory language is thus clear and unambiguous there is no need for construction, and courts should not indulge in it.'" (*In re Lance*, (1985) 37 Cal. 3d 873, 886, 210 Cal. Rptr. 631, quoting *Solberg v. Superior Court* (1977) 19 Cal. 3d 182, 198 [137 Cal. Rptr. 460, 561 P.2d 1148]). In *Unzueta v. Ocean View School District* (3d Dist. 1992) 6 Cal.App.4th 1689, 8 Ca.Rptr.2d 614, the court held that a clearly worded statute entitled a teacher suspended for drug use to receive back pay after the criminal case against him was dismissed. The court reached that conclusion despite a reluctance to reward the teacher's drug use.

Any potential changes to the clear provisions PUC § 5401 are in the hands of lawmakers. In enacting AB 2293 last year,²¹ the legislature signaled its continued monitoring of rules relating to TNCs as follows:

¹⁹ *Golden Sedan Service, Inc. v. Airport Limousine Service* (1981) 121 Ca.App.3d 359 at 365.

²⁰ *Id.*, citing *Mosonite Corp. v. Pacific Gas & Electric Co.* (1976) 65 Cal.App3d 1, 9-10, 135 Cal.Rptr. 170.

²¹ PUC §§ 5430-5443.

5440(b). Given the rapidly evolving transportation network company service, **it is the intent of the Legislature to continue ongoing oversight of the commission's regulation of these services in order to enact legislation to adjust commission authority and impose specific requirements or prohibitions as deemed necessary** as these services evolve. (Emphasis added.)

AB 2293 further states as follows:

5441. The Legislature does not intend, and nothing in this article shall be construed, to prohibit the commission from exercising its rulemaking authority **in a manner consistent with this article**, or to prohibit enforcement activities related to transportation network companies. (Emphasis added.)

For the reasons stated in Response F. below, we believe that changes in the individual fare provision of PUC § 5401 would be unwarranted and unwise. But if there are to be such changes, the legislature must make them.

E. *What is the definition of an “individual fare” and should the Commission further define that term?*

The term “individual fare” is not defined in the PUC. But it is a cardinal rule of statutory construction that words in a law are to be given their ordinary, common-sense meaning. “We first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. [Citation.] The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context.’ [Citation.] If the plain, commonsense meaning of a statute's words is unambiguous, the plain meaning controls.” (*Holland v. Assessment Appeals Bd. No. 1* (2014) 58 Cal.4th 482, 490, 167 Cal.Rptr.3d 74, quoting (*Fitch v. Select Products Co.* (2005) 36 Cal.4th 812, 818 [31 Cal.Rptr.3d 591, 115 P.3d 1233].) The first definition of “individual” in Webster’s Encyclopedic Unabridged Dictionary of the

English Language is “single; particular; separate”.²² It is further defined as “intended for the use of one person only”.²³

In this context, “individual” means “individual”. The charges that passengers of PSCs pay fall separately upon each person using the service. In contrast, CPCs are allowed to charge a single fare for the trip, measured by time and/or distance. PUC § 5401 provides that time/distance “charges may vary in accordance with the passenger capacity of the vehicle, or the size of the group to be transported”. But the important distinction is that there is one, and only one, charge paid. It is a chartered *vehicle*.

F. *Would any public policy objectives be compromised if the Commission were to determine that the TNCs’ ridesharing (sic) operations were not subject to PUC § 5401?*

Given the absence of ambiguity in PUC § 5401, the Commission lacks the authority to tamper with its provisions. But a determination that the statute did not apply to ridepooling, if left undisturbed, would predictably have negative consequences, which are occurring already, owing to the fact that TNCs are currently providing these services on a wide scale in violation of law.

The impacts are primarily environmental. TNCs seek to portray their services in general, and ridepooling in particular, as beneficial to the environment, but there is much evidence to indicate that the opposite is true. While no environmental impact study has been done, evidence in the form of general environmental indicators and direct observations points to TNC operations – exacerbated by unlawful ridepooling – as a major factor.

While TNCs claim to be reducing the number of cars on the streets, the fact is that they are adding many more vehicles than they remove. The numbers are truly

²² Gramercy Books, 1989.

²³ *Id.*

staggering. Uber recently admitted to having 22,000 vehicles operating in San Francisco alone.²⁴ Almost a year ago, a spokesperson for Lyft claimed at a meeting of the Mayor's Disability Council that the company had "tens of thousands" of vehicles in SF.²⁵ These numbers are undoubtedly continuing to grow. By comparison, there are fewer than 2,000 licensed taxis operating in San Francisco.

Despite their enormous numbers, is it possible that TNCs are simply replacing private vehicles on the streets? Not at all. This was made clear in a study released last summer by the University of California Transportation Center, based at UC Berkeley.²⁶ One study question asked TNC users how they would have made the trip if they hadn't used the TNC's services. Only 6% said they would have taken their personal car. 1% said a family member or friend would have driven them. Fully 93% would have gotten there some other way, 39% by taxi and 33% by bus or rail.²⁷

Another indicator: since TNCs began operations, San Francisco has become the second most congested city in the U.S. (after Los Angeles), according to a study by tech products developer TomTom.²⁸ This has become obvious to regular users of the city streets, including two of our most eminent present and former public officials. Here is former Assembly Speaker and Mayor Willie Brown's recounting of a recent discussion he had with Senator Dianne Feinstein:

If I were Ed Lee, I'd be keeping an eye out for former Mayor Dianne Feinstein, because she's been keeping an eye on the city and is not happy about what she sees.

²⁴ Forbes, June 3, 2015. <http://www.forbes.com/sites/ellenhuet/2015/06/03/uber-adding-hundreds-of-thousands-of-new-drivers-every-month/>

²⁵ http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=17&clip_id=21010

²⁶ App-Based, On-Demand Ride Services: Comparing Taxi and Ridesourcing Trips and User Characteristics in San Francisco. U.C. Berkeley Transportation Center, Nov. 2014. http://tsrc.berkeley.edu/sites/default/files/RidesourcingWhitePaper_Nov2014Update.pdf

²⁷ *Id.*

²⁸ San Francisco Chronicle, 4/3/15. <http://www.sfgate.com/cars/article/San-Francisco-s-traffic-congestion-is-2nd-worst-6172993.php>

I had dinner with the senator at North Beach Restaurant, and for all of her involvement in national and international issues, you would have thought the world ended at the bridges. She was laser-focused on San Francisco.

At the top of her concerns is the gridlocked traffic, which she experienced most recently when it took her and husband Dick Blum an inordinate amount of time to get across town after attending the funeral for Gov. Jerry Brown's sister Cynthia Kelly at St. Cecilia Church in the Sunset.

I explained that Mayor Ed was trying to make the city more bicycle-friendly, which means fewer lanes for cars. Add in all the construction, and getting across town takes some effort.

Then Feinstein brought up all the "ride-share" services from buses to cars that have flooded the city, all without much of anything in the way of rules or regulations. She's seen the numbers showing there are 4,000 to 6,000 ride-share cars operating in San Francisco, most of which seem to be tooling around in the core of the city.

It's clear that City Hall is not paying attention to what's happening on the streets. It doesn't even seem to care. There are no attempts at better traffic control, **no crackdowns on double-parked service cars dropping off and picking up fares.**²⁹ (Emphasis added.)

It is interesting that Senator Feinstein thought there were only 4-6,000 TNC vehicles in San Francisco. As noted above, the number is many times larger.

More vehicles on the streets means more emissions. Here again there is evidence of a worsening situation. The American Lung Association ("ALA") publishes an annual list of cities with the highest levels of particulate pollution, short-term and year-round.³⁰ The San Francisco Bay Area wasn't even on the ALA's lists of the 25 most polluted cities in the 2013 report.³¹ In just the two years since TNCs have been officially allowed to operate, San Francisco has moved to sixth for short-term and seventh for year-round pollution.³²

²⁹ Willie's World, San Francisco Chronicle, 4/11/15. <http://www.sfchronicle.com/opinion/article/Clinton-tosses-hat-into-presidential-ring-too-6193683.php?t=804c5f8310972bc8cd&cmpid=twitter-premium>

³⁰ While there are various sources of particulate pollution, vehicle emissions, particularly in the summer, are a significant component. The International Agency for Research on Cancer (IARC) and the World Health Organization (WHO) have designated airborne particulates a Group 1 carcinogen.

<http://www.cancer.org/cancer/news/world-health-organization-outdoor-air-pollution-causes-cancer>.

³¹ <http://www.stateoftheair.org/2013/city-rankings/most-polluted-cities.html>

³² <http://www.stateoftheair.org/2015/city-rankings/most-polluted-cities.html>.

Owing to strict requirements in San Francisco's Transportation Code,³³ most all San Francisco cabs are hybrids or other low-emissions vehicles. In contrast, TNC vehicles come in every shape and size, with virtually no restrictions on vehicle type and none on emissions.³⁴ Given those conditions, allowing TNCs to further extend their services will inevitably lead to even more pollution and congestion.

Replacing green taxi service with more polluting TNC service is clearly harming the environment. But the greatest environmental impact may fall upon the far cleaner services of mass transit. Earlier this year, Lyft promoted its LyftLine ridepooling service by matching Muni's \$2.25 bus fare.³⁵ The price has since varied, but remains low.³⁶ UberPool offers prices similar to Lyft's.³⁷ The consequences may not yet have manifested themselves, but the prospect of fewer bus and rail passengers forbodes less revenue for these essential services, threatening a downward spiral of job and service cuts. The Commission has given no heed to the environmental impact of TNCs, which is another reason why the proper venue for consideration of these issues is in the state legislature.

G. Would any public safety objectives be compromised if the Commission were to determine that the TNCs' ridesharing (sic) operations were not subject to PUC § 5401?

See response to question C above.

H. If the Commission were to determine that the TNCs' ridesharing operations were not subject to PUC § 5401, should the Commission adopt any additional regulations that would be applicable to the TNCs' ridesharing (sic) operations?

³³ San Francisco Transportation Code, Division II, Section 1106(m). The city's goal of a fleetwide 20% reduction in greenhouse gas emissions from the year 1990 has been more than met, despite the fact that there are currently more than twice as many cabs on the streets as in that year.

³⁴ Decision 13-09-045, 12/19/13, Safety Requirements h) and k) at 28.

³⁵ <http://blog.lyft.com/matchmuni/>. The price has gone up since this offer was introduced, but both Uber and Lyft continues to offer low fares for ridepooling designed to entice Muni riders. The flat rates offered for these rides also violate the requirement of PUC§ 5401 that CPCs charge by mileage and/or distance.

³⁶ <https://www.lyft.com/help/article/1635263>

³⁷ <https://get.uber.com/cl/uberpool/>

Given the clear language of PUC § 5401, a provision of state law, the Commission has no authority to declare that TNCs are not subject to that law.

CONCLUSION

The unambiguous language of PUC § 5401 may only be changed by the state legislature. We believe a change in the law is not in the public interest, but unless and until it happens, TNC ridepooling operations violate the law and must cease.

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Respectfully submitted,

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