

November 11, 2020

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Consumer Protection and Enforcement Division  
Transportation Licensing and Analysis Branch  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Service List: R.19-02-012

Re: Reply of Lyft, Inc. to Protests of the Disability Rights California and the Disability Rights Education & Defense Fund to Lyft Advice Letter AL-5

Dear CPED Staff:

By this Reply, Lyft, Inc. ("Lyft") responds to the protest submitted by Disability Rights California and the Disability Rights Education & Defense Fund (collectively, "DRA") to Lyft Advice Letter AL-5 ("AL5").

## **1. DRA's Protest Lacks Merit**

DRA asserts three primary objections to Lyft's AL5. Because none of these objections has merit, DRA's Protest should be promptly denied and reimbursement should issue. Lyft discusses each objection in turn below.

### **1.1 DRA's Argument that Lyft Failed to Establish the Presence and Availability of WAVs Lacks Merit**

DRA argues that Lyft failed to show presence and availability of WAVs because "there is no data available to Disability Advocates which makes this showing."<sup>1</sup> To be clear, D.20-03-007 requires TNCs to demonstrate **to the Commission** that it has met the presence and availability requirement, not to DRA or any other party. To that end, Lyft dutifully complied with Staff's instructions to serve a redacted, public version of its AL5 on the service list, and subsequently to file a non-public, unredacted version of its filing with the Commission when directed to do so.

Furthermore, there is nothing improper about requesting confidential treatment for portions of an advice letter. Pursuant to GO 96-B, a utility submitting an advice letter is expressly authorized to seek confidential treatment in accordance with the process set forth in §10.3. Indeed, it is routine for utilities to seek confidential treatment of data underlying advice letters submitted to the Commission.<sup>2</sup>

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<sup>1</sup> Protest and Confidentiality Objections regarding Lyft's Advice Letter 005 Requesting Offsets pursuant to the TNC Access for All Act ("DRA Protest"), p. 2.

<sup>2</sup> See, e.g., *In Re Order Instituting Rulemaking* (Aug. 19, 2005) 2005 WL 2036510, at \*6 (upholding Southern California Edison's claim of confidentiality with respect to data underlying advice letter); *In Re Pac. Gas & Elec. Co.* (Dec. 14, 2006) 2006 WL 3831303, at \*2 (finding that PG&E justified confidential treatment of data in advice letter); see *Resolution E-4388. San Diego Gas & Elec. (SDG&E) Requests Approval of Two Renewable Power Purchase Agreements with Centinela Solar Energy, LLC.* (Jan. 13,

The fact that a party requests confidential treatment offers no grounds for denying the relief requested. Pursuant to §10.5, in the event a party objects to a claim of confidentiality, that party must meet and confer with the utility in an effort to resolve the objection. If the parties are unable to resolve the objection, the Industry Division is directed to refer the dispute to the Administrative Law Judge Division for resolution. The parties met and conferred on November 2, 2020. At the meet and confer, Lyft offered to make the full, unredacted versions of its AL5 available to both San Francisco and DRA, subject to an appropriate nondisclosure agreement.<sup>3</sup> Indeed, in a further effort to address DRA's objections, Lyft offered to propose language that would relieve DRA of any obligation to maintain confidentiality upon a final decision regarding entitlement to confidential treatment or a withdrawal by Lyft of its request for confidential treatment. DRA nevertheless refused to accept access to the data because, they say, they have an obligation to share TNC data with individuals they purport to represent in this proceeding.<sup>4</sup>

DRA's refusal to agree to a routine nondisclosure agreement is not only contrary to law and practice, but seemingly misapprehends the nature of its participation in this proceeding. Section 10.3(a) of GO 96-B expressly provides that a party seeking confidential treatment of information in an advice letter shall provide notice "that the information will be made available to those who execute a nondisclosure agreement" and list "the name and contact information of the person or persons who will provide the nondisclosure agreement and access to the confidential information."<sup>5</sup> Thus, GO 96-B expressly provides for the very process that DRA rejected. Furthermore, DRA is participating in this proceeding as a representative of members of the disability community, to act on their behalf and to advance their interests. Indeed, DRA and DREDF have justified their participation in this proceeding -- and their multiple requests for intervenor compensation -- by purporting to represent and protect the interests of the disability community.<sup>6</sup> As a party to R.19-02-012 and representative of the disability community, it is both DRA's right and obligation to act on behalf of, and as a proxy for, members of that community. In that role, it is appropriate to permit DRA access to data submitted in support of TNC offset requests so that it can adequately represent those interests. This process is no different than what is routinely done in litigation, where protective orders are entered so that parties can zealously represent their own interests or those of the general public, without destroying confidentiality of information. The process contemplated by GO 96-B and routinely employed in court proceedings, is no less appropriate here. Further, to the extent an individual that DRA purports to represent makes a request to DRA for access to Lyft's data, DRA can advise the individual third-party to seek party status and enter into an NDA with Lyft to gain access to the confidential data. The existing process and rules allow for this and Lyft welcomes it as the need arises.

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2011) 2011 WL 732001, at \*2 (ruling that "confidential appendices attached to the Advice Letter 2171-E and the confidential portions of the Advice Letter 2171-E will not be made public upon Commission approval of the Advice Letter 2171-E.").

<sup>3</sup> See Disability Rights Protest, p. 5 ("At the meet and confer, Lyft offered to share data with Disability Rights California and DREDF with a nondisclosure agreement.").

<sup>4</sup> DRA Protest, p. 5.

<sup>5</sup> GO 96-B, §103(a).

<sup>6</sup> See, e.g., 5/28/19 Disability Rights Advocates Notice of Intent to Request Intervenor Compensation ("Disability Rights California is an organization that is authorized by its bylaws to represent the interests of residential customers with disabilities before the Commission. Specifically, Article 2 of our bylaws states that DRC is 'responsible for protecting and advocating for the rights of persons with disabilities.'"); 5/22/19 Disability Rights Education & Defense Fund Notice of Intent to Request Intervenor Compensation ("DREDF is a national law and policy center that is authorized by its bylaws to represent the interests of people with disabilities.").

In sum, there is nothing improper about Lyft providing access to confidential data subject to a nondisclosure agreement. DRA's refusal to agree to such a process obviously hampers its ability to represent the interests of the disability community, but that is a problem of DRA's own making. Lyft expressly agreed to provide access to that data and DRA chose not to accept it. DRA cannot be heard to complain about lacking access to data that it could readily have accessed had it wanted to.

### **1.2 DRA's Additional Arguments for Denial of Lyft's Offset Requests Are Equally Lacking in Merit**

DRA also argues that Lyft's request for reimbursement should be denied because the requests purportedly include "material errors or omissions."<sup>7</sup> It is unclear to what DRA is referring here, as it does not identify any alleged errors and the only "omissions" it identifies are the items redacted pursuant to Lyft's request for confidentiality.

### **1.3 DRA's Objections to Confidentiality Are Not a Proper Subject of Protest and Should Be Disregarded**

The remainder of DRA's Protest is devoted to objecting to Lyft's request for confidential treatment. These arguments violate GO 96-B and should be ignored. Section 7.4.2 expressly identifies the grounds upon which a protest may be premised,<sup>8</sup> limiting protests to non-policy objections to the **substance** of the relief requested in the advice letter.<sup>9</sup> Those grounds do **not** include objections based on a claim for confidential treatment, which must be pursued in accordance with an entirely separate set of procedures set forth in GO 96-B, §10.5 *et seq.* Section 10.5 requires DRA 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 DRA has done with respect to Lyft's Advice Letters 001 - 004. DRA attempts to short-circuit this process by inserting its confidentiality arguments into its protest and arguing that "Lyft should be required to resubmit its Advice Letter 005 requesting an offset of funds with no redactions."<sup>10</sup> GO 96-B, §10.5 and 10.6 make clear that CPED staff has no authority to resolve a claim of confidentiality, or to order Lyft to submit unredacted data. DRA's arguments regarding confidentiality in its Protest are improper and should be disregarded.

## **2. CONCLUSION**

DRA's protest lacks merit and should be denied. To the extent DRA interjects arguments regarding confidentiality into its Protest, those arguments are improper and should be disregarded.

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<sup>7</sup> DRA Protest, p. 4.

<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> DRA Protest, p. 6.

Lyft's request for reimbursement should be promptly approved without further delay, consistent with the need for expeditious resolution of such requests, recognized by the Commission in D.20-03-007.<sup>11</sup>

**Very truly yours,**



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<sup>11</sup> D.20-03-007, p. 37.