

MEMORANDUM

TO: File

FROM: Jasmine K. Le Veaux

DATE: July 31, 2013

SUBJECT: Summary of Proposed Decision with respect to CPUC Rulemaking 12-12-011

Summary of Proposed Decision

On the evening of Tuesday, July 30, 2013, Commissioner Michael R. Peevey, on behalf of the California Public Utilities Commission (“CPUC”), issued a proposed decision with respect to the CPUC’s “quasi-legislative proceeding” to institute rulemaking on regulations relating to passenger carriers, ridesharing, and new online-enabled transportation services (the “rulemaking”). The smartphone applications at issue were previously referred to throughout the rulemaking as new online-enabled transportation services, or “NOETS”, however the proposed decision replaces that term with “Transportation Network Companies” (“TNC(s)”) for ease of use. (See pg. 2, fn. 1). A TNC is defined as “a company or organization, operating in California that provides transportation services using an online-enabled platform to connect passengers with drivers using their personal, non-commercial vehicles.” (See pg. 2).

In short, the proposed decision creates the category of a TNC to accompany the existing category of a Transportation Charter Party (“TCP) in the CPUC rules, and requires a company or individual wishing to provide transportation, or facilitate the transportation of passengers, to choose to apply for either a TCP license or a TNC license. (See pg. 21, 52). Once a TNC license is obtained, the TNC is accountable to the CPUC in several ways. A TNC must:

- (i) conduct criminal background checks on all of its drivers;
- (ii) establish a driver training program to be filed with the CPUC;
- (iii) maintain a zero-tolerance policy on drugs and alcohol;
- (iv) register in the Department of Motor Vehicle (DMV) Pull Notice program, which allows a transportation company to monitor driver’s license records of employees/affiliated workers;
- (v) conduct a 19-point car inspection of TNC-affiliated vehicles,
- (vi) require a one-year driving history from TNC drivers;
- (vii) submit reports to the CPUC’s Safety and Enforcement Division (“SED”) detailing (a) the number and percentage of TNC customers who requested accessible vehicles, and how often the TNC was able to comply with such requests and (b) the number of rides that were requested, but not accepted by TNC drivers;
- (viii) TNCs must endeavor to provide equal access to all

consumers and will be required to submit a plan within 90 days of the effective date of the CPUC final decision to inform the CPUC of how they plan to avoid creating a divide between able and disabled communities¹; (ix) TNCs are prohibited from operating at any airport unless such operations are authorized by the airport authority involved; (x) ¼ of 1% of the TNC revenues shall be collected by the CPUC on a quarterly basis as part of overall fees; and (xi) TNCs must maintain excess liability insurance policies providing a minimum of \$1,000,000 per-incident coverage² and TNC drivers are required to provide proof of both their personal insurance and excess liability insurance in the case of an accident. (See pgs. 23-27, 43, 45).

Discussion of Proposed Decision

In addition to the above, the proposed decision also makes several findings of fact/conclusions of law (collectively referred to as “findings”) with respect to the TNCs. These findings include:

- TNCs do not qualify for the rideshare exemption under California Public Utilities Code (“PU Code”) § 5353(h), which requires that rideshare transportation must have a common work-related purpose; or must be incidental to another purpose of the driver. (See pgs. 37-38).
- TNCs are designed to provide a service similar to taxis and TCPs for compensation. (See pg. 40). It is therefore, reasonable to conclude that TNCs are providing passenger transportation for hire. (See pgs. 16-17, 54).
- TNC’s operate on a prearranged basis because (i) before a passenger can request a ride, the passenger must download the app and agree to the TNC service agreement, (ii) for a particular trip, the passenger must input information regarding current location and trip destination, and (iii) a TNC driver cannot be hailed on the street similar to a taxicab where no information is shared until the passenger enters the vehicle. (See pgs. 17-19, 54).
- TNCs are not IP-enabled services under the Federal Telecommunications Act of 1996 (the “Telecom Act”). (See pgs. 12 –15, 56).
- The Telecom Act and recently adopted California legislation (Senate Bill 1161) does not prevent the CPUC from regulating TNCs. (See pgs. 12 –15, 56).

¹ The plans must also discuss how TNCs plan to provide incentives to individuals with accessible vehicles to become TNC drivers and how they will ensure accessibility accommodations for their apps and websites. (See pg. 45).

² Each TNC must file their insurance policies under seal with the CPUC as part of applying for a license. Furthermore, the license for the TNC will automatically expire upon expiration of the insurance policy. (See pg. 48).

Next Steps

Opening comments in response to the proposed decision, which shall not exceed 15 pages, are due no later than August 19, 2013. Reply comments, which shall not exceed 5 pages, are due five (5) days after the last day for filing opening comments. (See Article 14 of the Commission's Rules of Practice and Procedure; see also email service of proposed decision dated July 30, 2013).

The proposed decision orders a second phase to this proceeding to review the CPUC's existing regulations over limousines and other charter party carriers in order to ensure that these rules have kept pace with the needs of today's transportation market, and that public safety rules are up-to-date. (See pgs. 3, 58).

Within 60 days after the effective date of this decision, the CPUC will post a Transportation Network Company Application Packet on its website and TNCs currently operating in California must file their TNC Applications with the SED 60 days thereafter if they wish to continue operating. (See pgs. 22, 58).

The CPUC will look for further guidance from the state legislature should there be a need for formal legislation to provide an overall legislative scheme for regulating TNCs. (See pg. 3).