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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

JOINT ASSIGNED COMMISSIONER'S AND ASSIGNED ADMINISTRATIVE LAW JUDGE'S RULING ORDERING CRUISE LLC TO SHOW CAUSE WHY IT SHOULD NOT BE SANCTIONED BY THE COMMISSION FOR FAILING TO PROVIDE COMPLETE INFORMATION AND FOR MAKING MISLEADING PUBLIC COMMENTS REGARDING THE OCTOBER 2, 2023 CRUISE RELATED INCIDENT AND ITS SUBSEQUENT INTERACTIONS WITH THE COMMISSION

This *Ruling* orders Cruise LLC (Cruise or Respondent) to appear on February 6, 2024, commencing at 1:30 P.M., for an Order to Show Cause Evidentiary Hearing (OSC Hearing) and to show cause, if any, why Cruise should not be fined, penalized, and/or receive other regulatory sanctions for failing to provide complete information to the Commission regarding a Cruise related incident that occurred on October 2, 2023, and for making misleading public comments regarding its interactions with the Commission. The specific allegations that Cruise must address in its written submission and at the upcoming OSC Hearing are discussed below.

As part of its written submission and at the upcoming OSC Hearing, Cruise is ordered to address the following authorities: Decision (D.) 20-11-046 (*Decision Authorizing Deployment of Drivered and Driverless Autonomous Vehicle Passenger Service*), Ordering Paragraph 7g, the telephonic meeting between

Cruise and representatives from the Commission's Consumer Protection and Enforcement Division on October 3, 2023, Rule 1.1 of the Commission's Rules of Practice and Procedure, and Pub. Util. Code §§ 701, 2107, 2108, 5411, 5415, and 5378(a) and (b).

1. Factual and Procedural Background

1.1. Cruise's Duty to Report Autonomous Vehicle Collisions

On November 23, 2020, the Commission issued Decision (D.) 20-11-046, entitled *Decision Authorizing Deployment of Drivered and Driverless Autonomous Vehicle Passenger Service*. Pursuant to that decision Autonomous vehicle companies having the necessary operating permits from the California Department of Motor Vehicles (DMV) and the Commission to participate in the autonomous vehicle (AV) deployment program were required to comply with the requirements of D.20-11-046 as a condition for providing drivered and driverless AV transportation service.

For the Commission to satisfy its duty to understand and ensure the safety of the autonomous vehicle passenger service, D.20-11-046 contained two ordering paragraphs that established reporting requirements for Drivered and Driverless AV Passenger Service. As the incident giving rise to this OSC involves Cruise's driverless AV transportation service, it is necessary to set forth the applicable reporting requirements in Ordering Paragraph 7(g):

7. Permit-holders participating in the driverless AV deployment program shall:

- g. Transmit simultaneously to the Commission all reports required by DMV regulations, including the process in the event of a collision, law enforcement interaction plan, collision reporting, disclosure to the passenger regarding collection and use of personal information, and annual autonomous Vehicle disengagement reports[.]

The DMV requires permitted providers of AV transportation service to provide complete disclosure of information of any incident that may call into question the safety of AV transportation service. As stated in the DMV's October 24, 2023 Order of Suspension sent to Cruise, the failure to provide complete disclosure constitutes a violation of 13 California Code of Regulations §227.42(b)(5), which states:

Any act or omission of the manufacturer or one of its agents, employees, contractors, or designees which the department finds makes the conduct of autonomous vehicle testing on public roads by the manufacturer an unreasonable risk to the public.¹

Accordingly, as the DMV has determined that Cruise failed to comply with the DMV's reporting requirements, that failure also amounts to a violation of Ordering Paragraph 7g and applicable Commission Rules and statutes, which will be set forth later in this *Ruling*.

2. Cruise's Failure to Provide a Complete Report of the October 2, 2023 Incident to the Commission

On October 2, 2023, at approximately 9:30 p.m., an unknown driver struck a pedestrian in the crosswalk at 5th and Market streets in San Francisco. The impact caused the pedestrian to fall into the path of a driverless Cruise AV, which instituted a hard-braking maneuver and came to a stop.² Yet in the process of engaging in the hard-braking maneuver, the Cruise AV collided with and ran over the pedestrian.³ After coming to a complete stop, the Cruise AV attempted

¹ DMV Order of Suspension (October 24, 2023) and DMV News Release are attached to this OSC. The Commission takes official notice of the Order of Suspension and the facts recited therein pursuant to Rule 13.10 of the Commission's Rules of Practice and Procedure.

² DMV Order of Suspension.

³ *Id.*

to perform a pullover maneuver while the pedestrian was still underneath the Cruise AV.⁴ The Cruise AV travelled approximately 20 feet and reached a speed of 7 mph before coming to a complete stop.⁵ During this pullover, the pedestrian remained under the Cruise AV.⁶

On October 3, 2023, Jose Alvarado of Cruise telephoned Ashlyn Kong, a CPED analyst at the Commission, and informed her of the collision.⁷ During this telephonic meeting, Mr. Alvarado's description of the incident only included that the Cruise AV immediately stopped upon impact with the pedestrian and contacted Cruise's remote assistance.⁸ Mr. Alvarado's description of the October 2, 2023 incident omitted that the Cruise AV had engaged in the pullover maneuver which resulted in the pedestrian being dragged an additional 20 feet at 7 mph.⁹

On October 5, 2023, CPED's Transportation Enforcement Branch (TEB) issued a data request seeking information related to the October 2, 2023 incident, including video documentation.¹⁰

On October 11, 2023, the Commission's Transportation Licensing and Analysis Branch (TLAB) met with the DMV and learned that the DMV was trying to obtain a longer video of the October 2, 2023 incident.¹¹

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Declaration of Ashlyn Kong (Kong Decl.) at 4,

⁸ *Id.*, at 7.

⁹ *Id.*

¹⁰ Declaration of Bezawit Dilgassa (Dilgassa Decl.) at 2.

¹¹ Kong Decl. at 9.

On October 18, 2023, TLAB and Cruise representatives met. Cruise stated it was in the process of providing the full video to the Commission's TEB.¹²

On October 19, 2023, Cruise responded to TEB's data request and provided the full video of the October 2, 2023 incident.¹³

Thus, from October 3, 2023 to October 18, 2023, Cruise failed to provide the Commission with a full account of the October 2, 2023 incident for 15 days.

3. Cruise's Public Misrepresentations Regarding the Extent of its Cooperation with the Commission

On October 24, 2023, Cruise issued a blog post entitled "A detailed review of the recent SF hit-and-run incident."¹⁴ In the post, Cruise asserted that

our team proactively shared information with the DMV, California Public Utilities Commission (CPUC), and National Highway Traffic Safety Administration (NHTSA), including the full video, and have stayed in close contact with regulators to answer their questions.¹⁵

That statement is misleading in two respects: first Cruise claims to have "proactively shared information" when, in fact, it withheld information from the Commission for 15 days, thus misleading the Commission.¹⁶ Second, by

¹² *Id.*, at 10-12.

¹³ Dilgassa Decl., at 3.

¹⁴ . <https://getcruise.com/news/blog/2023/a-detailed-review-of-the-recent-sf-hit-and-run-incident/>

¹⁵ Cruise's claims of proactive sharing also appear in the following articles:

<https://abc7news.com/cruise-permit-suspended-dmv-autonomous-vehicle-permits/13964874/>

<https://techcrunch.com/2023/10/24/dmv-immediately-suspends-cruises-robotaxi-permit-in-california/>

¹⁶ Kong Decl., at 13.

withholding information about the extent of the Cruise AV interaction with the pedestrian, Cruise misled the DMV and, in turn, the Commission into thinking that the original video shown and commented on accurately memorialized the full extent of the incident.

4. Penalty Analysis

4.1. Rule 1.1.

Pursuant to Rule 1.1 of the Commission's Rules of Practice and Procedure:

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

A person subject to the Commission's jurisdiction does not need to act with the intent to mislead the Commission to violate Rule 1.1.¹⁷ Instead, a Rule 1.1 violation can occur if one misleads the Commission through the omission of facts essential to the Commission's understanding of the circumstances regarding an event that's within the purview of the Commission's regulatory authority. Thus, Cruise's omission of the circumstances in which its Cruise AV attempted a pullover maneuver and dragged the pedestrian 20 feet and reached a speed of 7 mph misled the Commission regarding the extent and severity of the October 2, 2023 incident, as well as the ability of Cruise's AV's to operate safely

¹⁷ See discussion in *Pacific Gas & Electric Co. v. Public Utilities Commission* (2013) 237 Call.App.4th 812, 840-842, and 854; and Decisions (D.) 16-01-014, fn. 65; D.13-12-053; D.93-05-078, D.01-09-019; and D.90-12-038.

after experiencing a collision. Such an omission is the type of conduct prohibited by Rule 1.1.

5. Fine/Penalty Analysis

The Commission's authority to fine or penalize a public utility not in compliance with a Commission rule, order, ruling, regulatory requirement, etc., is set forth in Pub. Util. Code § 2107 (penalties range from \$500 to \$100,000)¹⁸ and 2108 (which provides that every violation is a separate offense, and that each day's continuance shall be a separate and distinct offense).¹⁹ And as in the case of a Rule 1.1 violation, one need not act with a specific intent to violate Pub. Util. Code § 2107.²⁰

In addition, there are separate fine or penalty ranges for TCPs, which would include a Cruise. Pursuant to Pub. Util. Code § 5411, TCPs can be fined between \$1,000 and \$5,000,²¹ and each day's continuance thereof is a separate

¹⁸ Section 2107 states:

Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than one hundred thousand dollars (\$100,000), for each offense.

¹⁹ Section 2108 states:

Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

²⁰ *Pacific Gas & Electric Co.*, *supra*, 237 Cal.App.4th at 843-844.

²¹ Section 5411 states:

Every charter-party carrier of passengers and every officer, director, agent, or employee of any charter-party carrier of passengers who

Footnote continued on next page.

and distinct offense pursuant to Pub. Util. Code § 5415. Finally, Pub. Util. Code § 5378(b) also provides that a TCP can be fined up to \$7,500 for a violation of the provisions set forth in Pub. Util. Code § 5378(a).²²

Thus, Cruise's failure to comply with D.20-11-046, Ordering Paragraph 7g, as well as its public misrepresentations regarding its alleged proactive cooperation with the Commission, subjects it to potential penalties under any or all of the foregoing referenced sections of the Public Utilities Code.

6. Additional Regulatory Sanctions

Cruise's failure to comply with D.20-11-046, Ordering Paragraph 7g, and its public misrepresentations regarding its proactive cooperation with the Commission, potentially exposes Cruise to additional regulatory sanctions. First,

violates or who fails to comply with, or who procures, aids, or abets any violation by any charter-party carrier of passengers of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit or certificate issued to any charter-party carrier of passengers, or who procures, aids, or abets any charter-party carrier of passengers in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit or certificate, is guilty of a misdemeanor and is punishable by a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment.

²² Section 5378 (b) states:

(b) The commission may levy a civil penalty of up to seven thousand five hundred dollars (\$7,500) upon the holder of an operating permit or certificate issued pursuant to this chapter, for any of the grounds specified in subdivision (a), as an alternative to canceling, revoking, or suspending the permit or certificate. The commission may also levy interest upon the civil penalty, which shall be calculated as of the date on which the civil penalty is unpaid and delinquent. The commission shall deposit at least monthly all civil penalties and interest collected pursuant to this section into the General Fund.

there is authority to suspend or revoke any operating permit pursuant to Pub. Util. Code § 5378(a).²³ Second, the Commission has additional, broadly worded authority to impose regulatory penalties and requirements pursuant to Pub. Util. Code § 701.²⁴ Thus, Pub. Util. Code §§ 701 and 5378(a) provide a template for the Commission to consider imposing additional regulatory penalties and requirements to ensure greater compliance on Cruise's part.

7. Order to Show Cause

Cruise's failure to comply with D.20-11-046, Ordering Paragraph 7g, misleading the Commission through omission regarding the extent and seriousness of the October 2, 2023 incident, and misrepresentations to the public about its proactive cooperation with the Commission, establish sufficient grounds for the instant OSC and subsequent OSC hearing. The OSC hearing is the proper forum for Cruise to be heard and to submit evidence, information, or documents on its behalf.

Pursuant to its regulatory authority, the Commission may find that Cruise's conduct rises to a violation of Rule 1.1.

Pursuant to its regulatory authority, the Commission may find that Cruise's conduct rises to a violation of Pub. Util. Code § 2107.

²³ We note that on October 24, 2023, the DMV suspended Cruise's AV Testing Permit for driverless vehicles. As a result of that suspension, Cruise's authority to offer driverless autonomous vehicle passenger service as a Transportation Charter-Party Carrier (TCP) permitholder has also been suspended. (*See* D.20-11-046, Ordering Paragraph 13.) In the event that the DMV ends Cruise's suspension at some future date, that act does not prevent the Commission, on its own, from suspending or revoking Cruise's TCP permit.

²⁴ Section 701 states:

The Commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

Pursuant to Pub. Util. Code § 2107, the Commission may impose penalties up to \$100,000 per offense.

Pursuant to Pub. Util. Code § 2108, the Commission may find that Cruise's conduct constitutes a continuing offense.

Pursuant to Pub. Util. Code § 5411, the Commission may impose fines up to \$5,000 per offense.

Pursuant to Pub. Util. Code 5378(a), the Commission has the authority to suspend or revoke the operating permit of a TCP, which would include Cruise.

Pursuant to Pub. Util. Code § 5378(b), the Commission may impose penalties up to \$7,500 per day per offense in lieu of suspension or revocation for on-going violations of the Public Utilities Code.

Pursuant to Pub. Util. Code § 701, the Commission may impose additional regulatory penalties. The issues that Cruise must address in its written statement in advance of the OSC hearing and at the OSC hearing are as follows:

- a) Whether Cruise's failure to fully disclose the circumstances of the October 2, 2023 incident violated Rule 1.1.
- b) Whether Cruise's failure to fully disclose the circumstances of the October 2, 2023 incident violated Pub. Util. Code § 2107.
- c) Whether Cruise's failure to fully disclose the circumstances of the October 2, 2023 incident violated D.20-11-046, Ordering Paragraph 7g.
- d) Whether Cruise's failure to fully disclose the circumstances of the October 2, 2023 incident should subject Cruise to any penalties, fines, or other regulatory sanctions pursuant to Pub. Util. Code §§ 701, 2107, 5378(a), 5378(b), and 5411.
- e) Whether Cruise's failure to fully disclose the circumstances of the October 2, 2023 incident should be considered a continuous offense or multiple continuous offenses pursuant to Pub. Util. Code §§ 2108 and 5415.

- f) Whether Cruise's public representations regarding its proactive cooperation with the Commission should subject Cruise to any penalties, fines, or other regulatory sanctions pursuant to Pub. Util. Code §§ 701, 2107, 5378(a), 5378(b), and 5411.

8. Ex Parte Prohibition

Ex parte communications are prohibited as to the OSC portion of this proceeding as it is adjudicatory.

IT IS RULED that:

1. Cruise LLC is ordered to appear at the Order to Show Cause Evidentiary Hearing to be scheduled as described below, and therein to show cause why the Commission should or should not fine, penalize, and/or impose other regulatory sanctions against Cruise for failing to fully disclose the circumstances of the October 2, 2023 incident, and for making public misrepresentations regarding its claimed proactive cooperation with the Commission.

2. Cruise LLC shall appear and show cause why it should or should not be fined, penalized, and/or incur other regulatory sanctions at the following Evidentiary Hearing:

February 6, 2024, commencing at 1:30 P.M.
California Public Utilities Commission Auditorium
505 Van Ness Avenue
San Francisco, California, 94102

3. Robert M. Mason III, one of the co-assigned Administrative Law Judges in this proceeding, is assigned as the presiding officer over the hearing that will be held in the Order to Show Cause Evidentiary Hearing.

4. A quorum of the Commission may attend the hearing.

5. At the hearing, Cruise LLC shall cause to appear representatives who will be capable of addressing all the issues identified in this *Ruling*, as well as the facts and arguments contained in its verified statements. Such representatives

shall speak under oath and may be subject to questioning by the Commissioners and Administrative Law Judge Robert M. Mason III.

6. No later than the close of business on December 18, 2023, Cruise LLC shall file and serve a verified statement responding to the issues identified in Section 5 of this *Ruling*. The verified statement shall include all facts, arguments, and legal authorities that support Cruise's position. A word version of the verified statement and all attachments shall be hand delivered to Administrative Law Judge Robert M. Mason III, along with a three-ringed binder containing a copy of all authorities cited in the verified statement.

7. Should Cruise LLC fail to appear, the allegations in this *Ruling* will be deemed admitted.

8. *Ex parte* communications are prohibited for the Order to Show Cause portion of this proceeding as it is adjudicatory.

9. This *Ruling* shall be served on the service list for this proceeding.

Additionally, a copy shall be served on:

PRASHANTHI RAMAN at prashanthi.raman@getcruise.com

AICHI DANIEL at aichi.daniel@getcruise.com

Cruise LLC

333 Brannan Street

San Francisco, Ca 94107

Dated December 1, 2023, at San Francisco, California.

/s/ GENEVIEVE SHIROMA

Genevieve Shiroma
Assigned Commissioner

/s/ ROBERT M MASON III

Robert M. Mason III
Administrative Law Judge