

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

-----X		INDEX NO.	<u>160451/2022</u>
UBER USA, LLC,			N/A, N/A,
	Petitioner,		01/06/2023,
		MOTION DATE	<u>01/06/2023</u>
- v -			
NEW YORK CITY TAXI & LIMOUSINE COMMISSION,			001 003 004
DAVID DO, THE CITY OF NEW YORK,		MOTION SEQ. NO.	<u>005 006</u>

Respondents.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 48, 58, 59, 60, 61, 62, 63, 64, 65, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 124, 125, 126

were read on this motion for a INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 72, 73, 74, 75, 76, 77, 84, 86, 87, 122, 123, 130

were read on this motion for MISCELLANEOUS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 78, 79, 80, 81, 82

were read on this motion for PRO HAC VICE.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103

were read on this motion for LEAVE TO FILE.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 127, 128, 129

were read on this motion for LEAVE TO FILE.

Upon the foregoing documents, and after oral argument held Friday, January 6, 2023, the instant petition is granted for the reasons stated on the record as well as those hereinbelow.

As an initial matter, the pending pro hac vice motion is hereby granted, and the motion to intervene and motions for leave to file are denied as moot.

Although what is technically before this Court is petitioner's motion for a preliminary injunction and a motion to intervene, all parties and this Court agree that the entire case is ripe for a final decision.

At first glance, the instant special proceeding appears faintly ridiculous. New York City, through its Taxi and Limousine Commission (“TLC”), strictly regulates for-hire vehicles, such as medallioned taxicabs, limousines, and Uber and Lyft (“ride service”) automobiles, on its streets. A major element of that regulation is determining minimum driver income. The ride services themselves determine the fares they charge their passengers, but the TLC determines the minimum rate at which the services pay the drivers. That task is firmly in the TLC’s bailiwick.

The current system of regulating ride service drivers’ income goes back to the 2018-2019 era. Since then, the TLC has adjusted ride service driver compensation upwards twice. However, general inflation soared in 2022, and transportation costs, essentially fuel prices and vehicle costs, spiked. In response, on or about November 15, 2022, the TLC issued a “Notice of Promulgation,” and attached “Statement of Basis and Purpose.” NYSCEF Doc. No. 30. Most of the Statement explains that the ride service drivers’ minimum pay rate was to increase slightly. However, the “Basis” does not go beyond, “[t]he transportation costs component of the CPI over this time increased 23.93%.” The “Basis” completely fails to explain why the TLC chose the particular inflation indices and time frames that it did, and the reasons it departed from its previous practices. Even more importantly, the TLC has failed to include a single mathematical computation explaining how it arrived at its numbers. The TLC explains that X exists and therefore it is doing Y, but it never explains how it gets from X to Y.

In a brief opposing the petition, TLC Assistant Commissioner James DiGiovanni arguably explains, or at least tries to explain, the Commission’s reasoning. NYSCE Doc. No. 116. However, black-letter law requires that an administrative agency explain its reasoning when it promulgates a rule, not when it seeks to justify the rule, post hoc, in subsequent litigation. Metro. Taxicab Bd. of Trade v New York City Taxi & Limousine Commn, 18 NY3d 329, 333 (2011).

No doubt the TLC will, and should, try again. This Court strongly urges the TLC to make its new explanation as clear as possible and suggests that concrete numerical examples be given, and all calculations explained. Indices (CPI-W or CPI-U) and periods (one month, six months, or several years) may or not be arbitrary, but here the TLC certainly has not explained, much less justified, them. Moreover, the TLC’s forthcoming explanation should, ideally, be something that the ride service drivers themselves can understand.

This Court sympathizes with the plight of the ride service drivers, whose deserved raise is being held up by a legal technicality not of their own making. But try as it might, this Court cannot square what the TLC did with what the law requires it to have done.



<u>1/9/2023</u> DATE	<u>ARTHUR F. ENGORON, J.S.C.</u>			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT