BEFORE THE
MARYLAND PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE COMPLAINT OF THE STAFF OF THE PUBLIC SERVICE COMMISSION OF MARYLAND V. YAZAM d/b/a EMPOWER

CASE NO. 9732

OFFICE OF PEOPLE'S COUNSEL'S MOTION FOR PENALTIES

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October 27, 2026

TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 4

I. The Commission should assess civil penalties for Empower's continued unauthorized operations and violations of Commission orders. 4

A. The Commission should assess a civil penalty of $677,500 for Empower's unauthorized operations and violation of the Commission's January Order through October 27, 2026. 4

B. The Commission should assess $36 million for Empower's violations of the September 21, 2026 cease-and-desist order through October 27, 2026. 9

II. OPC's proposed penalties are appropriate. 16

III. The Commission should assess the penalties supported by the record and obtain the evidence needed to determine the full extent of Empower's violations. 20

A. The Commission should require Empower to produce the information necessary to determine the appropriate civil penalties under PUA § 13-201. 21

B. The Commission should assess civil penalties following the October 30 hearing to the extent supported by the record and establish supplemental proceedings as necessary. 22

INTRODUCTION

Over two and a half years after Commission Staff initiated this proceeding, Empower continues to operate a rideshare business in Maryland without the permit required of a transportation network company ("TNC").[1] On January 29, 2026, the Commission held that Empower qualified as a TNC and was therefore required to obtain a permit from the Commission to operate.[2] In the same order, the Commission affirmed the Public Utility Law Judge's ("PULJ's") grant of the Commission Staff's motion to compel responses to Staff data requests 2-8, 2-18, and 3-8.[3] On September 21, 2026, the Commission issued Order No. 92652, directing Empower to immediately cease providing or facilitating transportation services in Maryland.[4] On October 22, 2026, the Commission issued Order No. 92711, making the cease-and-desist order permanent and determining that Empower should be penalized under PUA § 13-201 based on the facts and evidence presented at the October 30 hearing.[5]

But Empower has neither ceased its operations nor sought a permit. Recently, Empower has claimed that its customers provide approximately half of all private for-hire rides in the State.[6] Yet because Empower operates outside the Commission's regulatory system, the Commission cannot perform the oversight Maryland law requires. It cannot

[1] *See* Md. Code Ann., Pub. Util. ("PUA") § 10-403.1.
[2] Md. Pub. Serv. Comm'n, Order No. 92165 (Case No. 9732, Jan. 29, 2026) ("January Order").
[3] *Id.* at 17.
[4] Md. Pub. Serv. Comm'n, Order No. 92652 (Case No. 9732, Sept. 21, 2026).
[5] Md. Pub. Serv. Comm'n, Order No. 92711 (Case No. 9732, Oct. 22, 2026) at 6-8.
[6] Empower, *Motion to Extend Time to File Appeal Brief on Proposed Cease and Desist Order*, ML# 334140 (Case No. 9732, Sept. 8, 2026).

verify that Empower's drivers are properly licensed and screened, or that their vehicles are safe and adequately insured. Empower and its drivers are thus operating outside the regulatory safeguards that the General Assembly and the Commission established to protect Maryland passengers and the public.

Those safeguards concern important matters of public safety. They determine who may transport passengers for hire, whether a driver has a disqualifying criminal or driving history, whether the vehicle carrying the passenger meets Maryland's safety requirements, and whether insurance is available if something goes wrong. That concern is magnified by the scale of Empower's operations. Empower represented on September 8 that its customers were providing "approximately half of all private for-hire rides in Maryland" and that their share had grown from approximately 20 percent to approximately 50 percent in the preceding twelve months.[7] The Commission itself has recognized that the cease-and-desist issues "potentially implicate the health and welfare of the public and are too important to delay hearing."[8]

Empower continues to violate Maryland law, the Commission's January Order, and the Commission's cease-and-desist order. The Commission is empowered to assess civil penalties for such violations under PUA § 13-201, and OPC requests that it exercise that authority to assess $36,677,500 in civil penalties for violations occurring through October 27, 2026, and additional penalties for separately established violations, including

[7] *Id.* at 2.
[8] Md. Pub. Serv. Comm'n, Order No. 92651 (Case No. 9732, Sept. 18, 2026) at 3.

those occurring during the periods covered by OPC's present recommendations and those occurring thereafter.

First, the Commission should assess a $2,500 per-day penalty for Empower's unauthorized operations and violation of the Commission's January Order beginning January 30, 2026—the first full day after the Commission determined that Empower was operating as a TNC in Maryland without a permit and affirmed the PULJ's grant of Staff's motion to compel. That penalty totals $677,500 through October 27, 2026.[9] OPC also recommends a $2,500 penalty for each additional day of unauthorized operations established by the record.

Second, the Commission should assess a penalty tied to the number of violations committed by Empower per day—*i.e.*, the number of rides facilitated—for Empower's failure to cease operations following the Commission's summary cease and desist order, beginning September 22, 2026—the first full day Empower began violating that order. Based on a conservative estimate of Empower's daily ride volume, OPC recommends a penalty of $1 million per day, totaling $36 million through October 27, 2026, while preserving additional penalties for separately established violations, including rides during that same period not accounted for in OPC's recommendation.

Third, the Commission should consider these penalty recommendations at the October 30, 2026 evidentiary hearing, which it has expressly scheduled to address the violations and penalties to be assessed against Empower. To the extent that the existing

[9] January 30 through October 27, 2026, inclusive, is 271 days. At $2,500 per day, the proposed penalty totals $677,500.

record and evidence presented at that hearing support the recommended penalties, the Commission should assess them promptly. The Commission should also establish an expedited process for obtaining additional information concerning the full extent of Empower's violations, including its ride volume, revenues, and compliance with Commission orders, and determine whether additional civil penalties are warranted. Empower's refusal to provide discovery should not prevent the Commission from imposing substantial penalties supported by the record.

ARGUMENT

I. The Commission should assess civil penalties for Empower's continued unauthorized operations and violations of Commission orders.

PUA § 13-201 authorizes the Commission to impose a civil penalty on a common carrier that violates the Public Utilities Article or an effective Commission direction, ruling, order, rule, or regulation.[10] A TNC is expressly included within the definition of a "common carrier."[11] The maximum penalty for a common carrier is $2,500 for each violation, "[e]ach violation is a separate offense," and "[e]ach day or part of a day the violation continues is a separate offense."[12]

A. The Commission should assess a civil penalty of $677,500 for Empower's unauthorized operations and violation of the Commission's January Order through October 27, 2026.

The Commission has already determined that Empower is a TNC, and PUA § 10-

[10] PUA § 13-201(b).
[11] PUA § 1-101(e)(2)(viii).
[12] PUA § 13-201(b)–(c).

403.1 prohibits a TNC from operating in Maryland without a Commission permit. Nevertheless, Empower has continued to operate without obtaining one.[13] Empower's continued operations therefore violate PUA § 10-403.1, regardless of whether the Commission's January Order expressly directed Empower to cease operations.

Empower is violating the Commission's January Order in another respect—Empower has not answered Staff's data requests at issue in the Commission's January Order and refuses to do so.[14] Empower has argued—and continues to argue—that it is entitled to exhaust its appellate remedies before it will produce responses to data requests, including the ones the Commission has already compelled Empower to respond to.[15] The discovery dispute is argued extensively in Empower's motion for reconsideration[16] and appeal memorandum regarding the PULJ's July omnibus ruling,[17] both pending before the Commission. However, Empower fails to appreciate that the January Order remains in effect until and unless the Commission issues a stay, or the order is otherwise vacated, suspended, modified, or superseded.[18] Therefore, Empower has also been violating the Commission's January Order since its issuance. The remaining question for the purposes of PUA § 13-201 is the amount of the civil penalty that should be imposed.

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[13] *See* Order No. 92590 at 5; Empower, *Motion to Extend Time to File Appeal Brief on Proposed Cease and Desist Order* at 2 (Sept. 8, 2026); Empower, *Response to Order No. 92684 and Motion to Continue October 30 Hearing*, ML# 335431 (Case No. 9732, Oct. 18, 2026), at 1 ("Empower Response to Order No. 92684").
[14] Hearing Tr. at 16:7-12 (Mar. 11, 2026).
[15] *Id.* at 16:12-18; *see also* Empower Response to Order No. 92684 at 1.
[16] Empower, *Motion for Reconsideration*, ML# 327571 (Case No. 9732, Mar. 2, 2026).
[17] Empower, *Memorandum on Appeal from the Public Utility Law Judge's July 22, 2026 Ruling on Pending Motions*, ML# 333807 (Case No. 9732, Sept. 1, 2026) ("Empower Appeal Memorandum of PULJ Omnibus Ruling").
[18] *See* PUA §§ 3-113(b), 3-205.

Section 13-201(b)(2) authorizes the Commission to impose a civil penalty of up to $2,500 on a common carrier for each violation of the Public Utilities Article. Section 13-201(a) expressly identifies the statutory provisions excluded from that authority, but does not exclude Title 10. Moreover, PUA § 13-201(c)(1) permits civil penalties in addition to other penalties authorized by the Public Utilities Article. Although PUA § 10-502(d) separately authorizes a civil penalty of up to $500 for each violation of that section, it is not exclusive and does not displace the Commission's authority under PUA § 13-201. Finally, Empower has conceded that the Commission "has the authority to sanction a penalty of $2,500 per day for violating a [Commission] order" under PUA § 13-201.[19] OPC therefore submits that the Commission may assess penalties under PUA § 13-201 for Empower's continued violation of § 10-403.1 and the Commission's January Order.[20]

The present record does not contain all of the evidence necessary to determine the full extent of Empower's penalty liability.[21] Section 13-201(d) requires the Commission to consider the number of previous violations, the gravity of the current violation, Empower's good-faith efforts to achieve compliance after notification of the violation, and any other matter the Commission considers appropriate and relevant. The Commission also needs reliable evidence concerning the duration of Empower's continuing violation because PUA § 13-201(c)(3) treats each day or part of a day that a

[19] Empower Appeal Memorandum of PULJ Omnibus Ruling at 16 (emphasis omitted).
[20] PUA §§ 10-403.1, 10-502(c)–(d), 13-201(a)–(c); *see also State v. Roshchin*, 446 Md. 128, 140–43 (2016) (explaining that a specific statute governs the general statute when two statutes conflict, but when the statutes do not conflict, the more specific statute does not negate the authority granted by the more general statute).
[21] *See* July 22 Omnibus Ruling at 44–45 (finding that Empower had not produced driver, vehicle, and revenue information previously ordered); PUA § 13-201(c)–(d).

violation continues as a separate offense.

The Commission should assess penalties supported by the existing record and the evidence presented at the October 30 hearing without waiting for Empower to provide all of the outstanding discovery. Supplemental proceedings may be necessary to establish additional violations and determine additional penalties, but they should not delay assessments already supported by the record. Empower has continued to operate after the Commission's January 29, 2026 determination that it is a TNC, without obtaining the permit required by § 10-403.1.[22] Empower has also violated the Commission's January Order in refusing to answer discovery. For purposes of OPC's penalty recommendation, January 30, 2026—the first full day after the January Order was issued—is the appropriate starting date. After affording Empower the required hearing opportunity on October 30, the Commission should assess the maximum penalty of $2,500 for each day Empower continues to violate PUA § 10-403.1 and the Commission's order, as authorized by § 13-201(b)(2) and (c)(3), beginning January 30, 2026 and continuing until the Company answers Staff's data requests, and ceases operating in Maryland or until it has secured a permit to operate from the Commission.

Penalties for Empower's continuing violations of PUA § 10-403.1 and the Commission's January Order, even in the absence of specific information that would assist the Commission in assessing a more commensurate penalty, are warranted and permitted under PUA § 13-201. The gravity of the current violation—continuing to

[22] Order No. 92165 at 17–18; PUA §§ 10-403.1, 13-201(b)(2), (c)(3).

operate without a permit after the Commission determined that Empower is subject to Maryland's TNC requirements and ignoring a Commission order—is severe. Not only do Empower's actions pose risks to public safety, as the Commission cannot ensure Empower is operating with the proper safeguards required by law, Empower's actions are an affront to the power, duty, and responsibility the General Assembly conferred on the Commission. A penalty of $2,500 per day is inadequate to address the severity of this violation; in the absence of additional information, Empower should be subject to at least that amount for each day of continued unlawful operations.

The other PUA § 13-201(d) factors weigh in favor of this penalty as well. With respect to previous violations, Empower not only continues to operate without a permit despite the Commission's January determination that it is a TNC but is also violating the Commission's September 21, 2026 cease and desist order, which the Commission made permanent on October 22, 2026.[23] As for good-faith efforts to achieve compliance, Empower has presented no evidence that it has attempted to achieve compliance with Maryland's permitting requirements following the Commission's January determination. Rather, Empower insists that it should continue to operate until it has exhausted its appellate remedies, disregarding the fact that the Commission's January Order is in effect, by law, until and unless the Commission stays its enforcement, or otherwise vacates, suspends, modifies, or supersedes the order.[24]

[23] Md. Pub. Serv. Comm'n, Order No. 92652 (Case No. 9732, Sept. 21, 2026); Md. Pub. Serv. Comm'n, Order No. 92711 (Case No. 9732, Oct. 22, 2026) at 8.
[24] PUA §§ 3-113(b), 3-205.

The Commission's decision in Order No. 92165 to strike an earlier $2,500 discovery-related penalty does not undermine OPC's recommendation. The Commission struck that penalty because Empower had a seemingly good-faith belief that its status as a TNC should first be adjudicated.[25] The Commission has now resolved that issue, and OPC's proposed penalty concerns Empower's continued unlawful operations after that determination, rather than its earlier refusal to provide discovery.

The Commission should assess a penalty of $677,500 for the 271 days from January 30 through October 27, 2026,[26] and assess an additional $2,500 per day for each subsequent day on which Empower is established to have continued operating in violation of PUA § 10-403.1 or fails to respond to ordered discovery, subject to the evidence developed and the required hearing. As discussed below, the Commission should seek supplementary information and, whether Empower supplies that information or not, assess an additional, more commensurate penalty following any necessary supplemental proceedings for any separately established violations, without imposing duplicative penalties for the same offense.

B. The Commission should assess $36 million for Empower's violations of the September 21, 2026 cease-and-desist order through October 27, 2026.

As stated above, the Commission issued a summary cease and desist order on September 21, 2026, ordering Empower to cease operations in the State.[27] Specifically,

[25] Order No. 92165 at 17.
[26] January 30 through October 27, 2026, inclusive, is 271 days. At $2,500 per day, the proposed penalty totals $677,500.
[27] Order No. 92652.

the Commission ordered Empower to cease providing or facilitating transportation services in Maryland through its website, software application, or digital platform.[28] On September 29, 2026, Staff filed an affidavit authored by Mark Gorman, describing his attempts to access and use the Empower application to request a ride to and from locations within Maryland.[29] In his affidavit, Mr. Gorman states that, on September 23 and 24, 2026, he was able to access the Empower application on his cell phone and make a request for a ride with pick-up and drop-off locations within Maryland.[30] The application displayed multiple vehicles available to provide Mr. Gorman his requested ride, and the various fares offered to provide that ride.[31] More recently, Empower has confirmed through filings that the company is operating in Maryland and will continue to operate, without identifying a point at which Empower would comply with a Commission order to cease its operations.[32]

Empower's decision to violate the Commission's summary cease and desist order, after the Commission had already determined in January that Empower is subject to Maryland's TNC requirements, increases the severity of Empower's violation and, accordingly, that conduct warrants a more severe penalty. Indeed, in Order No. 92711, the Commission determined that Empower should be penalized under PUA § 13-201 for

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[28] *Id.* at 1.
[29] Comm'n Tech. Staff, *Affidavit of Mark Gorman in Support of Commission Staff's Request for Imposition of Penalties on Yazam, Inc. d/b/a Empower for Violating the Commission's Directive that Empower Terminate its Unauthorized Transportation Services*, ML# 335181 (Case No. 9732, Sept. 29, 2026).
[30] *Id.* at 1.
[31] *Id.*
[32] *See* Empower, *Response to Order No. 92684 and Motion to Continue October 30 Hearing*, ML# 335431 (Case No. 9732, Oct. 18, 2026) ("Empower Response to Order No. 92684").

violations of its cease-and-desist order. The remaining questions concern the violations established by the record and the appropriate penalty amounts, which the Commission will determine based on the evidence presented at the October 30 hearing.

Importantly, PUA § 13-201 does not limit the Commission to assessing a single penalty for each day Empower operates unlawfully. Section 13-201(b) authorizes a civil penalty of up to $2,500 for each *violation* committed by a common carrier, and PUA § 13-201(c)(2) provides that each violation constitutes a separate offense. Although PUA § 13-201(c)(3) also provides that each day a continuing violation persists constitutes a separate offense, that provision allows—and certainly does not foreclose—separate penalties for distinct violations committed during the same day.

Each ride Empower facilitates through its application constitutes a separate violation of the Commission's September 21 order. The Public Utilities Article defines a TNC by its use of a digital network to connect passengers with drivers for transportation network services.[33] The Commission has already determined that Empower is a TNC, and its September 21 order expressly prohibits Empower from facilitating transportation services through its digital platform.[34] Each ride arranged through that platform is a distinct instance of the very conduct the Commission prohibited. Accordingly, each such ride constitutes a separate violation for purposes of PUA § 13-201(c)(2).[35]

Empower has recently estimated the number of rides Empower facilitates in

[33] PUA § 10-101(l).
[34] *See* Order No. 92165 at 17; Order No. 92652 at 5–6.
[35] PUA §§ 10-101(l), (m)(2), 13-201(b)(2), (c)(2)–(3); Order No. 92165 at 17; Order No. 92652 at 5–6.

Maryland.[36] In one filing, Empower stated that "Empower's customers now provide well over 300,000 rides per week in Maryland[.]"[37] In the same filing, Empower argued that imposing a per-ride penalty at the statutory maximum of $2,500 would result in a penalty "exceed[ing] $100 million per day and $3 billion per month[.]"[38] Dividing $100 million by $2,500 produces a result of 40,000 rides per day, or 280,000 per week. The same per-day result is produced if one assumes a 30-day month.[39] Empower's separate representation that its customers provide well over 300,000 rides weekly indicates an average exceeding 40,000 rides per day.

These figures are Empower's own representations to the Commission, not estimates developed by OPC or Staff. Although Empower has failed to provide the discovery needed to verify the precise number of rides facilitated on particular days, its own admissions provide a reasonable factual basis for estimating the scale of its operations.[40] Empower should not be permitted to assert that the Commission lacks sufficient information to impose a meaningful penalty while withholding the information necessary to establish the precise number of violations. The Commission may consider Empower's representations in determining the appropriate penalty, while affording

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[36] *See* Empower, *Memorandum on Appeal from the Public Utility Law Judge's July 22, 2026 Ruling on Pending Motions*, ML# 333807 (Case No. 9732, Sept. 1, 2026) (Empower Appeal Memorandum).
[37] *Id.* at 1.
[38] *Id.* at 2.
[39] $3,000,000,000 divided by $2,500 is 1,200,000 rides per month. 1,200,000 divided by 30 days is 40,000 rides per day.
[40] *See MCIC, Inc. v. Zenobia,* 86 Md. App. 456, 487–88 (1991), *rev'd in part on other grounds sub nom. Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420 (1992) (holding that admissions made on a party's behalf in documents filed during litigation may be considered substantive evidence of the facts admitted); *see also Beck v. Beck*, 112 Md. App. 197, 204–06 (1996) (recognizing that admissions made in documents filed during litigation may be considered substantive evidence of the facts admitted).

Empower an opportunity to present contrary evidence concerning the number of rides actually facilitated.

Using Empower's representations concerning the number of rides, OPC proposes the Commission assess a penalty representative of ten percent of the number of rides Empower purports to provide in Maryland on a daily basis. Ten percent of 40,000 rides is 4,000 rides; multiplied by $250 per violation (*i.e.*, rides) results in a daily penalty of $1,000,000, or $36 million for 36 days of violations.

OPC proposes the preceding numbers for two reasons: (1) though the record is not clear on exactly how many rides Empower facilitates in a day, ten percent of a relatively consistent, recently claimed number of rides is conservative to account for any possible fluctuation in actual rides facilitated on any given day; and (2) assessing a penalty that is only 10 percent of the statutorily available maximum for each of those rides is also conservative, recognizing that, without additional information, maintaining an entire operation that provides tens of thousands of rides a day is on its face more severe a violation than facilitating a single ride. Taken together, these reductions produce a proposed daily penalty equal to approximately one percent of the theoretical maximum based on 40,000 separately punishable rides. The use of 4,000 rides per day is a conservative estimate for purposes of OPC's recommendation, not a claim that the existing record establishes the exact number of violations committed every day.

Importantly, Empower violates the law and two Commission orders with each ride booked through its application. Each ride Empower facilitates represents an individual risk to the innocent rider and the public at large because the Commission cannot verify

that the driver, vehicle, and insurance satisfy applicable regulatory requirements. In Order No. 92711, the Commission also cited testimony concerning 49 uninsured claims involving Empower drivers, and found that immediate, substantial, and irreparable harm is occurring as a result of Empower's unauthorized operations.[41] OPC's proposed penalty only covers a small fraction of the true scope of Empower's operations in the State. As the company stated, rides provided by Empower's customers now exceed those provided by Uber and Lyft combined.[42] Such an operation, continuing outside the bounds of Commission authority and the law despite repeated warnings, warrants a substantial penalty.

The proposed penalty is also justified by the factors in PUA § 13-201(d), including the gravity of the violations and Empower's good-faith efforts, if any, to achieve compliance. As described above, the Commission determined in January that Empower qualifies as a TNC and is subject to Maryland law. It subsequently issued an express cease-and-desist order in September. Yet Empower has continued to operate without obtaining the required permit or demonstrating that it intends to comply with the Commission's directive. The size of Empower's operation, the repeated and knowing nature of its violations, and the public-safety protections that the Commission cannot enforce all support a substantial penalty.

A meaningful penalty is also necessary to discourage continued noncompliance.

[41] Order No. 92711 at 6.
[42] *See* Empower, *Reply to OPC's October 8 Submission*, ML# 335191 (Case No. 9732, Oct. 11, 2026), at 5.

Here, the Commission's determination that Empower is a TNC and its subsequent cease-and-desist order have not secured compliance. A nominal penalty that Empower can absorb as a cost of doing business would provide little incentive to cease its unauthorized operations. Although the Commission does not yet have complete information concerning Empower's Maryland revenues and financial circumstances, the scope of its admitted operations and its continued noncompliance support a penalty substantially greater than $2,500 per day. The Commission can consider additional financial and operational evidence in determining the final assessment under PUA § 13-201(d).

OPC proposes the Commission assess a $1,000,000 penalty for each day Empower operates in violation of the Commission's cease-and-desist order, starting on September 22, 2026. Using the conservative estimate described above, the proposed penalty would total $36 million for September 22 through October 27, 2026. OPC recommends an additional $1,000,000 assessment for each subsequent day on which the necessary violations are established. OPC also requests that the Commission preserve the ability to assess additional penalties for separately established violations occurring during the September 22 through October 27 period, to the extent further discovery reveals violations beyond the 4,000 daily rides accounted for in OPC's present recommendation. Any additional assessment should avoid imposing duplicative penalties for the same offense. OPC requests that the Commission determine the penalties supported by the record at or promptly after the October 30 hearing and determine any additional penalties through the supplemental proceedings discussed in Section III, as necessary to establish additional violations and consider the factors specified in § 13-201(d).

II. OPC's proposed penalties are appropriate.

The Eighth Amendment to the U.S. Constitution—and in particular, the prohibition on imposing excessive fines—limits the government's power to extract payment as punishment for some offense.[43] This prohibition applies not only to criminal penalties but also to punitive civil fines.[44] Article 25 of the Maryland Declaration of Rights similarly prohibits excessive fines, and Maryland courts interpret that protection coextensively with the Excessive Fines Clause of the Eighth Amendment.[45] Even assuming the Excessive Fines Clause applies, the proposed penalties are not constitutionally excessive.

In determining whether a civil penalty is constitutionally excessive, Maryland courts have applied the "principle of proportionality."[46] The United States Supreme Court has, in defining "proportionality," held that a punitive fine violates the Excessive Fines Clause "if it is grossly disproportional to the gravity of a defendant's offense."[47] The relevant inquiry therefore considers the amount of the penalty in relation to the gravity of the underlying conduct, rather than the amount of the penalty in isolation.

The fines OPC currently proposes are not "grossly disproportional." Courts have upheld substantial aggregate penalties resulting from numerous individual violations. In *Tuomey*, the United States Court of Appeals for the Fourth Circuit upheld a judgment that

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[43] *See* U.S. Const. amend VIII; *see also Austin v. U.S.*, 509 U.S. 602, 609-10 (1993); Md. Decl. of Rights, Art. 25.
[44] *Austin*, 509 U.S. at 609-10; *see also In re Cash-N-Go, Inc.*, 256 Md. App. 182, 216 (2022).
[45] *Aravanis v. Somerset County*, 339 Md. 644, 656–57 (1995).
[46] *Cash-N-Go*, 256 Md. App. at 217 (citing *U.S. v. Bajakajian*, 524 U.S. 321, 334 (1998)).
[47] *Bajakajian*, 524 U.S. at 334; *see also Cash-N-Go*, 256 Md. App. at 217.

included civil penalties totaling $119,515,000, assessed by multiplying the number of false claims submitted to Medicare in violation of the False Claims Act by the statutory minimum penalty for such an action, against a challenge under the Excessive Fines Clause.[48] In that case, Tuomey Healthcare was found to have submitted 21,730 false claims.[49] The court, in upholding the judgment, noted that while the award was substantial, it was not unconstitutional.[50] The court further stated that courts would "infrequent[ly]" find penalties unconstitutionally excessive under the False Claims Act.[51] Although *Tuomey* involved a different statutory scheme, it demonstrates that a substantial aggregate penalty is not unconstitutional merely because it results from imposing a statutory penalty for each of numerous violations.

The Appellate Court of Maryland's decision in *In re Cash-N-Go, Inc.*[52] provides more direct support. There, the court rejected an Excessive Fines Clause challenge to civil penalties totaling $1,200,750, calculated by assessing $750 for each of 1,601 unlawful consumer-lending transactions.[53] In evaluating the penalties, the court considered the severity of the violations, the company's lack of good faith, its history of unlawful conduct, and the need for penalties sufficient to deter continued violations.[54] The court emphasized that Cash-N-Go had continued its unlawful practices despite regulatory warnings in Maryland and that its owner had previously faced enforcement for

[48] *United States ex rel. Drakeford v. Tuomey,* 792 F.3d 364, 384 (4th Cir. 2015).
[49] *Id.* at 370.
[50] *Id*. at 387.
[51] *Id.* at 387.
[52] 256 Md. App. at 216–17, 223–24.
[53] *Id.* at 224 (noting that the maximum penalty allowed per violation was $10,000).
[54] *Id.* at 224–26.

similar unlawful lending practices in West Virginia.[55] It concluded that lesser measures, including another cease-and-desist order, would be insufficient to protect consumers, and upheld the penalties as neither excessive nor arbitrary and capricious.[56]

Similar considerations support OPC's proposed penalties here. Empower has continued operating without the required permit despite the Commission's determination that it is a TNC and its subsequent cease-and-desist order. The Commission has also determined that Empower's unauthorized operations are causing immediate, substantial, and irreparable harm to the public because the Commission cannot verify compliance with the driver, vehicle, and insurance requirements established to protect passengers.[57] As in *Cash-N-Go*, the ineffectiveness of prior regulatory measures supports a substantial penalty to protect the public and deter continued violations.

The amount OPC proposes is also proportionate to the scale of Empower's violations. As discussed above, Empower has represented that its customers provide well over 300,000 rides weekly in Maryland, or more than 40,000 rides per day on average.[58] Yet OPC's proposed $1 million daily penalty is based on only 4,000 rides per day, assessed at $250 per violation. Thus, assuming each ride constitutes a separate offense, OPC's proposed penalty reflects only ten percent of Empower's estimated daily rides, assessed at ten percent of the statutory maximum for each violation. The resulting daily penalty is approximately one percent of the maximum that could be assessed based on

[55] *Id.* at 225–26.
[56] *Id.* at 226–27.
[57] *See* Order No. 92165 at 17–18; Order No. 92652 at 4–6.
[58] Empower, *Memorandum on Appeal from the Public Utility Law Judge's July 22, 2026 Ruling on Pending Motions* at 1, ML# 333807 (Case No. 9732, Sept. 1, 2026).

40,000 separately established violations. At $2,500 per ride, the theoretical maximum would be $100 million per day, or $3.6 billion over the 36 days covered by OPC's recommendation. This calculation does not establish the precise number of violations on each day, which remains subject to further evidentiary development, but it demonstrates that OPC's recommendation is substantially below the maximum authorized for the scale of operations Empower itself has reported.

Finally, a penalty must be sufficiently substantial to encourage compliance with the law. The Commission's determination that Empower is a TNC and its subsequent cease-and-desist order have not secured compliance. A penalty that Empower can absorb as a cost of continued unauthorized operations would provide little incentive to change its behavior. As in *Cash-N-Go*, the ineffectiveness of prior enforcement measures supports a substantial penalty to protect consumers and deter future violations. OPC's recommendation also accounts for the gravity of operating a large transportation network outside the Commission's regulatory oversight, notwithstanding repeated notice of the applicable legal requirements.

Accordingly, OPC's proposed penalties are not grossly disproportionate to the gravity, duration, and scope of Empower's violations. The Commission should consider the evidence developed concerning the number of violations, Empower's financial circumstances, and the factors prescribed by PUA § 13-201(d) in determining the final assessment. Any aggregate assessment should also rest on separate, established offenses rather than duplicative penalties for the same violation. Subject to those determinations, OPC's proposed penalties do not violate the Excessive Fines Clause of the Eighth

Amendment or Article 25 of the Maryland Declaration of Rights.

III. The Commission should assess the penalties supported by the record and obtain the evidence needed to determine the full extent of Empower's violations.

OPC requests that the Commission assess the penalties recommended in Section I based on the existing record and the evidence presented at the October 30 hearing. The record provides a substantial basis for those recommendations, including Empower's own representations concerning the scale of its operations. But the Commission should also establish a procedure to obtain the evidence necessary to establish the full extent of Empower's violations and support an appropriate penalty assessment.

Empower has not answered a data request in almost a year.[59] Empower is not only refusing to respond to discovery requests; it is also disregarding Commission orders to produce information. In its January Order, the Commission affirmed the PULJ's grant of Staff's motion to compel and Empower has failed to produce the information as ordered.[60] The Commission should not allow Empower's refusal to provide information to prevent it from assessing penalties supported by the record. Nor should it foreclose additional penalties for violations established through further proceedings. Accordingly, OPC requests that the Commission establish an expedited procedure for obtaining the information necessary to determine the full extent of Empower's violations and support its penalty determination under PUA § 13-201.

[59] Empower provided amended responses to OPC DR 2 on November 12, 2025. *See* OPC, *Renewed Motion to Compel*, ML# 327643 (Case No. 9732, March 5, 2026), Exhibit 2 at 2-3. To OPC's knowledge, Staff has served three data requests on Empower since, all of which have gone unanswered.
[60] Order No. 92165 at 17.

A. The Commission should require Empower to produce the information necessary to determine the appropriate civil penalties under PUA § 13-201.

As stated above, the full scope of Empower's operations in Maryland is not known, nor has it been developed in the record. The Commission and the parties do not know, apart from claims made in filings, how many rides Empower facilitates each day, how many drivers use the Empower application each day, the revenue generated from Empower's Maryland operations, how Empower handles safety complaints from drivers and riders and the nature of those complaints, and Empower's attempts, if any, to comply with Commission orders, among other important information.

The Commission should therefore direct Empower to produce the information necessary to develop that record through a prompt supplemental discovery process. At a minimum, that information should establish (1) the dates on which Empower continued to facilitate transportation network services in Maryland, (2) the number of Maryland rides facilitated during the relevant period, (3) the number of drivers providing those rides, and (4) information concerning the scale of Empower's Maryland operations. The Commission should also require the driver and vehicle information that remains outstanding and any other information relevant to the factors identified in PUA § 13-201(d), including the information contained in OPC's outstanding data request.[61]

[61] *See* July 22 Omnibus Ruling at 44–45 (July 22, 2026) (finding that Empower had not produced the driver, vehicle, and revenue information previously ordered); PUA § 13-201(d).

Given the limited time remaining before the October 30 hearing, OPC does not request that Empower be required to produce all of this information before that hearing. Instead, the Commission should establish a reasonable but prompt schedule for completing the necessary discovery following the October 30 hearing. The Commission should prioritize information concerning the dates and number of rides facilitated in Maryland, Empower's Maryland revenues, and its efforts to comply with Commission orders. This supplemental process should not excuse Empower's failure to comply with the discovery orders already issued in this proceeding.

Obtaining that information will permit the Commission to verify the scope of Empower's operations and establish a stronger evidentiary basis for determining the appropriate penalties. But the need for additional discovery should not prevent the Commission from assessing the penalties recommended above to the extent those penalties are supported by the existing record and the applicable hearing requirements have been satisfied. In making any initial assessment, the Commission should expressly reserve consideration of penalties for additional, separately established violations that remain subject to further evidentiary development.

B. The Commission should assess civil penalties following the October 30 hearing to the extent supported by the record and establish supplemental proceedings as necessary.

PUA § 3-102(c) entitles the subject of a Commission complaint to a hearing in the contested case resulting from that complaint. At that hearing, Empower may present

evidence and argument, cross-examine witnesses, and submit rebuttal evidence.[62]

The Commission has expressly scheduled the October 30, 2026 evidentiary hearing to address civil penalties. In Order No. 92711, the Commission made the cease-and-desist order permanent and determined that Empower should be penalized under PUA § 13-201 for violations to be defined in a subsequent order based on the October 30 hearing. That hearing should therefore focus on the violations established by the evidence and the appropriate penalties. To the extent the Commission determines that additional evidence or a further hearing opportunity is necessary to assess civil penalties, it should establish a prompt supplemental procedure limited to those issues.

The Commission has already determined that Empower is a TNC subject to Maryland law,[63] and it is undisputed that Empower has continued to operate its business in Maryland despite that ruling.[64] OPC requests that the Commission assess the penalties recommended in Sections I.A and I.B based on the existing record and the evidence presented at the October 30 hearing. If the Commission determines that additional evidence is necessary to establish the number of violations or the appropriate penalty, it should identify the remaining issues and establish an expedited process to resolve them.

At any supplemental penalty hearing, Empower can appear through counsel, present evidence relevant to the penalty factors in PUA § 13-201(d), cross-examine any witnesses presented by Staff or OPC, and offer any evidence it believes bears on the

[62] PUA § 3-107.
[63] *See* Order No. 92165 at 17–18.
[64] *See* Empower Response to Order No. 92684 at 1.

appropriate penalty. Staff and OPC likewise can present evidence concerning the duration and gravity of Empower's violations, its conduct after receiving notice that it was required to comply with Maryland law, and the other factors the Commission must consider under PUA § 13-201(d).

The Commission should assess the penalties supported by the record developed through October 30 and determine any additional penalties after completing any necessary supplemental proceedings. Any supplemental hearing should be limited to issues requiring further evidentiary development, without reopening matters already resolved by the Commission.

Should Empower fail to produce a response to the Commission's supplemental discovery order, the Commission should not permit that failure to indefinitely delay its penalty determination. The Commission may consider Empower's continued noncompliance in evaluating its good-faith efforts to achieve compliance under PUA § 13-201(d), and may determine the appropriate penalties based on the available evidence after affording Empower the required hearing opportunity. Empower's refusal to produce information should not prevent the Commission from imposing substantial penalties for violations established by the record.

CONCLUSION

Empower has continued operating in Maryland without the required permit despite the Commission's determination that it is a TNC subject to Maryland law. It has continued operating despite an express cease-and-desist order, which the Commission

made permanent on October 22, 2026, and has refused to provide information necessary for the Commission to determine the full extent of its violations. The Commission has repeatedly directed Empower to comply with Maryland law, yet those directives have not secured compliance. Substantial civil penalties are warranted to hold Empower accountable for its violations, protect the public, and deter continued disregard of the Commission's authority.

The existing record provides a substantial basis for assessing those penalties. Empower's own representations establish the considerable scale of its operations, and OPC has deliberately used conservative assumptions in calculating the penalties it recommends. Further discovery may establish that Empower committed substantially more violations than those accounted for in OPC's recommendations. The Commission should not permit Empower's refusal to provide that information to prevent it from assessing penalties supported by the record, nor should it foreclose additional penalties for separately established violations.

For the foregoing reasons, OPC respectfully requests that the Commission:

1. Assess a civil penalty of $677,500 for Empower's unauthorized operations as a TNC in Maryland and its continued violation of the Commission's January Order from January 30 through October 27, 2026, pursuant to PUA § 13-201, and assess an additional $2,500 for each subsequent day of unauthorized operations established by the record;

2. Assess a civil penalty of $36 million for Empower's violations of the September 21, 2026 cease-and-desist order from September 22 through October 27, 2026, based on the conservative estimate of 4,000 violations per day at $250 per violation, without foreclosing additional penalties for separately established violations;
3. Assess additional penalties for separately established violations, including violations occurring during the periods covered by OPC's present recommendations that are not accounted for in those recommendations, as well as violations occurring thereafter, without imposing duplicative penalties for the same offense;
4. Consider these penalty recommendations at the October 30, 2026 evidentiary hearing and assess the penalties supported by the existing record and the evidence presented at that hearing, after affording Empower the required opportunity to be heard;
5. Establish an expedited supplemental discovery process to obtain information necessary to determine the full extent of Empower's violations and support the Commission's penalty determination, including a further hearing if needed; and
6. Grant such other relief as the Commission determines appropriate.

OPC requests that the Commission act promptly on the penalties supported by the record and not permit Empower's continued refusal to provide discovery to delay the assessment of substantial civil penalties.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of October 2026, the foregoing *Office of People's Counsel's Motion for Penalties* was sent via electronic mail to all parties of record to this proceeding.

Respectfully submitted,

/electronic signature/
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