**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Rasier-PA LLC, a limited liability company : A-2014-2416127

of the State of Delaware, for the right to begin to transport, :

by motor vehicle, persons in the experimental service :

of shared-ride network for passenger trips between points in :

Allegheny County :

**INITIAL DECISION**

**DISMISSING THE PROTESTS OF**

**THE INSURANCE FEDERATION OF PENNSYLVANIA, INC.,**

**AND THE PENNSYLVANIA ASSOCIATION FOR JUSTICE**

Before

Mary D. Long

Jeffrey A. Watson

Administrative Law Judges

The preliminary objections which seek dismissal of the protests of two non-profit associations due to lack of standing to protest a transportation application will be sustained and the protests dismissed.

PROCEDURAL HISTORY

Rasier-PA LLC[[1]](#footnote-1) (Applicant) filed an application for motor common carrier of persons in experimental service between points in Allegheny County, Pennsylvania on April 14, 2014:

Applicant proposes to operate a ride-sharing network service for passenger trips between points within Allegheny County, Pennsylvania.

Applicant proposes to use a digital platform to connect passengers to independent ride-sharing operators (“Operators”) with whom Applicant intends to contract. Operators will use their personal, noncommercially licensed vehicles for the purpose of providing transportation services. The Applicant plans to license the Uber technology to generate leads from riders who need transportation services. Applicant does not own vehicles, employ drivers or transport passengers.[[2]](#footnote-2)

Commission regulations permit certification of transportation providers for “experimental” service in order to “allow . . . a new, innovative or experimental type or class of common carrier service.”[[3]](#footnote-3)

Notice of the application was published in the Pennsylvania Bulletin on April 26, 2014. The notice provided that the deadline for the filing of protests was May 12, 2014.[[4]](#footnote-4) On May 12, 2014, the Insurance Federation of Pennsylvania, Inc. (Insurance Federation) and the Pennsylvania Association for Justice (PAJ) filed protests to the application.[[5]](#footnote-5) The Applicant filed preliminary objections on June 2, 2014, which seek dismissal of the protests because the Applicant contends that neither the Insurance Federation nor PAJ have established their standing to protest the application. Both the Insurance Federation and PAJ filed answers to the preliminary objections on June 12 and June 16, 2014, respectively.

DISCUSSION

**Legal Standard**

Pursuant to the Commission’s rules of procedure, a protest to an application for transportation authority is treated as a pleading and an applicant may file a motion as provided by Section 5.101, relating to preliminary objections. The grounds for preliminary objection are limited:

§ 5.101. Preliminary objections.

(a) Grounds. Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

(1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

(2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.

(3) Insufficient specificity of a pleading.

(4) Legal insufficiency of a pleading.

(5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

(7) Standing of a party to participate in the proceeding.

Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections.[[6]](#footnote-6) In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible.[[7]](#footnote-7) Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.[[8]](#footnote-8) All of the non-moving party’s averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party.[[9]](#footnote-9) A preliminary objection which seeks dismissal of a pleading will only be granted where relief is clearly warranted and free from doubt.[[10]](#footnote-10)

**The Protests**

The Insurance Federation is a non-profit trade association which represents “over 200 insurance companies doing business in the Commonwealth . . . . Among its members are the overwhelming majority of insurers providing private passenger auto insurance in this Commonwealth . . . .” According to the Insurance Federation, its members include auto insurers who provide the personal liability insurance coverage which it states the Applicant describes in its application for authority. The Insurance Federation believes that the insurance proposal described by the Applicant is not consistent with the Commission’s regulations and therefore creates liability exposure to its members and “creates gaps, uncertainties and delays in that required coverage, setting up obstacles and uncertainties for consumers seeking resolution of liability claims and creating significant liability exposure and cost for our auto-writing members who insure the drivers as provided in the Application.”

The PAJ is also a non-profit organization. Its members are approximately 2,200 men and women of the trial bar of the Commonwealth of Pennsylvania. Like the Insurance Federation, PAJ is concerned with the proposed insurance proposal in the application. Specifically, PAJ contends that the insurance coverage proposed by the Applicant leaves a “gap” in insurance coverage that may pose a hazard to drivers, passengers and pedestrians “in the position where they are led to believe that they are covered by insurance when, in fact, they are not.” PAJ also complains that the Applicant has been operating without authority from the Commission and has therefore failed to demonstrate a propensity to obey the law, as required by the Commission’s regulations. These concerns impact PAJ because interest in the application identified by PAJ “rests with ensuring that the members of PAJ are able to provide proper service to their clients and obtain for those clients the fullest protection under the law.”

The Applicant seeks dismissal of the protests of the Insurance Federation and PAJ because they fail to set forth specific facts establishing their standing.[[11]](#footnote-11) The Applicant contends that neither the Insurance Federation nor PAJ are certificated carriers who will be directly impacted by the grant of authority to the Applicant. Further, the Applicant contends, the injury claimed by the Insurance Federation and PAJ is too speculative and tenuous and amounts to no more than a general interest in compliance with the law, which is insufficient to convey standing to participate in the litigation.

We agree with the Applicant and as explained more fully below, we will dismiss the protests of the Insurance Federation and PAJ.

Generally, Commission precedent provides that a protestant must have some operating rights in actual or potential conflict with the authority sought by an applicant in order to have standing to protest an application.[[12]](#footnote-12) There is no dispute that neither the Insurance Federation nor PAJ hold operating rights of any kind. However, we agree with PAJ and the Insurance Federation that this application is unique and that the broader standard of Pennsylvania jurisprudence should be applied.

Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency.[[13]](#footnote-13) “In simple terms, "standing to sue" is a legal concept assuring that the interest of the party who is suing is really and concretely at stake to a degree where he or she can properly bring an action before the court.”[[14]](#footnote-14) The usual standard for determining whether a party is the proper party to complain about agency action has been often articulated:

If a party is not adversely affected in any way by the determination being challenged, the party is not aggrieved and, thereby, has no standing to obtain a judicial resolution of the challenge. *William Penn Parking Garage, Inc. v. City of Pittsburgh,* 464 Pa. 168, 192, 346 A.2d 269, 280 (1975). "[I]t is not sufficient for the person claiming to be 'aggrieved' to assert the common interest of all citizens in procuring obedience to the law." *Id*. at 192, 346 A.2d at 280-81. In order to be aggrieved, a party must have a substantial interest in the subject matter of the litigation, the interest must be direct, and the interest must be immediate. *Id*. The substantial interest requirement means that "there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law." *Id*. at 195, 346 A.2d at 282. A direct interest "means that the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which [the person] complains." *Id*. Finally, the interest must "be 'immediate' and 'not a remote consequence of the judgment.'" *Id*. at 197, 346 A.2d at 283 (quoting *Keystone Raceway Corp. v. State Harness Racing Commission*, 405 Pa. 1, 7-8, 173 A.2d 97, 100 (1961)).

An association may have standing as a representative of its members. *Tripps Park v. Pennsylvania Public Utility Commission*, 52 Pa. Commw. 317, 415 A.2d 967, 970 (Pa. Cmwlth. 1980). Thus, as long as an organization "has at least one member who has or will suffer a direct, immediate, and substantial injury to an interest as a result of the challenged action [i.e., is aggrieved, the organization] has standing." *Parents United for Better Schools v. School District of Philadelphia*, 166 Pa. Commw. 462, 646 A.2d 689, 692 (Pa. Cmwlth. 1994) (PUBS). For example, in PUBS, this Court held that a group of individuals, including parents of high school students, incorporated to challenge the implementation of a new school district policy making condoms available at school-based health clinics upon request of high school students, had standing because at least one of its members would be aggrieved by the school district's actions. *Id.* Similarly, in *Tripps Park*, we held that an organization of Pennsylvania Gas and Water Company customers and ratepayers, had standing "even in the absence of injury to itself . . . solely as the representative of its members." *Tripps Park*, 415 A.2d at 970.[[15]](#footnote-15)

There is no question that the issue of the adequacy of the insurance coverage that the Commission may require of the Applicant is one of critical importance. Indeed, it is to be hoped that expert testimony of the sort described by the Insurance Federation and PAJ in their protests will be presented as our consideration of the application progresses. However, the fact that the Insurance Federation and PAJ may be experts in the area of insurance coverage and have strong and important opinions concerning the adequacy and potential consequences of the Applicant’s proposal is not sufficient. They have failed to articulate a specific and immediate injury other than an abstract interest in ensuring that the operation proposed by the Applicant has insurance coverage which is consistent with the Commission’s regulations.[[16]](#footnote-16) For example, neither has identified a specific member who has been required to defend or provide coverage to an underinsured individual involved in a personal injury action related to the Applicant’s service. The grant of authority to the Applicant will not impose a legal obligation upon the insurance carriers represented by the Insurance Federation to provide any specific coverage or to cover costs which may or may not result from the Commission’s approval of the application. Accordingly, the potential injuries articulated by the Insurance Federation and PAJ are at best, speculative. Therefore, their protests must be dismissed as a matter of law.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa.C.S. § 701.

2. The Insurance Federation and PAJ have failed to demonstrate that they possess any interest in the subject matter of this proceeding which is direct, immediate, and substantial.

3. The protests of the Insurance Federation and PAJ fail to set forth sufficient facts to support their standing to challenge the application. 52 Pa.Code § 5.52(b); 5.101(a)(7).

4. It is just, reasonable and in the public interest that the protests filed be dismissed without a hearing. 66 Pa.C.S. § 703(b).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objection of Rasier-PA LLC to dismiss the protest of the Insurance Federation of Pennsylvania, Inc. is sustained.

2. That the protest of the Insurance Federation of Pennsylvania, Inc. to the Application of Rasier-PA LLC in the above-captioned proceeding is dismissed.

3. That the preliminary objection of Rasier-PA LLC to dismiss the protest of the Pennsylvania Association for Justice is sustained.

4. That the protest of the Pennsylvania Association for Justice to the Application of Rasier-PA LLC in the above-captioned proceeding is dismissed.

Date: July 1, 2014 /s/

 Mary D. Long

 Administrative Law Judge

 /s/

 Jeffrey A. Watson

 Administrative Law Judge

1. Raiser-PA LLC, is a wholly owned subsidiary of Uber Technologies, Inc. [↑](#footnote-ref-1)
2. Application at ¶ 10-11. [↑](#footnote-ref-2)
3. 52 Pa.Code § 29.352. [↑](#footnote-ref-3)
4. 44 Pa.B. 2604 (April 26, 2014). [↑](#footnote-ref-4)
5. Several others filed protests as well. The preliminary objections to the other protests will be resolved by separate order. [↑](#footnote-ref-5)
6. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

 [↑](#footnote-ref-6)
7. *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm’n*, 669 A.2d 1105 (Pa.Cmwlth. 1996). [↑](#footnote-ref-7)
8. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002).

 [↑](#footnote-ref-8)
9. *Ridge v. State Employees’ Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

 [↑](#footnote-ref-9)
10. *Interstate Traveller Services, Inc. v. Pa. Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Application of K&F Medical Transport, LLC,* PUC Docket No. A-2008-2020353 (Initial Decision dated April 25, 2008). [↑](#footnote-ref-10)
11. See 52 Pa.Code § 5.52(a)(3). [↑](#footnote-ref-11)
12. *Application of Germantown Cab Company,* PUC Docket No. A-2012-2295131 (Initial decision served August 23, 2012) (and the cases cited therein). [↑](#footnote-ref-12)
13. *Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co*., 75 Pa. PUC 598, 603 (1991).

 [↑](#footnote-ref-13)
14. [*In re Milton Hershey School*, 867 A.2d 674, 683 (Pa.Commw. Ct. 2005)](http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=le&search=867+A.2d+674%2520at%2520683), *reversed on other grounds*, 911 A.2d 1258 (Pa. 2006) (citing *Baker v. Carr*, 369 U.S. 186 (1962)). [↑](#footnote-ref-14)
15. *Energy Conservation Council v. Pa. Pub. Util. Comm’n,* 995 A.2d 465, 475-76 (Pa.Cmwlth. 2009). [↑](#footnote-ref-15)
16. Neither PAJ nor the Insurance Federation have suggested that the Commission’s current regulatory requirements related to insurance coverage are inadequate. [↑](#footnote-ref-16)