#  PENNSYLVANIA

 **PUBLIC UTILITY COMMISSION**

 **Harrisburg, PA 17105-3265**

Commissioners Present:

 Robert F. Powelson, Chairman, Dissenting

 John F. Coleman, Jr., Vice Chairman

 James H. Cawley

 Pamela A. Witmer, Dissenting

 Gladys M. Brown

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

company 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

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the following: the Exceptions filed by the Insurance Federation of Pennsylvania, Inc. (Insurance Federation) on July 23, 2014, to the Initial Decision Dismissing the Protests of the Insurance Federation and the Pennsylvania Association for Justice of Administrative Law Judges (ALJs) Mary D. Long and Jeffrey A. Watson, issued on July 3, 2014; and the Exceptions filed by JB Taxi LLC (JB Taxi) on July 23, 2014, to the Initial Decision Dismissing the Protest of JB Taxi of ALJs Long and Watson, issued on July 3, 2014. On August 4, 2014, Rasier-PA LLC (Applicant or Rasier-PA) filed Replies to the Exceptions of both the Insurance Federation and JB Taxi.

**Procedural History**

On April 14, 2014, Rasier-PA filed an application for motor common carrier of persons in experimental service between points in Allegheny County, Pennsylvania (Application).[[1]](#footnote-1) In its Application, Rasier-PA stated as follows:

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.

Application at 2-3.

Notice of the Application was published in the Pennsylvania Bulletin on April 26, 2014 at 44 *Pa*. *B*. 2604. The notice provided that the deadline for filing protests was May 12, 2014.

On May 7, 2014, JB Taxi filed a Protest to the Application and a Petition to Intervene. In its Protest, JB Taxi stated that it holds call or demand authority in the counties of Beaver, Lawrence, Mercer, and Crawford. JB Taxi Protest at 3. JB Taxi averred that the grant of experimental authority to the Applicant would adversely impact its business by diverting its patrons and reducing its revenues and would result in unfair competition. JB Taxi asserted that it would be harmed directly and significantly if the Application were granted, because a grant of operation in Allegheny County would likely encourage Rasier-PA to expand into JB Taxi’s service area. *Id*. at 2. JB Taxi also contended that the Applicant did not meet the Commission’s fitness requirements. *Id*. at 3. In its Petition to Intervene, JB Taxi stated that it has a substantial, direct, and immediate interest based on its loss of patrons and revenues to operators that seek to evade the requirements of the Public Utility Code (Code) and the Commission’s Regulations. *Id*. at 4.

On May 12, 2014, the Insurance Federation and the Pennsylvania Association for Justice (PAJ) filed Protests to the Application.[[2]](#footnote-2)

In its Protest, the Insurance Federation indicated that it 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 that the Applicant proposes to require for its Operators, as well as insurers who provide insurance on those who may be involved in accidents with the Applicant’s Operators. Insurance Federation Protest at 1. The Insurance Federation avers that the insurance proposal described by the Applicant fails to satisfy Section 32.11(a) and (b) of the Commission’s Regulations, 52 Pa. Code § 32.11(a) and (b), pertaining to insurance requirements, 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.” Insurance Federation Protest at 2, 6.

In its Protest, the PAJ indicated that it is a non-profit organization whose members consist of approximately 2,200 men and women of the trial bar of the Commonwealth of Pennsylvania. The PAJ stated that its interest in the Application “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.” PAJ Protest at 2. The PAJ contended that the insurance coverage proposed by the Applicant does not meet the requirements in Section 32.11(a) and (b) of the Commission’s Regulations, 52 Pa. Code

§ 32.11(a) and (b), and 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.” *Id*. at 7. The PAJ also averred 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. *Id*. at 5.

On June 2, 2014, the Applicant filed Preliminary Objections to all three Protests, seeking dismissal of the Protests on the basis that the Protestants did not establish their standing to protest the Application. The Insurance Federation, JB Taxi, and the PAJ filed Answers to the Preliminary Objections on June 12, June 13, and June 16, 2014, respectively.

In the Initial Decision Dismissing the Protests of the Insurance Federation and the Pennsylvania Association for Justice, issued on July 3, 2014, ALJs Long and Watson recommended, *inter alia*, that the Applicant’s Preliminary Objection be sustained and that the Protests of the Insurance Federation and the PAJ be dismissed. Insurance Federation I.D. at 8.

In the Initial Decision Dismissing the Protest of JB Taxi, the ALJs recommended that the Applicant’s Preliminary Objection be sustained, that JB Taxi’s Protest be dismissed, and that JB Taxi’s Petition to Intervene be denied. JB Taxi I.D. at 7.

Exceptions and Replies to Exceptions were filed as above noted.

**Discussion**

We note that any issue or Exception that we do not specifically delineate has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

**Legal Standards**

Section 5.101 of the Commission’s Regulations, 52 Pa. Code § 5.101, sets forth the grounds for filing preliminary objections. In pertinent part, that section provides as follows:

**§ 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.

52 Pa. Code § 5.101(a).

Commission procedure regarding the disposition of preliminary objections is similar to the procedure utilized in Pennsylvania civil practice. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dep’t of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (1979). The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commonwealth* *of Pa.*, 507 Pa. 360, 490 A.2d 402 (1985). The preliminary objection may be granted only if the moving party prevails as a matter of law. *Rok v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1987). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dep’t of Auditor General, et al. v. State Employees’ Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

In this case, the Applicant sought dismissal of the Protests on the basis that the Protestants lacked standing. Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. *Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co.*, 75 Pa. P.U.C. 598 (1991). Generally, Pennsylvania courts and the Commission have held that a person or entity has standing when the person or entity has a direct, immediate, and substantial interest in the subject matter of a proceeding. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 195-197, 346 A.2d 269, 282-284 (1975); *Waddington v. Pa. PUC*, 670 A.2d 199, 202 (Pa. Cmwlth. 1995); *Landlord Service Bureau, Inc. v. Equitable Gas Co.*, 79 Pa. P.U.C. 342 (1993); *Re Equitable Gas Co.*, 76 Pa. P.U.C. 23 (1992).

**The Protests of the Insurance Federation and the PAJ**

**ALJs’ Recommendation**

The ALJs reached four Conclusions of Law. Insurance Federation I.D. at 7-8. We shall adopt and incorporate herein by reference the ALJs’ Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

Initially, the ALJs noted that Commission precedent provides that a protestant must have some operating rights in actual or potential conflict with the authority sought by the applicant in order to have standing to contest an application. *Id*. at 5 (citing *Application of Germantown Cab Co.*, Docket No. A-2012-2295131 (Final Order entered November 9, 2012)). The ALJs acknowledged that there was no dispute that neither the Insurance Federation nor the PAJ hold operating rights; however, the ALJs determined that, because this Application is unique, the broader standard of Pennsylvania jurisprudence should be applied. I.D. at 5.

 The ALJs concluded that the Insurance Federation and the PAJ failed to articulate a specific and immediate injury, other than an abstract interest in ensuring that the service proposed by Rasier-PA had insurance coverage as mandated by the Commission’s Regulations, as neither Protestant identified a specific member who was required to defend or provide coverage to an underinsured individual involved in a personal injury action related to Rasier-PA’s service. The ALJs reasoned that a grant of authority to the Applicant would not impose a legal obligation on the insurance carriers represented by the Insurance Federation to provide specific coverage or to cover costs that may or may not result from approval of the Application. The ALJs found that the potential injuries claimed by the Insurance Federation and the PAJ were speculative and, accordingly, that the Protests must be dismissed. The ALJs stated that the adequacy of the insurance coverage that the Commission would require of the Applicant was of critical importance, and they hoped that expert testimony of the kind described by the Insurance Federation and the PAJ in their Protests would be presented as consideration of the Application progressed. *Id*. at 7.

**Exceptions and Replies**

 In its first Exception, the Insurance Federation objects to Conclusion of Law No. 2, which states that the Insurance Federation has failed to demonstrate that it has “any interest in the subject matter of this proceeding which is direct, immediate, and substantial.” Insurance Federation Exc. at 1 (citing I.D. at 7). The Insurance Federation notes that the Initial Decision acknowledged the importance of adequate insurance coverage by the Applicant and the value of the expertise that the Insurance Federation might provide, yet the Initial Decision incorrectly concluded that the Insurance Federation did not articulate a specific and immediate injury, other than an abstract interest in ensuring that the Applicant comply with the Commission’s insurance requirements. Insurance Federation Exc. at 1-2. The Insurance Federation believes that the ALJs failed to realize the exposure to the Insurance Federation’s auto-insuring members which were outlined in its Protest. *Id*. at 2.

Specifically, the Insurance Federation is concerned that the Applicant is proposing to fulfill the Commission’s insurance requirements through an excess policy, which applies only if the personal auto policies of the Insurance Federation’s members do not apply, rather than through a primary policy Rasier-PA has obtained. The Insurance Federation is also concerned about the potential of substantial gaps in Rasier-PA’s coverage. The Insurance Federation avers that the Applicant’s approach imposes significant administrative costs on the auto-insuring members of the Insurance Federation, as claims investigation and defense costs will be necessary even if no claim is paid. *Id*. Additionally, the Insurance Federation avers that its members will also pay for claims that result from providing coverage while the Applicant’s drivers are on the road and on duty. The Insurance Federation states that the Applicant is using the personal auto insurance of its drivers, as provided by the Insurance Federation’s members, to satisfy a large portion of the Commission’s insurance requirements. The Insurance Federation asserts that these new obligations of its members are wholly unanticipated and, therefore, not included in any rate setting or underwriting process by its members, partly because the Applicant does not provide for notice to its drivers’ personal auto insurers. *Id*. at 3.

The Insurance Federation also expresses concern that the Initial Decision’s dismissal is based, in part, on the current lack of claims and costs imposed on its members. *Id*. The Insurance Federation believes that this reasoning sets up a “Catch 22” as it means that the Insurance Federation would only have standing after the Application and the issues creating injuries to its members have been decided by the Commission. *Id*. at 3-4.

The Insurance Federation notes that the Applicant has claimed it is revising its insurance coverage to comply with the Commission’s Regulations, but it has not yet made a formal revision with the Commission. The Insurance Federation is concerned that, even with the amendments to its proposal, Rasier-PA refuses to provide primary coverage during the time period in which its drivers have applications open for business and are soliciting rides, because the Insurance Federation believes that this approach creates gaps and uncertainty in coverage. *Id*. at 4.

In its Replies to Exceptions, Rasier-PA states that the Initial Decision properly determined that the Insurance Federation failed to demonstrate a “direct, immediate, and substantial” interest. R. Exc. at 3. Rasier-PA avers that, because the Insurance Federation does not have operating authority in actual or potential conflict with the authority sought by Rasier-PA, the Insurance Federation does not have standing to file its Protest. *Id*. (citing *Application of Germantown Cab Co*., *supra*). Moreover, the Applicant asserts that the Insurance Federation lacks standing even when a broader standard of Pennsylvania jurisprudence is applied, because the Insurance Federation has not established a specific and immediate injury other than an abstract interest in ensuring that the Applicant has adequate insurance coverage. *Id*. at 3-4. Rasier-PA contends that the Insurance Federation’s claims about the future potential impact of the Applicant’s operations on its members are speculative and agrees with the ALJs that the Insurance Federation has not identified a specific member who has been required to provide coverage to an underinsured individual involved in an accident related to the Applicant’s proposed service. The Applicant believes that permitting the Insurance Federation’s Protest in this case would be contrary to the standing rules, which are designed to appropriately limit the issues raised in motor carrier applications in the interest of judicial economy. *Id*. at 4.

The Applicant additionally avers that the Insurance Federation’s concerns have become moot due to the Commission’s diligent review of insurance matters in proceedings involving experimental transportation network service applications. *Id*. at 5 (citing *Application of Rasier-PA LLC for Emergency Temporary Authority*, Docket No.

A-2014-2429993 (Order entered July 24, 2014); *Application of Yellow Cab Co. of Pittsburgh, Inc., t/a Yellow X*, Docket No. A-2014-2410269 (Order entered May 22, 2014)).

In its Second Exception, the Insurance Federation objects to Conclusion of Law No. 3, which states that the Insurance Federation’s Protest failed “to set forth sufficient facts to support [its] standing to challenge the [A]pplication.” Insurance Federation Exc. at 5 (citing I.D. at 7). The Insurance Federation avers that its Protest sets forth the facts that justify its standing, as it outlined the direct and immediate liability exposure created by Rasier-PA’s proposal, and it explained that this exposure was unanticipated and incapable of being underwritten and rated. Insurance Federation Exc. at 5.

In response, Rasier-PA states that the Initial Decision correctly concluded that the Insurance Federation failed to set forth sufficient facts to support its standing. Rasier-PA indicates that allegations regarding potential indirect injury resulting from approval of the Application and the expression of opinions on the adequacy of the Applicant’s insurance coverage are insufficient to support standing. Rasier-PA believes that, based on the Commission’s diligent review of insurance requirements for transportation network services in recent proceedings, the Insurance Federation’s participation in this proceeding is unnecessary. R. Exc. at 5.

 In its third Exception, the Insurance Federation challenges Conclusion of Law No. 4, which states that “[i]t is just, reasonable and in the public interest that the protests filed be dismissed without a hearing,” and cites to 66 Pa. C.S. § 703(b). Insurance Federation Exc. at 5 (citing I.D. at 8). The Insurance Federation avers that the Applicant’s unprecedented proposal to satisfy the Commission’s insurance requirements through an excess policy justifies a hearing to determine if the drivers’ primary policies are actually providing the insurance coverage that Rasier-PA claims they are providing. Insurance Federation Exc. at 6. In support of its position, the Insurance Federation cites to a separate proceeding before the Commission, *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for an Interim Emergency Order requiring Uber Technologies, Inc. to immediately cease and desist from brokering transportation service for compensation between points within the Commonwealth of Pennsylvania*, at Docket No. P-2014-2426846, in which it states that the ALJs noted that insurance coverage is integral to protecting the public safety and that the Applicant failed to offer testimony or evidence supporting its compliance with the Commission’s insurance requirements. Insurance Federation Exc. at 6-7 (citing the ALJs’ Order on Interim Emergency Relief, Docket No. P-2014-2426846, at 7, 14-15 (Order dated July 1, 2014)). The Insurance Federation believes that, because it now raises these same insurance concerns, its concerns should also be resolved in a full and open proceeding. Insurance Federation Exc. at 7.

 Rasier-PA replies that the Initial Decision properly recognized that the public interest would be best served by dismissal of the Protest, because subjecting motor carrier applications to a protest by any entity with an indirect interest is contrary to longstanding Commission policies and the public interest. The Applicant states that the Insurance Federation fails to consider the statements Rasier-PA made in its Application regarding its intent to comply with and exceed the Commission’s minimum insurance requirements and to acknowledge the Commission’s ability to determine whether Rasier-PA has adequate insurance coverage prior to issuing a Certificate of Public Convenience. R. Exc. at 6.

**Disposition**

Initially, based on our review of the Initial Decision, we concur with the ALJs’ determination and reasoning that the PAJ lacks standing. PAJ has failed to identify a specific and immediate injury to its members, other than an abstract interest in ensuring that the service proposed by Rasier-PA has insurance coverage as mandated by the Commission’s Regulations. PAJ has not excepted to the ALJs ruling and, finding it otherwise reasonable, we adopt the ALJs’ recommendation to sustain Raiser-PA’s Preliminary Objection to dismiss the PAJ Protest.

However, for the reasons set forth in detail herein, we disagree with the ALJs’ decision to dismiss the Insurance Federation’s Protest. Accordingly, we will modify the Initial Decision with respect to the findings and conclusions pertaining to the Insurance Federation’s standing to participate in this proceeding.

We note the procedural posture of this case: the Applicant has filed Preliminary Objections to the Insurance Federation’s Protest on the grounds of standing. As stated above, preliminary objections should only be granted where relief is clearly warranted and free from doubt. Therefore, in this case, the Preliminary Objection should only be granted if it is clear that the Insurance Federation lacks standing.

We agree with the ALJs’ reasoning that, because the Application is unique, the broader standard of Pennsylvania jurisprudence governing standing should be applied. *See*, Insurance Federation I.D. at 5. Under this broader standard, we conclude that Raiser-PA’s Preliminary Objection should be denied because it is not clear that the Insurance Federation lacks a direct, immediate, and substantial interest in the subject matter of this proceeding.

An association, such as the Insurance Federation, may have standing solely as the representative of its members so long as it satisfies the requirements of a direct, immediate, and substantial injury. *Concerned Taxpayers of Allegheny County v. Commonwealth of Pennsylvania*, 382 A.2d 490, 493-494 (Pa. Cmwlth. 1978). An interest in the subject matter of the proceeding is direct if such interest is adversely affected by the actions challenged in the protest, is immediate if there is a close causal nexus between the asserted injury and the actions challenged in the protest, and is substantial if there is a discernible interest other than the general interest of all citizens in seeking compliance with the law. *Ken R. ex rel. C.R. v. Arthur Z.*, 546 Pa. 49, 53-54, 682 A.2d 1267, 1270 (1996); *William Penn Parking Garage, supra*.

In this case, the Insurance Federation has set forth facts in its Protest which demonstrate that its members could be adversely affected by the manner in which Raiser-PA proposes to satisfy the Commission’s insurance requirements. First, its members include auto insurers who currently do or, in the future, will provide the personal liability insurance coverage the Applicant promises to require for its Operators. Second, its members include auto insurers who provide the personal liability insurance coverage for vehicles that might be involved in accidents with the Applicant’s Operators. “In both situations, the Insurance Federation’s members will have direct liability exposure resulting from the actions of the Applicant’s Operators, and direct liability exposure resulting from the insurance coverage (or lack thereof) the Applicant proposes for its Operators.” Insurance Federation Protest at 1. Additionally, the Insurance Federation’s members could incur administrative costs if the Application is granted; in the event of an accident, they may need to pay for “claims investigation and defense costs even if no claim is actually paid.” Insurance Federation Exc. at 2. Although we admit that the record at this point contains no evidence of an insurance claim arising out of an accident involving Raiser-PA, there is no question that insurance coverage will be required for Raiser-PA. Moreover, the possibility of an accident at some point involving Raiser-PA’s Operators is not unduly speculative. Consequently, we are unable to conclude that the Insurance Federation’s members lack a direct, immediate, or substantial interest in the Application.

The Insurance Federation avers that the insurance proposal described by the Applicant “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.” Insurance Federation Protest at 2, 6. For example, the Insurance Federation states that its auto-insuring members will not know if their insured have become Operators for the Applicant because Raiser-PA’s current proposal does not provide for notice to the driver’s insurer. An insurer’s need to know if its insured has become a driver for the Applicant is a valid underwriting and rating element that could impact whether the insurer provides ongoing coverage. Insurance Federation Exc. at 3; Protest at 4.

The Insurance Federation has also identified instances where it is possible that neither the Applicant’s insurance nor the Operator’s personal auto insurance will be providing coverage, such as when a driver is available but between trips. The Insurance Federation is concerned that this coverage uncertainty and gaps in coverage presents a significant harm to consumers, as well as to its members and their policy holders, because personal auto insurers will be brought into unanticipated liability claims, with related unanticipated administrative and claims liability costs, for which they never calculated. Insurance Federation Protest at 5. We agree with the Insurance Federation that it need not wait for its members to experience these harms associated with Rasier-PA’s current insurance proposal before its position may be fully heard in a proceeding before the Commission. *See,* *Lehigh Valley Power Committee v. Pa. PUC*, 593 A.2d 1333, 1336-1337 (Pa. Cmwlth. 1991) (holding that Lehigh Valley Power Committee had a substantial interest due to a possible rate impact).

As we find that it is not clear that the Insurance Federation lacks standing to participate as a Protestant in this proceeding, we disagree with the ALJs’ conclusion that it was “just, reasonable and in the public interest” to dismiss the Insurance Federation’s Protest pursuant to Section 703(b) of the Code, 66 Pa. C.S. § 703(b). Pursuant to our statutory authority to regulate common carriers of passengers and to ensure the safety of the traveling public, it is critical that we be certain, based on a fully developed record in this proceeding, that Raiser-PA has adequate insurance coverage for the service it proposes.[[3]](#footnote-3) As the ALJs noted, it would be beneficial for expert testimony of the kind described by the Insurance Federation to be presented as part of our consideration of this application for experimental transportation service. *See*, Insurance Federation I.D. at 7. We believe that the Insurance Federation is in a unique position to provide such expert testimony on insurance coverage and related issues and that it would be in the public interest to receive such testimony and evidence from the Insurance Federation, particularly in the context of an application for experimental transportation service which includes important insurance issues of first impression. For these reasons, we shall grant the Insurance Federation’s Exceptions and modify the ALJs’ Initial Decision.

**JB Taxi’s Protest**

**ALJs’ Recommendation**

The ALJs reached five Conclusions of Law. JB Taxi I.D. at 6-7. We shall adopt and incorporate herein by reference the ALJs’ Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

 Initially, the ALJs rejected the notion that only carriers holding experimental authority using “App-based” technology are in a position to challenge the Application. The ALJs noted that “[b]y its very nature, the purpose of experimental authority is to provide the Commission with flexibility to consider ‘innovative’ transportation schemes that do not fit within the other types of service defined by the Commission’s Regulations.” JB Taxi I.D. at 5. The ALJs found that, to adopt the narrow view of standing argued by the Applicant would be so limiting that almost no carriers would be in a position to protest the Application. *Id*. at 5-6.

 Nevertheless, the ALJs dismissed the Protest for lack of standing on the basis that JB Taxi does not hold operating authority within the service territory requested in the Application. The ALJs found that JB Taxi’s general allegation that drivers using the app may serve patrons outside of Allegheny County was not enough to support a finding that JB Taxi had a direct interest in the Application. The ALJs also denied the Petition to Intervene, finding that there were no allegations of fact that JB Taxi’s service in Beaver, Lawrence, Mercer, and Crawford Counties could be affected by a decision on the instant Application. *Id*. at 6.

 **Exceptions and Replies**

 In its First Exception, JB Taxi avers that the ALJs erred in finding that it does not have a “direct, immediate, and substantial” interest. JB Taxi Exc. at 1 (citing JB Taxi I.D. at 6, Conclusions of Law Nos. 2 and 3). JB Taxi states that, since the Commission has broad discretion in reaching a decision on standing, standing to challenge proposed “experimental services” should include all current common carriers that have an interest in determining which rights, privileges, and obligations fall under the definition of “experimental.” JB Taxi asserts that its Protest satisfies all of the requirements for standing and that it has a substantial interest in challenging services proposed as “experimental.”

 JB Taxi indicates that it has alleged a specific concern about the Applicant obtaining a foothold in Allegheny County as the initial step preceding expansion into near-by counties. JB Taxi contends that the ALJs did not acknowledge its claims that Rasier-PA’s proposed service will drain revenues from JB Taxi’s business, increase the deadhead mileage in JB Taxi’s operation, require an increase in fuel consumption and other operating expenses, and result in unfair competition. JB Taxi Exc. at 2. JB Taxi believes that existing common carriers in western Pennsylvania should have the opportunity to demonstrate the adverse impact that Rasier-PA’s proposed service may have on “certificated carriers who are held to higher service standards, required to absorb higher fixed costs and adhere to much more restrictive, tariff-based fare level[s] than the pricing methods proposed and currently used by Applicant.” *Id*. at 3.

 In response, Rasier-PA states that, as the ALJs concluded, JB Taxi’s general allegations that drivers contracted by Rasier-PA may serve patrons outside of Allegheny County is insufficient to find that JB Taxi has a “direct, immediate and substantial” interest. R. Exc. at 3. The Applicant avers that, since JB Taxi holds operating authority in Beaver, Lawrence, Mercer, and Crawford Counties, and not in Allegheny County, it does not have standing to file this Protest, as it does not have operating authority in actual or potential conflict with the authority sought by Rasier-PA. *Id*. (citing *Application of Germantown Cab Co*., *supra*). Moreover, the Applicant asserts that JB Taxi lacks standing even when a broader standard of Pennsylvania jurisprudence is applied. R. Exc. at 3. Rasier-PA believes that JB Taxi’s interest is speculative because it is based on the possibility that the Applicant may provide service outside of Allegheny County in the future. *Id*. at 4. Rasier-PA asserts that, to the contrary, it has filed another application to provide transportation network services in other parts of Pennsylvania and has expressly excluded the counties served by JB Taxi from that proposed service. *Id*. (citing *Application of Rasier-PA LLC, a limited liability company 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 Pennsylvania, excluding those which originate or terminate in the Counties of Beaver, Clinton, Columbia, Crawford, Lawrence, Lycoming, Mercer, Northumberland and Union*, Docket No. A-2014-2424608). The Applicant opines that permitting JB Taxi’s Protest in this case would be contrary to the standing rules, which are designed to appropriately limit the issues raised in motor carrier applications in the interest of judicial economy. R. Exc. at 4.

 In its second Exception, JB Taxi states that the ALJs erred in concluding that the impact on existing providers in adjacent counties and, accordingly, the public interest, could be determined without a hearing to receive evidence from existing providers. JB Taxi Exc. at 3 (citing I.D. at 7, Conclusions of Law Nos. 4 and 5). JB Taxi avers that it remains to be seen what a transportation network service entails, as the marketplace is defined principally by access to technology and the proximity of prospective patrons to the Applicant’s “Operators.” JB Taxi Exc. at 3. JB Taxi contends that, if they are excluded from the Commission’s adjudicatory proceeding, existing carriers will not have an opportunity to challenge unfounded and potentially dangerous conditions accompanying transportation network services. JB Taxi believes that the process of defining the attributes of a transportation network service for the purposes of the Code would be better accomplished if the certificated carriers potentially subject to an adverse impact were permitted to participate in an adversarial capacity. JB Taxi asserts that the suggested territorial limit of Allegheny County is artificial and irrelevant, given the capability and design of the digital platform as administered and operated by the Applicant and should, therefore, have no bearing on defining the impact on existing carriers serving adjacent counties. *Id*. at 4.

 In reply, Rasier-PA avers that the ALJs properly recognized that the public interest would be best served by dismissing JB Taxi’s Protest. Rasier-PA states that subjecting motor carrier applications to a protest by an entity that does not hold operating authority in actual or potential conflict with the proposed service is contrary to longstanding Commission policies and the public interest. Additionally, Rasier-PA states that, as JB Taxi has not made any factual allegations that it may be affected by a decision on the current Application, it has failed to establish that the public interest would be served by allowing its Protest to be heard. R. Exc. at 5.

**Disposition**

We begin by noting the procedural posture of this case: the Applicant has filed Preliminary Objections to JB Taxi’s Protest on the grounds of standing. As stated above, preliminary objections should only be granted where relief is clearly warranted and free from doubt. Therefore, in this case, the Preliminary Objection should only be granted if it is clear that JB Taxi lacks standing.

As we determined above regarding the Insurance Federation’s Protest, because Rasier-PA’s Application is unique, the broader standard of Pennsylvania jurisprudence governing standing should be applied. Under this broader standard, we conclude that Raiser-PA’s Preliminary Objection should be denied because it is not clear that JB Taxi lacks a direct, immediate, and substantial interest in the subject matter of this proceeding.

In this case, JB Taxi has alleged facts in its Protest which suggest that it could be adversely affected by the service Raiser-PA proposes to provide in its Application. Pursuant to the innovative proposal in Raiser-PA’s Application, riders will request transportation via Uber technology through the Internet or a mobile application (app) on their smartphones. JB Taxi avers that it remains to be seen what Rasier-PA’s experimental service will entail, as the marketplace is defined by access to technology and the proximity of prospective patrons to the Applicant’s Operators. JB Taxi also avers that the proposed territorial boundary of Allegheny County is artificial and irrelevant due to the capability and design of the digital platform administered and operated by the Applicant and should, consequently, have no bearing on defining the impact on existing carriers, such as JB Taxi, serving adjacent counties. JB Taxi states that drivers using the app have the ability to serve patrons outside of Allegheny County and that such service would drain revenues from JB Taxi’s business, increase the deadhead mileage in JB Taxi’s operation, increase fuel consumption and other operating expenses, and result in unfair competition. Because the service Rasier-PA is proposing is new and experimental and is generally still under consideration by the Commission, it would not be appropriate to exclude JB Taxi from participation in this proceeding based on a narrow view of standing.

 As we find that it is not clear that JB Taxi lacks standing to participate as a Protestant in this proceeding, we disagree with the ALJs’ conclusion that it was “just, reasonable and in the public interest” to dismiss the Protest pursuant to Section 703(b) of the Code, 66 Pa. C.S. § 703(b). Pursuant to our statutory authority to regulate common carriers of passengers, it is critical that we base our disposition of the Application in this proceeding on a fully developed record. As an existing common carrier in western Pennsylvania, JB Taxi is in a position to provide information regarding the impact Rasier-PA’s proposed service may have on certificated carriers in the context of an application for experimental transportation service which includes important issues of first impression. JB Taxi may also be able to provide information regarding the rights and obligations that should apply to experimental transportation service. For these reasons, we shall grant JB Taxi’s Exceptions and reverse the ALJs’ Initial Decision. As we are denying Raiser-PA’s Preliminary Objection and permitting JB Taxi’s Protest, we need not address JB Taxi’s Petition to Intervene.

**Conclusion**

Based upon our review of the pleadings, the Parties’ positions, and the applicable law, we shall grant the Insurance Federation’s Exceptions and modify the Initial Decision Dismissing the Protests of the Insurance Federation and the Pennsylvania Association for Justice. We shall also grant JB Taxi’s Exceptions and reverse the Initial Decision Dismissing the Protest of JB Taxi; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by the Insurance Federation of Pennsylvania, Inc. on July 23, 2014, are granted.

 2. That the Initial Decision Dismissing the Protests of the Insurance Federation of Pennsylvania, Inc. and the Pennsylvania Association for Justice, issued by Administrative Law Judges Mary D. Long and Jeffrey A. Watson on July 3, 2014, is modified, consistent with this Opinion and Order.

 3. That the Preliminary Objections filed by Rasier-PA LLC on June 2, 2014, to dismiss the Protest of the Insurance Federation of Pennsylvania, Inc., are denied.

 4. That the Preliminary Objections filed by Rasier-PA LLC on June 2, 2014, to dismiss the Protest of the Pennsylvania Association for Justice, are sustained.

 5. That the Protest of the Pennsylvania Association for Justice to the Application of Rasier-PA LLC is dismissed.

 6. That the Exceptions filed by JB Taxi LLC on July 23, 2014, are granted.

 **7**. That the Initial Decision Dismissing the Protest of JB Taxi LLC, issued by Administrative Law Judges Mary D. Long and Jeffrey A. Watson on July 3, 2014, is reversed, consistent with this Opinion and Order.

8. That the Preliminary Objections filed by Rasier-PA LLC on June 2, 2014, to dismiss the Protest of JB Taxi LLC, are denied.

 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: August 15, 2014

ORDER ENTERED: August 15, 2014

1. Section 29.352 of the Commission’s Regulations, 52 Pa. Code § 29.352, which pertains to certification for the provision of experimental service, provides the following:

§ 29.352. Experimental service

 In order to advance and promote the public necessity, safety and convenience, the Commission may, upon application, grant a new certificate or an amendment to an existing certificate in order to allow to be provided a new, innovative or experimental type or class of common carrier service. An application for a certificate or amendment shall state that it is an application for an experimental service. Holders of experimental certificates shall abide by this chapter except those which the Commission shall explicitly state do not apply. Holders of experimental certificates shall abide by an additional regulations or requirements, including informational and reporting requirements, which the Commission shall stipulate upon granting the certificate. A certificate for experimental service shall be valid only until the service is abandoned, until 2 years have elapsed from the time the certificate was approved or until the Commission enacts amendments to this chapter pertaining to the new class of service represented by the experimental service, whichever event occurs first. [↑](#footnote-ref-1)
2. Other parties filed protests that were disposed of by Interim Order. [↑](#footnote-ref-2)
3. We will not address the merits of the instant Application or the Applicant’s insurance coverage herein. However, we emphasize that it is well-established that we will not permit a common carrier of passengers to begin operating in Pennsylvania unless its insurance carrier provides acceptable evidence of insurance (a Form E Certificate of Insurance) in compliance with our Regulations. *See, ETA Order* at 18-19, 22; *Application of Yellow Cab Co. of Pittsburgh, Inc., t/a Yellow X*, Docket No.

A-2014-2410269 (Order entered May 22, 2014). [↑](#footnote-ref-3)