

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Reading City Cab LLC	:	
for approval to transport persons in call or	:	
demand service from points in Berks and	:	A-2016-2524649
Lancaster Counties, to points in Pennsylvania	:	
and return	:	

**INITIAL DECISION SUSTAINING PRELIMINARY OBJECTIONS AND
DISMISSING PROTEST OF J&J LEASING & RENTALS, INC.**

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

A corporation filed an application to provide call and demand service. A carrier holding call and demand authority, limousine authority, paratransit authority and airport transfer authority filed a protest to the application. This decision dismisses the protests of the carrier because it lacks standing to protest the application since its operating authorities are not in conflict with the authority sought by the applicant and it therefore cannot be adversely affected by the granting of the application.

HISTORY OF THE PROCEEDING

On January 14, 2016, Reading City Cab, LLC (Reading City) filed an application with the Pennsylvania Public Utility Commission (Commission) requesting the right to begin to transport persons in call and demand service, from points in Berks County to points in Pennsylvania and return. The Commission caused notice of Reading City's application to be published in the Pennsylvania Bulletin dated February 13, 2016, at 46 Pa.B. 836. The notice

stated that the deadline for filing protests was February 29, 2016. The notice in the Pennsylvania Bulletin mistakenly stated that Reading City's application was for authority from points in Bucks County to points in Pennsylvania and return.

On February 18, 2016, Discount Cab Service, LLC t/a Berks Taxi Cab Service (Berks Taxi), Reading Checker Cab, Inc. (Reading Checker), Reading Metro Taxi Cab, Inc. (Reading Metro) and Reading Yellow Cab, Inc. (Reading Yellow) all filed protests to Reading City's application. These protestants' protests allege that they provide call and demand service in portions of Berks County where Reading City seeks authority to operate.

The protests allege that Reading City's application would not serve a useful public purpose, responsive to a public demand or need, but would duplicate already existing service to the detriment of existing carriers. The protests also allege that approval of Reading City's application would impair these protestants' operations to such an extent that it would be contrary to the public interest. Finally, the protests allege that Reading City is neither technically nor financially capable of providing the service its application proposes. The protests request that the Commission deny Reading City's application.

On February 22, 2016, Reading City filed an amended application with the Commission requesting the right to begin to transport, persons in call and demand service, from points in Berks and Lancaster Counties to points in Pennsylvania and return. The Commission caused notice of Reading City's amended application to be published in the Pennsylvania Bulletin dated March 5, 2016, at 46 Pa.B. 1296. The notice stated that the deadline for filing protests was March 21, 2016.

On March 18, 2016, J&J Leasing and Rentals, Inc. (J&J) filed a protest to Reading City's application. J&J's protest alleges that it has call and demand authority in Lehigh and Northampton Counties, limousine authority in Lehigh, Northampton, Carbon, Luzerne and Monroe Counties, paratransit authority in Lehigh and Northampton Counties and airport transfer authority in Lehigh and Northampton Counties.

J&J's protest alleges that Reading City's application would not serve a useful public purpose, responsive to a public demand or need, but would duplicate already existing service to the detriment of existing carriers. The protest also alleges that approval of Reading City's application would impair J&J's operations to such an extent that it would be contrary to the public interest. Finally, the protest alleges that Reading City is neither technically nor financially capable of providing the service its application proposes. J&J's protest requests that the Commission deny Reading City's application.

Also on March 18, 2016, Autocab, Inc. (Autocab) filed a protest to Reading City's application. Autocab's protest alleges that it provides call and demand service in portions of Lancaster County where Reading City seeks authority to operate.

Autocab's protest alleges that Reading City's application would not serve a useful public purpose, responsive to a public demand or need, but would duplicate already existing service to the detriment of existing carriers. The protest also alleges that approval of Reading City's application would impair Autocab's operations to such an extent that it would be contrary to the public interest. Finally, the protest alleges that Reading City is neither technically nor financially capable of providing the service its application proposes. Autocab's protest requests that the Commission deny Reading City's application.

On April 1, 2016, Reading City filed a motion to dismiss J&J's protest. Reading City's motion to dismiss states that J&J's protest fails to allege that they hold a certificate of public to provide service within the territory sought by Reading City. Reading City argues that, since J&J's protest fails to allege that it holds a certificate of public convenience to provide service within the territory sought by Reading City, J&J lacks standing to protest Reading City's application. The motion to dismiss requests that the Commission dismiss J&J's protest because J&J lacks standing to protest Reading City's application.

On April 11, 2016, J&J filed an answer to Reading City's motion to dismiss. J&J's answer argues that it does hold authority to provide service within the territory sought by Reading City. According to J&J, Reading City is requesting Commission authority to provide service from

points in Berks and Lancaster Counties to points in Pennsylvania and return. Points in Pennsylvania include counties served by J&J. Therefore, J&J argues that it has standing to protest Reading City's application. J&J's answer requests that the Commission deny Reading City's motion to dismiss.

By hearing notice dated April 26, 2016, the Commission scheduled an in person hearing for this matter on June 13, 2016 at 10:00 a.m. in Hearing Room 4, Commonwealth Keystone Building, Harrisburg and assigned the case to me. I issued a prehearing order dated April 27, 2016, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

FINDINGS OF FACT

1. The applicant in this case is Reading City.
2. On January 14, 2016, Reading City filed an application with the Commission.
3. The Commission caused notice of Reading City's application to be published in the Pennsylvania Bulletin dated February 13, 2016, at 46 Pa.B. 836.
4. On February 18, 2016, Berks Taxi, Reading Checker, Reading Metro and Reading Yellow all filed protests to Reading City's application.
5. On February 22, 2016, Reading City filed an amended application with the Commission.
6. The Commission caused notice of Reading City's amended application to be published in the Pennsylvania Bulletin dated March 5, 2016, at 46 Pa.B. 1296.
7. On March 18, 2016, J&J filed a protest to Reading City's application.

8. On March 18, 2016, Autocab filed a protest to Reading City's application.
9. On April 1, 2016, Reading City filed a motion to dismiss J&J's protest.
10. On April 11, 2016, J&J filed an answer Reading City's motion to dismiss.

DISCUSSION

Reading City has filed a motion to dismiss J&J's protest, alleging that J&J lacks standing to protest Reading City's application. The Commission's regulation governing protests to passenger common carrier applications at 52 Pa.Code § 3.381(c)(1)(i)(C) provides as follows:

(C) A protest shall be treated as a pleading and the applicant may, within 20 days after the closing date for the filing of protests, file motions to strike, to dismiss, or for amplification as provided in §5.101 (relating to preliminary motion).

Here J&J filed its protests on March 18, 2016. Reading City filed its motion to dismiss on April 1, 2016. Reading City therefore filed its motion in a timely fashion.

In this case, Reading City has filed a motion to dismiss alleging that J&J lacks standing to protest Reading City's application. I will treat Reading City's motion to dismiss, filed pursuant to 52 Pa.Code § 3.381(c)(1)(i)(C), as preliminary objections requesting dismissal of the protests for lack of standing, pursuant to 52 Pa.Code § 5.101(a)(7). Before addressing the merits of Reading City's preliminary objections, I will briefly discuss the standards for granting preliminary objections.

The Commission's Rule of Practice and Procedure, at 52 Pa.Code §5.101, permits parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa.Code §5.101(a) as follows:

- (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.

Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa.Super. 1991). The Commission follows this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A.2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa.Cmwlt. 1988). The Commission must view the protest in this case in the light most favorable to J&J and should dismiss the protest only if it appears that J&J would not be entitled to relief under any circumstances as a matter of law. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

The regulation at 52 Pa.Code § 5.101(a)(7) permits the filing of a preliminary objection to dismiss a pleading for lack of standing. The provision at 52 Pa.Code § 5.101(a)(7) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa.C.S. § 703(a); Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n, 563 A.2d 557 (Pa.Cmwlth. 1989); Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n, 563 A.2d 548 (Pa.Cmwlth. 1989); S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n, 540 A.2d 1006 (Pa.Cmwlth. 1988); White Oak Borough Authority v. Pa. Pub. Util. Comm'n, 103 A.2d 502 (Pa.Super. 1954).

Viewing the averments in J&J's protest as true for purposes of disposing of Reading City's preliminary objections, J&J has call and demand authority in Lehigh and Northampton Counties, limousine authority in Lehigh, Northampton, Carbon, Luzerne and Monroe Counties, paratransit authority in Lehigh and Northampton Counties and airport transfer authority in Lehigh and Northampton Counties.

Reading City does not deny that J&J has Commission-issued certificates of public convenience authorizing it to provide the service set forth above. Rather, Reading City contends that since J&J does not hold a certificate of public convenience to provide service within the territory sought by Reading City, J&J lacks standing to protest Reading City's application. Reading City is correct.

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. PUC 598, 603 (1991). The Commission has 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. Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co., docket Nos. A-212285F0046/47 and A-210870F01 (Opinion and Order entered July 9, 1998); William Penn Parking Garage, Inc. v. City of Pittsburgh, 346 A.2d 269 (Pa. 1975); Landlord Service Bureau, Inc. v. Equitable Gas Co., 79 Pa. PUC 342 (1993); Re Equitable Gas Co., 76 Pa. PUC 23 (1992);

Manufacturers' Association of Erie v. City of Erie - Bureau of Water, 50 Pa. PUC 43 (1976); Waddington v. Pa. Pub. Util. Comm'n, 670 A.2d 199 (Pa.Cmwlt. 1995), alloc. denied, 678 A.2d 368 (Pa. 1996).

A protestant's interest in the subject matter of a proceeding is direct if the protestant's interest is adversely affected by the actions challenged in the protest, is immediate if there is a close causal nexus between the protestant's asserted injury and the actions challenged in the protest, and is substantial if the protestant has 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., 682 A.2d 1267 (Pa. 1996); In re El Rancho Grande, Inc., 437 A.2d 1150 (Pa. 1981); William Penn Parking Garage, Inc.; Empire Coal Mining & Development, Inc. v. Department of Environmental Resources, 623 A.2d 897 (Pa.Cmwlt. 1993); Landlord Service Bureau, Inc. v. Equitable Gas Co., 79 Pa. PUC 342 (1993). Mere conjecture about possible future harm does not confer a direct interest in the subject matter of a proceeding. Official Court Reporters of the Court of Common Pleas of Philadelphia County v. Pennsylvania Labor Relations Board, 467 A.2d 311 (Pa. 1983). Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers. Pa. Pub. Util. Comm'n v. National Fuel Gas Distribution Corp., 73 Pa. PUC 552 (1990).

Admitting the factual allegations in J&J's protest as true for purposes of disposing of Reading City's preliminary objections, it is clear that J&J does not hold certificates of public convenience to provide service within the territory sought by Reading City nor does it have an application for such service pending before the Commission. J&J therefore lacks standing to protest Reading City's application.

The Commission has previously addressed a party's standing to protest an application for motor carrier authority. In Application of Carriage Limousine Services, Inc., Docket No. A-00108361, F.1, Am-B, Administrative Law Judge Robert P. Meehan discussed the issue of a protestant's standing. In his Initial Decision dated October 12, 1994, which became final by operation of law (Final Order entered December 23, 1994), ALJ Meehan said:

On the question of standing to protest an application to obtain a certificate of public convenience, it appears that a protestant must have some operating authority in actual or potential conflict, with the authority sought by an applicant to have the requisite standing to protest the application. See, Application of Glen Alsace Water Company, 45 PA PUC 472 (1971), standing denied to uncertificated protestant; Re Francis M. Bauer, 50 PA PUC 825 (1977), late-filed protest allowed where protestant had an application for conflicting authority pending; Re Capitol Bus Company, 53 PA PUC 590 (1979), call or demand authority conferred no standing to protest scheduled route service application; Application of Ronald M. McDonald, t/d/b/a Rusmin Trucking, A-00107696, F.2 (entered February 21, 1989), operations under temporary authority with permanent authority application pending sufficient to confer standing upon a protestant; Application of Team Brokerage, Inc., A-00105267 (entered March 6, 1985) and Application of Interstate Express, Inc., A-00111077 (entered April 1, 1994), certificated common carriers lack standing to protest applications for brokerage authority; and Application of Commercial Aggregates Transportation and Sales, L.P., A-0011085, F0003 (entered June 22, 1994), certificated common carrier lacked standing to continue to prosecute the protest after restrictive amendment eliminated all areas of operating authority between the protestant and the applicant. I.D. 7-8.

ALJ Meehan then decided that a protestant having call or demand authority lacked standing to protest an application for amendment of a certificate of public convenience seeking additional service area in which to render limousine service. See also, Application of Kutztown Area Transport, Docket No. A-2009-2140250 (Order entered October 18, 2010); Application of K&F Medical Transport, Docket No. A-2008-2020353 (Final Order entered July 8, 2008). The Commission recently held that protestants having call or demand authority lacked standing to protest an application for paratransit authority. Application of Select Ambulance, Inc., Docket No. A-2014-2441095 (Final Order entered April 3, 2015).

The decisions cited above are controlling on the outcome of this case. J&J has authority to provide limousine service, paratransit service and airport transfer service. The limousine, paratransit and airport transfer authorities held by J&J are not in conflict or potential

conflict with the authority sought by Reading City. Consequently, J&J cannot be adversely affected by the granting of Reading City's application for call and demand authority. Therefore, J&J cannot be aggrieved. J&J possesses no greater interest in Reading City's application than any other member of the general public in having others comply with the law. This generalized interest is not sufficient to confer standing on J&J to protest Reading City's application.

In its answer to Reading City's motion to dismiss, J&J argues that its authority to provide call and demand service is in conflict with Reading City's application because Reading City is requesting Commission authority to provide service from points in Berks and Lancaster Counties to points in Pennsylvania and return. J&J contends that this portion of the authority sought by Reading City includes points to, from, within and between points in Lehigh and Northampton where J&J provides call and demand service. Therefore, J&J argues that it has a direct, immediate and substantial interest in Reading City's application and standing to protest Reading City's application. However, J&J fails to cite any Commission decisions that support its position. In fact, J&J's argument is contrary to Commission regulations governing the method of operation of call and demand carriers.

The Commission regulation at 52 Pa.Code § 29.312(4) governing the method of operation of call and demand carriers states as follows:

(4) *Territorial restrictions, exclusive service.* When engaged in service on an exclusive basis, a call or demand vehicle may transport persons:

- (i) In the area authorized by the certificate.
- (ii) From a point in the area authorized by the certificate to a point in this Commonwealth.
- (iii) From a point in this Commonwealth to a point in the area authorized by the certificate, provided that the request for the transportation is received in the area authorized by the certificate.

Applying this regulation to Reading City and J&J reveals that there is no actual or potential conflict in their operating authorities. Reading City's application will only allow it to transport persons in Berks and Lancaster County, from a point in Berks or Lancaster County to a point within Pennsylvania or from a point in Pennsylvania to a point in Berks or Lancaster County if the request for transportation is received in Berks or Lancaster County. J&J's call and demand certificate of public convenience allows it to transport persons in Lehigh and Northampton County, from a point in Lehigh or Northampton County to a point within Pennsylvania or from a point in Pennsylvania to a point in Lehigh or Northampton County if the request for transportation is received in Lehigh or Northampton County. There is no conflict between Reading City's and J&J's call and demand authorities. J&J cannot be adversely affected by the granting of Reading City's application.

The regulation and decisions cited above require that a protestant have authority that is in actual or potential conflict with the authority sought by the applicant. Here, there is not actual or potential conflict between the authority sought by Reading City and the authority held by J&J.

Reading City's right to relief is clearly warranted and free from doubt. I will sustain Reading City's preliminary objections and dismiss J&J's protest.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the participants in this case. 66 Pa.C.S. § 1103
2. Standing requires that an aggrieved party have an interest which is substantial, direct, and immediate. William Penn Parking Garage, Inc. v. City of Pittsburgh, 346 A.2d 269 (Pa. 1975)

3. A protestant must have some operating authority in actual, or potential conflict with the authority sought by an applicant to have the requisite standing to protest the application. Application of Glen Alsace Water Company, 45 PA PUC 472 (1971).

4. J&J has failed to demonstrate that it possesses any interest in the subject matter of this proceeding which is direct, immediate, and substantial. Application of Kutztown Area Transport, Docket No. A-2009-2140250 (Order entered October 18, 2010).

5. J&J lacks standing to litigate its protest in this proceeding. Application of Select Ambulance, Inc., Docket No. A-2014-2441095 (Final Order entered April 3, 2015).

6. No genuine issue of material fact exists for trial regarding J&J's lack of standing. Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n, 563 A.2d 557 (Pa.Cmwlth. 1989).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections of Reading City Cab, LLC to the protest filed by J&J Leasing and Rentals, Inc. at Docket No. A-2016-2524649 are sustained.

2. That the protest of J&J Leasing and Rentals, Inc. is dismissed for lack of standing.

Dated: May 5, 2016

/s/
David A. Salapa
Administrative Law Judge