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September 1, 2011

Ms. Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

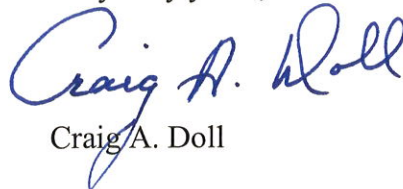
Re: Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v.  
Keystone Cab Service, Inc.  
Commission Docket No. C-2010-2092896

Dear Secretary Chiavetta:

Enclosed for filing is the original of the Motion for Judgment on the Pleadings of Respondent, Keystone Cab Service, Inc. in the above captioned proceeding which was filed electronically this date. A copy of this Motion has been served upon the presiding Administrative Law Judge and those parties set forth in the accompanying Certificate of Service.

If you have any questions, please feel free to contact me. Thank you for your cooperation.

Very truly yours,

  
Craig A. Doll

Enclosure

cc: Per Certificate of Service  
Keystone Cab

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :  
Bureau of Transportation and Safety : Docket No. C-2010-2092896  
v. :  
Keystone Cab Service, Inc. :

**NOTICE TO PLEAD**

The attached Motion for Judgment on the Pleadings of Keystone Cab Service, Inc. has been filed with the Pennsylvania Public Utility Commission in the above captioned proceeding. If you wish to respond to this Motion, you must take action within twenty (20) days after this Motion are served by filing a response with the Secretary of the Pennsylvania Public Utility Commission and serving a copy of that response upon all parties of record. You are warned that if you fail to do so the case may proceed without you and an order or judgment may be entered against you by the Commission without further notice.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Transportation and Safety	:	
	:	
v.	:	C-2010-2092896
	:	
Keystone Cab Service, Inc.	:	

MOTION FOR  
JUDGMENT ON THE PLEADINGS

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TO THE HONORABLE ELIZABETH H. BARNES:

Keystone Cab Service, Inc. (“Keystone” or “Respondent”), by and through its undersigned counsel, and pursuant to the provisions of 52 Pa. Code §5.102, files this Motion for Judgment on the Pleadings, requesting that Your Honor enter a judgment in favor of Respondent Keystone. In support of this Motion, Keystone states as follows:

1. On or about February 1, 2010, the above captioned complaint was served upon Respondent Keystone pursuant to the authority delegated by the Commission to the Bureau of Transportation and Safety (“BTS”).
2. The complaint alleged, *inter alia*, that at some unspecified date, one Michael Holmes received \$80.00 for future service to be rendered to one Candace Woods. The complaint further alleged that the future service was not rendered. Additionally, the complaint alleged that on February 10 and again on February 20, 2009, Respondent was visited by an Enforcement Officer and was unable to produce a driver history and log sheet for Mr. Holmes on the dates that the alleged transportation was to have taken place.
3. On February 22, 2010, February 21, 2010 being a Sunday, Respondent filed an Answer and New Matter with a copy served upon the Commission’s Chief of Enforcement who had signed the original complaint.

4. Within the Answer, Respondent denied that Mr. Holmes was a driver for Respondent during the period in question as well as all other material factual allegations with specificity.

5. In addition to incorporating its previous answers, Respondent, in New Matter, alleged that it received no compensation from Ms. Woods and that Ms. Woods never contacted Respondent or requested that it provide transportation services. As such, Respondent had no obligation to provide such services to Ms. Woods.

6. Pursuant to 52 Pa. Code § 5.63(a) replies to new matter must be filed with the Commission and served upon the parties within 20 days of the date of service of the answer. As the answer and new matter was filed February 22, 2010, the response to new matter was due March 15, 2010.

7. No response to New Matter was ever filed or received by Respondent.

8. Pursuant to the provisions of 52 Pa. Code §5.63(b), the failure to file a timely response to new matter deems all of the relevant facts contained in the new matter to be admitted. *See also, Urbano v. STAT Courier, Inc.*, 878 A.2d 58 (Super. 2005); appeal denied 889 A.2d 1217, 586 Pa. 714.

9. As stated in new matter and by incorporating its answers to the BTS allegations by reference, Mr. Michael Holmes was not a driver for Respondent during the period in question, was not a representative or agent of Respondent and had no legal authority to bind Respondent to any contractual arrangement. Further, Respondent specifically alleged in new matter that Ms. Woods never called Respondent to request service from Respondent (¶ 14) and that Respondent received no compensation from Ms. Woods. (¶ 13). By failing to reply to this new matter, BTS has admitted these facts.

10. 52 Pa. Code §5.102 permits the filing of a Motion for Judgment on the Pleadings which will be granted upon a showing that there exists no genuine issue as to a material fact and that the movant is entitled to a judgment as a matter of law. 52 Pa. Code §5.102(a), (d)(1); *Parish v. Horn*, 768 A.2d 1214 (Cmwlth. 2001), affirmed 800 A.2d 294, 569 Pa. 45; *American Federation of State, County and Municipal Employees*, 658 A. 2d 865 (Cmwlth. 1995).

11. There are no genuine issues as to the material facts in this proceeding. BTS asserts that Michael Holmes not Respondent received money from Candace Woods. BTS has admitted that Mr. Holmes was not an employee or driver for Respondent during the time period in question. BTS has admitted that Ms. Woods never contacted Respondent to provide service during the period in question. BTS has admitted that Respondent did not receive any compensation from Ms. Woods to provide service. Respondent has admitted that it did not provide any service since service was not requested of it by Ms. Woods. Respondent has further admitted that it did not furnish logs to PUC Enforcement Officer Troxell, and that as Mr. Holmes was not a driver for Respondent there was no necessity to maintain logs that did not exist or were required to be kept. There are no other material facts at issue in this proceeding.

12. Respondent is entitled to a judgment as a matter of law. BTS claims that Respondent has failed to charge the proper rate in accordance with its tariff. Since Respondent did not transport Ms. Woods there was no fare due to Respondent, nor did Respondent receive any fare from Ms. Woods. Thus, it could not have received any compensation that was different from that contained in its tariff.

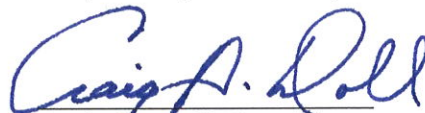
13. BTS has alleged that by failing to provide service Respondent has violated 66 Pa. C.S. §1501. Respondent submits that the basic premise of all public utility service is that a customer must first request that service be provided from a particular utility, and that, except in limited circumstances; only upon receipt of the request must the utility provide service to that

customer. As BTS has admitted that Ms. Woods never requested service from Respondent, there was no obligation on the part of Respondent to provide that service.

14. BTS alleges that the failure to provide a driver history and log sheets gives rise to a violation of 52 Pa. Code §§29.504 and 29.313(c). BTS has also admitted that it was informed that Mr. Holmes was not an employee or driver for Respondent during the period in question. Respondent submits that there is no obligation imposed under the Public Utility Code or the Commission's regulations to maintain driver history or log sheets for individuals who are not drivers for Respondent. Respondent submits that the law is clear and under the admitted facts submitted in this proceeding Respondent has not violated the Public Utility Code or this Commission's regulations.

Wherefore, Respondent, Keystone Cab Service, Inc. respectfully requests that Your Honor grant this Motion and enter a judgment on the pleadings in favor of Respondent.

Respectfully submitted,



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Attorney I.D. # 22814  
Attorney for Keystone Cab Service, Inc.

Dated: September 1, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the Motion for Judgment on the Pleadings of Keystone Cab Service, Inc. upon the persons listed below via first class mail, postage prepaid in accordance with the provisions of 52 Pa. Code §1.54.

Honorable Elizabeth Barnes  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Heidi Wushinske, Esquire  
Pa PUC Law Bureau  
P.O. Box 3265  
Harrisburg, PA 17105-3265



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Craig A. Doll, Esquire

Attorney for Keystone Cab Service, Inc.

DATED: September 1, 2011