

The

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November 29, 2011

Secretary's Bureau  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

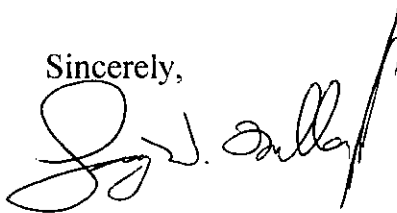
Re: Kleffel's Moving & Delivery Service, No.: A-2010-2202568

Dear Sir/Madam:

Enclosed please find the original and one (1) copy of the Post Hearing Reply Brief in Support of Applicant in the above-mentioned matter. Kindly file the original and return a time-stamped copy in the enclosed postage paid envelope.

If you have any questions, please give me a call.

Sincerely,



Larry W. Miller, Jr., Esquire  
Miller Law Group, PLLC

LWM:tmh  
Enclosure

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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IN THE MATTER OF:  
APPLICATION OF  
BRADLEY A. KLEFFEL,  
T/A KLEFFEL'S MOVING & DELIVERY SERVICE  
NO.: A-2010-2202568

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PA PUBLIC UTILITY COMMISSION  
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POST HEARING REPLY BRIEF IN SUPPORT OF APPLICANT

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After a review of Protestants' Brief filed in this matter, and after a review of the Brief filed by Applicant in this matter, it appears little is in dispute in this case. Protestants agree that a need exists for a company providing the services and prices proposed by Applicant, and they further agree that none of the currently licensed companies provide such services at the pricing structure proposed by Applicant. It was undisputed that Applicant provides excellent service to its customers and that Applicant is a positive benefit for the customers it serves in the areas it is licensed to provide service for. Applicant stands by its Brief, and respectfully asks again that the Commission reviews its previous brief filed in this matter and grants the license sought by Applicant in this matter for the reasons set forth therein.

The only issue appears to be whether Applicant's practice of waiving charges over and above its estimate is legal under the current laws and regulations with the PUC. Protestants offer no legal support for its assertion that this practice is illegal, but Applicant believes the laws Protestants are referring to is 66 Pa.C.S.A. 1303 and 1304. The laws set forth in 1303 and 1304 are clear in that a common carrier may not charge a rate less than the published tariff rates, particularly in a fashion that discriminates against one class of consumer over another, but the

law seems to be less than clear as to the application of the law when a common carrier elects *not* to charge for time spent on a project.

Applicant takes note of Pennsylvania Bulletin Number 6, Volume 28 dated February 7, 1998, discussing whether a binding estimate is permitted under current Pennsylvania law as well as whether it ought to be permitted under Pennsylvania law. Few cases, if any, exist on point as to whether Applicant may elect not to charge for time under certain circumstances. However, Applicant found the following cases to be the most instructive: Kirkwood Partnership v. Pennsylvania Public Utility Commission, 576 A.2d 1167 (1990); and Mill v. Commonwealth, 447 A.2d 1100 (1982).

Neither of these cases is on point, however, and Applicant was unable to find a case which dealt with the issue as Applicant submits in this case. Simply put, Applicant does an estimate as required under Pennsylvania law. That estimate contains a reasonable and accurate determination from Applicant as to the actual hours that will be necessary to complete the job as requested. If the actual performance of the job requires additional hours to complete the job due to additional tasks required or unforeseen difficulties known to the customer but not Applicant, then Applicant agrees that he is required to charge the additional fees as required under the PUC laws. However, if other situations arise which are not under the control of the customer or Applicant such as traffic between points, Applicant believes that time should not be charged to the customer. Applicant does not charge a lesser fee than the scheduled tariff, neither through lesser rates or a binding estimate. However, under the law Applicant is legally entitled to not charge for time where no work is being performed on behalf of the customer, and because of this non-existence of a requirement to charge for time Applicant is entitled to “waive” such charges.

Applicant does not dispute that a carrier would be entitled to charge for time sitting in traffic or lost time looking for an address, etc. Such time is spent in an effort to complete the tasks as the carrier has been hired to complete, so charging for such time is not inappropriate. However, Applicant feels it is not required to charge for such time under the law, as this time was not required to complete the task, and is more related to the carrier's inability to find a quicker route or know all of the addresses in a given community. This time is not the customer's creation, and work is not being done at those times. After a close look at the law, Applicant has determined that he is not required to charge for time not used actively in completing the task at hand, and Applicant feels it is not proper to charge a customer for this time. Making a determination that certain time is not properly billed is well within the acceptable parameters of discretion given to carriers by the PUC. Applicant has a policy to "waive" such charges, as he believes they are not fair. No law within the Commonwealth of Pennsylvania or case law interpreting that law makes such a practice illegal. Applicant is fighting to make the customer the foremost concern. As was said in Kirkwood, Applicant is following what the law asks which is to make charges fair and reasonable for the consumer. Electing not to charge for time spent essentially doing nothing is a practice which should be applauded, not chastised and used as a reason not to grant a license. Applicant puts the customers first- we need more, not less, of such behavior.

It should be further noted that no testimony was given regarding whether Applicant is not giving accurate estimates, as such an issue was not disputed between the parties. However, the reason Applicant is in a position to "waive" charges over and above the estimate given is because his estimates are amazingly accurate, and to date all time spent on the job has matched or been lesser than the time placed on the original estimate. The only issue has been the occasional time

spent in traffic or lost looking for an address, which Applicant waives as he believes such time should not be charged, and is not required to be charged under the law. Applicant is and always will be an advocate for the consumer. The applied for areas will benefit from such an approach.

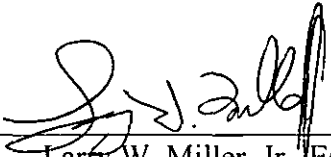
The only remaining issue is an apparent confirmation from Protestants in their Brief that their charges (the one hour minimum instead of two) are not the same as their scheduled tariffs. If true, such a practice should suggest their credibility and further call into question whether the applied for territory would benefit from the addition of the Applicant. Given all that has been argued, Applicant respectfully asks this Commission to do what's reasonable and fair for both Applicant and the consumers they propose to serve: approve Applicant's application.

#### Conclusion

For all the reasons discussed, granting the Applicant's application would permit a quality company to provide customers with a useful public purpose within the proscribed area, as evidenced by the testimony regarding Applicant's quality of work. Granting the application would further be responsive to a public demand or need, as the uncontroverted testimony given in this matter shows that the proscribed area described in Applicant's application is in need of a company to provide the services Applicant will provide at the prices Applicant will charge. For the benefit of the public within the proscribed area, Applicant respectfully asks this Commission to approve the application of Applicant.

Dated: November 29, 2011

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By:   
Larry W. Miller, Jr., Esquire  
Attorney for Applicant  
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West Lawn, PA 19609  
(610) 670-9000

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN THE MATTER OF:  
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BRADLEY A. KLEFFEL,  
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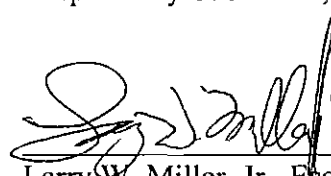
CERTIFICATE OF SERVICE

I, Larry W. Miller, Jr., Esquire hereby certify that I have this day served a true and correct copy of this Post Hearing Brief in Support of Applicant, via first class mail, postage prepaid, and via email upon the following:

William H. R. Casey, Esquire  
99 East Court Street  
Doylestown, PA 18901

Angela T. Jones, Administrative Law Judge  
Pennsylvania Public Utility Commission  
Suite 4063  
801 Market Street  
Philadelphia, PA 19107

Respectfully Submitted,



Larry W. Miller, Jr., Esquire  
Miller Law Group, PLLC  
25 Stevens Avenue  
West Lawn, PA 19609  
(610) 670-9000

Date: November 29, 2011



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UNITED STATES P.



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**FROM:** (PLEASE PRINT) PHONE (610) 670-9600

Kerry W. Miller, Jr., Esquire  
 Miller Law Group, PLLC  
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**TO:** (PLEASE PRINT) PHONE ( )

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