

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-461CP-TA

THE APPLICATION OF KYLE BUIS, DOING BUSINESS AS PEGASUS TRANSIT, FOR TEMPORARY AUTHORITY TO CONDUCT OPERATIONS AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**COMMISSION ORDER DENYING
TEMPORARY AUTHORITY**

Mailed Date: November 7, 2003
Adopted Date: November 5, 2003

I. BY THE COMMISSION:

A. Statement

1. On October 21, 2003, Kyle Buis, doing business as Pegasus Transit (“Pegasus Transit”), filed an application for temporary authority to conduct operations as a common carrier by motor vehicle for hire for the transportation of passengers and their baggage, in scheduled service: (I) between the Greeley Mall, Greeley, Colorado, on the one hand, and Denver International Airport, 8500 Pena Boulevard, Denver, Colorado, on the other hand, with service to the following intermediate points: 3033 8th Street, Evans, Colorado, La Salle, Colorado, Peckham, Colorado, Gilcrest, Colorado, Platteville, Colorado, Ione, Colorado, Ft. Lupton, Colorado, and Brighton, Colorado; and (II) between the Transfer Station at Colorado State University, Ft. Collins, Colorado, on the one hand, and Denver International Airport, 8500 Pena Boulevard, Denver, Colorado, on the other hand, with service to the following intermediate points: the intersection of Monroe and J. F. K. Parkway, near the Foothills Square Mall, Ft. Collins, Colorado, the Harmony Road Park and Ride at the intersection of Harmony Road and I-

25, Ft. Collins, Colorado; and the Loveland Park and Ride at the intersection of I-25 and U. S. Highway 34. Restrictions: (1) To using vehicles that meet the accessibility requirements of the Americans with Disabilities Act; (2) Item I is restricted to use of two vehicles; and (3) Item II is restricted to the use of one vehicle.

2. The Commission gave notice of the application on October 27, 2003.

3. Shamrock Taxi of Fort Collins Inc., doing business as Shamrock Shuttle, and Greeley Airport Shuttle Inc., doing business as Rocky Mountain Shuttle, Ltd., filed interventions opposing a grant of the application.

4. Pursuant to § 40-6-120(1), C.R.S., the Commission is authorized to grant temporary authority when "there appears to be an immediate and urgent need to any point or within a territory having no carrier service capable of meeting such need."

5. Pegasus Transit must meet a two-fold test: first, that there is an immediate and urgent need for the transportation services, and second, that there is no existing carrier capable of meeting the need. If Pegasus Transit fails to meet either test, the application must be denied.

B. Findings of Fact

6. Shamrock Taxi of Fort Collins Inc., doing business as Shamrock Shuttle, under Certificate of Public Convenience and Necessity (CPCN) PUC No. 49759, may provide scheduled service and call-and-demand limousine service between all points within a 13-mile radius of the intersection of Larimer County Road 32 and Larimer County Road 13 near Ft. Collins, Colorado, and from and to said points on the one hand, and Denver International Airport, on the other hand; with service to the intermediate points of Loveland and Longmont, Colorado.

The scheduled service that Shamrock Taxi of Fort Collins Inc., doing business as Shamrock Shuttle, may provide between Ft. Collins and Denver International Airport does overlap with a portion of the authority requested in this temporary authority application.

7. Greeley Airport Shuttle Inc., doing business as Rocky Mountain Shuttle, Ltd., under CPCN PUC No. 52483, may provide scheduled service between Denver International Airport, on the one hand, and Greeley, Colorado, on the other hand, with service to the intermediate points of LaSalle, Platteville, Fort Lupton, and Brighton, Colorado. The scheduled service that Greeley Airport Shuttle Inc., doing business as Rocky Mountain Shuttle, Ltd., may provide between Greeley and Denver International Airport does overlap with a portion of the authority requested in this temporary authority application.

8. In its statement of support Pegasus Transit states: “There are currently no providers that have any vehicles that are A.D.A. compliant, that leaves people with disabilities without a ride to/from 8500 Pena Blvd. (DIA). We have received many phone calls & letters about the need for services for the disabled. Our vehicles were designed to be A.D.A. compliant, & we are ready to transport any disabled passenger who needs a ride.”

9. Four letters of support were submitted with this application. The authors of three of the letters state they, or a relative, need transportation between Ft. Collins, Colorado, and Denver International Airport. The individual in each of the letters, who needs to be transported between Ft. Collins, Colorado, and Denver International Airport, apparently has some type of disability and requires the use of a wheelchair. The authors of two of the letters state they have not received satisfactory service when they tried to use Shamrock Taxi of Ft. Collins, Inc., doing business as Shamrock Shuttle for the trip between Ft. Collins and Denver International Airport.

Shamrock Taxi of Ft. Collins, Inc., doing business as Shamrock Shuttle may provide scheduled and call-and-demand limousine service between Ft. Collins and Denver International Airport under Certificate of Convenience and Necessity PUC No. 49759.

10. The author of the fourth letter, Sean Herr, is the production manager of an unidentified business facility. Mr. Herr states “We have a dozen employees who have various disabilities, & require high roof vehicles.” Mr. Herr also states that the business facility has limited parking available for its employees. Mr. Herr has met with these employees and discussed their need for some type of public transportation. Mr. Herr reports that the employees have stated they would use Pegasus Transit for transportation to and from work. Mr. Hess does not identify the location of the business facility or the addresses from which the employees would be transported. Pegasus Transit, in this application, only requested to provide scheduled service to or from Denver International Airport. Therefore, unless this business facility is located at Denver International Airport, Pegasus could not provide transportation service between the employees’ homes and the business facility.

11. None of the letters included any information that indicated a need for service existed between Greeley, Colorado, and Denver International Airport.

12. The service that Pegasus is requesting to provide appears to involve the transportation of individuals who require the use of a wheelchair. The support letters also indicate the need for transportation by individuals with disabilities. Pegasus Transit is advised that the transportation of individuals who require the use of a wheelchair is addressed in §40-11-102(2), C.R.S. as follows:

“Nothing in this article shall apply to any motor vehicle carrier as defined by section §40-10-101 (4)(a), nor to a private individual who carries a neighbor or a friend on a trip, nor to hearses or ambulances or other emergency vehicles, nor to vehicles designed and used for the nonemergency transportation of individuals with disabilities as defined in section 42-7-510(2)(b).”

These vehicles are defined in §42-7-510(2)(b), C.R.S. as follows:

“As used in subsection (2), a ‘motor vehicle designed and used for the nonemergency transportation of individuals with disabilities means any motor vehicle designed to facilitate the loading of individuals with physical disabilities confined to a wheelchair.”

13. Therefore, the type of service requested by Pegasus Transit in this application and the transportation service described in the support letters appears to be exempt from regulation by the Commission. Pegasus Transit is not required to obtain a permit from the Commission to provide the transportation named in §40-11-102(2) and §42-7-510(2)(b), C.R.S. However, Pegasus Transit is also advised that the transportation of individuals for compensation, who are not confined to a wheelchair, in a motor vehicle designed to facilitate the loading of individuals with physical disabilities confined to a wheelchair is a regulated transportation service and does require a Certificate of Public Convenience and Necessity issued by this Commission.

C. Conclusions

14. An immediate and urgent need for the requested transportation services has not been shown to exist, and it has not been shown that there are no other carriers capable of providing the service.

15. This application for temporary authority is not in the public interest.

16. The denial of this application creates no presumption about the final disposition of the permanent authority application. The permanent authority application will be determined on the evidence presented using the statutory criteria.

II. ORDER

A. The Commission Orders That:

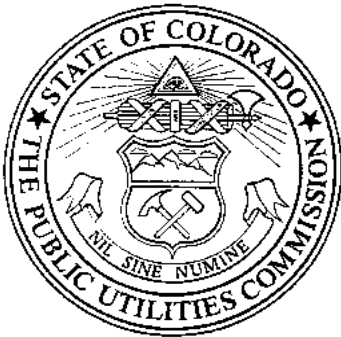
1. The application for temporary authority filed by Kyle Buis, doing business as Pegasus Transit, is denied.

2. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails or serves this Order.

3. This Order is effective immediately on its Mailed Date.

**B. ADOPTED IN THE COMMISSIONERS' WEEKLY MEETING
November 5, 2003.**

(SEAL)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners