

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

THE APPLICATION OF FRESH)	
EXPRESS-COLORADO, INC., FOR)	
TEMPORARY AUTHORITY TO EXTEND)	DOCKET NO. 92A-527CY-
OPERATIONS UNDER CERTIFICATE OF)	EXTENSION-TA
PUBLIC CONVENIENCE AND NECESSITY)	
PUC NO. 346&I.)	

**COMMISSION ORDER GRANTING
TEMPORARY AUTHORITY IN PART**

Mailed date: October 29, 1992
Adopted date: October 28, 1992

STATEMENT, FINDINGS, AND CONCLUSIONS

BY THE COMMISSION:

1. On September 30, 1992, Fresh Express-Colorado, Inc., filed Docket No. 92A-527CY-Extension-TA for temporary authority to extend operations under Certificate of Public Convenience and Necessity PUC No. 346&I for the transportation of potatoes and lettuce between points within a 15-mile radius of Center, Colorado, on the one hand, and points in the Counties of Denver, Arapahoe, Larimer, and El Paso, State of Colorado, on the other hand. The application is restricted to the use of vehicles equipped with mechanical refrigeration devices.

2. The Commission gave notice of the application on October 13, 1992. Interventions opposing a grant of the application were filed by E&R Trucking, Inc., and Bill Clark Trucking, Inc.

3. By § 40-6-120, C.R.S., the application for temporary authority is under consideration for a Commission order.

4. Section 40-6-120(1), C.R.S., authorizes the Commission 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. The support filed on behalf of this application indicates four of the five shippers require an alternate to a service arrangement that has been terminated so that they will have adequate motor carrier services be made available to them to transport produce inbound to their facilities on a timely basis. The letter from Yancey's Food Service, Inc. (Yancey's), however, did not furnish any reasons to support a need for the Applicant's service. The shippers believe that other carriers are unwilling to handle their freight because of the smaller volumes tendered, and there is an need for service they believe they are unable to obtain. The intervenors deny that there is an unmet need and assert that they can provide the service to the shippers.

6. The Commission finds due to the facts stated in paragraph 5 above, there is as immediate and urgent need for additional transportation services. The Commission will grant the application in part. The lettuce season has ended so the Commission will grant the application for potatoes only and will limit the grant to the supporting shippers with the exception of Yancey's.

7. The Applicant has adequate equipment and financial resources to begin immediate service within the scope of the authority sought and is willing, ready, and able to operate under all Commission rules and regulations governing carriers by motor vehicle.

8. This application for temporary authority is in the public interest and should be granted in part.

9. The Applicant is advised that the granting of a temporary authority makes no presumption that permanent authority will be granted.

THEREFORE THE COMMISSION ORDERS THAT:

1. Fresh Express-Colorado, Inc. is granted temporary authority to extend operations under Certificate of Public Convenience and Necessity PUC No. 346&I for a period of 165 days commencing from the mailed date of this order, with authority as set forth in the attached Appendix.

2. Fresh Express-Colorado, Inc. shall not commence operation until all requirements have been met and notice in writing has been received from the Commission that the Applicant is in compliance and may begin service.

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3. 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 decision.

4. This Order is effective on its date of mailing.

DONE IN OPEN MEETING October 28, 1992.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

CHAIRMAN ROBERT E. TEMMER DISSENTING.

CHAIRMAN ROBERT E. TEMMER DISSENTING:

I would deny the application. There is insufficient evidence to support a finding that there is no carrier service capable of providing the service.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Chairman

ORDER-IS

Transportation of
potatoes

from points within a 15-mile radius of Center, Colorado to points in the Counties of Denver, Arapahoe, and El Paso, State of Colorado.

This temporary authority is restricted as follows:

1. to the use of vehicles equipped with mechanical refrigeration devices; and
2. to providing service for only:
 - a. Federal Fruit and Produce, Inc.;
 - b. Quality Food Service, Inc.;
 - c. Federal Food Service, Inc.; and
 - d. Kraft-Denver.

ORDER-IS

APPLICANT:

Fresh Express-Colorado, Inc.
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Colorado Springs, CO 80906

APPLICANT'S ATTORNEY:

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WILLIAMS & ISLEY, P.C.
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INTERVENORS:

E & R Trucking, Inc.
P. O. Box 37
Henderson, CO 80640

Bill Clark Truck Line, Inc.
311 6th Street
Alamosa, CO 81101

ATTORNEY FOR INTERVENORS:

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ROUTE:

1	31 (5 copies)
2	40 (7 copies)
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