

Decision No. C03-0103

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 02A-412CP-TA

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THE APPLICATION OF OWNER/DRIVER UNITED CORPORATION, DOING BUSINESS AS BLUE SKY SHUTTLE, FOR EMERGENCY TEMPORARY AUTHORITY TO CONDUCT OPERATIONS AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

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DOCKET NOS. 02A-531CP-LEASE-TA and 02A-531CP-LEASE

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THE APPLICATION OF OWNER/DRIVER UNITED CORPORATION, DOING BUSINESS AS BLUE SKY SHUTTLE, FOR TEMPORARY APPROVAL TO ALLOW BOULDER EXPRESS, LLC, DOING BUSINESS AS BOULDER EXPRESS SHUTTLE, TO ASSUME OPERATIONAL CONTROL OF TEMPORARY AUTHORITY.

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**DECISION DENYING APPLICATION FOR REHEARING,  
REARGUMENT, OR RECONSIDERATION PURSUANT  
TO § 40-6-114, C.R.S., AND DECISION GRANTING  
STIPULATED MOTION TO RESTRICTIVELY  
AMEND TEMPORARY AUTHORITY**

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Mailed Date: January 30, 2003  
Adopted Date: January 22, 2003

**I. BY THE COMMISSION**

**A. Statement and Findings**

1. We address two separate filings both related to Docket No. 02A-412CP-TA. The second also involves Docket Nos. 02A-531CP-Lease-TA and 02A-531CP-Lease.

**B. Application for Rehearing, Reargument, or Reconsideration**

2. This matter comes before the Commission for consideration of the Application for Rehearing, Reargument, or Reconsideration (RRR) of Decision No. C02-1415 filed by Schafer-Schonewill and Associates, Inc., doing business as Englewood Express and/or Wolf Express Shuttle (Englewood Express), on January 7, 2003. In that decision, the Commission granted in

part, and denied, in part, earlier applications for RRR filed by Intervenor Englewood Express, as well as Intervenor SuperShuttle International Denver, Inc. (SuperShuttle), and Metro Taxi, Inc. (Metro).

3. In granting SuperShuttle's RRR application in full, and Metro's, in part, we amended that temporary authority granted to Owner/Driver United Corp., doing business as Blue Sky Shuttle (Blue Sky), and acknowledged that we had "erred in omitting restrictions from both the scheduled and call-and-demand portions of the authority, and also in expanding upon that geographic area requested and noticed for scheduled service." We further stated in Decision No. C02-1415 that:

In order to correct these errors, we find it useful to revert back to the format and wording of the original authority as requested by Blue Sky in August. While we ... note the somewhat awkward and inelegant wording and format of the authority, we find that, for purposes of this *temporary* authority, it is most practical to leave the authority in this format.

(Emphasis in original.)

4. We then denied Metro's application as moot to the extent that it urged the incorrectly omitted (and newly re-inserted) restrictions resulted in Blue Sky's authority being substantially similar to that of a taxicab carrier such as Metro.

5. We denied Englewood Express's application in full. We rejected Englewood Express's argument that it should not be penalized for failing to procure some 170 supplemental letters that were not served upon it by Blue Sky. In denying RRR on this argument, we stated:

Regarding Englewood Express's first argument—regarding its failure to procure the supplemental letters—we stand by our earlier statement that we are not persuaded. As we noted in Decision No. C02-1220, Blue Sky was required, per Commission Rule of Practice and Procedure 7(b)(2), 4 CCR 723-1, to serve Englewood Express with copies of the supplemental letters. However, as we stated in that decision, Englewood Express knew of the existence of the letters as

soon as Decision No. C02-1003 was issued. When we issued Decision No. C02-1141, Englewood Express knew that the Commission requested comments regarding those letters. While Blue Sky should have sent those letters to Englewood Express when they were filed with the Commission in August, we decline to relieve Englewood Express of any burden to even make a simple phone call to this Commission or to Blue Sky in order to procure the letters when it knew that we desired comment regarding the substance of those letters.

In a closely related argument, Englewood Express continues to urge that the letters are prohibited *ex parte* information, and that they must be stricken, and the application, denied. Because the identical argument has been fully addressed in Decision No. C02-1220, we deny Englewood Express's application for RRR on this point

6. We next denied Englewood Express's RRR application in terms of its second argument—that the Commission erred in not considering Englewood Express's newly granted authority when we considered the merits of Blue Sky's temporary authority application. We noted that Englewood Express had mentioned the pending decision granting it new authority in its Notice of Intervention, and stated that “mention of the pending Decision No. C02-0905 is on the record in this docket by virtue of Englewood Express's reference to the decision in its original intervention, filed before our ruling on Blue Sky's application, and was considered by the Commission, along with all other filed materials, before our determination on the merits of Blue Sky's application.” We now further remind Englewood Express that the Commission had already voted to grant the new authority, hence we were aware that an order commemorating that decision was forthcoming.

7. We next denied Englewood Express's RRR application to the extent that Englewood Express asserted that we erred in stating that we may not amend a temporary authority based on changed circumstances:

Contrary to Englewood Express's assertion, we did not state that we may never amend a decision based on circumstances that have changed since the original decision, but merely stated, citing § 40-6-114(1), C.R.S., that “in contemplating an application for RRR, we necessarily look to the legal merits of the original

decision.” We further noted the necessarily fleeting nature of a temporary authority, and determined that the particular changed circumstances in this instance would not merit reversal of our decision to grant to Blue Sky the temporary authority. Hence, for the same reasons as we articulated in Decision No. C02-1220, we deny Englewood Express’s application on this contention.

(Footnotes omitted.)

8. We additionally noted that Englewood Express’s reference to an earlier Commission decision was misleading, as that case was factually distinguishable from the facts at issue in Docket No. C02-412CP-TA.

9. Finally, we denied Englewood Express’s RRR application on the issue of Englewood Express’s assertion that Decision No. C02-1220 must be reversed because Englewood Express stated that it cannot sustain the diversion of traffic brought on by Blue Sky’s operations. In denying on this point, we stated that:

we find that (1) the issue of injury to other carriers has already been addressed in previous Commission decisions, and (2) Englewood Express had an opportunity to comment on the substantive merits of Blue Sky’s application in previous stages of this process—notably, when we requested comment on the substance of the 171 supplemental letters—and it chose to only address procedural deficiencies. Because we find that the issue of harm to Englewood Express has already been adequately considered in earlier parts of this application, we deny Englewood Express’s RRR application to the extent that it urges a reversal of the grant of Blue Sky’s temporary authority.

10. Englewood Express now urges the Commission that we erred in three of our findings in Decision No. C02-1415. First, Englewood Express states that we were incorrect in our discussion of the supplemental letters filed by Blue Sky, and our determination that Englewood Express had an opportunity to comment upon them but chose not to do so. Englewood Express urges that we underestimated the extent of the harm caused by the late filing of those letters. Second, Englewood Express claims that the Commission “misse[d] the point” of

Englewood Express's arguments relating to its newly granted authority. Finally, Englewood Express takes issue with our reversion back to the original language of the temporary authority.

11. We find that the first two arguments have been adequately addressed in Decision No. C02-1415 and previous decisions, and therefore deny Englewood Express's application as to those points. Regarding the third issue, we remind Englewood Express that we returned to the original language, as requested and noticed to the public, merely for ease. In no way did we expand upon that authority granted to Blue Sky, as amended by Decision No. C02-1220, by doing so. Hence we likewise deny Englewood Express's application for RRR on this final point as well.

### **C. Stipulated Motion**

12. This matter comes before the Commission for consideration of the Stipulated Motion to Restrictively Amend Temporary Authority filed by Blue Sky and Boulder Express, LLC (Boulder Express), on the one hand, and Metro, on the other hand, on January 10, 2003.

13. Metro is an intervenor in Docket No. 02A-412CP, the permanent authority docket related to this temporary authority docket. Boulder Express is a party to that docket by virtue of the fact of its lease of Blue Sky's temporary authority granted by Decision No. C02-1003, as amended. *See* Decision Nos. C02-1195 and C02-1291. On January 8, 2003, Metro, Blue Sky, and Boulder Express negotiated a stipulation whereby Blue Sky and Boulder Express agreed, *inter alia*, restrictively to amend that temporary authority granted to Blue Sky in Docket No. 02A-412CP-TA and temporarily leased to Boulder Express in Docket No. 02A-531CP-Lease-TA. A decision on the merits in Docket No. 02A-531CP-Lease is pending. In exchange for Blue Sky and Boulder Express agreeing restrictively to amend the temporary authority and

the related permanent authority application, Metro agreed to withdraw its intervention in the 02A-412CP permanent authority docket.

14. By Decision No. C02-1195 in Docket No. 02A-531CP-Lease-TA, the Commission granted Blue Sky's application to temporarily lease to Boulder Express the temporary authority granted to Blue Sky in Decision No. C02-1003, as amended by subsequent Commission decisions. *See also* Decision No. C02-1291 (amending the leased authority following amendment of the temporary authority). The Stipulated Motion is filed in Docket No. 02A-531CP-Lease-TA, and the accompanying permanent application, Docket No. 02A-531CP-Lease, as well as in Docket No. 02A-412CP-TA, because the parties are aware that any change to Docket No. 02A-412CP-TA affects those other two dockets. While we agree that the Commission may properly determine the merits of the Stipulated Motion in regard to Docket Nos. 02A-412CP-TA and 02A-531CP-Lease-TA, it is inappropriate for the Commission to rule on the merits of the Motion in regard to Docket No. 02A-531CP-Lease because that docket has been referred to a Commission Administrative Law Judge for disposition. Hence we refer a decision on the merits of this Motion in Docket No. 02A-531CP-Lease to the Administrative Law Judge hearing the remainder of that docket.

15. The amendments proposed in the Stipulated Motion include: (1) amending the locations Blue Sky/Boulder Express may serve from "points" to "transient hotels and motels" in certain areas; (2) removing two geographic portions of the temporary authority; and (3) modifying certain vehicle restrictions to limit the vehicle size to not less than 9 passengers, or more than 20, excluding the driver.

16. Finding good cause to do so, we grant the Stipulated Motion in Docket Nos. 02A-412CP-TA and 02A-531CP-Lease-TA and waive response time to that Motion.

**II. CONCLUSION**

17. Consistent with the discussion above, we deny Englewood Express's application for RRR of Decision No. C02-1415 in its entirety. We grant the Stipulated Motion filed by Blue Sky, Boulder Express, and Metro and hence alter the authority granted in Docket No. 02A-412CP-TA and as the subject of the lease in Docket No. 02A-531CP-Lease-TA as set forth in the Attachment to this order. Finally, we refer that portion of the Stipulated Motion filed by Blue Sky, Boulder Express, and Metro that pertains to Docket No. 02A-531CP-Lease to the Administrative Law Judge assigned to that case.

**III. ORDER****A. The Commission Orders That:**

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C02-1415 filed by Schafer-Schonewill and Associates, Inc., doing business as Englewood Express and/or Wolf Express Shuttle, is denied.

2. The Stipulated Motion to Restrictively Amend Temporary Authority filed by Owner/Driver United Corp., doing business as Blue Sky Shuttle, and Boulder Express, LLC, on the one hand, and Metro Taxi, Inc., on the other hand, is granted in Docket Nos. 02A-412CP-TA and 02A-531CP-Lease-TA. The amended temporary authority granted to Owner/Driver United Corp., doing business as Blue Sky Shuttle, in Docket No. 02A-412CP-TA, and temporarily leased to Boulder Express, LLC, in Docket No. 02A-531CP-Lease-TA shall be as set forth in the Attachment to this Order.

3. Disposition of that portion of the Stipulated Motion to Restrictively Amend Temporary Authority filed by Owner/Driver United Corp., doing business as Blue Sky Shuttle, and Boulder Express, LLC, on the one hand, and Metro Taxi, Inc., on the other hand, relating to

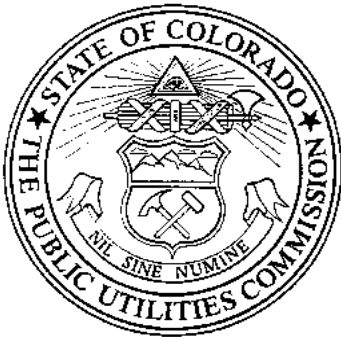
Docket No. 02A-531CP-Lease is referred to the Commission Administrative Law Judge hearing that case.

4. Response time to the Stipulated Motion to Restrictively Amend Temporary Authority filed by Owner/Driver United Corp., doing business as Blue Sky Shuttle, and Boulder Express, LLC, on the one hand, and Metro Taxi, Inc., on the other hand, is waived.

5. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
January 22, 2003.**

(S E A L)



**ATTEST: A TRUE COPY**

**Bruce N. Smith  
Director**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

**RAYMOND L. GIFFORD**

**POLLY PAGE**

Commissioners

COMMISSIONER JIM DYER RECUSED  
HIMSELF.