

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-199CP-TRANSFER-ETA

THE APPLICATION OF BENJAMIN R. SAGENKAHN, DOING BUSINESS AS PEAK TRANSIT, FOR EMERGENCY TEMPORARY APPROVAL TO ALLOW HOTELS OF DENVER MOUNTAIN CARRIER, INC., DOING BUSINESS AS DENVER MOUNTAIN EXPRESS, TO ASSUME OPERATIONAL CONTROL OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PUC NO. 55275.

**COMMISSION ORDER GRANTING
EMERGENCY TEMPORARY APPROVAL**

Mailed Date: May 21, 2003
Adopted Date: May 16, 2003

I. BY THE COMMISSION:

A. Statement, Findings and Conclusions

1. On May 13, 2003, Benjamin R. Sagenkahn, doing business as Peak Transit (Peak Transit), filed an application for emergency temporary approval to allow Hotels of Denver Mountain Carrier, Inc., doing business as Denver Mountain Express (Denver Mountain Express), to assume operational control of Certificate of Public Convenience and Necessity (CPCN) PUC No. 55275 pending Commission consideration of the related application to permanently transfer the certificate.

2. Pursuant to § 40-6-120(2), C.R.S., the Commission may grant temporary approval of a certificate transfer "if it appears that failure to grant such temporary approval may result in destruction of or injury to such carrier or carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public." Section 40-6-120(4), C.R.S., further states: "If the Commission is of the opinion

that an emergency exists, it may issue emergency temporary authority or approval at once by making specific reference in its order to the circumstances constituting the emergency, in which case no notice need be given, but any such emergency authority or approval shall expire no later than thirty days after it was issued."

3. Peak Transit may provide the following service under CPCN PUC No. 55275:

I. Transportation of passengers and their baggage, in call-and-demand limousine service, between all points within a 50-mile radius of the intersection of U.S. Highway 24 and Colorado Highway 67, Woodland Park, Colorado, and between said points, on the one hand, and all points in the State of Colorado, on the other hand; and II. Transportation of passengers and their baggage, in scheduled service, between the Colorado Springs Municipal Airport, Colorado Springs, Colorado, on the one hand, and Denver International Airport, Denver, Colorado, on the other hand, serving intermediate points within one mile of Interstate 25 only between the intersection of Interstate Highway 25 and Circle Drive, Colorado Springs, and the intersection of Interstate Highway 25 and Founders Parkway, Castle Rock. Restrictions: (A) Item (I) is restricted against transportation service from points in Pueblo, El Paso, and Douglas Counties, State of Colorado to Cripple Creek, Colorado; and (B) Item (II) is restricted to providing service only to those points listed on the carrier's approved time schedule on file with the Commission; and (C) Item (II) is restricted against scheduled service to or from the following intermediate points: the Doubletree Hotel, 1775 E. Cheyenne Mountain Boulevard, Colorado Springs, Colorado; the Holiday Inn, 505 Popes Bluff Trail, Colorado Springs, Colorado; and the Homewoods Suites, 9136 Explorer Drive, Colorado Springs, Colorado.

4. SuperShuttle International Denver, Inc. (SuperShuttle), filed an intervention to this application on May 16, 2003. SuperShuttle may, under Item II (A) of CPCN PUC No. 55686, provide call-and-demand limousine service between all points in the Counties of Denver, Adams, Arapahoe, Douglas, and Jefferson, State of Colorado, on the one hand, and Denver International Airport, on the other hand. The call-and-demand limousine authority named in Item II (A) of SuperShuttle's CPCN PUC No. 55686 does overlap geographically with a portion of the call-and-demand authority named in Item I of Peak Transit's CPCN PUC No. 55275. Therefore, SuperShuttle may intervene as a matter of right to this application.

5. In support of this application, Peak Transit by and through counsel, states “Transferor is undercapitalized. To economize, Benjamin R. Sagenkahn, has resorted to taking on more work himself. Worse still, due to the economic downturn, Transferor does not have the financial wherewithal to meet its insurance premium requirement due on May 19, 2003. Without insurance, Transferor will risk the loss of the subject authority and such loss will cause substantial harm to the public interest. As a sole proprietor, Mr. Sagenkahn is under a heavy burden to keep transferor financially viable. His financial condition no longer permits him to do so. Unless, this ETA is granted, the certificate is in serious danger of being damaged or destroyed and the service offered to the public under the certificate, as well as its future usefulness to the public, will be materially harmed.”

6. Rule 723-31-12.1 (4 CCR) states “Every carrier shall obtain and keep in force at all times Public Liability and Property Insurance which shall not be less than the minimum limits set forth in this rule, with schedules and endorsement as required by the Commission.” Peak Transit’s insurance carrier has notified the Commission that the required insurance will be canceled as of May 19, 2003. Therefore, as provided by Rule 723-31-12.7.1 (4 CCR) Peak Transit’s authority, CPCN PUC No. 55275, will be summarily suspended until the Commission receives proper proof of new coverage or until its authority is revoked pursuant to the Commission’s show cause procedures. The revocation of CPCN PUC No. 55275 would eliminate the service that Peak Transit is currently providing to the traveling public. The granting of emergency temporary approval to allow Denver Mountain Express to assume operational control of CPCN PUC No. 55275 ensures that this service will continue to be provided to the public.

7. The Commission finds that Peak Transit has shown that a failure to grant emergency approval of an assumption of operational control could result in injury to CPCN PUC No. 55275 and ultimately affect service to the public.

8. Hotels of Denver Mountain Carrier, Inc., doing business as Denver Mountain Express, has adequate equipment and financial resources to begin immediate service within the scope of the authority sought.

9. This application for emergency temporary approval is in the public interest.

10. Peak Transit and Hotels of Denver Mountain Carrier, Inc., doing business as Denver Mountain Express, are advised that the grant of emergency temporary approval of an assumption of operational control creates no presumption that either temporary approval of an assumption of operational control or permanent approval of the transfer will be granted.

II. ORDER

A. The Commission Orders That:

1. The application for emergency temporary approval of an assumption of operational control filed by Benjamin R. Sagenkahn, doing business as Peak Transit, is granted.

2. Hotels of Denver Mountain Carrier, Inc., doing business as Denver Mountain Express, is granted emergency temporary approval to conduct operations under Certificate of Public Convenience and Necessity PUC No. 55275 for a period of 30 days commencing from the Mailed Date of this Order.

3. Hotels of Denver Mountain Carrier, Inc., doing business as Denver Mountain Express, shall operate in accordance with all applicable Commission rules and regulations.

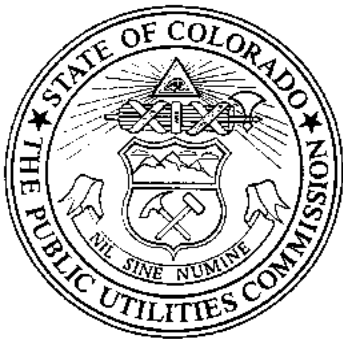
4. Hotels of Denver Mountain Carrier, Inc., doing business as Denver Mountain Express, shall not assume operational control until it has adopted the tariffs and time schedules of the Peak Transit, and notice in writing has been received from the Commission stating that it is in compliance and may begin service.

5. 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 this Order.

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

**B. ADOPTED IN THE COMMISSIONERS' WEEKLY MEETING
May 16, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners

I/TRANS/ORDERS/C03-0524_03A-199CP

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CERTIFICATE OF SERVICE

DOCKET NO. 03A-199CP-TRANSFER-ETA

DECISION NO. C03-0524

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I, Bruce N. Smith, Director of the Public Utilities Commission of the State of Colorado, certify that I served a true and correct copy of the above Commission Decision -- entered in the above numbered matter of record -- upon each of the persons whose names and addresses appear below, by mailing the same in sealed envelopes properly addressed, with sufficient postage prepaid to carry the same to its destination to the following:

TRANSFEROR:

Benjamin R. Sagenkahn
dba Peak Transit
P.O. Box 4761
Woodland Park, CO 80866

TRANSFeree:

Hotels of Denver Mountain Carrier, Inc.
dba Denver Mountain Express
1550 Larimer Street #280
Denver, CO 80202

TRANSFeree'S ATTORNEY:

Robert J. Hooke
Gouger & Franzmann, LLC
400 Inverness Parkway, Suite No. 250
Englewood, CO 80112

INTERVENOR:

SuperShuttle International, Inc.
4929 Ironton Street
Denver, CO 80239

INTERVENOR'S ATTORNEY:

Richard L. Fanyo
DUFFORD & BROWN, P. C.
1700 Broadway, Suite 1700
Denver, CO 80290

ROUTE:

6, 60, and all PUC staff, including staff that may be listed as parties, received this decision electronically.



WITNESS MY HAND
AND THE SEAL OF THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



DIRECTOR