

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

DOCKET NO. 02A-464CP

---

THE APPLICATION OF DSC/PURGATORY, LLC, DOING BUSINESS AS MOUNTAIN TRANSPORT, FOR TEMPORARY AUTHORITY TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PUC NO. 54985.

---

**ORDER GRANTING MOTION OF DURANGO  
TRANSPORTATION, INC., FOR EXTENSION  
OF TIME AND DENYING MOTION OF  
DSC/PURGATORY, LLC FOR EXTENSION OF TIME**

---

---

Mailed Date: May 21, 2003

Adopted Date: May 16, 2003

**I. BY THE COMMISSION**

**A. Background**

1. This matter comes before the Commission for consideration of a Motion for Extension of Time to File Response filed by Durango Transportation, Inc (Durango Transportation), and a Motion for Extension of Time filed by DSC/Purgatory, LLC doing business as Mountain Transport (Mountain Transport).

2. On March 18, 2003, Mountain Transport filed a Motion for Extension of Time to File Exceptions with the administrative law judge (ALJ) assigned to hear Mountain Transport's application for an extension of its Certificate of Public Convenience and Necessity. The motion sought an enlargement of time to, and including 30 days following the filing of the transcript of the hearing held in this matter, within which to file Mountain Transport's exceptions to Recommended Decision No. R03-0225.

3. The ALJ granted the motion *nunc pro tunc* to March 21, 2003, and ordered Mountain Transport to file its exceptions on or before the thirtieth day following the filing of the transcript of the hearing in this matter. Mountain Transport subsequently filed its exceptions on April 29, 2003.

**B. Durango Transportation's Motion for Extension of Time**

4. Durango Transportation now seeks an extension of time through and including June 2, 2003 in which to file its response to Mountain Transport's exceptions. Durango Transportation represents that due to the nature and extent of the arguments raised in Mountain Transport's exceptions, and the length of the hearing transcript, additional time is necessary to file its response.

5. We find that Durango Transportation states good cause to grant its motion for an extension of time through and including June 2, 2003 to file its response to Mountain Transport's exceptions, and therefore grant its motion.

**C. Mountain Transport's Motion for Extension of Time**

6. Mountain Transport seeks an extension of time for any party considering seeking leave from the Commission to participate in this matter and to file briefs in support as *amicu curiae* up to and including June 2, 2003. Mountain Transport argues that given the voluminous record in this matter, an extension of time is needed for any party contemplating *amicus curiae* status in this matter.

7. We find that Mountain Transport's motion is inappropriate. The grant of *amicus curiae* status to a party is governed by Colorado Appellate Rule (C.A.R.) 29 and our Rule 4 *Code of Colorado Regulations* (CCR) 723-1-20(c)(2). C.A.R. 29 provides in relevant part:

Any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer.

Mountain Transport's motion requests a blanket grant of an extension of time for any party who may seek leave to file a brief as *amicus curiae* in this matter. Given the requirements of C.A.R. 29, we find that any party seeking *amicus* status must file a brief only by leave of the Commission and within the same time constraints as the party it seeks to support. To allow such a late filed brief may cause prejudice to Durango Transportation in that it would not have the opportunity to respond to the *amicus* brief.

8. Here, the ALJ granted Mountain Transport an extension of time to 30 days after the date the hearing transcript was prepared. Mountain Transport subsequently filed its exceptions on April 29, 2003. Consequently, any party seeking *amicus* status in support of Mountain Transport's position was required to file its brief and motion for leave by the same date. Any party who now seeks *amicus* status must file a motion for leave with the Commission and a determination whether good cause exists to allow the party to late file a brief in support of Mountain Transport will be made on a case-by-case basis. Therefore, we deny Mountain Transport's motion for an extension of time for any party wishing to participate in this matter as *amicus curiae*.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The Motion for Extension of Time to File Response by Durango Transportation, Inc., up to and including June 2, 2003 is granted.

2. The Motion for Extension of Time for parties seeking leave to file a brief as *amicus curiae* up to and including June 2, 2003 is denied.

3. This Order is effective on its Mailed Date.

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

(S E A L)



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