

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02A-412CP

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.

**ORDER CONSTRUING BLUE SKY LETTER AS
MOTION TO INTRODUCE NEW EVIDENCE AND
DENYING MOTION AND GRANTING IN PART
SUPERSHUTTLE'S MOTION FOR EXTENSION OF TIME**

Mailed Date: June 16, 2003

Adopted Date: June 11, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a letter filed on May 20, 2003, by a principal of Boulder Express, LLC, doing business as Boulder Express Shuttle (Boulder Express) and Blue Sky Shuttle (Blue Sky). In response, SuperShuttle International Denver, Inc. (SuperShuttle), filed a motion on June 3, 2003 for an extension of time to respond to Boulder Express' letter. On June 10, 2003, Supershuttle filed a motion for extension of time to respond to the exceptions filed by Blue Sky's counsel on May 27 2003, as well as an extension of time to respond to the May 20, 2003 Blue Sky letter should the Commission construe the letter as exceptions at the June 11, 2003 weekly meeting.

2. Now, being duly advised in the matter, we will construe the May 20, 2003 letter, filed by Blue Sky's president, as a motion to introduce new evidence into the record and deny the motion. Consequently, we deny SuperShuttle's June 3, 2003 motion for extension of time to respond to the letter as moot. We further deny, in part, SuperShuttle's June 10, 2003 motion for

extension of time to respond to exceptions as it relates to Blue Sky's May 20, 2003 letter, as moot, and grant in part the motion as it pertains to an extension of time to respond to the exceptions filed by Blue Sky's attorney of record in this matter on May 27, 2003.

II. BACKGROUND

3. On April 25, 2003, an administrative law judge (ALJ) issued Recommended Decision No. R03-0436 (Recommended Decision) in the matter of Blue Sky's application for a certificate of public convenience and necessity (CPCN) to operate scheduled service and call-and-demand service in various areas throughout metropolitan Denver.

4. On May 9, 2003, the ALJ issued an Interim Order granting Blue Sky a 12-day extension of time to file exceptions to the Recommended Decision. Blue Sky's attorney of record in this matter filed exceptions to the Recommended Decision on May 27, 2003.

5. On May 20, 2003, Blue Sky's president, Mr. Howard D. Davey submitted a letter to Bruce Smith, Executive Director of the Colorado Public Utilities Commission. In that letter, Mr. Davey expressed concern over the Recommended Decision's findings. In addition, Mr. Davey presented evidence he had apparently gathered concerning Denver Mountain Express' compliance with its scheduled service to various hotels in downtown Denver.

6. According to SuperShuttle's motion for extension of time to respond to Blue Sky's letter (which was listed as "exceptions" on the Commission's suspense agenda), SuperShuttle had not been served with a copy of the letter and its legal counsel had only learned of the letter when it appeared on the suspense agenda. As a result, SuperShuttle requested an extension of time to respond to what it assumed was exceptions filed by Blue Sky.

7. On June 6, 2003, counsel for Blue Sky sent an additional letter to the Commission's Executive Director indicating that Blue Sky had no objection to SuperShuttle's motion for extension of time to respond to its earlier letter of May 20, 2003.

8. SuperShuttle's June 10, 2003 motion for extension of time indicates that, until the Commission renders a decision with regard to Blue Sky's May 20, 2003 letter, SuperShuttle does not know whether to respond to the filing or incorporate a reply in its response to Blue Sky's May 27, 2003 exceptions. If the Commission should construe the May 20, 2003 Blue Sky letter as exceptions, SuperShuttle represents that it would respond to the May 20, 2003 letter and May 27, 2003 exceptions in the same pleading. As such, SuperShuttle requests an extension to June 16, 2003, to file its response to Blue Sky's May 27, 2003 exceptions and May 20, 2003 letter, should the Commission construe the letter as exceptions.

III. ANALYSIS

9. In order to determine the status of SuperShuttle's motions for extension of time, we must first determine the nature of Blue Sky's May 20, 2003 letter. Although the letter makes brief reference to the ALJ's Recommended Decision, its intent is plainly to introduce a summary of evidence into the record gathered by Mr. Davey regarding Denver Mountain Express' scheduled service to several downtown Denver hotels.

10. The letter, in affidavit form, details Mr. Davey's observations of arrival and departure times of Denver Mountain Express vehicles over a three-day period. Mr. Davey also provides a detailed spreadsheet of the observed arrival and departure times of Denver Mountain Express vehicles. The letter further indicates that this information was gathered and compiled at

the time of the hearings on Blue Sky's permanent application for a CPCN to operate as a common carrier by motor vehicle for hire in January 2003.

11. It is clear that with the May 20, 2003 letter, Blue Sky's president attempts to introduce new evidence regarding Blue Sky's application for authority to operate as a common carrier. Although brief mention is made of the ALJ's Recommended Decision, the principal intent is clearly to introduce Mr. Davey's findings regarding Denver Mountain Express' scheduled service. As such we must construe the letter as a motion to introduce new evidence into the docket.

12. The Commission's rules regarding post-hearing procedures are well settled. *Rule 92 of the Rules of Practice and Procedure, 4 Code of Colorado Regulations (CCR) 723-1* provides that a party may seek to amend, modify, annul, or reverse basic findings of fact made in the recommended decision by filing exceptions to that recommended decision. 4 CCR 723-1-92(a)(1). We find that the letter proffered by Blue Sky fails to adhere to the procedures provided in Rule 92. Rather, we find that the letter simply attempts to introduce new evidence gathered by Blue Sky during the time its CPCN application hearing was taking place. To allow this evidence in at this time would prejudice SuperShuttle by denying it the right to cross-examine any Blue Sky witnesses to determine the credibility of the offered information. Blue Sky's attempt to introduce new evidence into the record subsequent to the issuance of the Recommended Decision is inappropriate. We find that the appropriate time to introduce such evidence should have been at the time Blue Sky's CPCN hearing was in progress. Therefore, we construe the letter as a motion to introduce new evidence and deny the motion.

13. As a result, we deny SuperShuttle's June 3, 2003 motion for extension of time to respond to Blue Sky's May 20, 2003 letter as moot. We also deny as moot SuperShuttle's June 10, 2003 motion for extension of time to the extent it requests an enlargement of time to respond to Blue Sky's May 20, 2003 letter. However, we grant SuperShuttle's request for an extension of time to June 16, 2003, to file its response to the exceptions filed by Blue Sky's counsel on May 27, 2003, and waive response time to SuperShuttle's motion.

IV. ORDER

A. The Commission Orders That:

1. The letter filed by Mr. Howard Davey, president of Boulder Express, LLC, doing business as Boulder Express and Blue Sky Shuttle on May 20, 2003, shall be construed as a motion to introduce new evidence into this docket.

2. The motion to introduce new evidence into this docket filed by Mr. Howard Davey, president of Boulder Express, LLC, doing business as Boulder Express and Blue Sky Shuttle is denied.

3. The June 3, 2003 motion of SuperShuttle International Denver, Inc., for an extension of time to respond to the motion filed by Boulder Express, LLC, doing business as Boulder Express and Blue Sky Shuttle on May 20, 2003, is denied as moot.

4. The June 10, 2003 motion of SuperShuttle International Denver, Inc., to the extent it requests an extension of time to respond to the motion filed by Boulder Express, LLC, doing business as Boulder Express and Blue Sky Shuttle on May 20, 2003, is denied as moot.

5. The June 10, 2003 motion of SuperShuttle International Denver, Inc., to the extent it requests an extension of time to June 16, 2003, to respond to exceptions filed on May 27, 2003

by counsel for Boulder Express, LLC doing business as Boulder Express Shuttle and Blue Sky Shuttle, is granted.

6. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 11, 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

Commissioners

COMMISSIONER JIM DYER RECUSED
HIMSELF.