Decision No. C03-0929

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.

DECISION GRANTING EXCEPTIONS

Mailed Date: August 18, 2003
Adopted Date: June 18, 2003

I. BY THE COMMISSION

A. Statement

Introduction

1. This matter comes before the Colorado Public Utilities Commission (Commission or PUC) for consideration of Exceptions filed by DSC/Purgatory, LLC, doing business as Durango Mountain Resort (Applicant or DMR), to Decision No. R03-0225 (Recommended Decision).[1] In that decision, the Administrative Law Judge (ALJ) recommended denial of DMR's Application for Extension of Certificate of Public Convenience and Necessity PUC Number 54985 (Application) concluding that DMR had failed to show that the existing carrier's transportation services were "substantially inadequate". Intervenor Durango Transportation, Inc. (DTI), is the existing carrier in the relevant area. The ALJ's conclusion in that regard was primarily based on the fact that the Applicant did not present evidence that potential customers had requested transportation services from DTI and had subsequently been

[1] Mountain TranSport is the name under which DMR provides transportation service. DSC/Purgatory is affiliated with Durango Mountain Resort. For all practical purposes, Durango Mountain Resort is the applicant here.

refused or denied such services. Pursuant to § 40-6-109(2), C.R.S., DMR excepts to the Recommended Decision. Intervenor DTI has filed a response to the Exceptions.

2. DMR's position is that the ALJ's application of the doctrine of "regulated monopoly" is in error, and results in the creation of a new and erroneous legal standard: that the **only** way for an applicant to show "substantial inadequacy" of existing services is to provide evidence of specific instances, which occurred on more than an occasional basis, in which the existing carrier actually failed or refused to provide a requested service. In particular, DMR argues that the ALJ refused to consider several factors in determining whether DTI's services are "substantially inadequate": DTI's rates for transportation to and from DMR; DTI's failure to base its operations in an area more accessible to persons at DMR, thus resulting in lengthy transit times and the concomitant high rates charged by DTI for such transportation; the limited number of DTI vehicles and vehicle operators; and finally, the undisputed fact that out of the tens of thousands of persons who fly into Durango each ski season, virtually none use DTI's services to travel to or from the ski areas. DMR's position is summarized succinctly in the following excerpt from its Exceptions (page 14):

> DTI's insistence on keeping inordinately high prices is in and of itself a failure to provide adequate service. The combination of its small staff, few vans, and expansive certificate, together with the fact that DTI has no base of operations on the mountain, all demonstrate that DTI has failed to serve the public adequately and indeed constitutes a "constructive refusal to provide service."

3. DTI, on the other hand, contends that the ALJ's interpretation of the evidentiary burden placed on an applicant by the "regulated monopoly" doctrine is appropriate. DTI relies on the fact that DMR presented no evidence at hearing of a specific potential passenger who was denied service to support its contention that there is no public need for DMR's proposed services and that DTI's services are adequate. DTI's position is that the testimony it presented at the

hearing demonstrated that DTI has "never failed to answer a call" and that it is "ready, willing and able" to meet the public need and therefore does provide adequate services. DTI agrees with the ALJ's conclusion that its rates should not be taken into account as evidence of inadequacy of service because those rates are "lawful" under PUC rules.

4. Now, being duly advised in the matter, we grant DMR's Exceptions and reverse the Recommended Decision.

II. DISCUSSION

A. Background

5. The Applicant holds Certificate No. 54985; this certificate allows DMR to provide scheduled service between DMR and Durango, with service to intermediate points.

6. On September 9, 2002, the Commission gave public notice of the Application in its Notice of Applications Filed. As noticed, Applicant seeks the following motor carrier authority:

> For a certificate of public convenience and necessity authorizing an extension of operations under PUC No. 54985 to include the transportation of passengers and their baggage, in call-and-demand limousine service, between Durango Mountain Resort, on the one hand, and all points in the Counties of La Plata, Montezuma, Ouray, and San Juan, State of Colorado, on the other hand.

7. Timely interventions of right were filed by Mill Creek Management Co., LLC (Mill Creek) and DTI. Each intervention opposed the application. Mill Creek operates Cascade Village Resort and has PUC authority to provide call-and-demand transportation for its

registered guests.[2] As such, Mill Creek's service territory overlaps with the area that the Applicant seeks to serve with call-and-demand limousine service.

8. DTI has state and federal transportation authorities. Under Certificate of Public Convenience and Necessity (CPCN) PUC No. 14916 and as pertinent here, DTI may provide taxi service, charter service, and call-and-demand limousine service: (a) between the Airport, on the one hand, and all points within a 100-mile radius of the intersection of U. S. Highway 160 and U. S. Highway 550 in Durango, Colorado, on the other hand; (b) subject to specified restrictions, between all points within San Juan and Archuleta Counties; and (c) subject to specified restrictions, between all points in San Juan and Archuleta Counties, on the one hand, and all points in the State of Colorado, on the other hand. DTI's service territory encompasses the area that Applicant seeks to serve by call-and-demand limousine service.

9. Pursuant to an agreement with Mill Creek, DMR restrictively amended its application and Mill Creek withdrew its intervention. In particular, DMR agreed not to provide transportation service for passengers whose transportation would originate or terminate at Cascade Village Resort, except for providing transportation between DMR and Cascade Village for owners of properties or overnight guests registered at lodging facilities.

10. On November 19, 2002, a hearing was held in front of the ALJ. The Applicant and DTI were the only parties to this action. At the conclusion of the hearing, the ALJ issued the Recommended Decision at issue here.

[2] It is unclear from the record whether Mill Creek also operates to the Tamarron Resort; however, it is undisputed that the Tamarron Resort also has PUC authority to provide call-and-demand service.

11. The Recommended Decision contains 55 separate and comprehensive findings of fact. Upon review of the transcript, the Commission commends the ALJ on her attention to the many factual details presented at hearing. Nothing in the transcript of the hearing leads the Commission to dispute any of the ALJ's findings of fact. Likewise, it does not appear that either party is disputing any finding of fact in this matter.

12. Without reiterating the exhaustive findings of fact set out in the Recommended Decision, the Commission will endeavor to highlight those factual findings that it relies upon to come to its conclusion in this matter.

13. In order to fully understand the dynamics of this case, the geography of the area in question is of critical importance. The record reveals that DMR is approximately 25 miles from the town of Durango. Given the distance between the areas in question, in good weather and with good highway conditions, it takes approximately 45 minutes to reach DMR from Durango.

14. There is no dispute among the parties that there is no public transportation between Purgatory Mountain (including DMR) and Durango. At present, the only transportation services available between the mountain and Durango are: DTI's services, DMR's scheduled service, and private (including rented) vehicles.

15. Testimony was presented at the hearing that transportation to and from DMR is not readily available. Mr. Gary Derck, President and Chief Executive Officer of DMR testified that DMR guests use DMR scheduled service to and from Durango or rent vehicles for access to Durango and other locations. However, DMR's scheduled service cannot go to all the tourist locations in and around Durango and, most significantly, cannot operate to the Airport. Mr. Derck testified that the DMR shuttle at present is designed primarily to accommodate the

needs of persons who work at DMR; as a result the shuttle has a limited number of departures to and from DMR and has four stops in Durango.

16. Mr. Derck testified that the perceived lack of adequate transportation service to and from DMR is a critical issue for the resort as it had negatively affected DMR's marketing efforts. Moreover, the transportation problem had been raised by La Plata and San Juan Counties (Counties) as a concern in the approval process for expansion of DMR over the next 10 to 20 years. In fact, the development agreement between the Counties and DMR requires the availability of on-call and shuttle service to meet transportation demands. DMR must provide, or make arrangements to obtain, service to meet the requirements of the Counties.

17. In addition to the purely business related concerns DMR has regarding transportation for its customers, Mr. Derck testified that DMR also has legitimate safety concerns about its guests driving between DMR, Durango, and other tourist attractions. The 25-mile highway between DMR and Durango is unlit. Animals frequently cross the highway; and there is a risk of accidents caused by hitting, or attempting to avoid hitting, the animals. Many resort guests are unfamiliar with driving on snow-packed and/or icy roads, and many are unfamiliar with driving in mountainous terrain. Some resort guests drive to Durango, drink alcoholic beverages, and then drive back to the resort. In DMR's opinion, availability of adequate call-and-demand service with drivers familiar with driving in the area will help address these safety concerns. DMR does not believe that sufficient service is available at present.[3]

18. DMR presented testimony from DMR employees regarding the fact that DMR guests generally do not use DTI's services for transportation. These witnesses testified that

[3] A review of the record reveals no testimony refuting any of Mr. Derck's testimony, nor is there any indication in the Recommended Decision that the ALJ found Mr. Derck's testimony to be not credible.

resort guests have cited the delay in obtaining DTI transportation, as well as the cost of DTI's service, as a reason for not using that service. DTI employees provided similar testimony, *i.e.*, that they had received complaints about DTI's services - primarily regarding the cost of service and the lengthy wait times for service.

19. There is no dispute that DTI utilizes only one base of operations and that it is located in the town of Durango. Indeed, the record reflects that the vast majority of DTI's business is derived from transportation services originating and terminating in Durango. As the record reflects, the consequence of DTI's choice of location for its base of operation is that it cannot respond to calls for service from DMR's guests in less than, at the very least, 45 minutes – assuming that a car is available and dispatched immediately upon receipt of the call for service.

20. DTI has authority to provide a variety of transportation services over a vast geographical area – approximately 7,000 square miles. DTI's owner, Mr. Olson, testified that, due to the size of its territory, DTI cannot be available to serve the entire area all of the time. In fact, two resorts on Purgatory Mountain -- Cascade Village and Tamarron -- have successfully obtained authority for transportation operations.[4] Despite Mr. Olson's admission that his company cannot service the entire area over which he has the exclusive right to operate, there was no credible evidence presented at the hearing that DTI is, has, or would consider, utilizing an additional base of operations. On the other hand, if the Application is granted, DMR will have two bases of operation: DMR and downtown Durango. This is important to DMR because it believes that two bases of operation will shorten the wait for transportation service.

[4] The Order granting transportation authority for Cascade Village contains language indicating that the Commission found that DTI's services were substantially inadequate.

21. Numerous witnesses testified that DTI's rates for transportation to or from DMR effectively prevent the public from utilizing DTI's services. The following prices are based on DTI's current tariffs: For one or two passengers, a one-way trip between DMR and Durango costs $54; for three or four passengers, the trip costs $60; and for five or more passengers, the trip costs $13 per passenger. For one or two passengers, a one-way trip between DMR and Ignacio (the site of the Sky Ute Casino, a popular attraction in the area) costs $104; for three passengers, the trip costs $108; for four passengers, the trip costs $112; and for five or more passengers, the trip costs $23 per passenger. For one passenger, a one-way trip between DMR and the Airport costs $65; for two passengers, the trip costs $80; for three passengers, the trip costs $96; for four passengers, the trip costs $112; and for five or more passengers, the trip costs $25 per passenger.

22. The fact that the public's use of DTI's services to or from DMR is negligible is evidenced by DTI's witnesses and records. As is reflected in the ALJ's factual findings, in ski season 2001 through 2002 an estimated 20,000 persons needed transportation from the Airport to DMR. Of this number, DTI transported 132 persons from the Airport to DMR and 140 persons from DMR to the Airport.

23. There is public need for the service DMR has proposed to provide in its application that is not currently being met by the existing providers under their CPCNs. The public which DMR seeks to serve, if this Application is granted, consists of: guests at the resort, destination travelers, guests at other properties located in the region, homeowners, and anyone who wishes to go to or from the amenities and activities at or near DMR. Either alone or in conjunction with other ski areas in the region, DMR has tried to address the transportation needs of this public. The attempts were not successful, primarily because they involved scheduled

service. Based on its experience, DMR found that scheduled service does not provide the desired flexibility and responsiveness.

24. There is sufficient evidence in the record to support the conclusion that DMR is both operationally and financially fit to provide the service it proposes in its application. As noted above, DMR already runs a scheduled transportation service. DMR also has access to capital and human resources to provide for adequate facilities, vehicles, and bases of operation for its proposed service.

B. Legal Analysis

25. The PUC has a general responsibility to protect the public interest regarding utility rates and practices; in fulfilling that function, the PUC has broadly based authority to do whatever it deems necessary to accomplish the legislative functions delegated to it. *City of Boulder v. Colorado Public Utilities Com'n*, 996 P.2d 1270, 1277 (Colo. 2000). In making a determination to grant or expand a CPCN, the Commission must consider each application on its own individual merits. As such, consideration must be given to all competent evidence bearing on the question of whether the public convenience and necessity will be served by the granting of such application.

26. The legal doctrine governing applications for common carrier, call-and-demand limousine passenger authority is that of regulated monopoly. Section 40-10-105(1), C.R.S.; *Yellow Cab Cooperative Association v. Public Utilities Commission*, 869 P.2d 545 (Colo. 1994). Under this doctrine the Commission may not authorize a second common carrier to provide the same, or even similar, service within the same geographic territory as an existing common carrier without a showing that the service provided by the existing common carrier is substantially inadequate. *Yellow Cab Cooperative Association*, 869 P.2d at 548; *Ephraim Freightways, Inc. v.*

Public Utilities Commission, 380 P.2d 228, 231 (Colo. 1963); *see also Colorado Transportation Co. v. Public Utilities Commission*, 405 P.2d 682 (Colo. 1965).

27. The fundamental principle of the doctrine of regulated monopoly is that a competitive advantage is granted because the public convenience and necessity so warrants. *Yellow Cab* at 550; *see also Morey v. Public Utilities Com'n*, 629 P.2d 1061, 1067 (Colo. 1981)(noting that under the doctrine of regulated monopoly the existing carrier enjoys a modified form of monopoly, having the right to serve expanding needs if it can handle them adequately).

28. Under the doctrine of regulated monopoly, an applicant for common carrier authority has the heavy burden of proving by substantial and competent evidence: (a) that the public needs its proposed service, *Denver and Rio Grande Western Railroad v. Public Utilities Commission*, 351 P.2d 278 (Colo. 1960); and (b) that the service of existing certificated carriers within the proposed service area is substantially inadequate. *RAM Broadcasting v. Public Utilities Commission*, 702 P.2d 746 (Colo. 1985); *Rocky Mountain Airways, Inc. v. Public Utilities Commission*, 509 P.2d 804 (Colo. 1973). Substantial inadequacy is a factual question to be determined by the Commission. *RAM Broadcasting* at 751.

29. In applying the doctrine of regulated monopoly to the facts presented here, the ALJ concluded that the Applicant had not met its burden of proof with respect to showing that DTI's services are "substantially inadequate" and, therefore, DMR was not entitled to the expansion of authority requested. A review of the Recommended Decision reveals that the ALJ's conclusion in that regard was based exclusively on the fact that the Applicant did not present

evidence that a potential customer had requested transportation services from DTI and had subsequently been refused or denied such services.[5]

30. We disagree with the ALJ's conclusion. The narrow interpretation of the regulated monopoly doctrine applied by the ALJ in this instance ignores the overall context of the situation presented in this case, something the Commission is not at liberty to do. The Commission is directed by statute to exercise supervisory control over the certification of common carriers in such a manner as will promote safe, adequate, economical, and efficient transportation to the public and foster sound economic conditions in transportation. *See* § 40-3-101(2), C.R.S.:

> Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees, and the public, and as shall in all respects be adequate, efficient, just and reasonable.

31. Focusing only on whether a particular potential customer was denied transportation services ignores important issues of whether the carrier is providing, among other things, safe, adequate, economical, and efficient transportation to the public. Given the statutory directives, it is axiomatic that all of these factors must be considered when determining whether a carrier is providing "substantially adequate" service. Indeed, to ignore them is to oversimplify the issue to such an extent that the "substantial inadequacy" standard is rendered illusory.

[5] The record contains some testimony regarding instances when DTI may not have provided services when requested to do so; however, the ALJ correctly pointed out that the legal test for "substantial inadequacy" is not perfection. *Ephraim Freightways, Inc.*, 380 P.2d 228, 232 (Colo. 1963) ("When a common carrier renders service to a number of customers within a specific geographic area, it is expected that some dissatisfaction will arise and that some legitimate complaints will result. Thus, a general pattern of inadequate service must be established in order to demonstrate substantial inadequacy. Isolated incidents of dissatisfaction are not sufficient").

32. The Commission finds no legal support for the narrow test imposed by the ALJ regarding what evidence is necessary to show "substantial inadequacy" under the doctrine of regulated monopoly. To the contrary, the Commission notes that factors other than whether a particular customer has asked for and been denied transportation services have been considered in determining whether a carrier's service is substantially inadequate. *See e.g. Boulder Airporter, Inc. v. Rocky Mountain Shuttlines, Inc.*, 918 P.2d 1118 (Colo. 1996)(Supreme Court upheld Commission conclusion that "the call-and-demand, single vehicle service of [the incumbent] was substantially inadequate where unrebutted evidence showed that "true call-and-demand service from [the incumbent] is so rare as to be non-existent"); *Commission Decision No. R95-546, Application of Eagle Valley Cab Co. for a CPCN to Operate as a Common Carrier* (ALJ concluded that Applicant had established "substantial inadequacy" of incumbent taxi service based on testimony regarding prohibitive charges).

33. While there is no bright line test to determine what kind of service is substantially inadequate, it is instructive to note that both the Commission and the Colorado Supreme Court have looked at whether a carrier is "ready, willing and able" at all times to provide transportation services to anyone who might demand it to make such a determination. *See Ephraim* at 232 (incumbent carrier found to be rendering adequate and satisfactory service where it had presented extensive evidence regarding its organization, equipment, and personnel, indicating that it was "ready, willing and able" at all times to render service to anyone who might demand it); *Pubic Service Co. of Colorado v. Trigen-Nations Energy Co., LLP* 982 P.2d 316, 327 at FN 9 (Colo. 1999) (CPCN recognizes a right to serve customers of a certificated region *unless* the company is not ready, willing, and able to provide the requested service) (emphasis added).

34. Our determination that DMR has, in fact, met its burden of showing that DTI's services are substantially inadequate is based on many factors which, in combination, demonstrate that DTI is not "ready, willing and able" at all times to render service to anyone who might demand it.

35. First, and perhaps most importantly, although DTI has had its geographically vast and functionally varied authority for approximately 20 years – years in which the Durango area has undergone huge growth, especially in the tourist business related to, in large part, tourists who wish to ski at Purgatory Mountain – DTI has failed to take any action to ensure that it is able to provide efficient and timely transportation services to potential customers, *i.e.*, tourists, who might demand its services. The record is replete with evidence that DTI has simply ignored this section of the public. In addition to the fact that DTI has made no serious attempts to market itself to this tourist population, DTI has taken no action to move its base of operations, or add another base of operations, in order to better serve the tourists visiting Durango. The result of DTI's failure to address this issue has, it appears from the record, cost DTI a significant amount of business over the years.[6] There is ample evidence in the record that this "lost" business is directly related to the fact that DTI's rates to and from DMR are perceived by the public to be prohibitively expensive and that, even if certain DMR guests are willing to pay the cost of DTI's

[6] The record reflects that, according to DTI's 2001 Annual Report, Exhibit 15, trips to and from DMR represented only 6 percent of DTI's total revenue, or approximately $20,000. Transcript at 238 lines 6-16. Information presented by DTI reveals that, out of the approximately 20,000 visitors who arrive in Durango by plane and need transportation to DMR, DTI transported approximately 300 passengers to or from DMR. Transcript at 227 line 5 to 228 line 11.

services, they are generally not willing to wait the minimum 45 minutes it would take DTI to begin providing its services.[7]

36. Second, the record reflects that DTI simply does not have the vehicles or the vehicle mix necessary to provide the transportation required by the public. Indeed, Mr. Olson, DTI's owner, after first stating that DTI had 34 vehicles in service, finally admitted that DTI had only 4 vehicles in operation, but that he had others "in reserve." Transcript at 362 lines 19-21. The four vehicles that DTI actually has in operation were described by DTI driver Scott Foster as being two mini-vans and two 14-passenger vans. Transcript at 319 lines 8-10. Similarly, after first stating that DTI had 13 or 14 drivers on its staff, Mr. Olson admitted that, in fact, DTI generally has 2 to 3 drivers working at any given time. Transcript at 364, lines 16-20. Assuming that Mr. Olson's final answers were accurate, the Commission finds it unacceptable for DTI - whose authority covers 7,000 square miles and includes a high volume ski resort located 25 miles from a town whose businesses would, one suspects, appreciate the opportunity to have the tourists on the mountain transported into town in order to boost business - to utilize only four vehicles to serve the public.

37. The record reveals that DTI has not, or cannot, adequately provide the transportation services for which it was originally granted a monopoly. DTI's insistence that it

[7] The ALJ cites *Rocky Mountain Airways v. PUC*, 181 Colo. 170, 509 P.2d 804 (1973), for the proposition that the Commission cannot consider the location of a utility's base of operations when considering adequacy of service. Such a broad interpretation of *Rocky Mountain* is not justified. In that case, the court held that the existing carrier's failure to station aircraft at each of its bases of operations did not alone constitute inadequacy of service. *Id.* at 175. However, the court stated that there was no evidence that the service of customers had suffered at all by such failure. *Id.* Further, while the Commission had authorized the carrier to have an additional base of operations, the carrier had testified that it would **not** base an airplane at such base; thus, by granting the existing carrier's application, the Commission "obviously did not consider that that would result in inadequate service." *Id.* By contrast, in the case at hand, there is no evidence that DTI indicated to the Commission at the time it applied for a CPCN that it would not maintain a base of operations at or near DMR. There is ample evidence that customers have suffered because of the distance between DTI's base of operations and the resort. For these reasons, we find *Rocky Mountain* inapposite.

"has always answered the call" for transportation services is rendered meaningless when one considers the unrefuted fact that, at least with respect to a large portion of the public DTI has been granted the exclusive right to serve, very few people are calling. DTI's insistence that it is "ready willing and able" to provide transportation service to anyone at anytime is similarly negated by the facts in the record. The Commission does not consider a carrier "ready" to provide transportation services when, as to a significant number of potential customers, the carrier cannot commence providing such service for, at a minimum, 45 minutes after the customer requests the service.

38. The Commission also rejects the notion that it cannot consider DTI's rates as a factor in determining whether DTI's services are substantially inadequate.[8] The ALJ based her conclusion that DTI's rates cannot be used as evidence of substantial inadequacy on the fact that the rates are "legal". The Commission recognizes the difficulty cited by the ALJ in finding substantially inadequate service based, in part, on existing "legal rates" on file with the Commission. Ultimately, however, the Commission finds that ignoring a carrier's rates has the potential to lead to absurd results. The instant case is a good example -- consideration of DTI's inordinately high rates imposed on tourists who wish to travel to and from DMR provides the Commission with important information regarding both DTI's adequacy of service and willingness to serve all of the public that it has been given the exclusive right to serve. DTI's services are priced so high as to be tantamount to a denial of service to the tourist population requiring transportation to and from DMR.[9] Were the Commission to simply ignore the

[8] The issues of base of operations location and rates are intertwined. Part of the reason DTI's rates are high is that its base of operations in Durango is far from the mountain resort, and, since there is only one base, there is usually one-way "deadhead" trips when DTI serves the resort.

[9] The proposition that a utility's rates, though lawful, may be tantamount to a denial of service was affirmed in *Town of Fountain v. PUC,* 167 Colo. 302, 310, 447 P.2d 527 (1968).

contribution of DTI's inordinately high rates to the lack of transportation options available to tourists traveling to and from DMR it might conclude that DTI's services, while expensive, were adequate. This result would not square with the extensive evidence in the record that there is a lack of transportation options for that segment of the public. By considering a carrier's rates as evidence of substantial inadequacy, the Commission is not challenging those rates; or questioning their legality; rather, it is simply factoring them into the "bigger picture" of adequacy of a carrier's service.

39. DTI's service is substantially inadequate.

40. There is public need for DMR's service proposed in its application that is not currently being met.

41. DMR is both operationally and financially fit to provide the service proposed in its application.

42. Therefore, it is within the public convenience and necessity to grant DMR's application.

III. CONCLUSION

43. For the foregoing reasons, we grant the Exceptions by DMR and grant its Application for Extension of Certificate of Public Convenience and Necessity PUC Number 54985.

IV. ORDER

A. The Commission Orders That:

1. The Exceptions to Decision No. R03-0225 by DSC/Purgatory LLC, doing business as Mountain Transport are granted consistent with the above discussion.

2. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.

3. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING June 18, 2003.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners

ATTEST: A TRUE COPY

Bruce N. Smith
Director

G:\ORDER\C03-0929_02A-464CP.doc:srs