

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-382CP-TRANSFER-TA

THE APPLICATION OF THE MOUNTAIN MEN, INC. DOING BUSINESS AS BEST MOUNTAIN TOURS FOR TEMPORARY APPROVAL TO ALLOW ARGO ENTERPRISES LLC, TO ASSUME OPERATIONAL CONTROL OF A PORTION OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PUC NO. 7010&I.

**COMMISSION ORDER GRANTING
TEMPORARY APPROVAL**

Mailed Date: September 18, 2003
Adopted Date: September 17, 2003

I. BY THE COMMISSION:

A. Statement

1. On August 29, 2003, The Mountain Men, Inc., doing business as Best Mountain Tours (Best Mountain Tours), filed an application for temporary approval to allow Argo Enterprises LLC (Argo Enterprises), to assume operational control of Certificate of Public Convenience and Necessity (CPCN) PUC No. 7010&I pending Commission consideration of the related application to permanently transfer the certificate. The portion of CPCN 7010&I is: Transportation, in sightseeing service, of passengers and their baggage, between all points located in the area comprised of the Counties of Gilpin and Clear Creek, State of Colorado. Restriction: to rendering transportation that both originates and terminates at the same point.

2. The Commission gave notice of the application on September 8, 2003.

3. There are no interventions opposing a grant of the application.

4. 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."

B. Findings of Fact

5. Best Mountain Tours filed a petition for Chapter 7 bankruptcy in the U.S. Bankruptcy Court on October 28, 2002. Best Mountain Tours filed an application with the Commission to suspend operations under CPCN PUC No. 7010&I on December 16, 2002. The Commission granted the suspension of operations under CPCN PUC No. 7010&I from September 30, 2002, through March 31, 2003, by Decision No. C03-0138 in Docket No. 02A-670CP. Best Mountain Tours subsequently filed an application with the Commission to continue the suspension of operations under CPCN PUC No. 7010&I on March 3, 2003. The Commission granted the suspension of operations under CPCN PUC No. 7010&I from March 31, 2003, through September 30, 2003, by Decision No. R03-0721 in Docket No. 03A-080CP.

6. CPCN PUC No. 7010&I was sold on July 31, 2003, at a public auction conducted by the U.S. Bankruptcy Trustee. Argo Enterprises was the highest bidder for the portion of CPCN PUC No. 7010&I named in this application.

7. In support of this application Argo Enterprises states: "The PUC authorized transferor Best Mountain Tours to suspend operations effective September 30, 2002. Best Mountain Tours filed Chapter 7 bankruptcy in October, 2002. Since then, there could have been no legal operations under Certificate 7010&I. It is imperative that public service commence, in

the immediate future to restore and preserve the value of Certificate 7010&I. This cannot be accomplished solely by awaiting the results of a permanent transfer approval application, which could not be completed prior to the September 30, 2003, date upon which the authorized suspension is now scheduled to expire. The commission should exercise its discretion to grant temporary approval of the transfer from Best Mountain Tours to Argo Enterprises in order to prevent destruction of or injury to Certificate 7010&I (V) to the detriment of the both the U. S. Bankruptcy Trustee as Transferor and to Argo Enterprises as Transferee.”

C. Conclusions

8. A failure to grant temporary approval of an assumption of operational control could result in injury to CPCN PUC No. 7010&I and ultimately affect service to the public.

9. Argo Enterprises, LLC, has adequate equipment and financial resources to begin immediate service within the scope of the authority sought.

10. This application for temporary approval is in the public interest.

11. Jon S. Nicholls, United States Bankruptcy Trustee for and on behalf of Best Mountain Tours, and Argo Enterprises, LLC, are advised that the grant of temporary approval of an assumption of operational control creates no presumption that permanent transfer approval will be granted.

II. ORDER

A. The Commission Orders That:

1. The application for temporary approval of an assumption of operational control filed by Jon S. Nicholls, United States Bankruptcy Trustee for and on behalf of The Mountain Men, Inc., doing business as Best Mountain Tours, is granted.

2. Argo Enterprises, LLC, is granted temporary approval to assume operational control of a portion of Certificate of Public Convenience and Necessity PUC No. 7010&I for a period of 180 days commencing from the Mailed Date of this Order.

3. Argo Enterprises, LLC, shall operate in accordance with all applicable Commission rules and regulations.

4. Argo Enterprises, LLC, shall cause to be filed with the Commission certificates of insurance as required Commission rules. Argo Enterprises, LLC, shall also adopt the tariffs of The Mountain Men, Inc., doing business as Best Mountain Tours, which shall become that of Argo Enterprises, LLC, until changed in accordance with the public utilities law. Argo Enterprises, LLC, shall pay the appropriate vehicle identification fee. Argo Enterprises, LLC, may not assume operational control of a portion of Certificate of Public Convenience and Necessity PUC No. 7010&I, and may not begin service until it meets these requirements and has received notice in writing from the Commission that it is in compliance and may begin service.

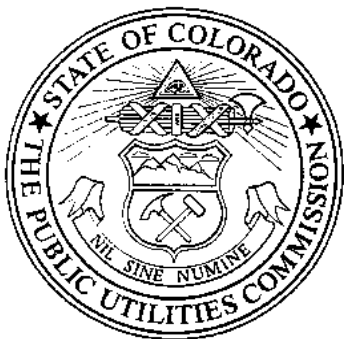
5. If Argo Enterprises, LLC, does not comply with the requirements of this Order within 30 days of its effective date, then the temporary approval shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within the 30 days.

6. 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 or serves this Order.

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

**B. ADOPTED IN THE COMMISSIONERS' WEEKLY MEETING
SEPTEMBER 17, 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

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