

Decision No. R03-0013-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02A-412CP

IN THE MATTER OF THE APPLICATION OF BOULDER EXPRESS, LLC, D/B/A BLUE SKY SHUTTLE (FORMERLY OWNER/DRIVER UNITED CORP., D/B/A BLUE SKY SHUTTLE), 1412 WEST 104TH AVENUE, SUITE 114, NORTHGLENN, COLORADO 80234 FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

DOCKET NO. 02A-410CP

IN THE MATTER OF THE APPLICATION OF FLYING EAGLE EXPRESS SHUTTLE SERVICE, INC., 13024 EAST ALASKA PLACE, AURORA, COLORADO 80012 FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

DOCKET NO. 02A-471CP

IN THE MATTER OF THE APPLICATION OF OVERSEAS EMPORIUM, INC., 16740 EAST ILIFF AVENUE, AURORA, COLORADO 80013 FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
DENYING GOLDEN WEST
COMMUTER, LLC'S MOTION
TO DISMISS, OR ALTERNATIVE
MOTION *IN LIMINE***

Mailed Date: January 3, 2003

I. STATEMENT

1. On December 30, 2002, at 3:10 p.m. Golden West Commuter, LLC (Golden West), filed its Motion to Dismiss Application of Overseas Emporium, Inc. and Alternative

Motion *In Limine* (Motion) in the captioned proceedings via facsimile transmission. The Motion contends that Overseas Emporium, Inc. (OE), failed to properly respond to discovery.¹ It requests that the OE application be dismissed or, in the alternative, that it be precluded from offering any testimony or evidence at the hearing on the issues of public need for the proposed services to, from, or between points in Jefferson County and the alleged inadequacy of existing service of Golden West.

2. OE's response to the Motion was due on January 2, 2003, under the provisions of Decision No. R02-1450-I. OE did not file a response.

3. Under the provisions of Decision No. R02-1450-I the Motion was required to be filed with the Commission and served on OE on or before noon on December 30, 2002. As indicated above, the Commission did not receive the Motion until 3:10 p.m. on that date. Therefore, the Motion was not filed on a timely basis and may be denied on that basis alone.

4. Regarding the substance of the Motion, a review of the discovery requests referenced therein and OE's responses thereto reveal that, indeed, the responses could be more complete. However, they are not so defective as to warrant the relief requested by the Motion. OE's responses, while unsatisfactory to Golden West, are responses nonetheless. They suggest that all evidence to be presented by OE relating to a need for transportation service to, from, or between points in Jefferson County and the potential inadequacy of existing service within that area is contained in OE's amended application. As such, they may afford Golden West the ability to successfully impeach or exclude evidence presented by OE in connection with those issues that may be derived from other sources.

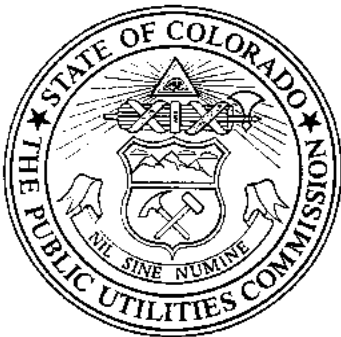
¹ Copies of Golden West's discovery directed to OE on December 13, 2002, and OE's responses dated December 20, 2002, were attached to the Motion.

II. ORDER

A. It Is Ordered That:

1. The Motion to Dismiss Application of Overseas Emporium, Inc. and Alternative Motion *In Limine* filed by Golden West Commuter, LLC, is denied.
2. This Order shall be effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

DALE E. ISLEY

Administrative Law Judge

L:\final\R03-0013-I_02A-412CP.doc:LP