

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02A-412CP-TA

IN THE MATTER OF THE APPLICATION OF OWNER/DRIVER UNITED CORP.,
D/B/A BLUE SKY SHUTTLE, FOR TEMPORARY AUTHORITY TO CONDUCT
OPERATIONS AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
DENYING MOTION TO
STRIKE; GRANTING MOTION
TO EXTEND TEMPORARY
AUTHORITY; AND DENYING
MOTION TO SET MATTER
OF EXTENSION OF TEMPORARY
AUTHORITY FOR HEARING**

Mailed Date: January 31, 2003

I. STATEMENT

1. On December 27, 2002, Boulder Express, LLC (Boulder Express) filed a Motion to Extend Temporary Authority (Motion to Extend) in the captioned proceeding. On January 13, 2003, Owner/Driver United Corporation, doing business as Blue Sky Shuttle (Owner/Driver), filed a pleading entitled "Joinder of Owner Driver United Corporation in the Motion to Extend Temporary Authority" (Owner/Driver Joinder) wherein it joins in the relief requested by the Motion to Extend.

2. By the Motion to Extend, Boulder Express and Owner Driver seek an extension of temporary authority granted to Owner/Driver by Decision No. C02-1003 (hereinafter, the temporary authority) pending issuance of an administratively final decision by the Colorado

Public Utilities Commission (Commission) in Docket No. 02A-412CP.¹ The temporary authority is currently scheduled to expire on February 8, 2003.²

3. On January 10, 2003, Schafer-Schonewill and Associates, Inc., doing business as Englewood Express and/or Wolf Express Shuttle (Wolf), filed a Motion to Strike Pleading (Motion to Strike); Alternate Reply in Opposition to Motion to Extend Temporary Authority (Wolf Response); Alternate Motion to Set Matter of Extension of Temporary Authority for Hearing (Motion for Hearing). On the same day, SuperShuttle International Denver, Inc. (SuperShuttle), filed its Response in Opposition to Applicant's Motion to Extend Temporary Authority. In addition, Wolf and SuperShuttle submitted responses to the Owner/Driver Joinder on January 17, 2003.

4. In support of the Motion to Extend, Boulder Express and Owner/Driver contend that good cause exists for extending the temporary authority. Traffic studies designed to demonstrate the extent to which passenger carrier operations have been conducted under the same and support letters designed to demonstrate the existence of a continued need for the temporary service are attached to the Motion to Extend and to the Owner/Driver Joinder. These parties submit that the circumstances underlying the grant of temporary authority continue to exist and that the failure to authorize continued operations would deprive the traveling public of

¹ The Commission previously approved the temporary lease of the temporary authority from Owner/Driver to Boulder Express. *See*, Decision No. C02-1195 in Docket No. 02A-531CP-TA. In addition, Boulder Express has been substituted as the applicant in Docket No. C02-412CP. *See*, Decision No. R02-1251-I.

² The scope of the temporary authority originally granted in Decision No. C02-1003 was subsequently modified by Decision Nos. C02-1220 and C02-1415. The temporary authority was further modified as a result of restrictive amendments agreed to by Boulder Express, Owner/Driver, Metro Taxi, Inc., and Golden West Commuter, LLC. The restrictive amendments relating to Metro Taxi, Inc., were approved by Decision No. C03-0103. The restrictive amendments relating to Golden West Commuter, LLC were approved by Decision No. R03-0124-I. The current scope of the temporary authority is set forth in Appendix A attached hereto.

a service upon which it has come to rely. They point out the likelihood that a final decision will not be rendered in Docket No. 02A-412CP prior to expiration of the temporary authority.

5. By its Motion to Strike, Wolf contends that the Motion to Extend is defective and should be stricken. It maintains that Boulder Express, the entity that filed the Motion to Extend, has no standing to request extension of the temporary authority since it is not a party to Docket No. 02A-412CP-TA.

6. The Motion to Strike will be denied. The Owner/Driver Joinder makes it clear that Owner/Driver, the lawful holder of the temporary authority, also requests that the temporary authority be extended. In addition, as the temporary lessee of the temporary authority, Boulder Express has a substantial interest in joining in the extension request. This holding applies with equal force to the third procedural reason advanced in the Wolf Response as to why the temporary authority should not be extended (*i.e.*, that Boulder Express was not the proper party to file the Motion to Extend).

7. The Wolf Response also contends that the Motion to Extend cannot be granted since uncertainty still exists concerning the actual scope of the temporary authority as a result of its pending application for reconsideration, reargument, or rehearing (Wolf RRR) to Decision No. C02-1415. However, the Commission denied the Wolf RRR without further modification of Decision No. C02-1415 subsequent to the filing of the Wolf Response. *See*, Decision No. C03-0103. Therefore, the scope of the temporary authority, as further modified by the restrictive amendments referred to in footnote 2 above, has now been finalized. *See*, § 40-6-114, C.R.S.

8. Finally, in its response to the Owner/Driver Joinder, Wolf argues that the temporary authority cannot be extended under § 40-6-120(1), C.R.S., since its holder,

Owner/Driver, does not have a corresponding permanent application pending. In this regard, it points to the fact that, while Boulder Express has been substituted for Owner/Driver as the applicant in Docket No. 02A-412CP, it has not been so substituted in Docket No. 02A-412CP-TA. Wolf argues, therefore, that the subject statute requires that the holder of temporary authority be the same entity as the applicant in the corresponding permanent application proceeding.

9. While there is usually an identity between the holder of temporary authority and the applicant in the corresponding permanent authority application, § 40-6-120(1), C.R.S., does not expressly impose such a requirement. It refers only to “corresponding permanent authority.” Here, the permanent application pending in Docket No. 02A-412CP by Boulder Express obviously “corresponds” to the temporary authority it now operates under its lease arrangement with Owner/Driver. Under these circumstances, the lack of identity between the holder of the temporary authority and the applicant in the subject permanent application does not require denial of the Motion to Extend.

10. Both Wolf and SuperShuttle contend that there is no good cause warranting an extension of the temporary authority since the grounds upon which the Commission originally based its grant of the same (*i.e.*, the almost complete discontinuance of service by SuperShuttle on August 7, 2002, as a result of the loss of all but one of its drivers) no longer exist. These parties contend that the “good cause” standard imposed by § 40-6-120(1), C.R.S., requires Boulder Express and/or Owner/Driver to again establish that the “immediate and urgent need” originally warranting the grant of temporary authority continues at the present time. SuperShuttle submits that such a need no longer exists as a result of the revival of its service capacities to levels now exceeding those in existence prior to issuance of the temporary

authority. Both SuperShuttle and Wolf also dispute the reliability and/or relevance of the traffic studies and support letters accompanying the Motion to Extend and the Owner/Driver Joinder.

11. Section 40-6-120(1), C.R.S., authorizes the Commission to extend temporary authority beyond the initial 180-day grant of such authority. Such an extension may, upon good cause shown, be granted until the corresponding permanent authority application is final.

12. In construing the “good cause” standard imposed by this statute the Commission has consistently focused on whether members of the traveling public are using the temporary service provided and, if so, would likely be inconvenienced by a discontinuance of that service. *See, for example*, Decision Nos. R94-1390-I, R00-814-I, R01-811-I, and C02-1081. It has also focused on the inherent injustice of denying a carrier the opportunity to continue providing temporary service merely because the 180-day period authorized by the statute does not, for whatever reason, provide sufficient time to finalize the corresponding permanent application. *See, for example*, Decision Nos. R95-981-I, R95-1013-I, R97-1176-I, R99-465-I, R99-782-I, R99-1189-I, and C02-1081.

13. Despite a diligent review of prior decisions on the subject, the undersigned has been unable to locate any Commission pronouncement adopting the “good cause” standard advanced by SuperShuttle and Wolf; *i.e.*, that one petitioning for an extension for temporary authority must “re-prove” the existence of an immediate and urgent need for the temporary service initially authorized. Indeed, the undersigned has been unable to locate any instance in which the Commission has denied a request to extend temporary authority under § 40-6-120(1), C.R.S.

14. With the above in mind, it is found and concluded that Boulder Express and Owner/Driver have demonstrated good cause for the requested extension of the temporary authority. It is indeed unlikely that the corresponding permanent application proceeding will be finalized prior to the February 8, 2003, temporary authority expiration date.³ Having granted Owner/Driver the temporary authority and having thereafter authorized Boulder Express to temporarily lease and operate the same, it would be fundamentally unfair to now require the temporary service to be discontinued merely because of a procedural impediment; *i.e.*, the inability to finalize the permanent application proceeding within the 180-day period provided by § 40-6-120(1), C.R.S. The traffic studies attached to the Owner/Driver Joinder establish that the operators of the temporary authority have provided and continue to provide regular service under the same. Passengers who utilize and rely on that service should be allowed to continue to use it until Boulder Express' permanent application is finalized. Accordingly, the Motion to Extend will be granted.

15. Holding an evidentiary hearing in connection with the Motion to Extend would not materially assist the undersigned in reaching a decision in connection with the issues raised therein. Therefore, the Motion for Hearing will be denied.

II. ORDER

A. It Is Ordered That:

1. The Motion to Extend Temporary Authority filed by Boulder Express, LLC, and the Joinder of Owner Driver United Corporation in the Motion to Extend Temporary Authority filed by Owner/Driver United Corporation, doing business as Blue Sky Shuttle, are granted.

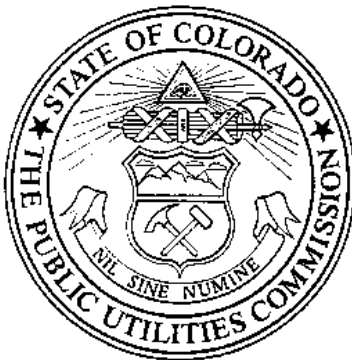
³ The hearing in Docket No. 02A-412CP is not scheduled to conclude until January 31, 2003, and, as a result, a recommended decision is not likely to be forthcoming until late February at the earliest.

2. The temporary authority originally granted in Decision No. C02-1003 in the captioned proceeding is extended until such time as an administratively final decision is issued by the Colorado Public Utilities Commission in Docket No. 02A-412CP. The scope of the temporary authority so extended is set forth in Appendix A hereto and is incorporated herein for all pertinent purposes.

3. The Motion to Strike Pleading and Alternate Motion to Set Matter of Extension of Temporary Authority for Hearing filed by Schafer-Schonewill and Associates, Inc., doing business as Englewood Express and/or Wolf Express Shuttle, are denied.

4. This Order shall be effective immediately.

(SEAL)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

DALE E. ISLEY

Administrative Law Judge