

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-100CP-TRANSFER-ETA

THE APPLICATION OF BOULDER EXPRESS, LLC., DOING BUSINESS AS BOULDER EXPRESS SHUTTLE &/OR BLUE SKY SHUTTLE, FOR EMERGENCY TEMPORARY APPROVAL TO ALLOW OWNER/DRIVER UNITED CORPORATION, DOING BUSINESS AS BLUE SKY SHUTTLE, TO ASSUME OPERATIONAL CONTROL OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PUC NO. 55725.

**COMMISSION ORDER GRANTING
EMERGENCY TEMPORARY APPROVAL**

Mailed Date: April 12, 2004

Adopted Date: April 7, 2004

I. BY THE COMMISSION:

A. Statement, Findings and Conclusions

1. On April 1, 2004, Boulder Express, LLC., doing business as Boulder Express Shuttle &/or Blue Sky Shuttle (Boulder Express), filed an application for emergency temporary approval to allow Owner/Driver United Corporation, doing business as Blue Sky Shuttle (Owner/Driver United) to assume operational control of Certificate of Public Convenience and Necessity (CPCN) PUC No. 55725 pending Commission consideration of the related application to permanently transfer the certificate.

2. 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." Section 40-6-120(4), C.R.S., further states: "If the Commission is of the opinion

that an emergency exists, it may issue temporary authority or approval at once by making specific reference in its order to the circumstances constituting the emergency, in which case no notice need be given, but any such emergency authority or approval shall expire no later than thirty days after it was issued."

3. Owner/Driver United filed applications for emergency temporary authority and temporary authority to conduct operations as a common carrier on August 8, 2002, in Docket 02A-412CP. Owner/Driver United was granted emergency temporary authority to conduct operations as a common carrier for a period of 30 days by Decision No. C02-0876 on August 13, 2002. Owner/Driver United was granted temporary authority to conduct operations as a common carrier for a period of 150 days by Decision No. C02-1003 on September 11, 2002.

4. Owner/Driver United filed an application on October 2, 2002, for temporary authority to allow Boulder Express to assume operational control of the temporary authority granted by in Docket No. 02A-412CP-TA by Decision No. C02-1003 pending Commission consideration of the related application to permanently lease the certificate. Boulder Express was granted temporary approval in Docket No. 02A-531CP-Lease-TA by Decision No. C02-1195 on October 22, 2002, to assume operational control of the temporary authority granted to Owner/Driver United in Docket No. 02A-412CP-TA by Decision No. C02-1003.

5. Owner/Driver United and Boulder Express, on October 21, 2002, filed a Motion for Substitution of Applicant in Docket No. 02A-412CP. This motion requested that Boulder Express be substituted for Owner/Driver United in this docket. The Motion for Substitution of Applicant was granted by Decision No. R02-1251-I on November 5, 2002.

6. Boulder Express was granted a certificate of public convenience and necessity to provide common carrier service by Decision No. R03-0436 in Docket 02A-412CP on April 25, 2003. Boulder Express filed exceptions to Decision No. R03-0426 on May 27, 2003. The exceptions filed by Boulder Express were denied in their entirety by Decision No. C03-1045 on September 15, 2003. The authority granted to Boulder Express by Decision No. C03-1045 was assigned CPCN PUC No. 55725.

7. Boulder Express and Owner/Driver United entered into a revised contract and sales agreement on June 20, 2003. This revised agreement stated “Boulder Express will continue to seek a permanent authority from the PUC under Docket No. 02A-412CP. If the same is issued by the PUC, then Boulder Express will immediately transfer the authority to Owner/Driver United in exchange for Owner/Driver United’s payment of \$1.00.”

8. The application to permanently transfer CPCN PUC No. 55725 from Boulder Express to Owner/Driver United was filed on March 8, 2004. The emergency temporary application to allow Owner /Driver United to assume operational control of CPCN PUC No. 55725 was filed on April 1, 1004.

9. Mr. Howard D. Davey, president of Owner/Driver United, filed a letter in support of this application. In his letter, Mr. Davey states that Boulder Express is not operating the service it was granted by Decision No. C03-1045. Mr. Davey also states “Owner/Driver United believes it is very important to begin providing adequate, dependable service in this area (the service area granted by Decision No. C03-1045) otherwise the value of its authority will be diminished.”

10. Owner/Driver United has followed a very lengthy and circuitous route in its continued attempt to provide the transportation service named in CPCN PUC No. 55725. Boulder Express and Owner/Driver United entered into a sales agreement which provided for the immediate transfer of the permanent authority issued in Docket No. 02A-412CP. The permanent authority in Docket No. 02A-412CP was granted by Decision No. C03-1045 on September 15, 2003. The application to permanently transfer this authority was not filed until March 8, 2004. Owner/Driver United states it is ready and willing to begin providing the service named in CPCN PUC No. 55725 as soon as possible. Boulder Express does not include any statement in this application to indicate it is currently providing the service named in CPCN PUC No. 55725. Therefore, a failure to grant this emergency temporary approval to lease CPCN PUC No. 55725 to Owner/Driver United could interfere substantially with the performance of adequate and continuous service to the public

11. The Commission finds that a failure to grant emergency approval of an assumption of operational control could result in injury to CPCN PUC No. 55725 and ultimately affect service to the public.

12. Owner/Driver United has adequate equipment and financial resources to begin immediate service within the scope of the authority sought.

13. This application for emergency temporary approval is in the public interest.

14. Boulder Express and Owner/Driver United are advised that the grant of emergency temporary approval of an assumption of operational control creates no presumption that either temporary approval of an assumption of operational control or permanent approval of the transfer will be granted.

II. ORDER**A. The Commission Orders That:**

1. The application for emergency temporary approval of an assumption of operational control by Owner/Driver United filed by Boulder Express is granted.

2. Owner/Driver United is granted emergency temporary approval to conduct operations under Certificate of Public Convenience and Necessity PUC No. 55725 for a period of 30 days commencing from the Mailed Date of this Order.

3. Owner/Driver United shall operate in accordance with all applicable Commission rules and regulations.

4. Owner/Driver United shall cause to be filed with the Commission certificates of insurance as required by Commission rules. Owner/Driver United shall also adopt the tariff of Boulder Express, which shall become that of Owner/Driver United until changed in accordance with the public utilities law. Owner/Driver United shall pay the appropriate vehicle identification fee. Owner/Driver United shall not assume operational control of Certificate of Public Convenience and Necessity PUC No. 55725 until it has met these requirements, and notice in writing has been received from the Commission stating that it is in compliance and may begin service.

5. 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.

6. This Order is effective on its Mailed Date.

**B. ADOPTED IN THE COMMISSIONERS' WEEKLY MEETING
April 7, 2004, .**

(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

JIM DYER

Commissioners

I/TRANS/ORDERS/04A-100CP-ETA