

Decision No. C04-0598

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. C04-106CP-TRANSFER

IN THE MATTER OF THE APPLICATION OF DENVER MOUNTAIN EXPRESS, INC.,
DOING BUSINESS AS AMERISHUTTLE &/OR BLUE SKY SHUTTLE FOR APPROVAL TO
TRANSFER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PUC NO. 55275
TO BENJAMIN R SAGENKAHN DOING BUSINESS AS PEAK TRANSIT.

**COMMISSION ORDER APPROVING TRANSFER OF
CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY**

Mailed Date: June 11, 2004

Adopted Date: June 2, 2004

I. BY THE COMMISSION:

A. Statement, Findings and Conclusions

1. On March 15, 2004, Denver Mountain Express, Inc., doing business as Amerishuttle &/or Blue Sky Shuttle (Denver Mountain Express) filed an application for approval to transfer Certificate of Public Convenience and Necessity (CPCN) PUC No. 55275 to Benjamin R Sagenkahn doing business as Peak Transit (Peak Transit).

2. The Commission granted the application for approval to transfer CPCN PUC No. 55275 from Denver Mountain Express to Peak Transit by Decision No. C04-0422 on April 29, 2004. Ordering Paragraph (6)(A) of Decision No. C04-0422 includes the following requirements: Denver Mountain Express shall file a terminating annual report from the first of January to the date of this Order. An acceptance of transfer signed by both Denver Mountain Express and Peak Transit shall be filed with the Commission.

3. Ordering Paragraph (6)(A) also states: Peak Transit may not begin operations until these requirements have been met and it has received notice in writing from the Commission stating that it is in compliance and may begin service.

4. Peak Transit filed a letter with the Commission on May 26, 2004. In this letter, Peak Transit states it is aware that Ordering Paragraph (6)(A) of Decision No. C04-0422 that Peak Transit and Denver Mountain Express are required to file an acceptance of transfer and Denver Mountain Express is required to file a terminating annual report. Peak Transit also states:

“Denver Mountain Express’ principals, however, cannot be located to comply with the order. Many attempts have been made to locate the owner of Denver Mountain Express. I ask the Commission to accept Denver Mountain Express’ application for transfer as willingness to accept the transfer and that the Commission waive the requirement for Denver Mountain Express to file a terminating annual report and an acceptance of transfer and grant the permanent authority.”

5. The Commission construes the letter filed by Peak Transit on May 26, 2004, as a Motion to Waive the portions of Ordering Paragraph (6) of Decision C04-0422 that require Denver Mountain Express to file a terminating annual report and both parties to file an acceptance of transfer.

6. The requirement to file a terminating annual report is named in Rule 4 Colorado Code of Regulations (CCR) 723-1-25(f)(3). The requirement to file an acceptance of transfer is named in Rule 4 CCR 723-31-3.8. Rule 4 CCR 723-1-25(f)(3) states: “When a permanent transfer of authority is granted, the transferor shall complete a terminating annual report.” Rule 4 CCR 723-31-3.8 states: “When a transfer is authorized by the Commission, the transferor and transferee shall file an acceptance of transfer, signed by both parties, accepting the terms and

conditions of the order authorizing the transfer.” Therefore, the Commission finds that Peak Transit is requesting a waiver of Rules 4 CCR 723-1-25(f)(3) and 723-31-3.8.

7. The Commission finds that Peak Transit has shown good cause to grant the waiver of Rules 4 CCR 723-1-25(f)(3) and 723-31-3.8.

II. ORDER

A. The Commission Orders That:

1. The application filed by Peak Transit is construed as a Motion to Waive Rules 4 CCR 723-1-25(f)(3) and 723-31-3.8 as they relate to Ordering Paragraph (6)(A) of Decision No. C04-0422.

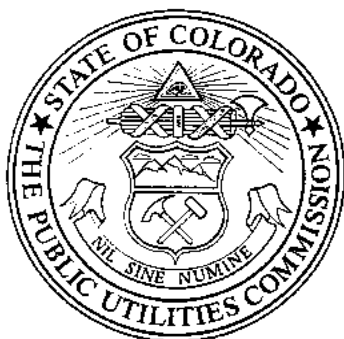
2. Peak Transit is granted a waiver of the requirements to file an acceptance of transfer and a terminating annual report.

3. The 20-day time period provided by § 40-6-141(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.

4. This Order is effective on its Mailed Date.

**B. ADOPTED IN THE COMMISSIONERS' WEEKLY MEETING
June 2, 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-106CP