

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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THE APPLICATION OF COLUNEB)
TRUCKING, INC., FOR TEMPORARY)
AUTHORITY TO CONDUCT OPERATIONS) DOCKET NO. 92A-309CY-TA
AS A COMMON CARRIER BY MOTOR)
VEHICLE FOR HIRE.)
- - - - -

**COMMISSION ORDER DENYING
TEMPORARY AUTHORITY**

Mailed date: August 27, 1992
Adopted date: July 31, 1992

STATEMENT, FINDINGS, AND CONCLUSIONS

BY THE COMMISSION:

1. On June 16, 1992, Coluneb Trucking, Inc., filed Docket No. 92A-309CY-TA for temporary authority to conduct operations as a common carrier by motor vehicle for hire for the transportation of electrical supplies and equipment, on call-and-demand, between the warehouse of Steve O'Kane & Associates, Inc., located at 505 West Cedar Avenue, Denver, Colorado, on the one hand, and all points in the State of Colorado, on the other hand.

2. The Commission gave notice of the application on June 22, 1992. An intervention opposing a grant of the application was timely filed by Arvada Transfer Co.

3. By § 40-6-120, C.R.S., the application for temporary authority is under consideration for a Commission order.

4. Section 40-6-120(1), C.R.S., authorizes the Commission to grant temporary authority when there appears to be "... an immediate and urgent need to any point or within a territory having no carrier service capable of meeting such need."

5. The burden of proof created by this statute is indeed heavy. The Applicant must meet a twofold test in order to satisfy the criteria demanded by the law. First, that there is an immediate and urgent need for the transportation services, and secondly that there is no existing carrier capable of meeting the need. If the Applicant fails to meet either test, the application cannot be granted. Although the Commission is sympathetic with the request of the Applicant and the supporting shippers, we cannot ignore the law and find that there is no other carrier service available in light of the intervention of Arvada Transfer Co. The support filed on behalf of this application fails to prove that there is an immediate and urgent need for the transportation services requested and that there is no other carrier service available capable of providing the service.

6. This application for temporary authority is not in the public interest and should be denied.

THEREFORE THE COMMISSION ORDERS THAT:

1. This application is denied.
2. 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 decision.
3. This Order is effective on its date of mailing.

DONE IN OPEN MEETING July 31, 1992.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

COMMISSIONER GARY L. NAKARADO DISSENTING

Commissioner Gary L. Nakarado, dissenting

The Applicant, Coluneb Trucking, Inc., has been in business for over six years, operating a number of years under an interstate

authority, serving electrical contractors on a 24-hour a day basis.

When Coluneb found it needed a Colorado Public Utilities Commission permit, Coluneb immediately applied for such permit, in order to comply with the law. In this Decision, the majority denies the permit because it finds Coluneb fails to meet the burden of proof under our state transportation law for a temporary authority permit. Although Coluneb may obtain a permanent contract carrier permit, given the quantity and quality of the support letters from businesses wanting Coluneb's services, the Colorado Public Utilities Commission, by failing to find that the necessary standard be met, will frustrate Coluneb's customers, jeopardize Coluneb's business and that of its customers' pending the delay needed for Coluneb to obtain a permanent permit. This will only protect Coluneb's competitors. This case is a powerful example in favor of the deregulation of transportation.

I would have considered the equities involved in this matter, I believe we would have lawfully found the standard met and I would have granted Coluneb a temporary authority permit.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioner

ORDER-GQ

APPLICANT:

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INTERVENOR:

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INTERVENOR'S ATTORNEY:

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