

(Decision No. C92-1284)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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THE APPLICATION OF FRESH )	
EXPRESS-COLORADO, INC., FOR )	
EMERGENCY TEMPORARY AUTHORITY TO )	DOCKET NO. 92A-527CY-
EXTEND OPERATIONS UNDER )	EXTENSION-ETA
CERTIFICATE OF PUBLIC )	
CONVENIENCE AND NECESSITY PUC )	
NO. 346&I. )	
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**COMMISSION ORDER GRANTING EMERGENCY  
TEMPORARY AUTHORITY IN PART**

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Mailed date: October 9, 1992  
Adopted date: October 7, 1992  
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STATEMENT, FINDINGS, AND CONCLUSIONS

BY THE COMMISSION:

1. On September 30, 1992, Fresh Express-Colorado, Inc., filed Docket No. 92A-527CY-Extension-ETA for emergency temporary authority to extend operations under Certificate of Public Convenience and Necessity PUC No. 346&I for the transportation of potatoes and lettuce between points within a 15-mile radius of Center, Colorado, on the one hand, and points in the Counties of Denver, Arapahoe, Larimer, and El Paso, State of Colorado, on the other hand. Restricted to the use of vehicles equipped with mechanical refrigeration devices.

2. Interventions opposing a grant of the application were filed by E&R Trucking, Inc., Bill Clark Trucking, Inc., and Mile Hi Frozen Foods Company.

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

4. Section 40-6-120(1), C.R.S., authorizes the Commission to

grant emergency 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." Section 40-6-120(4) further states "If the commission is of the opinion that an emergency exists, it may issue emergency 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 15 days after it was issued."

5. The support filed on behalf of this application indicates four of the five shippers require an alternate to a service arrangement that has been terminated so that they will have adequate motor carrier services be made available to them to transport produce inbound to their facilities on a timely basis. The letter from Yancey's Food Service, Inc., however, did not furnish any reasons to support an emergency need for the Applicant's service.

The shippers believe that other carriers are unwilling to handle their freight because of the smaller volumes tendered, and there is an emergency need for service they believe they are unable to obtain.

6. The Commission finds, due to the facts stated in paragraph 5 above, there is an immediate and urgent need for additional transportation services. The Commission will grant the application.

7. The Applicant has adequate equipment and financial resources to begin immediate service within the scope of the authority sought and is willing, ready, and able to operate under all Commission rules and regulations governing carriers by motor vehicle.

8. This application for emergency temporary authority is in the public interest and should be granted in part.

9. The Applicant is advised that the granting of an emergency temporary authority makes no presumption that temporary or permanent authority will be granted.

THEREFORE THE COMMISSION ORDERS THAT:

1. Fresh Express-Colorado, Inc. is granted emergency temporary authority to extend operations under Certificate of Public Convenience and Necessity PUC No. 346&I for a period of 15 days commencing from the mailed date of this order, with authority as set forth in the attached Appendix.

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2. Fresh Express-Colorado, Inc. shall not commence operation until all requirements have been met and notice in writing has been received from the Commission that the Applicant is in compliance and may begin service.

3. 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.

4. This Order is in effect on the date of mailing.

DONE IN OPEN MEETING on October 7, 1992.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners

COMMISSIONER GARY L. NAKARADO DISSENTING IN PART.

COMMISSIONER GARY L. NAKARADO DISSENTING IN PART:

I would have granted the application as to all five of these shippers. Accordingly, I dissent in part.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioner

ORDER-IG

Transportation of

potatoes

from points within a 15-mile radius of Center, Colorado to points in the Counties of Denver, Arapahoe, and El Paso, State of Colorado.

This emergency temporary authority is restricted as follows:

- 1.to the use of vehicles equipped with mechanical refrigeration devices; and
- 2.to providing service for only:
  - a.Federal Fruit and Produce, Inc.
  - b.Quality Food Service, Inc.
  - c.Federal Food Service, Inc.
  - d.Kraft-Denver

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APPLICANT:

Fresh Express-Colorado, Inc.  
3147 North Century Road  
Colorado Springs, CO 80907

APPLICANT'S ATTORNEY:

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WILLIAMS & ISLEY, P.C.  
1225 Mellon Financial Center  
1775 Sherman Street  
Denver, CO 80203

INTERVENOR:

E & R Trucking, Inc.  
P. O. Box 37  
Henderson, CO 80640

INTERVENOR:

Bill Clark Truck Line, Inc.  
311 6th Street  
Alamosa, CO 81101

ATTORNEY FOR INTERVENORS:

David E. Driggers, Esq.  
JONES & KELLER, P.C.  
1625 Broadway, Suite No. 1600  
Denver, CO 80203

INTERVENOR:

Mile Hi Frozen Foods Company  
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Denver, CO 80216

ATTORNEY FOR INTERVENOR (MILE HI):

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