

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-106CP-TRANSFER-TA

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

**COMMISSION ORDER GRANTING
TEMPORARY APPROVAL**

Mailed Date: April 2, 2004
Adopted Date: March 31, 2004

I. BY THE COMMISSION:

A. Statement

1. On March 15, 2004, Denver Mountain Express, Inc., doing business as Amerishuttle &/or Blue Sky Shuttle (Denver Mountain Express), filed an application for temporary approval to allow Benjamin R. Sagenkahn, doing business as Peak Transit (Peak Transit), to assume operational control of Certificate of Public Convenience and Necessity (CPCN) PUC No. 55275 pending Commission consideration of the related application to permanently transfer the certificate.

2. The Commission gave notice of the application on March 22, 2004.

3. There are no interventions opposing the application.

4. 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."

B. Findings of Fact

5. Benjamin R. Sagenkahn, doing business as Peak Transit, was authorized to transfer a portion of CPCN PUC No. 55275 to Hotels of Denver Mountain Carrier, Inc., doing business as Denver Mountain Express, by Decision No. R03-0973 in Docket No. 03A-199CP on August 27, 2003. Hotels of Denver Mountain Carrier, Inc., doing business as Denver Mountain Express changed its name to Denver Mountain Express, Inc., doing business as Amerishuttle &/or Blue Sky Shuttle on September 17, 2003.

6. Mr. Sagenkahn, the former owner of CPCN PUC No. 55275, filed a letter in support of this transfer application. In his letter, Mr. Sagenkahn states that since the completion of the transfer of CPCN PUC No. 55275 in August of 2003, he has experienced problems receiving payments from Denver Mountain Express in the manner named in the asset purchase and sale agreement as signed by Peak Transit and Denver Mountain Express. Mr. Sagenkahn also states that Denver Mountain Express has recently suspended daily operations under CPCN PUC No. 55275.

7. The Commission has been advised that Denver Mountain Express is currently undergoing financial difficulties and has ceased providing the transportation service named in CPCN PUC No. 55275.

8. The Commission granted Peak Transit emergency temporary approval to conduct operations under CPCN PUC No. 55275 on March 10, 2004, by Decision No. C04-0255.

C. Conclusions

9. The Commission finds that a failure to grant temporary approval of an assumption of operational control could result in injury to CPCN PUC No. 55275 and ultimately affect service to the public.

10. Peak Transit has adequate equipment and financial resources to begin immediate service within the scope of the authority sought.

11. This application for temporary approval is in the public interest.

12. Denver Mountain Express and Peak Transit are advised that the grant of temporary approval of an assumption of operational control creates no presumption that permanent transfer approval will be granted.

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

1. The application for temporary approval of an assumption of operational control filed by Denver Mountain Express is granted.

2. Peak Transit is granted temporary approval to assume operational control of Certificate of Public Convenience and Necessity PUC No. 55275 for a period of 150 days commencing from the Mailed Date of this Order.

3. Peak Transit shall operate in accordance with all applicable Commission rules and regulations.

4. Peak Transit shall cause to be filed with the Commission certificates of insurance as required by Commission rules. Peak Transit shall also adopt the tariff of Denver Mountain

Express, which shall become that of Peak Transit until changed in accordance with the public utilities law. Peak Transit shall pay the appropriate vehicle identification fee. Peak Transit shall not assume operational control 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.

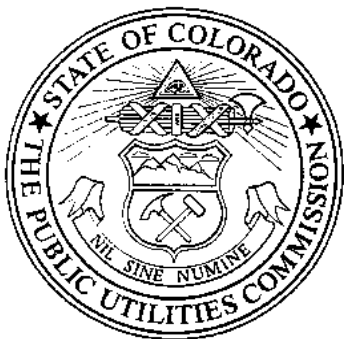
5. If Peak Transit does not comply with the requirements of this Order within 30 days of its effective date, then the temporary approval shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within the 30 days.

6. 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.

7. This Order is effective on its Mailed Date.

**B. ADOPTED IN THE COMMISSIONERS' WEEKLY MEETING
March 31, 2004**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners