

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-163CP-LEASE-ETA

IN THE MATTER OF THE APPLICATION FOR EMERGENCY TEMPORARY AUTHORITY TO LEASE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY PUC NOS. 50790, 52940, 55363, & 55519 FROM SCHAFFER-SCHONEWILL & ASSOCIATES, INC., DOING BUSINESS AS ENGLEWOOD EXPRESS &/OR WOLF EXPRESS SHUTTLE, TO OWNER/DRIVER UNITED CORPORATION, DOING BUSINESS AS BLUE SKY SHUTTLE.

**COMMISSION ORDER GRANTING
EMERGENCY TEMPORARY APPROVAL**

Mailed Date: April 22, 2004
Adopted Date: April 13, 2004

I. BY THE COMMISSION:

A. Statement, Findings and Conclusions

1. On April 7, 2004, Schafer-Schonewill & Associates, Inc., doing business as Englewood Express &/or Wolf Express Shuttle (Englewood 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 Certificates of Public Convenience and Necessity (CPCNs) PUC Nos. 50790, 52940, 55363, and 55519, pending Commission consideration of the related application to permanently lease the certificates.

2. Pursuant to § 40-6-120(2), C.R.S., the Commission may grant emergency temporary approval of a lease of a certificate "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. Mr. Khalil Laleh, president of Englewood Express, filed a Verified Statement of Facts in support of this application. In this document, Mr. Laleh states: "On April 1, 2004, Denver Mountain Express, Inc., doing business as Amerishuttle and/or Blue Sky (Amerishuttle), defaulted on its obligations¹ under the Asset Purchase and Sale Agreement, and a related Promissory Note, causing my company to begin undertaking to repossess all collateral, including Certificates of Public Convenience and Necessity PUC Nos. 50790, 52940, 55363, and 55519. My company is poorly capitalized at this time because of the Amerishuttle default in the above-described transaction. It would be very difficult, but not impossible, for me to inject additional capital into the company to continue operations under the subject certificates. In an effort to mitigate Englewood Express damages in this situation, on April 5, 2004, Englewood Express entered into an agreement to lease all four CPCN's described above to Owner/Driver United, subject to prior Commission approval. However, in the event the PUC does not approve the proposed lease transaction to Owner/Driver United, it is my company's intent to attempt to sell the subject operating rights to a third party, failing which my company will undertake to secure

¹ Englewood Express was granted authority to permanently transfer CPCNs PUC Nos. 50790, 52940, and 55363, to Amerishuttle by Decision No. R03-0623 on June 5, 2003, in Docket No. 03A-055CP. Englewood Express was also granted an encumbrance against CPCNs PUC Nos. 50790, 52940, 55363, and 55519 in accordance with the terms of the sale and asset purchase and sale agreement between Englewood Express and Amerishuttle by Decision No. R03-0623.

the appropriate insurance and vehicles to begin operations under the subject Certificates in the near future. Currently my company is in no position to immediately begin providing service under the subject Certificates because we no longer have the equipment to do so, nor have we arranged to secure drivers or insurance necessary to provide such operations.”

4. The Commission finds that a failure to grant emergency approval of an assumption of operational control could result in injury to CPCNs PUC Nos. 50790, 52940, 55363, and 55519, and ultimately affect service to the public.

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

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

7. Englewood 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 Englewood Express is granted.

2. Owner/Driver United is granted emergency temporary approval to conduct operations under Certificates of Public Convenience and Necessity PUC Nos. 50790, 52940, 55363, and 55519, 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 Corporation shall not assume operational control of CPCNs PUC Nos. 50790, 52940, 55363, and 55519 until it has filed with the Commission certificates of insurance as required by Commission rules. Owner/Driver United shall also adopt the tariffs of Englewood 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 CPCNs PUC Nos. 50790, 52940, 55363, and 55519 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 13, 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

Commissioners

COMMISSIONER JIM DYER ABSENT

I:\Trans\Orders\04A-163CP-ETA