

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

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

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

**COMMISSION ORDER DENYING MOTION
TO RESTORE AND REACTIVATE**

Mailed Date: April 13, 2004
Adopted Date: March 31, 2004

I. BY THE COMMISSION:

A. Statement

1. On March 15, 2004, Benjamin R. Sagenkahn, doing business as Peak Transit (Peak Transit), filed a "Motion to Restore and Reactivate" the authorities previously operated by Peak Transit that were transferred to Denver Mountain Express (DME).

2. These authorities were previously transferred to Denver Mountain Express pursuant to Commission procedure, and with Commission approval. The Commission understands that Denver Mountain Express has not been able to make payments pursuant to the contract between Peak Transit and DME.

3. There is nothing in the Commission rules which provides for a motion to undo a properly concluded transfer of a CPCN, based on a breach of contract. The Commission has no jurisdiction to judge a contract dispute between Peak Transit and DME, and breach of contract is

the grounds upon which Peak Transit would have us transfer back the authorities it originally owned.

4. Without using Commission procedures to determine whether the transfer to Peak Transit should be granted, the Commission would have no basis on which to determine Peak Transit's fitness to operate the authorities it proposes to take back. We note that Peak Transit and DME have filed the appropriate applications to retransfer the authorities back to Peak Transit, and that although Peak Transit has not yet obtained permanent authority, temporary authority to operate has been granted to Peak Transit.

5. We therefore deny Peak Transit's motion.

II. ORDER

A. The Commission Orders That:

1. Peak Transit's motion to restore and reactivate 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 Order.

3. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING March 31, 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