

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 03A-461CP

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IN THE MATTER OF THE APPLICATION OF KYLE BUIS, DOING BUSINESS AS  
PEGASUS TRANSIT, 4421 SOUTH STOVER, SUITE 4, FORT COLLINS, COLORADO  
80525 FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE  
AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

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**DECISION DENYING EXCEPTIONS**

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Mailed Date: April 20, 2004  
Adopted Date: March 31, 2004

**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Commission for consideration of exceptions filed by Kyle Buis, doing business as Pegasus Transit (Pegasus Transit) to Recommended Decision No. R04-0188, effective February 25, 2004. On March 12, 2004, Pegasus Transit filed a "Notice of Appeal" (Notice) to the Recommended Decision. This Notice was filed within the 20-day deadline to file the exceptions as set forth in the Recommended Decision. The Notice shall be construed as exceptions.

2. The captioned application of Pegasus Transit was noticed on October 27, 2003. Timely interventions were filed by Shamrock Taxi of Fort Collins, Inc., doing business as Shamrock Shuttle, Inc. (Shamrock), and by Greeley Airport Shuttle, Inc., doing business as Rocky Mountain Shuttle, Ltd. (RMS). The matter was set for hearing on December 30, 2003, in Fort Collins, Colorado.

3. The hearing date was vacated due to Pegasus Transit's failure to properly file and serve its witness and exhibit list as required by Rule 71 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1-71(b)(4). See Interim Order No. R03-1457-I. The matter was rescheduled for hearing on March 11 and 12, 2004, again in Fort Collins. See Interim Order No. R04-0030-I. This decision also established a procedural schedule requiring Pegasus Transit to file its witness/exhibit list by February 11, 2004.

4. On February 10, 2004, Pegasus Transit filed three pleadings, a Notice of Retraction, a Witness and Exhibits List, and a Notice of Availability of Hearing Dates. Because these pleadings raised questions requiring clarification before a hearing could be conducted, the Administrative Law Judge (ALJ) scheduled a prehearing conference on February 20, 2004. On February 13, 2004, Shamrock submitted a pleading entitled "Objections of Intervenor to Applicant's Recent Witness and Exhibit List." This pleading renewed Shamrock's motion to dismiss for failure to file a proper witness list pursuant to Rule 71. Both Intervenors entered appearances at the scheduled hearing through their attorneys. Pegasus Transit failed to appear. The ALJ attempted to contact Pegasus Transit by phone but was unsuccessful. At the prehearing conference, RMS joined Shamrock's motion to dismiss. After hearing comments from the Intervenors, the ALJ granted the motion to dismiss the application.

5. Rule 71(b)(7) specifically provides that applications include a statement acknowledging that, if a party does not meet the requirements regarding filing and serving a witness list, the Commission may dismiss the application unless good cause is shown for this failure. 4 CCR 723-1-71(b)(5). In this case, the ALJ determined that the witness list filed by Pegasus Transit failed to meet the requirements of Rule 71. The filed witness list refers only to "witnesses requesting to be heard on the hearing date" without further identification. The ALJ

found the names of potential witnesses to be in many cases illegible, and to the extent they were legible, there were no addresses or telephone numbers. Pegasus previously indicated that the witnesses prefer that their identities not be revealed in order to protect their safety, but presented nothing to show that witnesses have been intimidated or harassed. In addition, no exhibits were received with the witness list. Rather, there were only references to “support letters received” and unidentified “public records.”

6. As the ALJ noted, an adequate witness and exhibit list is crucial to the ability of all parties to present their cases. Without the list, the intervenors cannot adequately respond to the application. Further, Pegasus cannot develop a *prima facie* case to grant the application because Rule 71(b)(6) forbids witness testimony or any other evidence (save in rebuttal) without a proper witness and exhibit list. Because Pegasus Transit may not present evidence, or introduce evidence, due to failure to present proper witness and exhibit lists, pursuant to Rule 71, it cannot prove its case.

7. We do not believe that the “Notice of Appeal” filed by Pegasus Transit demonstrates the good cause required by Rule 71 to avoid dismissal for failure to file a witness and exhibit list. The Notice merely states that Pegasus Transit was unavailable during the prehearing conference, without giving a reason, and does not even mention the deficiencies of witness lists which was the basis for dismissing the case. The exceptions filed by Pegasus Transit are thus denied.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The exceptions filed by Kyle Buis, doing business as Pegasus Transit are 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.**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners