

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-403CP-TRANSFER-TA

THE APPLICATION OF ALPINE EXPRESS, INC. FOR TEMPORARY APPROVAL TO ALLOW AEX, INC. TO ASSUME OPERATIONAL CONTROL OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PUC NO. 12750 AND CONTRACT CARRIER PERMIT NO. B-9414.

**COMMISSION ORDER GRANTING
TEMPORARY APPROVAL**

Mailed Date: August 19, 2004
Adopted Date: August 18, 2004

I. BY THE COMMISSION:

A. Statement

1. On August 3, 2004, Alpine Express, Inc. (Alpine Express) filed an application for temporary approval to allow AEX, Inc. (AEX) to assume operational control of Certificate of Public Convenience and Necessity (CPCN) PUC No. 12750 and Contract Carrier Permit No. B-9414 pending Commission consideration of the related application to permanently transfer the certificate and permit.

2. Alpine Express and AEX also filed a document entitled "Motion Concerning Confidentiality." In this motion, Alpine Express and AEX request that the Commission "determine that the contract between the parties to the above referenced transaction (Docket No. 04A-403CP) shall be maintained in confidence under the PUC's confidentiality Rules, 4 CCR 723-16-3."

3. The Commission gave notice of the application on August 9, 2004.

4. There are no interventions opposing the application.

5. 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

6. James H. Ruthven, the Vice President of Alpine Express submitted a verified statement in support of this application. In his statement, Mr. Ruthven states "Alpine Express is a wholly owned subsidiary of a company previously known as Crested Butte Mountain Resort, Inc. (CBMR), now known as Ragged Wilderness, Inc. (Ragged Wilderness). CBMR previously owned the ski area at Crested Butte. Ragged Wilderness entered into a contract to sell the ski area and certain other assets, including Alpine Express, to Crested Butte, LLC. Shortly prior to closing, Alpine Express was removed from the asset sale to Crested Butte, LLC. Ragged Wilderness continues to own Alpine Express, a wholly owned subsidiary. The function of Alpine Express is to provide transportation throughout the scope of its authorities generally, but specifically within Gunnison County, and between Gunnison and Crested Butte. Due to tax and other considerations, Ragged Wilderness is in the process of winding up affairs and must dispose of its assets in a relatively short period of time. It has found a qualified buyer in AEX to purchase Alpine Express' assets and to assume Alpine Express' obligation to various entities and organizations within the Gunnison County area to provide continued and perhaps even greater service to the public. We are now quickly approaching that time of year when advance reservations for the 2004-2005 ski season begin to come in and, more importantly, decisions are made concerning advertising, pricing, etc. for proposed services to be offered during the

upcoming ski season. It is important that AEX be allowed to operate the authority in this interim time, pending a resolution of the corresponding application to permanently transfer the authority, so that the AEX may develop, implement and market its operational plan for the upcoming ski season. Of equal importance, AEX must be able to coordinate its operations with the new owner of the ski area, Crested Butte, LLC. Additionally, Alpine Express has operated at a loss. It is working a hardship on the parent of Alpine Express to continue to fund operations during this off-season when, for all practical purposes, the ownership has decided to divest itself of Colorado assets.”

7. The Commission understands that the parties, in addition to the “Motion Concerning Confidentiality” have filed information pursuant to the Commission’s Rule 4-CCR 723-16.

C. Conclusions

8. The Commission finds that Alpine Express has provided sufficient information to indicate that a failure to grant the temporary approval of an assumption of operational control CPCN PUC No. 12750 and Contract Carrier Permit No. B-9414 could result in injury to these authorities and interfere with their future usefulness on the performance of adequate and continuous service to the public.

9. AEX has adequate equipment and financial resources to begin immediate service within the scope of the authority sought.

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

11. Alpine Express and AEX are advised that the grant of temporary approval of an assumption of operational control creates no presumption that permanent transfer approval will be granted.

12. The procedures to be used by a party or parties, in a formal docket, to file information with the Commission that the party or parties claim is confidential are established in 4 CCR 723-16. The party or parties, filing information in a formal docket which is claimed to be confidential, are not required by 4 CCR 723-16 to file a Motion with the Commission requesting the information be treated as confidential.

13. The documents filed by the parties pursuant to Rule 4 CCR 723-16 shall be treated in accordance with those rules.

II. ORDER

A. The Commission Orders That:

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

2. The Motion Concerning Confidentiality is denied as moot.

3. AEX is granted temporary approval to assume operational control of Certificate of Public Convenience and Necessity PUC No. 12750 and Contract Carrier Permit No. B-9414 for a period of 180 days commencing from the Mailed Date of this Order.

4. AEX shall operate in accordance with all applicable Commission rules and regulations.

5. AEX shall cause to be filed with the Commission certificates of insurance as required by Commission rules. AEX shall also adopt the tariff of Alpine Express, which shall

become that of AEX until changed in accordance with the public utility law. AEX shall pay the appropriate vehicle identification fee. AEX shall not assume operational control of Certificate of Public Convenience and Necessity PUC No. 12750 and Contract Carrier Permit No. B-9414 until it has met these requirements, and it has received notice in writing from the Commission stating that it is in compliance and may begin service.

6. If AEX 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.

7. 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.

8. This Order is effective on its Mailed Date.

**B. ADOPTED IN THE COMMISSIONERS' WEEKLY MEETING
August 18, 2004**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners