

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02A-464CP

THE APPLICATION OF DSC/PURGATORY, LLC, DOING BUSINESS AS MOUNTAIN
TRANSPORT, FOR TEMPORARY AUTHORITY TO EXTEND OPERATIONS UNDER
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PUC NO. 54985.

**ORDER DENYING MOTION FOR LEAVE TO
PARTICIPATE AS *AMICUS CURIAE***

Mailed Date: June 18, 2003
Adopted Date: June 11, 2003

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Motion for Leave to Participate as *Amicus Curiae* in the instant matter (Motion). Petitioners are La Plata Economic Action Development Partnership and the Durango Chamber of Commerce. The Motion was filed on June 2, 2003. An objection to the Motion was filed by Durango Transportation, Inc., on June 3, 2003. The Commission addressed the issue at its Weekly Meeting on June 11, 2003. Now being duly advised in the matter, we deny the Motion.

II. DISCUSSION

2. Petitioners rely on Public Utilities Commission Rule 4 *Code of Colorado Regulations* 723-1-20(c)(2) (Rule 20(c)(2)) to support their request to participate as *amicus curiae* in this matter. That rule states:

A person who desires to assist the Commission in arriving at a just and reasonable determination of a proceeding, and who has been permitted by order of the Commission to participate in the proceeding as an amicus curiae may present legal argument only, either orally or in writing as permitted by the Commission.

Rule 20(c)(2)(emphasis added).¹

3. In addition to their Motion, Petitioners provided the Commission with their Support Brief of Amicus Curiae (Support Brief). Upon review of the Support Brief, we find that the Petitioners appear to be attempting to introduce new evidence into this matter. *See, e.g.*, Support Brief at pp. 2-3. This is wholly inappropriate.

4. In addition, the Petitioners do not raise any additional or new legal arguments that would assist the Commission in reaching a decision in the case at hand. Rather, the Support Brief merely reiterates the position of Durango Mountain Resorts (DMR). Indeed, the Support Brief merely incorporates references to the record contained in DMR's Exceptions and then fails to apply those facts to the law in any way distinguishable from DMR. Merely reiterating another parties' legal argument does not constitute "legal argument" for purposes of the *amicus curiae* rule.

5. Therefore, the Motion for Leave to Participate as *Amicus Curiae* is denied.

III. **ORDER**

A. **The Commission Orders That:**

1. The Motion for Leave to Participate as *Amicus Curiae* filed on June 2, 2003, is denied.

2. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.

¹ Durango Transportation, Inc.'s Response to the Motion states that it is governed by PUC Rule 120(b). There is no such rule and it is clear from the Petitioners' Motion that they are relying on Rule 20(c)(2).

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 11, 2003.**

(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