

Decision No. R04-0170-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03G-472CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

EAST WEST RESORT TRANSPORTATION, LLC, DOING BUSINESS AS
COLORADO MOUNTAIN EXPRESS AND/OR CME PREMIER AND/OR
PREMIER VIP TRANSPORTATION AND/OR RESORT EXPRESS
A/K/A COLORADO MOUNTAIN EXPRESS, LLC,

RESPONDENT.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING UNOPPOSED MOTION,
VACATING HEARING, REQUIRING
STATUS REPORTS, AND
WAIVING RESPONSE TIME**

Mailed Date: February 17, 2004

I. STATEMENT

1. Staff of the Commission (Staff) issued Civil Penalty Assessment Notice or Notice of Complaint to Appear No. 28339-CPAN (the CPAN) on October 1, 2003. The CPAN alleges that East West Resort Transportation, LLC, doing business as Colorado Mountain Express and/or CME Premier and/or Premier VIP Transportation and/or Resort Express, also known as Colorado Mountain Express, LLC (Respondent), violated § 40-10-117, C.R.S., by transporting, and advertising to transport, persons at rates other than the tariff rates on file with the Commission. The CPAN alleges 16 violations of the statute. The CPAN commenced this proceeding.

2. The only parties in this proceeding are Respondent and Staff.
3. On October 29, 2003, the Commission set this matter for hearing. *See* Order Setting Hearing and Notice of Hearing. On motion of Respondent, the undersigned Administrative Law Judge (ALJ) vacated the hearing date. *See* Decision No. R03-1315-I.
4. On January 2, 2004, Respondent and Staff filed a Joint Motion to Set Hearing and Establish Procedures. In Decision No. R04-0007-I the ALJ established a procedural schedule and set the hearing in this matter for February 24 and 25, 2004.¹
5. On January 20, 2004, Respondent filed a complaint for declaratory judgment and related injunctive relief and a motion for preliminary injunction in the United States District Court for the District of Colorado (the federal action). *See* Civil Action No. 04-B-0105. On February 10, 2004, Respondent filed an amended complaint and an amended motion for preliminary injunction. The Commissioners, in their official capacities, and the Commission are the defendants in the federal action. Among other relief, Respondent seeks preliminarily and permanently to enjoin the instant administrative civil penalty proceeding.
6. On February 13, 2004, Staff filed an Unopposed Motion to Vacate Hearing Dates and to Establish Procedures for Status Reports (Motion). In this Motion, Staff requests that the scheduled hearing be vacated and, in essence, that this proceeding be suspended pending the outcome of the federal action. Staff suggests that reports be filed at regular intervals to keep the Commission informed about the status of the federal action. Respondent supports the Motion.

¹ Respondent is not required to file, and has not filed, an answer in this proceeding. Review of the Witness List and Copies of Exhibits filed by Respondent on February 11, 2004, discloses that Respondent denies the allegations and will raise a number of defenses, including the existence of federal authorities and tariffs.

7. The Motion states good cause, and granting the Motion will not prejudice any party. The Motion will be granted, subject to the conditions established in ¶¶ 8 through 12, *infra*.

8. Within three business days of issuance of an order granting or denying the preliminary injunction sought by Respondent in the federal action, the parties shall file a copy of the order in this proceeding.

9. Within five business days of issuance of an order denying the preliminary injunction in the federal action, the parties shall make a filing which contains three suggested hearing dates for this proceeding or such other suggested procedures as the parties may think desirable. If the order grants the preliminary injunction, the status reports required by this Order shall continue to be filed.

10. On May 17, 2004, and every 90 days thereafter until a dispositive decision is issued in the federal action or until further Order of the Commission, Respondent shall file a report informing the Commission about the activities occurring in the federal action. Prior to filing each report, Respondent shall provide a copy of the report to Staff for review and concurrence.

11. Within three business days of issuance of a dispositive decision in the federal action, the parties shall file a copy of the order.

12. Within five business days of the issuance of a dispositive decision in the federal action, the parties shall make either a filing with three suggested hearing dates (if the instant proceeding is permitted to go forward) or a filing with respect to disposition of this matter (if the instant proceeding is not permitted to go forward).

13. Rule 4 *Code of Colorado Regulations* 723-1-22(b) provides that, absent an order of the Commission, a party has 14 days within which to respond to a motion. Staff and Respondent are the only parties in this proceeding, and the Motion is unopposed. As a result, response time to the Motion will be waived.

II. **ORDER**

A. **It Is Ordered That:**

1. The Unopposed Motion to Vacate Hearing Dates and to Establish Procedures for Status Reports is granted, subject to the conditions established in ¶¶ I.8 through 12, *supra*.

2. The hearing in this matter scheduled for February 24 and 25, 2004, is vacated.

3. The parties shall make the filings and follow the procedures as specified above.

4. Response time to the Unopposed Motion to Vacate Hearing Dates and to Establish Procedures for Status Reports is waived.

5. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge