

Decision No. R04-0543-I

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

DOCKET NO. 04G-149CP

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PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

SAN MIGUEL MOUNTAIN VENTURES, LLC, D/B/A TELLURIDE EXPRESS,

RESPONDENT.

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**INTERIM ORDER OF  
ADMINISTRATIVE LAW JUDGE  
DALE E. ISLEY  
DENYING MOTION TO SET  
ASIDE INTERIM ORDER, AS MOOT;  
AND DENYING MOTION FOR  
SUMMARY JUDGMENT**

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Mailed Date: May 25, 2004

**I. STATEMENT**

1. The captioned proceeding was initiated on March 23, 2004, when the Staff of the Colorado Public Utilities Commission (Staff) issued Civil Penalty Assessment Notice (CPAN) No. 28452 to the Respondent, San Miguel Mountain Ventures, LLC, doing business as Telluride Express (Telluride Express).

2. On April 13, 2004, the Commission set this matter for hearing on June 10, 2004, in Montrose, Colorado.

3. By correspondence dated April 23, 2004, Telluride Express requested that the June 10, 2004, hearing be vacated and that the matter be rescheduled for hearing in either

Telluride or Montrose, Colorado, at a later time. Staff filed a response in opposition to this request on May 4, 2004. Telluride Express' request was construed as a Motion for Continuance and was denied on May 7, 2004. *See*, Decision No. R04-0473-I.

4. By correspondence dated May 17, 2004, and received by the Commission via facsimile transmission on that day, Telluride Express submitted a "rebuttal" to Staff's response to the Motion for Continuance. It disputes Staff's contention that Telluride Express provided its advance agreement to the June 10, 2004 hearing date. It also indicates that one of the witnesses it deems necessary in connection with its defense of CPAN No. 28452, Mr. Drew Smith, will be out of the country on that date. Since Telluride Express' rebuttal was submitted ten days after issuance of Decision No. R04-0473-I, it will be construed as a Motion to Set Aside that decision pursuant to Rule 86(b)(2) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1-86.

5. By correspondence dated May 18, 2004, and received by the Commission on May 21, 2004, Telluride Express states that, while disappointed that its Motion for Continuance was denied, it will abide by the decision rendered in Decision No. R04-0473-I since, to do otherwise would be a "wasteful use of the Commission's resources." This portion of Telluride Express' May 18, 2004, correspondence will be construed as a request to withdraw the Motion to Set Aside. This renders the Motion to Set Aside moot. As a result, it will be denied for that reason.

6. The remainder of Telluride Express' May 18, 2004, correspondence suggests that CPAN No. 28452 be resolved without a hearing since, in Telluride Express' opinion, it met the spirit of the regulations it is charged with violating. This portion of the subject correspondence

will be construed as a Motion for Summary Judgment (*i.e.*, a contention Telluride Express is entitled to judgment in its favor as a matter of law). Response time to the Motion for Summary Judgment will be waived.<sup>1</sup>

7. The Motion for Summary Judgment will be denied. The pleadings submitted by the parties to date establish that factual disputes exist with regard to whether Telluride Express violated the allegations of Staff as set forth in violation nos. 6 through 18 of CPAN No. 28452. Since material facts remain in dispute, it is not possible to resolve this matter on a summary judgment basis. Unless the parties are able to stipulate that all material factual issues relating to the alleged violations are undisputed, they must be allowed to present evidence bearing on these factual issues at a hearing.<sup>2</sup>

## **II. ORDER**

### **A. It Is Ordered That:**

1. The request of San Miguel Mountain Ventures, LLC, doing business as Telluride Express, to set aside Decision No. R04-0473-I is denied, as moot.

2. The request of San Miguel Mountain Ventures, LLC, doing business as Telluride Express, to resolve violation nos. 6 through 18 of CPAN No. 28452 on a summary judgment basis is denied.

3. This Order shall be effective immediately.

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<sup>1</sup> There is no indication that the Motion for Summary Judgment was served on Staff as required by 4 CCR 723-1-7(b)(2).

<sup>2</sup> As indicated in Decision No. R04-0473-I, Telluride Express may present the testimony of its absent witness, Mr. Smith, by telephone. If it elects to do so, it must provide notice of that intention to Staff and the Administrative Law Judge on or before June 1, 2004. That notice must include copies of all documents to be used in connection with Mr. Smith's testimony. Mr. Smith may participate at the hearing by telephone by initiating a call to (970) 252-4046 on the date and at the time the hearing is scheduled to commence (*i.e.*, 8:00 a.m. on June 10, 2004).

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge