

Decision No. R04-1149-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04C-452CP

RE: MOTOR VEHICLE OPERATIONS OF VAIL SUMMIT RESORTS, INC., DOING
BUSINESS AS KEYSTONE RESORTS, INC., UNDER CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY PUC NO. 20195.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
GRANTING REQUEST FOR PERMISSIVE
INTERVENTION; DENYING MOTIONS TO
STAY NEGOTIATED SETTLEMENT
AND TO COMPEL NOTICE; AND
ESTABLISHING DEADLINE
FOR SUBMITTING INTERVENTIONS**

Mailed Date: October 1, 2004

I. STATEMENT

1. The captioned proceeding was initiated on September 8, 2004, when the Colorado Public Utilities Commission (Commission) issued an Order to Show Cause and Notice of Hearing (Show Cause Order) directing Vail Summit Resorts, Inc., doing business as Keystone Resort, Inc. (Vail Summit), to show cause why the Commission should not take certain actions in connection with Vail Summit Tariff No. 4 (Tariff).¹ See, Decision No. C04-1066. The Show Cause Order set this matter for hearing on November 16, 2004, and established a procedural schedule for filing witness lists and exhibits.

¹ The Tariff was filed with the Commission on August 13, 2004, and became effective the next day. It was filed for the purpose of implementing rates and charges for transportation service authorized by Decision Nos. R04-0490 and C04-0722.

2. On September 13, 2004, Craig S. Suwinski (Suwinski) filed three pleadings in this docket. The first, entitled “Requested Permissive Intervention in Show Cause Proceeding” (Petition to Intervene), requests that he be allowed to intervene in this proceeding on a permissive basis. The second, entitled “Motion to Stay Any Negotiated Settlement” (Motion to Stay), requests that approval of any settlement of this proceeding negotiated between the Staff of the Commission (Staff) and Vail Summit be stayed for a period of 30 days pending public notice of the terms of such settlement. The third, entitled “Motion to Compel Vail Summit Resorts to Notify Current (sic) Transportation Services Contract Holders” (Motion to Compel Notice), requests that the Commission require Vail Summit to provide notice of this proceeding to all condominium associations with which it has previously contracted to provide transportation services.

3. On September 23, 2004, Vail Summit filed a pleading entitled “Motion to Strike Applicant’s Request for Permissive Intervention, Motion to Compel, and Motion to Stay Any Negotiated Settlement” (Motion to Strike). The Motion to Strike contends that Suwinski lacks standing to intervene in this proceeding and, as a result, the Petition to Intervene, the Motion to Stay, and the Motion to Compel Notice should be stricken.

4. Rule 64(b) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1-64(b), governs requests for permissive intervention in Commission proceedings.² Under that rule, permissive intervenor status may be granted to “...one who has a substantial interest in the subject matter of a proceeding.” *See also*, § 40-6-

² It is noted that the Commission’s procedural rule relating to show cause proceedings makes no provision for interventions and does not require that public notice of the proceeding be given. *See*, 4 CCR 723-1-73. Indeed, the Show Cause Order establishes no deadline for intervening in this matter. Nonetheless, the Commission has allowed interventions in show cause proceedings when the requirements for permissive intervention established by Rule 64(b) have been met. *See, for example*, Decision No. C99-945 in Docket No. 99C-371T.

109, C.R.S. (Commission may allow intervention to persons “interested in or affected by” a Commission order). Our Supreme Court has held that this standard is more inclusive than the “injury in fact” standard applicable to civil litigation matters. *See, Yellow Cab v. Public Utilities Commission*, 869 P.2d 545 (Colo. 1994).

5. The subject matter of this proceeding involves an inquiry into whether the Tariff is unjust or discriminatory as a result of the alternative rates proposed by Vail Summit for its scheduled transportation service; *i.e.*, a flat annual rate for unlimited usage of such service by owners or residents of condominium units managed by Vail Summit versus a “per-trip” rate for those who do not own or reside in such managed condominium units.

6. The Petition to Intervene states that Suwinski will be “directly affected” by the Tariff because he has “come to rely” on Vail Summit’s transportation services. From this it can be reasonably inferred that Suwinski is a user of the subject services and, as a result, may be subject to one or more of the rates contained in the Tariff. This is sufficient under the above-described standard to establish Suwinski’s interest in the subject matter of this proceeding. The Commission has so held in prior proceedings of this type. *See*, Decision No. C99-945 and *Archibald v. PUC*, 58 P.3d 1031 (Colo. 2002) (permissive intervenor status granted to retail utility customers in show cause proceeding concerning the charging of potentially unjust or discriminatory rates in violation of § 40-3-101, C.R.S.).

7. Accordingly, the Petition to Intervene will be granted and the Motion to Strike the same will be denied. Suwinski is advised that, as an intervenor, he will be required to comply with all procedural requirements applicable to parties to Commission proceedings. *See*, 4 CCR 723-1-20(a) (permissive intervenor is a party to a Commission proceeding). In addition, he shall file, at least 30 days prior to hearing: (a) two copies of a list containing the name, address, and

title of each of his witnesses; and (b) two copies of each of the exhibits he plans to present at the hearing. Copies of the witness list and exhibits shall be served upon all other parties to this proceeding.

8. As indicated above, the Show Cause Order does not establish a deadline for the submission of intervention requests in this matter. In light of the potential interest in this proceeding by others, it is appropriate to do so.³ Accordingly, any person, firm, or corporation who desires to intervene in this matter shall file an appropriate pleading requesting permission to do so on or before October 12, 2004.

9. The Motion to Stay and the Motion to Compel Notice will be denied and the Motion to Strike the same will be granted. As indicated above, the procedural rule applicable to this show cause proceeding does not require that public notice of the same be given. In addition, the Tariff constitutes an initial tariff filing as defined by 4 CCR 723-1-31(c). The notice requirements cited in support of the relief requested by these motions, 4 CCR 723-1-31(d) and 4 CCR 723-1-31(j), apply to **changes** or **increases** in tariff rates or **changes** in time schedules, not to initial tariff filings. Finally, the relief requested in the Motion to Stay is based on the speculative assumption that Staff and Vail Summit consummate a settlement of this matter. As an intervenor, Suwinski may renew his request for notice of any such proposed settlement if that should occur.

³ To date, the Commission has received written comments from three other individuals in connection with this proceeding; namely, Mr. Ed Wood, Mr. G. Richard Grant, and Mr. Paul A. Siegert. None of these individuals have requested permission to intervene in this matter. They are advised that their previously submitted comments (many of which deal with issues that are irrelevant to those involved in this proceeding) will not be considered unless: (a) they are granted permission to participate in this matter as an intervenor, they appear at the hearing, and they succeed in having their comments admitted into the record; or (b) they appear at the hearing as a witness on behalf of another party who succeeds in having their comments admitted into the record.

II. ORDER**A. It Is Ordered That:**

1. The Requested Permissive Intervention in Show Cause Proceeding filed by Craig S. Suwinski is granted.
2. The Motion to Strike Applicant's Request for Permissive Intervention filed by Vail Summit Resorts, Inc., doing business as Keystone Resort, Inc., is denied.
3. Craig S. Suwinski shall file, at least 30 days prior to hearing: (a) two copies of a list containing the name, address, and title of each of his witnesses; and (b) two copies of each of the exhibits he plans to present at the hearing. Copies of the witness list and exhibits shall be served upon all other parties to this proceeding.
4. Any person, firm, or corporation who desire to intervene and participate as a party in this proceeding shall file an appropriate pleading for intervention on or before October 12, 2004, and shall serve a copy of such pleading upon all other parties to this proceeding.
5. The Motion to Stay Any Negotiated Settlement and the Motion to Compel Vail Summit Resorts to Notify Current (sic) Transportation Services Contract Holders filed by Craig S. Suwinski are denied.
6. The Motion to Strike Applicant's Motion to Compel and Motion to Stay Any Negotiated Settlement filed by Vail Summit Resorts, Inc., doing business as Keystone Resort, Inc., are granted.
7. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge