

Decision No. R04-1251-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
DENYING EXCEPTION TO INTERIM
ORDER; DENYING REQUEST TO
CHANGE HEARING LOCATION;
DENYING REQUEST FOR PRODUCTION
OF DOCUMENTS; DENYING MOTION
TO MODIFY; AND STRIKING AFFIDAVIT**

Mailed Date: October 27, 2004

I. STATEMENT

1. On October 7, 2004, Craig S. Suwinski (Suwinski) filed the following pleadings in this docket: (a) Exception to Interim Order of Administrative Law Judge Dale E. Isley's Decision No. R04-1149-I Denying Intervenor's Motion to Compel Notice, and Granting Vail Resorts, Inc. Motion to Strike that Same Motion (Exception); (b) Request to Change Hearing Location; and (c) Request for Production of Documents (Request for Production). An Affidavit of Craig S. Suwinski (Affidavit) was attached to the Request for Production.¹

2. On October 15, 2004, Vail Summit Resorts, Inc., doing business as Keystone Resort, Inc. (Vail Summit), filed its Motion to Strike the Exception, the Request to Change

¹ The Exception, Request to Change Hearing Location, Request for Production and Affidavit may be collectively referred to herein as the Suwinski Pleadings.

Hearing Location, the Request for Production, and the Affidavit (Response).² The Staff of the Commission did not submit a response to the Suwinski Pleadings.

3. On October 25, 2004, Suwinski filed a pleading entitled “Intervenor Suwinski’s Request to Change the Previously Filed ‘Exception to Interim Order of Administrative Law Judge Dale E. Isley’s Decision No. R04-1149-I Denying Intervenor’s Motion to Compel Notice, and Granting Vail Resorts, Inc. Motion to Strike That Same Motion’ (filed October 6, 2004) to a Motion to Modify Order” (Motion to Modify). *See, 4 Code of Colorado Regulations (CCR) 723-1-86(b)(2).*

4. The Exception and Motion to Modify request that the undersigned administrative law judge (ALJ) reconsider his decision to deny Suwinski’s Motion to Compel Vail Summit Resorts to Notify Current (sic) Transportation Services Contract Holders (Motion to Compel Notice) as set forth in Decision No. R04-1149-I.

5. In his Exception, Suwinski contends that Vail Summit’s alleged prior unlawful transportation services somehow requires that notice of this proceeding be given to all current and prior holders of transportation contracts with Vail Summit. In this regard, Suwinski states that “...it will be shown by testimony at the hearing that Vail has been operating, and charging, several hundred thousand dollars per year, for the identical, but illegal, transportation services under consideration for as many as 10 years.” However, this issue is entirely irrelevant to the issues involved in this proceeding. *See, Decision No. C04-1066 and Decision No. R04-1149-I* (subject matter of this proceeding involves an inquiry into whether Vail Summit’s tariff is unjust

² This pleading will be construed as Vail Summit’s response to the Suwinski Pleadings pursuant to Rule 22(b) of the Commission’s Rules of Practice and Procedure, *4 Code of Colorado Regulations (CCR) 723-1-22*. Any applicable response time thereto is hereby waived. *See, 4 CCR 723-1-22(b)*. Likewise, response time to the Motion to Modify will also be waived.

or discriminatory as a result of the alternative rates proposed by it for scheduled transportation service). Therefore, alleged unlawful transportation operations conducted by Vail Summit prior to the filing of the Tariff does not provide a relevant justification for requiring it to provide the notice requested by Suwinski.

6. Suwinski also cites § 40-3-111(2), C.R.S., in support of his contention that the requested notice be given. However, that statute makes no provision for such notice. Indeed, and as previously pointed out in Decision No. R04-1149-I, the procedural rule applicable to this show cause proceeding, 4 CCR 723-1-73, does not require that public notice of the same be provided.

7. In the Motion to Modify, Suwinski states that Vail Summit charged for certain transportation services prior to the extension of its certificate of public convenience and necessity granted in Docket No. 04A-120CP-Extension. As a result, he contends that the Tariff should be construed as a change in rates as opposed to an initial tariff filing and, therefore, subject to the notice provisions of 4 CCR 723-1-31(c) or 4 CCR 723-1-31(d). However, this argument again calls into question the propriety of Vail Summit's operations prior to the time it filed the Tariff. As indicated previously, such operations are not relevant to the issues involved in this show cause proceeding.

8. Therefore, and for the foregoing reasons, the Exception and the Motion to Modify will be denied.

9. Suwinski's Request to Change Hearing Location requests that the hearing of this matter be held in Summit County, Colorado, as opposed to the Commission's offices in Denver, Colorado. As grounds therefore, Suwinski contends that such a change would be more

convenient for witnesses and those wishing to observe the proceedings. Vail Summit opposes this request.

10. The witness list submitted in this matter by Suwinski identifies ten potential witnesses, four of whom reside in Keystone, Colorado, and three of whom are employed by Vail Summit.³ The remaining three witnesses reside in Evergreen, Colorado, Morrison, Colorado, and Clermont, Florida. The witness list submitted by Staff indicates that both its witnesses work at the Commission's offices in Denver. The witness list submitted by Tourtelot indicates that she is the only witness who will be testifying (other than the previously mentioned Vail Summit witnesses) and that she resides in Aurora, Colorado. By virtue of its opposition to the hearing change request, it must be assumed that Vail Summit does not believe that its witnesses will be inconvenienced by holding the hearing in Denver. Counsel for Staff, Vail Summit, and Tourtelot all work in close proximity to the Commission's offices in Denver. On balance, therefore, it must be concluded that the convenience of the parties, their counsel, and the witnesses to be called to testify at hearing would not be furthered by relocating the hearing to Summit County. Those who find it inconvenient to travel to Denver to observe the hearing may do so by accessing the Commission's webcast at http://www.dora.state.co.us/puc/broadcast_streams/index.htm.

11. Therefore, and for the foregoing reasons, the Request to Change Hearing Location will be denied.

12. The Request for Production requests that Vail Summit produce certain documents. As correctly pointed out by the Response, the Commission's discovery rules provide that, unless otherwise ordered, discovery requests shall not be filed with the Commission. *See*, 4 CCR 723-

³ The three potential witnesses from Vail Summit include Messrs. Breslin, Juliano, and McCarthy. Messrs. Breslin and Juliano are also listed as potential witnesses by Molly A. Tourtelot (Tourtelot).

1-77(b)(2). Neither the Commission nor the ALJ has ordered that discovery materials be filed in this matter.

13. Therefore, and for the foregoing reasons, the Request for Production will be denied and/or stricken.

14. The Affidavit was apparently submitted in support of the Request for Production. This is not required by the Commission's discovery rules. Therefore, the Affidavit will be stricken and the statements contained therein will not be considered as evidence in this proceeding unless and until they are admitted into the record under applicable evidentiary rules.

II. ORDER

A. It Is Ordered That:

1. The Exception to Interim Order of Administrative Law Judge Dale E. Isley's Decision No. R04-1149-I Denying Intervenor's Motion to Compel Notice, and Granting Vail Resorts, Inc. Motion to Strike that Same Motion and the Request to Change Hearing Location filed by Craig S. Suwinski are denied.

2. The Request for Production of Documents filed by Craig S. Suwinski is denied and/or stricken.

3. The Affidavit of Craig S. Suwinski filed by Craig S. Suwinski is stricken.

4. Intervenor Suwinski's Request to Change the Previously Filed 'Exception to Interim Order of Administrative Law Judge Dale E. Isley's Decision No. R04-1149-I Denying Intervenor's Motion to Compel Notice, and Granting Vail Resorts, Inc. Motion to Strike That Same Motion' (filed October 6, 2004) to a Motion to Modify Order is denied.

5. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

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