

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
INTERVENTION, IN PART**

Mailed Date: October 27, 2004

I. STATEMENT

1. On October 4, 2004, Molly A. Tourtelot (Tourtelot) filed a Petition for Intervention in the captioned matter. The Petition states that Tourtelot “as a party that will be affected by the proceeding and having substantial interest in the subject matter, on Behalf (sic) of the Board of Managers and the Homeowners of the Northstar Condominium Association at Keystone (Northstar) ask the Commission to intervene with regard to the granting of the extension of the following authority.”

2. On October 14, 2004, Vail Summit Resorts, Inc., doing business as Keystone Resort, Inc. (Vail Summit), filed its Motion to Strike the Petition for Intervention of Ms. Tourtelot on Behalf of Northstar Homeowners Association (Motion to Strike). The Motion to Strike contends that Tourtelot and Northstar Homeowners Association (Northstar) lack standing to intervene in this proceeding since neither have demonstrated how they will be affected by the same.

3. On October 20, 2004, I. H. Kaiser, Esq. entered his appearance in this matter as legal counsel "...on behalf of the Board of Managers Northstar, and Northstar Condominium Association at Keystone, Colorado and Molly A. Tourtelot."

4. On October 21, 2004, a pleading entitled "Response to Vail Summit Resorts, Inc.'s Motion to Strike the Petition for Intervention of Ms. Tourtelot, on behalf of Northstar Homeowners Association" (Response) was filed by Mr. Kaiser.

5. Rule 64 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1-64(b), governs requests for intervention in Commission proceedings.¹ Under that rule, intervention "as a matter of right" may be granted to one who has a statutory or legally protected right in the subject matter of a proceeding. Permissive intervenor status may be granted to one who has a "substantial interest" in the subject matter of a proceeding. *See also*, § 40-6-109, 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).

6. The subject matter of this proceeding involves an inquiry into whether Vail Summit's Tariff No. 4 (Tariff) is unjust or discriminatory as a result of the alternative rates proposed by 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.

¹ It is noted that the Commission's procedural rule relating to show cause proceedings makes no provision for interventions. *See*, 4 CCR 723-1-73. Nonetheless, the Commission has allowed interventions in show cause proceedings when the requirements for intervention established by Rule 64 have been met. *See, for example*, Decision No. C99-945 in Docket No. 99C-371T. In this case, a deadline of October 12, 2004, was established for submitting requests to intervene. *See*, Decision No. R04-1149-I.

7. The Petition and Response indicate that Tourtelot is an owner of a Northstar condominium unit, uses Vail Summit's transportation service 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 permissive intervention standard to establish her 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.).

8. Accordingly, the Petition will be granted as to Tourtelot and the Motion to Strike her intervention will be denied. Tourtelot is advised that, as an intervenor, she 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).²

9. The Petition will be denied and the Motion to Strike will be granted insofar as it pertains to Northstar and/or its Board of Managers. There is no indication in the Petition or the Response that Tourtelot serves on the Board of Managers or that the Board of Managers or Northstar have authorized her to represent their collective interests in this proceeding. *See*, *Calabrese Foundation, Inc. v Investment Advisors, Inc.*, 831 F.Supp.2d 1507 (D.Colo 1993) (Existence and scope of agent's authority to perform actions cannot be proven by agent's acts or statements alone); and *Castner v. Rinne*, 72 P. 1052, 31 Colo. 256 (Colo. 1903).

² It is noted that Tourtelot filed and served all parties with her witness/exhibits lists on October 13 and 17, 2004.

II. ORDER

A. It Is Ordered That:

1. The Petition for Intervention filed by Molly A. Tourtelot is granted as to Molly A. Tourtelot.
2. The Petition for Intervention filed by Molly A. Tourtelot is denied as to the Board of Managers and the Homeowners of the Northstar Condominium Association at Keystone.
3. The Motion to Strike the Petition for Intervention of Ms. Tourtelot on Behalf of Northstar Homeowners Association filed by Vail Summit Resorts, Inc., doing business as Keystone Resort, Inc., is denied as to Molly A. Tourtelot.
4. The Motion to Strike the Petition for Intervention of Ms. Tourtelot on Behalf of Northstar Homeowners Association filed by Vail Summit Resorts, Inc., doing business as Keystone Resort, Inc., is granted as to the Board of Managers and the Homeowners of the Northstar Condominium Association at Keystone.
5. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

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