

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-120CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF VAIL SUMMIT RESORTS, INC., DOING BUSINESS AS KEYSTONE RESORT, INC., FOR AN ORDER OF THE COMMISSION AUTHORIZING AN EXTENSION OF OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PUC NO. 20195.

**DECISION DISMISSING APPLICATION FOR
REHEARING, REARGUMENT, OR RECONSIDERATION**

Mailed Date: August 17, 2004
Adopted Date: August 11, 2004

I. BY THE COMMISSION

A. Background

1. This matter comes before the Commission for consideration of an application for rehearing, reargument, or reconsideration (RRR) filed by Craig S. Suwinski, a non-practicing attorney, on July 20, 2004. Mr. Suwinski asks the Commission to reconsider decision No. C04-0722 decided June 16, 2004. In that decision, the Commission denied exceptions filed by Mr. Suwinski to Decision No. R04-0729, and thus denied him permissive intervenor status in the above docketed matter. That decision also granted Vail Summit Resorts Inc.'s (Vail Summit) application for an extension to their certificate of public convenience and necessity.

2. Also before the Commission is Mr. Suwinski's motion, filed on July 26, 2004 to have the Commission accept the application for RRR although it was filed late, a motion to stay Decision No. C04-0722 filed on July 20, 2004, as well as two addenda filed by Mr. Suwinski to his original application for RRR. Lastly, before the Commission is Vail Summit's response to Mr. Suwinski's motion for stay filed on July 27, 2004.

3. Mr. Suwinski initially misfiled his application for RRR with the Colorado Department of Regulatory Affairs, and it was not submitted to the Commission until July 20, 2004, one day late. Mr. Suwinski also did not file an application for an extension of time before the July 19, 2004 deadline.

B. Discussion

4. Section 40-6-114(a), C.R.S., provides:

After a decision has been made by the commission or after a decision recommended by an individual commissioner or administrative law judge has become the decision of the commission, as provided in this article, any party thereto may within twenty days thereafter, or within such additional time as the commission may authorize upon request made within such additional time as the commission may authorize upon request made within such period, make application for rehearing, reargument, or reconsideration of the same or of any matter determined therein.

5. Decision No. C04-0722 restates the 20-day deadline set forth in the statute. Mr. Suwinski notes that the Commission has traditionally treated transportation companies who do not understand Commission rules with leniency with respect to those rules. While the Commission may occasionally waive its rules, it may not waive statutory requirements. In this instance, there are no exceptions to the 20-day requirement, and the Commission may not create one where none exists.

6. The 20-day requirement is jurisdictional because the statute does not allow the Commission to consider applications for RRR after the 20-day deadline. The deadline for filing a request for reconsideration was July 19, 2004. Mr. Suwinski filed his application for RRR one day later on July 20, 2004. The Commission thus has no jurisdiction to consider the application for RRR, or the addenda. Similarly, Mr. Suwinski's motion to have the Commission accept the motion for RRR, despite its lateness, must fail as the Legislature provided no exceptions to the 20-day deadline.

7. Mr. Suwinski also filed a motion asking the Commission to stay Decision No. C04-0722 until it considers the application for RRR, or until the period for applying to District Court for review of the Commission decision has expired. Section 40-6-114(2), C.R.S., states that an application for RRR does not stay or postpone the order, unless the Commission so orders. Since we cannot rule on the merits of the application for RRR, and find very little possibility of harm to Mr. Suwinski if Vail Summit extends its operations, we find no reason to stay Decision No. C04-0722. We note that § 40-6-116, C.R.S., states that pendency of a writ of *certiorari* or review shall not of itself stay or suspend the operation of the decision of the Commission, but allows the District Court in its discretion, to stay in whole, or in part, the operation of the Commission's decision, providing the requirements of § 40-6-116, C.R.S., are met.

C. Conclusions

8. Because Mr. Suwinski's application for RRR was filed late, we have no jurisdiction to consider it or the addenda to the application, and must dismiss it. Similarly, without Commission jurisdiction, Vail Summit's response is moot and dismissed. We find no reason to suspend Decision No. C04-0722 until the filing of an appeal of the decision in District Court. Mr. Suwinski's motion for a stay is denied.

II. ORDER

A. The Commission Orders That:

1. Mr. Suwinski's application for rehearing, reargument, and reconsideration and the addenda thereto are dismissed without addressing the merits.

2. Mr. Suwinski's motion to have the application for rehearing, reargument, and reconsideration heard by the Commission is dismissed.

3. Mr. Suwinski's motion for a stay pending a Commission grant of rehearing, reargument, and reconsideration or until the time for appeal is denied.

4. The reply of Vail Summit Resorts, Inc., doing business as Keystone Resort, Inc., to the motion for stay is denied as moot.

5. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 11, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

CHAIRMAN GREGORY E. SOPKIN
ABSENT.