

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.

**ORDER TO SHOW CAUSE
AND NOTICE OF HEARING**

Mailed Date: September 8, 2004
Adopted Date: September 1, 2004

I. BY THE COMMISSION

A. Statement

1. Recommended Decision No. R04-0490 was issued on May 11, 2004, granting Vail Summit Resorts, Inc., doing business as Keystone Resort, Inc. (Vail Summit), an extension of the operating authority contained in Certificate of Public Convenience and Necessity (CPCN) PUC No. 20195.

2. Commission Decision No. C04-0722 was issued on June 29, 2004. This decision denied exceptions filed by Craig Suwinski, and granted Vail Summit an extension of authority consistent with Decision No. R04-0490. The recommended decision required Vail Summit to “file an appropriate tariff” before they could begin operating. Vail Summit did so, and the tariff became effective the day after it was filed.

B. Discussion

3. Commission Rule No. 4 *Code of Colorado Regulations* 723-1-31(c) states:

When any common carrier proposes to file an initial tariff, unless the Commission otherwise orders, the filing shall be consistent with the terms

and conditions established in the decision of the Commission granting the carrier initial operating authority.

4. In this case, Vail Summit's tariff filing was consistent with the terms and conditions in Decision No. R04-0490. Tariff No. 4 was technically correct, and filed properly. However, the tariff was filed on Friday, August 13, 2004 and became effective the next day, Saturday, August 14, 2004. As a result, Commission Staff were not able to properly evaluate the tariff before it became effective.

5. Tariff No. 4 provides that:

- 1.2 The scheduled local service shall be on a flat fee of \$150 per bedroom, per year for unlimited service for those condominium units managed by Keystone Resort, Inc.
- 1.3 For those passengers not residing at condominium units managed by Keystone Resort, Inc., the service shall be charged on a \$2.00 per trip basis.

Thus, owners of condominiums managed by Vail Summit will pay a per bedroom fee of \$150 for unlimited use, regardless of how often they use the services provided by Vail Summit, and regardless of how many individuals live in the condominium. For example, a single person could own a three-bedroom condominium, use the service not once, and be required to pay \$450 per year.

6. Pursuant to § 40-3-101(1), C.R.S., "[a]ll charges made, demanded or received by any public utility for any rate, fare, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Nothing in this subsection: (1) shall limit or restrict the commission's authority to regulate rates and charges, correct abuses, or prevent unjust discrimination."

7. Tariff No. 4 may be unjust and discriminatory because it is imposed without regard to actual use of the service provided by Vail Summit.

C. Findings of Fact

8. Vail Summit's tariff filing, although technically proper, did not provide enough time for Commission Staff to properly evaluate the justness and reasonableness of the tariff, or whether the tariff is discriminatory.

9. Tariff No. 4 may be unjust and discriminatory because the amount paid does not vary with usage.

D. Conclusions

10. Sufficient cause exists to hold a hearing to determine the facts of the matter, to hear material arguments to receive evidence and testimony, and to determine what remedy, if any, shall be imposed by Order of the Commission.

11. If the Commission determines that it is appropriate to do so, the Commission may issue a decision, including but not limited to: (a) an order determining that the rates contained in the tariff filed pursuant to Commission Decision No. R04-0490 are unjust and discriminatory; (b) an order, pursuant to §§ 40-3-111(1) and (2), C.R.S., determining and fixing the just and reasonable rates to be observed; (c) an order requiring Vail Summit to cease and desist any or all operations allowed under CPCN PUC No. 20195; (d) an order requiring Vail Summit to refund, with interest, charges or fees collected under the filed tariff; and (e) an order revoking CPCN PUC No. 20195 in whole or in part.

II. ORDER**A. The Commission Orders That:**

1. Vail Summit Resorts, Inc., shall appear before the Commission, as set forth below, to show cause why the Commission should not take action and enter a decision, including but not limited to: (a) an order determining that the rates contained in the tariff filed pursuant to

Commission Decision No. R04-0490 are unjust and discriminatory; (b) an order, pursuant to §§ 40-3-111(1) and (2), C.R.S., determining and fixing the just and reasonable rates to be observed; (c) an order requiring Vail Summit Resorts, Inc., to cease and desist any or all operations allowed under Certificate of Public Convenience and Necessity PUC No. 20195; (d) an order requiring Vail Summit Resorts, Inc., to refund, with interest, charges or fees collected under the filed tariff; and (e) an order revoking Certificate of Public Convenience and Necessity PUC No. 20195 in whole or in part.

2. Docket No. 04C-452CP is set for hearing before an Administrative Law Judge at the below designated time and place:

DATE: November 16, 2004
TIME: 9:00 a.m.
PLACE: Colorado Public Utilities Commission
Logan Tower, Office Level 2
1580 Logan Street
Denver, Colorado

3. Commission Staff shall file, at least 30 days prior to hearing: (a) two copies of a list containing the name, address, and title of each of its witnesses; and (b) two copies of each of the exhibits which it plans to present at the hearing. Copies of the witness list and exhibits shall be served upon all parties to the proceeding.

4. Vail Summit Resorts, Inc., shall file, at least 20 days before hearing: (a) two copies of a list containing the name, address, and title of each of their witnesses; and (b) two copies of each of the exhibits which they plan to present at the hearing. Copies of the witness list and exhibits shall be served upon all parties to the proceeding.

5. No witness shall be permitted to testify, nor shall any document be received in evidence, except in rebuttal, unless filed and served as provided in this Order.

6. If Commission Staff or Vail Summit Resorts, Inc., fail to meet the above requirements, the Commission may dismiss the proceeding or any defense, upon motion filed by any other party, unless good cause for non-filing is shown.

7. No motion for continuance shall be granted if filed within 20 days before the first day of the hearing, except for good cause shown.

8. No exception to the procedure in the Order shall be made except upon timely motion showing good cause.

9. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 1, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners