

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-554BP-EXTENSION

IN THE MATTER OF THE APPLICATION OF VAIL SUMMIT RESORTS, INC., DOING
BUSINESS AS KEYSTONE RESORT, INC., FOR AUTHORITY TO EXTEND OPERATIONS
UNDER CONTRACT CARRIER PERMIT NO. B-9862.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
DENYING MOTIONS TO DISMISS
INTERVENTIONS AND
GRANTING INTERVENTIONS**

Mailed Date: December 23, 2004

I. STATEMENT

1. On October 27, 2004, Vail Summit Resorts, Inc., doing business as Keystone Resorts, Inc. (Applicant), filed a Verified Application for an Extension of Contract Carrier Permit Number B-9862 (Application). The Applicant seeks to provide, on a permanent basis, transportation services on a contract basis to 46 named condominium associations and homeowner associations in a stated geographic area. The Application commenced this docket.

2. The Commission gave public notice of the Application. *See* Notice of Application Filed (Notice), dated November 1, 2004.

3. By Decision No. C04-1368 the Commission granted Applicant temporary authority to provide the requested contract transportation services to the 46 associations. The Commission expressly advised Applicant “that the grant of a temporary authority creates no presumption that a permanent authority will be granted.” *Id.* at ¶ 11.

4. Mr. Craig S. Suwinski (Suwinski) filed a Requested Intervention - By Right or Permission on November 24, 2004. Appended to that filing were a letter from Applicant to "Single Family Homeowner," a blank form transportation agreement for bus service at Keystone Resort for single family home owner to be entered into by Applicant, and a copy of envelopes showing mailing and hand-delivery to Mr. Suwinski. This filing was made *pro se* and timely.

5. Mr. Randall Seegers (Seegers) filed a Requested Intervention - By Right or Permission on November 24, 2004. Appended to the Seegers filing were an unexecuted transportation agreement between Applicant and the Gateway Condominium Association, Inc., and two bus schedules of Applicant. This filing was made *pro se* and timely.

6. The intervention period expired on December 1, 2004. Suwinski and Seegers are the only persons who seek to intervene.

7. On December 2, 2004, the Commission issued its Order Setting Hearing and Notice of Hearing in this matter. Hearing is scheduled for January 6, 2004.

8. On December 8, 2004, Applicant filed a Motion to Strike Suwinski's Requested Intervention - By Right or Permission (Motion to Strike Suwinski Intervention).

9. On December 8, 2004, Applicant filed a Motion to Strike Seegers' Requested Intervention - By Right or Permission (Motion to Strike Seegers Intervention).

10. By Decision No. R04-1468-I the undersigned Administrative Law Judge (ALJ) shortened the response time to the two motions to strike interventions and retained the procedural schedule established by the Commission in the Notice.

11. On December 17, 2004, Mr. Suwinski filed his Response to the Motion to Strike Suwinski Intervention.

12. On December 17, 2004, Mr. Seegers filed his Response to the Motion to Strike Seegers Intervention.

13. The ALJ will address each of the pending motions in turn.

14. In the Motion to Strike Suwinski Intervention, Applicant asserts that Mr. Suwinski lacks standing to intervene as a matter of right as he failed to identify any legal authority which vests in him a protested right which may be affected in this proceeding. Mr. Suwinski does not press the point that he is entitled to intervention as a matter of right. The ALJ finds that Mr. Suwinski has not established that he may intervene as a matter of right.

15. The crux of the issue with respect to Mr. Suwinski's intervention, then, is whether he meets the standard for intervention by permission: "substantial interest in the subject matter of a proceeding." Rule 4 *Code of Colorado Regulations* (CCR) 723-1-64(b)(1). An individual seeking to intervene by permission must show that he or she has a "current non-speculative interest that will be affected." Decision No. C04-0722 at ¶ 10. The standard for intervention by permission in a Commission proceeding is broader than the standard used in civil litigation because the intervenor need not show injury in fact. *Yellow Cab Cooperative Association, doing business as Yellow Cab, Inc. v. Public Utilities Commission of the State of Colorado*, 869 P.2d 545, 549-50 (Colo. 1994). Whether to grant intervention rests in the discretion of the Commission. *Public Service Company of Colorado v. Trigen-Nations Energy Company, L.L.P.*, 982 P.2d 316, 327 (Colo. 1999).

16. Broadly, Applicant argues that Mr. Suwinski does not meet the standard for intervention by permission because, in the intervention filing, he did not identify precisely how the Application would affect his particular interests; did not "demonstrate how his reliance on [Applicant's] common carrier transportation services will be affected" by the Application

(Motion to Strike Suwinski Intervention at ¶ 14); is not a competitor of Applicant; did not establish an interest in Applicant's rates "sufficiently substantial ... to merit his participation ... as an intervenor" (*id.* at ¶ 16); and raised generalized concerns about the Application, concerns which the Commission will address when it evaluates the Application irrespective of whether Mr. Suwinski is an intervenor (*id.* at ¶ 18). Mr. Suwinski responds, generally and broadly, that he had been granted permissive intervenor status in other proceedings before the Commission; that he has a substantial interest in this proceeding and is directly affected by the Application because he is dependent upon the bus service now provided by Applicant under its Certificate of Public Convenience and Necessity (CPCN), the existing bus service is the only publicly-available bus service in the geographic area at issue in the Application, and Applicant will discontinue that CPCN-based bus service if the Application is granted; and that the transportation service which Applicant seeks permission to provide does not meet the requirements for contract carriage and, in fact, is indistinguishable from the common carriage now provided under Applicant's CPCN.

17. Based on the filings and the record in this proceeding, the ALJ finds that Mr. Suwinski has provided sufficient information to support his intervention. He has demonstrated that, as a user of Applicant's common carrier transportation who may lose that transportation if the Application is granted, he has a substantial interest in the subject matter of this proceeding. In addition, he has called into question whether the transportation service which Applicant intends to offer if the Application is granted is, in fact, contract carriage. In so doing, he has raised an issue related to the public interest which must be examined in this proceeding. These are sufficient bases for granting Mr. Suwinski intervention by permission. In addition, because the nature of the transportation which Applicant seeks to offer is an issue which the

Commission must address in order to grant the Application, granting Mr. Suwinski's intervention will not broaden the issues in this matter. The Motion to Strike Suwinski Intervention will be denied, and Mr. Suwinski's request for intervention by permission will be granted.

18. Turning now to the Motion to Strike Seegers Intervention, Applicant asserts that Mr. Seegers lacks standing to intervene as a matter of right because he failed to identify any legal authority which vests in him a protested right which may be affected in this proceeding. Mr. Seegers does not press the point that he is entitled to intervention as a matter of right. The ALJ finds that Mr. Seegers has not established that he may intervene as a matter of right.

19. As with Mr. Suwinski, the crux of the issue with respect to Mr. Seegers's intervention is whether he meets the standard for intervention by permission: "substantial interest in the subject matter of a proceeding." Rule 4 CCR 723-1-64(b)(1).¹

20. Broadly, Applicant argues that Mr. Seegers does not meet this standard because, in the intervention filing, he did not identify precisely how the Application would affect his particular interests; relied upon asserted economic harm to him which was "purely speculative" because the Gateway Condominium Association, of which Mr. Seegers is a member, "has not entered into any contractual arrangement with" Applicant (Motion to Strike Seegers Intervention at ¶ 12); "failed to demonstrate how his individual rights will be implicated by Gateway Condominium's opportunity to enter into a contractual arrangement for transportation services as set forth" in the Application (*id.* at ¶ 13); based his intervention on the "inaccurate belief that [the] Application seeks to change the status of [Applicant's] operating authority from that of common carrier to contract carrier" (*id.* at ¶ 14); and raised other issues which are irrelevant to

¹ The standard is discussed in ¶ 15, *supra*.

this proceeding. Mr. Seegers responds, generally and broadly, that he will be forced to pay for Applicant's service on a non-use basis because he is the owner of a condominium unit in the Gateway Condominium Association; that, on December 13, 2004, the Gateway Condominium Association entered into a contract with Applicant for transportation service; that this contract will impose direct unit costs on him; that Applicant will discontinue its CPCN-based transportation service if the Application is granted; that transportation service is necessary, even essential, in the geographic area proposed to be served by the Applicant; and that the service which Applicant seeks permission to provide does not meet the requirements for contract carriage because that service is identical to Applicant's existing common carrier service.

21. Based on the filings and the record in this proceeding, the ALJ finds that Mr. Seegers has provided sufficient information to support his intervention. He has met the standard for intervention by permission by demonstrating that, as an owner of a unit within the Gateway Condominium Association, he will be directly and financially affected by the transportation contract entered into between Applicant and Gateway Condominium Association, which contract is one of the contracts in this matter. In addition, Mr. Seegers has demonstrated that, if the Application is granted, he may lose now-available transportation provided by Applicant under its CPCN. Finally, Mr. Seegers has called into question whether the transportation service which Applicant intends to offer if the Application is granted is, in fact, contract carriage. In doing so, he has raised an issue related to the public interest which must be examined in this proceeding. These are sufficient bases for granting Mr. Seegers's intervention by permission. In addition, because the nature of the transportation which Applicant seeks to offer is an issue which the Commission must address in order to grant the Application, granting Mr. Seegers's intervention will not broaden the issues in this matter. The Motion to Strike

Seegers Intervention will be denied, and Mr. Seegers's request for intervention by permission will be granted.

22. Mr. Suwinski and Mr. Seegers are advised that, as intervenors, they will be required to comply with all procedural requirements applicable to parties in Commission proceedings. Rule 4 CCR 723-1-64(d) ("intervenor by right or permission is a party to the proceeding and is subject to these rules and reasonable Commission procedural requirements.").

23. In determining that Messrs. Suwinski and Seegers have provided sufficient information to support their interventions, the ALJ makes no finding or determination that the facts asserted by Messrs. Suwinski and Seegers with respect to Applicant's actions or intentions are true. In addition, no inference or conclusion can or may be drawn from the ALJ's permitting these interventions. The evidence presented at the hearing in this matter, and not unverified assertions of parties, will establish the facts upon which this case will be decided. In this Order, the ALJ finds that Messrs. Suwinski and Seegers have provided information sufficient to satisfy the standard for intervention by permission, and nothing more.

II. ORDER

A. It Is Ordered That:

1. The Motion to Strike Suwinski's Requested Intervention - By Right or Permission is denied.
2. Consistent with the discussion above, the Requested Intervention - By Right or Permission filed by Mr. Craig S. Suwinski on November 24, 2004 is granted.
3. Mr. Craig S. Suwinski is permitted to intervene in this matter.

4. The Motion to Strike Seegers' Requested Intervention - By Right or Permission is denied.

5. Consistent with the discussion above, the Requested Intervention - By Right or Permission filed by Mr. Randall Seegers on November 24, 2004 is granted.

6. Mr. Randall Seegers is permitted to intervene in this matter.

7. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge