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SERVICE DATE - MARCH 21, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-21008

EAST WEST RESORT TRANSPORTATION, LLC, AND TMS, LLC D/B/A
COLORADO MOUNTAIN EXPRESS — PETITION FOR DECLARATORY ORDER
— MOTOR CARRIER TRANSPORTATION OF PASSENGERS IN COLORADO

Decided: March 18, 2005

On September 24, 2004, East West Resort Transportation, LLC, and TMS, LLC d/b/a Colorado Mountain Express, which do business under the single name of Colorado Mountain Express (CME) and will be referred to jointly as such here, filed with the Board, and served on the Colorado Public Utilities Commission (CPUC), a petition for a declaratory order. CME requests that a proceeding be instituted to determine whether 49 U.S.C. 14501(a) preempts CPUC from regulating the rates which CME may assess for scheduled, regular-route, intercity motor carrier transportation of passengers in Colorado. CME states that CPUC has commenced an enforcement action against CME, charging CME with having carried passengers on its vehicles at rates not on file with CPUC and having collected fares other than those prescribed by CPUC, in violation of Colorado law. CME claims that it is a motor carrier engaged in interstate commerce over its authorized routes, and therefore section 14501(a) preempts CPUC from requiring CME to file its rates with the state or charge state-prescribed rates. On October 14, 2004, CPUC filed a petition to intervene and request for an order establishing a procedural schedule.

The Board has discretionary authority under 5 U.S.C. 554(e) to issue a declaratory order to terminate a controversy or remove uncertainty. In this case, there is a controversy regarding the applicability of 49 U.S.C. 14501(a). Therefore, under the Board's authority at 5 U.S.C. 554(e) and 49 U.S.C. 721, a proceeding will be instituted. CPUC's petition to intervene will be granted, as it has a demonstrated interest in the proceeding and its intervention will not unduly broaden the issues raised.

The Board will resolve this matter pursuant to the modified procedure rules at 49 CFR part 1112. CME has presented its opening evidence with its petition. Replies are due by April 11, 2005. CME's rebuttal will be due by April 21, 2005.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CPUC's petition to intervene is granted.
2. A declaratory order proceeding is instituted. This proceeding will be handled under the modified procedure on the basis of written statements submitted by the parties. All parties must comply with the Rules of Practice, including 49 CFR parts 1112 and 1114.
3. Replies are due by April 11, 2005.
4. CME's rebuttal is due by April 21, 2005.
5. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary