

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: June 23, 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 requested that the Board 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 stated that CPUC had 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 claimed that it is a motor carrier engaged in interstate commerce over its authorized routes, and therefore that 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.

By decision served on March 21, 2005, the Board granted CPUC's petition to intervene and instituted a declaratory order proceeding. By decision served on April 8, 2005, the due dates for CPUC's reply and CME's rebuttal were extended to June 10, 2005, and June 20, 2005, respectively, in order for CPUC to conduct discovery. On April 14, 2005, CME filed a motion for protective order, stating that the documents requested by CPUC in discovery contained proprietary and commercially sensitive information and that the public disclosure of that information could be competitively damaging. By decision served on May 19, 2005, the Board granted the motion for the protective order. On May 25, 2005, and May 27, 2005, CPUC filed petitions requesting that the Board issue subpoenas requiring that representatives of two nonparty entities, Vail Resorts Management Company (Vail Resorts) and S&L Travel Partners, Inc., which owns travel businesses including but not limited to Aspen Ski Tours, Inc. and Ski.com, appear at deposition and produce documents. By decision served on June 1, 2005, the motions for subpoenas to appear at deposition were granted; however, it was determined that the motions for subpoenas to produce documents would be addressed, if necessary, in a subsequent decision. On June 8, 2005, CPUC filed a motion to modify the

procedural schedule to establish July 1, 2005, and July 18, 2005, as the due dates for filing a reply and a rebuttal, respectively. By decision served on June 9, 2005, the motion was granted.

On June 21, 2005, CPUC filed a second motion to modify the procedural schedule. CPUC indicates that it has been unable to take the depositions of representatives of Vail Resorts, and that those depositions will likely be taken in mid-July. Accordingly, with the July 1, 2005 due date for CPUC's reply fast approaching, additional time is needed to file that reply and CME's rebuttal. According to CPUC, CME does not oppose the motion, and the parties have agreed on a suggested modified procedural schedule that establishes August 17, 2005, as the reply due date and September 1, 2005, as the rebuttal due date.

Good cause does exist to extend the due date for CPUC's reply until August 17, 2005. CPUC has justified an extension of this duration. CME's rebuttal will be due on September 1, 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 motion to modify the procedural schedule is granted.
2. The due date for filing a reply to CME's petition for declaratory order is extended to August 17, 2005.
3. CME's rebuttal statement is due by September 1, 2005.
4. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary