

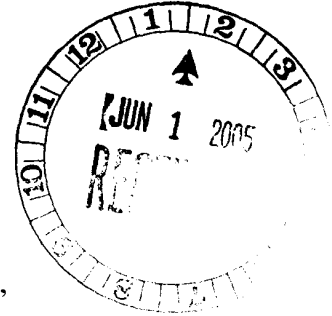
BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

ORIGINAL

214104

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



REPLY
OF
VAIL RESORTS MANAGEMENT COMPANY

ENTERED
Office of Proceedings

JUN 01 2005

Part of
Public Record

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VAIL RESORTS MANAGEMENT COMPANY

Dated: June 1, 2005

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SURFACE TRANSPORTATION BOARD
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REPLY
OF
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Vail Resorts Management Company ("Vail"), pursuant to 49 C.F.R. 1104.13(a), replies to the First Petition for Issuance of Subpoena to Appear at Deposition and Produce Documents, filed May 25, 2005, by the Colorado Public Utilities Commission ("CPUC"), as follows:

1. Vail is not a party to this proceeding. It is neither the Petitioners, East West Resort Transportation, LLC, and TMS, LLC, d/b/a Colorado Mountain Express ("CME"), nor the respondent, CPUC. It has not sought and does not seek leave to intervene as a party.

2. Vail, through its Vice President of Marketing and Sales, Mr. Christopher Jarrot, prepared a two-page supporting statement, attached to the Petition for Declaratory Order, filed by CME on September 24, 2004.

3. CPUC, on October 24, 2004, filed its petition for leave to intervene, granted by the Board by its Decision, served March 21, 2005. The Board's Decision established a procedural

schedule, pursuant to which CPUC's Reply was due April 11, 2005. On April 1, 2005, CPUC filed a Motion for Extension of Time so that it might pursue discovery in advance of filing its Reply. The Board, by its Decision, served April 8, 2005, partially granted CPUC's request and extended the due date of CPUC's Reply to June 10, 2005.

4. CPUC, therefore has known of Vail's supporting statement for eight months, since it was filed by CME on September 24, 2004, and CPUC has had more than two months, since its intervention in the proceeding was granted by the Board's Decision, served March 21, 2005, to file a petition with the Board seeking Subpoenas ad Testificandum and Duces Tecum compelling the appearance for deposition and the production of documents by Mr. Jarnot and Vail's Director of Reservations, Ms. Susan Rubin-Stewart. CPUC, however, chose to wait until May 25, 2005, almost on the eve of the due date for CPUC's Reply, to file its Petition and then asked that the deposition and document production take place one week later, on June 2, 2005, with the Memorial Day week-end intervening..

5. Vail, in trying to be helpful to both parties to this proceeding, has agreed to make Mr. Jarnot and Ms. Rubin-Stewart available on June 2, 2005, to have their depositions taken. The June 2, 2005, date was not cleared in advance with counsel for CME; however, it is Vail's understanding that counsel for CME will be able to attend the deposition. Vail, however, objects to the document production request and respectfully asks that the Subpoena Duces Tecum not be issued.

6. Vail manages four ski resorts in Summit and Eagle Counties, Vail, Beaver Creek, Breckenridge and Keystone, and, as an accommodation to its guests, it will put together ski vacation packages which include lift tickets, hotel accommodations, airline tickets and ground

transfers between the airports at Denver or Eagle and the hotels via CME.

7. CPUC has requested the production of 20,115 documents, that is, the booking arrangement for each of the guests for which Vail put together a ski vacation package during calendar year 2003 which included ground transfers via CME. For each, CPUC asks that Vail “identify the name of the customer/passenger, the date(s) CME provided ground transportation, the scheduled route of the van service (e.g., Denver International Airport to Vail, Eagle County Regional Airport to Vail, etc.), whether the customer/passenger acquired airline tickets directly from Vail Resorts Management Company as part of a multi-element travel package, whether the customer/passenger acquired any non-air travel components (e.g., lodging, lift tickets, etc.) directly from Vail Resorts Management Company as part of a multi-element travel package, and the pertinent flight number and arrival/departure information.”

8. On its face, CPUC’s document production request is overly broad, burdensome and oppressive and, accordingly, should not be ordered. See, STB Docket No. AB-124 (Sub-No. 2), Waterloo Railway Company–Adverse Abandonment–Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, Maine, served May 6, 2003. Moreover, some of data, as for example, whether the customer/passenger acquired any non-air travel components (e.g., lodging, lift tickets, etc.) directly from Vail Resorts Management Company as part of a multi-element travel package, are irrelevant to these proceedings, and their production should not be required. Id.

9. Vail understands that the data which CPUC seeks from Vail through its document production request either already has been provided or is more properly provided by CME in response to CPUC’s document production request of CME, and CME’s President, Mr. Jay Ufer,

has been deposed by CPUC and answered questions relating to the ski packages arranged by Vail. Thus, CPUC has failed to demonstrate a need for the 20,115 documents which it seeks to have produced. See, STB Docket No. 42057, Public Service Company of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, served February 1, 2002; STB Docket No. 42051, Wisconsin Power and Light Company v. Union Pacific Railroad Company, served June 21, 2000.

10. In his letter to the Board, dated May 27, 2005, counsel for CPUC announced that he intends to file a reply to this Reply. Vail asks that the Board remind counsel for CPUC that the Board's rule, 49 C.F.R. 1104.13(c) , does not permit the filing of a reply to a Reply.

WHEREFORE, Vail Resorts Management Company asks that the Petition of the Colorado Public Utilities Commission for the issuance of a Subpoena Duces Tecum be denied.

Respectfully submitted,

VAIL RESORTS MANAGEMENT COMPANY

By its attorney,



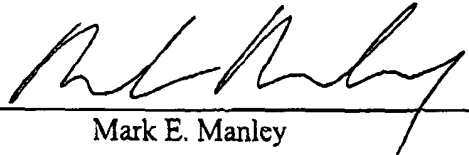
Mark E. Manley
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P. O. Box 7
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Dated: June 1, 2005

CERTIFICATE OF SERVICE

I certify that I this day served the foregoing Reply upon each of the parties by facsimile transmitting copies thereof to their counsel, David A. Beckett, Esq. (303) 866-5395; Thomas J. Burke, Jr., Esq. (303) 893-6506 and Fritz R. Kahn (202) 331-8330.

Dated at Vail, CO, this 1st day of June 2005.



Mark E. Manley