

29004
EB

SERVICE DATE - OCTOBER 23, 1998
SURFACE TRANSPORTATION BOARD

DECISION

STB No. MC-F-20902

COLORADO MOUNTAIN EXPRESS, INC., and AIRPORT SHUTTLE COLORADO, INC.,
d/b/a ASPEN LIMOUSINE SERVICE, INC.--CONSOLIDATION AND MERGER--
COLORADO MOUNTAIN EXPRESS

Decided: October 19, 1998

In a notice served November 27, 1996, and published in the Federal Register on November 29, 1996 (61 FR 60747-48), we tentatively approved the application of two motor passenger carriers, Colorado Mountain Express, Inc., and Airport Shuttle Colorado, Inc., for authority under 49 U.S.C. 14303 to consolidate or merge into a new entity, Colorado Mountain Express (CME), which was to be formed as a Colorado general partnership upon consummation of the transaction. The tentative grant of authority became effective on January 13, 1997. By decision served February 28, 1997, we denied a petition to reopen filed by the Colorado Public Utilities Commission.

By petition filed February 24, 1998, as clarified by letter filed April 23, 1998, applicants seek to reopen the record to change retroactively the identity of the new entity to which the assets and properties are to be deemed transferred. According to applicants, CME, the Colorado general partnership originally contemplated in the application, was never formed and, instead, the merged applicants were first consolidated into Colorado Mountain Express LLC, a Colorado limited liability company,¹ on October 3, 1997, and then converted to a Delaware limited liability company² on November 20, 1997.

As a consequence, the merged properties have not been consolidated into the entity for which approval was granted and applicants seek to rectify this discrepancy. Applicants have certified that all parties of record have been served with a copy of the petition; no one has filed comments in opposition.

¹ Applicants state that this form of partnership was deemed more advantageous, both operationally and administratively.

² Applicants state that this was done for tax-related reasons.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 14303, we approved the consolidation and merger of applicants' properties into CME. The initial transaction, however, left the Colorado limited liability company as the surviving entity instead of CME. When cause exists, we may issue appropriate orders to supplement a previous order issued in a proceeding. 49 U.S.C. 14303(j). In this proceeding, even though the name and legal status of the consolidated entity has changed,³ there appears to be no change in the control of the motor carrier properties involved,⁴ and the substance of the transaction remains the same. Thus, under section 14303(j), we will exercise our authority to modify our previous order and substitute the Colorado limited liability company in place of CME, the Colorado general partnership.⁵

The second transaction, in which the Colorado limited liability company was converted into a Delaware limited liability company, is a different matter not subject to our jurisdiction, because it does not involve consolidation, merger, or acquisition of control under section 14303. Rather, it is a change in business form, subject to the jurisdiction of the U.S. Department of Transportation's Federal Highway Administration (FHWA) and is governed by that agency's regulations at 49 CFR 365.413. Accordingly, we have no authority to substitute the Delaware limited liability company as the surviving entity in this matter, and applicants must pursue such a change with FHWA.

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

It is ordered:

1. The authority granted in this proceeding is modified to substitute Colorado Mountain Express LLC, a Colorado limited liability company, as the surviving entity, in place of Colorado Mountain Express, a Colorado general partnership.

³ Indeed, if the transaction had been consummated in the form originally contemplated and approved, and then the corporate transfers occurred, these subsequent actions would not require further Board approval, but rather approval of another agency as described below.

⁴ An additional entity, East West Resorts Transportation LLC, has been involved in these transactions, but it is a noncarrier.

⁵ Because no filings have been made in opposition, we find no need to reopen the record for the submission of additional evidence.

STB No. MC-F-20902

2. This decision is effective on its service date.

3. A copy of this decision will be served on the U. S. Department of Transportation, Office of Motor Carriers - HIA 30, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary