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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



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
EAST WEST RESORT TRANSPORTATION, LLC,
AND TMS, LLS, d/b/a
COLORADO MOUNTAIN EXPRESS

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EAST WEST RESORT TRANSPORTATION, LLC,
and TMS, LLC, d/b/a COLORADO MOUNTAIN
EXPRESS

Dated: April 6, 2005

BEFORE THE
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Petitioners, East West Resort Transportation, LLC, and TMS, LLC, d/b/a Colorado Mountain Express ("CME"), pursuant to 49 C.F.R. 1104.13(a), reply to the Motion for Leave to File a Reply to CME's Reply filed April 5, 2005, by the Colorado Public Utilities Commission ("CPUC"), as follow:

1. The Board's rules of practice, 49 C.F.R. 1104.13(c), do not permit the filing of a reply to a reply. See, STB Docket No. 42075, Englehard Corporation-Petition for Declaratory Order-Springfield Terminal Railway Company and Consolidated Rail Corporation, served September 24, 2004; Docket No. 41192, The TJX Companies, Inc.-Petition for Declaratory Order-Certain Rates and Practices of Sweeney Transportation, Inc., et al., served January 6,

1998.. As the Board said in STB Docket No. AB-33 (Sub-No. 140), Union Pacific Railroad Company—Abandonment—In Lancaster and Gage Counties, NE, and Marshall County, KS, served December 17, 1999, “Only in exceptional circumstances will we interrupt the deliberative process to consider what are generally prohibited replies to replies.”

2. The Board, of course, may waive the prohibition of 49 C.F.R. 1104.13(c), for good cause shown. See, STB Docket No. 42078, Norfolk Southern Railway Company—Petition for Declaratory Order—Interchange with Reading Blue Mountain & Northern Railroad Company, served April 29, 2003; Finance Docket No. 30186, Tongue River Railroad Co.—Construction and Operation—Western Alignment, served March 11, 2003; STB Docket No. WCC-102, Ocean Logistics Management, Inc. V. NPR, Inc., and Holt Cargo Systems, Inc., served January 14, 2000. The Board, however, will not grant a waiver merely to permit a party to advance arguments, rather than to tender evidence which will serve to clarify the record and enable the Board to have a better understanding of the issues in a proceeding. See, STB Finance Docket No. 33905, Lackawanna County Railroad Authority—Acquisition Exemption—F&L Realty, Inc., served October 22, 2001; Finance Docket No. 28905 (Sub-No. 27), CSX Corporation—Control—Chessie System, Inc., and Seaboard Coast Line Industries, Inc., et al., served July 15, 1997; STB Docket No. 41989, Potomac Electric Power Company v. CSX Transportation, Inc., served June 27, 1997.

3. CPUC’s tendered Reply to CME’s Reply, however, consists of nothing more than further arguments why CPUC should be granted a four-month stay of the proceeding so that it belatedly can pursue discovery. Indeed, CPUC’s arguments are largely repetitive of those which it advanced in its April 1, 2005, Motion for Extension of Time to File Verified Reply Statements

to CME's Opening Evidence, to which CME replied by its Verified Reply, filed April 5, 2005.

In short, CPUC has failed to show good cause why the Board should grant a waiver of its rules of practice and entertain its tendered Reply to CME's Reply.

WHEREFORE, Petitioners, East West Resort Transportation, LLC, and TMS, LLC, d/b/a Colorado Mountain Express, ask that the Colorado Public Utilities Commission's Motion for Leave to File a Reply to CME's Reply be denied.

Respectfully submitted,

EAST WEST RESORT TRANSPORTATION, LLC,
and TMS, LLC, d/b/a COLORADO MOUNTAIN
EXPRESS

By their attorneys,

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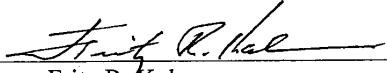

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Dated: April 6, 2005

CERTIFICATE OF SERVICE

I certify that I this day have served a copy of the foregoing Reply upon the Colorado Public Utilities Commission by facsimile transmitting a copy, as well as mailing a copy, by prepaid first-class mail, to its counsel, David A. Beckett, Esq.

Dated at Washington, DC, this 6th day of April 2005.


Fritz R. Kahn