

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0559CP

IN THE MATTER OF THE APPLICATION OF JEREMY RICHARD JENKIN DOING BUSINESS AS AMAZING ADVENTURES TOURS FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
REQUIRING FILINGS, ADDRESSING LEGAL
REPRESENTATION, AND SCHEDULING REMOTE
PREHEARING CONFERENCE**

Mailed Date: March 23, 2023

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I. STATEMENT AND PROCEDURAL HISTORY**A. Summary**

1. This Decision schedules a remote prehearing conference to move this matter forward, requires Intervenors to make filings as detailed herein by the established deadlines, and makes findings as to the parties' representation.

B. Procedural History

2. On December 16, 2022, Amazing Adventures Tours (Amazing Adventures or Applicant) initiated this matter by filing an Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire (Application). The Application was filed on behalf of Amazing Adventures by Jeremy Richard Jenkin, who identified himself as the owner and designated agent of Amazing Adventures. On December 19, 2022, the Applicant amended the Application.

3. On December 27, 2022, the Public Utilities Commission (the Commission) provided public notice under § 40-6-108(2), C.R.S., of the Application, describing the authority sought here, consistent with the December 19, 2022, Amendment to the Application.¹ As noticed, the Application seeks authority to:

to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand sightseeing service between all points in the Counties of Arapahoe, Denver, Douglas, and Jefferson, and between said points on the one hand, and all points in the Counties of Moffatt, Routt, Grand, Boulder, Rio Blanco, Garfield, Eagle, Clear Creek, Gilpin, Larimer, Jackson, Summit, Mesa, Delta, Gunnison, Pitkin, Lake, Chaffee, Fremont, Montrose, Ouray, San Miguel, Dolores, San Juan,

¹ See Notice of Applications and Petitions filed on December 27, 2022 (Notice), p. 2.

Montezuma, La Plata, Hinsdale, Mineral, Archuleta, Rio Grande, Conejos, Alamosa, Saguache, Fremont, Teller, Park, and El Paso, on the other hand..²

4. On December 28, 2022, after the Commission provided the above public notice, Amazing Adventures made a filing amending its Application (December 28th Amendment). The December 28th Amendment specifies that “Transportation will originate and terminate in the counties of Arapahoe, Denver, Douglas, and Jefferson and no other counties.”

5. On January 23, 2023, Ullr Tours, LLC, doing business as The Colorado Sightseer (The Colorado Sightseer), filed its “Intervention and Appearance as a Matter of Right to Application of a Transportation Utility.” The Colorado Sightseer’s Intervention was signed and filed by Richard Grover, who identified himself as a “member” of The Colorado Sightseer. The Colorado Sightseer stated that its Letter of Authority authorizes it to operate a sightseeing service in several Colorado counties and asserted that because Amazing Adventures’ Application conflicts with The Colorado Sightseer’s authority, the Application should be denied.

6. Also on January 23, 2023, Aspire Tours LLC (Aspire Tours) filed a “Petition for Intervention and Entry of Appearance.” Aspire Tours appended a copy of its CPCN No. 55865 to its Petition. In its Petition, Aspire Tours likewise asserted that the Application at issue in this Proceeding should be denied because it would “overlap” with Aspire Tours’ authority. Aspire Tours also requested that an evidentiary hearing be held addressing the Application.

7. On January 24, 2023, CKIMY, LLC, doing business as iLIMO (iLIMO) filed a timely “Intervention & Entry of Appearance” (iLIMO’s Intervention), also opposing the Application. iLIMO noted that it holds CPCN No. 55931, which authorizes it to provide

² *Id.*

call-and-demand shuttle and charter services in several Colorado counties. iLIMO's Intervention was filed on its behalf by Yassine Chanane, President of iLIMO.

8. Finally, on January 25, 2023, Mountain Star Transportation LLC, doing business as Explorer Tours (Explorer Tours) filed a timely "Petition for Intervention and Entry of Appearance" (Explorer Tours' Intervention), opposing the Application. Explorer Tours represented that it holds CPCN No. 55952, which authorizes it to provide call-and-demand sightseeing and shuttle services in several Colorado counties. Explorer Tours' Intervention was filed on its behalf by Roman Lysenko, who identified himself as its owner.

9. On February 1, 2023, the Commission deemed the Application complete and referred the matter to an Administrative Law Judge (ALJ) by minute entry for disposition. The Commission did not address the proposed amendment filed on December 28, 2022, after the Commission gave public notice of the Application.

II. RELEVANT LAW

10. Generally, parties appearing before the Commission must be represented by an attorney authorized to practice law in Colorado.³ However, an individual may appear without an attorney on behalf of a company after showing eligibility.⁴ To do so, all the below conditions must be met:

- (a) The company must not have more than three owners;
- (b) The amount in controversy must not exceed \$15,000; and

³ Rule 1201(a) of the Rules of Practice and Procedure, 4 *Code of Colo. Regulations* (CCR) 723-1.

⁴ Rule 1201(b)(II), 4 CCR 723-1; § 13-1-127, C.R.S.

- (c) The non-attorney individual seeking to represent the company must provide the Commission with satisfactory evidence demonstrating his or her authority to represent the company in the proceeding.⁵

11. It is presumed that a corporation's officers, a partnership's partners, a limited partnership's members, and persons authorized to manage a limited liability company have authority to represent the company in the proceeding.⁶ A written resolution from a company specifically authorizing the individual to represent the company's interests in the proceeding may also be relied upon as evidence of the individual's authority to represent the company.⁷

12. Two classes of parties may intervene in proceedings such as this: parties with a legally protected right that may be impacted by the proceeding (intervention of right), and parties with pecuniary or tangible interests that may be substantially impacted by the proceeding (permissive intervention).⁸ To intervene of right, a carrier's intervention must: state the basis for the claimed legally protected right that may be impacted by the proceeding; include a copy of the carrier's authority; show that the carrier's authority is in good standing; identify the specific parts of the authority that are in conflict with the application; and explain the consequences to the carrier and the public interest if the application is granted.⁹ A carrier's letter of authority provides the basis for the legally protected right which an intervenor claims may be impacted by the proceeding. Thus, it is important to determine whether the intervenor's letter of authority shows that it has the right to operate in a manner that may be impacted by an application's requested authority.

⁵ Rule 1201(b)(II), § 13-1-127(2) and (2.3)(c), C.R.S.

⁶ § 13-1-127(2) and (2.3), C.R.S.

⁷ § 13-1-127(3), C.R.S.

⁸ 4 CCR 723-1401(b) and (c); See § 40-6-109(a), C.R.S.; and *RAM Broad of Colo. Inc., v. Pub. Utils. Comm'n*, 702 P.2d 746, 749 (Colo. 1985).

⁹ Rule 1401(b) and (f)(I), 4 CCR 723-1.

III. DISCUSSION, FINDINGS, AND CONCLUSIONS**A. Amazing Adventures' Legal Representation.**

13. In its Application, Amazing Adventures indicates that it seeks to have Jeremy Jenkin represent its interest. It states that Jeremy Jenkin is the owner and sole proprietor of Amazing Adventures.

14. Based on the record, the ALJ finds that Amazing Adventures has established that it meets the requirements of Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-127, C.R.S., to be represented by a non-attorney in this Proceeding, Jeremy Jenkin, the company's owner, and sole proprietor. As such, the ALJ will permit Mr. Jenkin to represent Amazing Adventures in this Proceeding.

B. Amazing Adventure's December 28, 2022, Proposed Amendment to the Application.

15. As discussed above, Amazing Adventures filed an amendment to its Application on December 28, 2022, after the Commission provided public notice of the Application. The amendment seeks to restrict the authority that the Applicant seeks in this Proceeding by specifying that all transportation provided by Amazing Adventures "will originate and terminate in the counties of Arapahoe, Denver, Douglas, and Jefferson and no other counties."

16. Applicants may amend their application by right during the notice period.¹⁰

17. Having examined the Application as noticed by the Commission and the restrictive amendment Applicant submitted on December 28, 2022, during the notice period, the undersigned ALJ finds that the restrictive amendment is narrower than the Application as noticed by the

¹⁰ See Rule 1309(a), 4 CCR 723-1.

Commission. Because the scope of Applicant’s proposed service area is not broadened by the restrictive amendment, no further notice is required.¹¹

18. No objections to the proposed Amendment have been received.

19. Applicant’s Application will therefore be amended to incorporate the following restriction:

RESTRICTION: All transportation provided by Amazing Adventures Tours will originate and terminate in the counties of Arapahoe, Denver, Douglas, and Jefferson and no other counties.

C. Intervenor

20. All four of the entities that have filed Interventions in this Proceeding assert that the authority sought by Amazing Adventures will overlap with and impact the authority granted them by their respective Letters of Authority.

1. iLIMO

21. To intervene as of right in a transportation matter, an intervenor must include a copy of its letter(s) of authority; establish that it is in good standing; identify the parts of the Application that conflict with its authority; and explain the consequences to it and to the public should the Application be granted.¹² iLIMO attached copies of its Letters of Authority, CPCN Nos. 55822 and 55931, to its Intervention.¹³ iLIMO also explained the scope of its Letters of Authority, described how the Application would conflict with its authority, and asserted that the public interest

¹¹ See *In re Application of Heart & Soul Paratransit LLC*, CO PUC Decision No. R17-0493, issued June 12, 2017) (No further notice required where amendment to application “narrowed the scope of the authority sought and was restrictive in nature”).

¹² Rule 1401(f)(I), 4 CCR 723-1.

¹³ iLIMO’s Intervention at 1.

would be negatively impacted if the Application were granted. Accordingly, the ALJ finds that iLIMO has partially complied with Rule 1401(f)(I), 4 CCR 723-1, which requires intervenors in transportation cases to provide a copy of their Letters of Authority with their intervention and provide certain information.

22. However, the ALJ notes that iLIMO's Letters of Authority, CPCN Nos. 55822 and 55931, authorize it to provide call-and-demand charter and shuttle services in several Colorado counties, including Adams, Arapahoe, Denver, Douglas, El Paso, Jefferson, Larimer, Clear Creek, Eagle, and Summit, with some restrictions. But its authority does not include sightseeing services, which is the only type of service Amazing Adventures proposes to offer and the only type of authority it seeks in its Application. iLIMO therefore has not established an intervention as of right, as the authority Amazing Adventures seeks is not the same as the services iLIMO offers, and therefore the Application does not directly conflict with iLIMO's authority.

23. Nonetheless, the undersigned ALJ will treat iLIMO's petition as a motion to intervene in this proceeding. A movant may move to permissively intervene in a proceeding if the movant can establish that "the subject proceeding may substantially affect the pecuniary or tangible interests of the movant."¹⁴

24. Although iLIMO states that the authority Amazing Adventures seeks would "overlap" with its own, and that its "legally protected right" would be impacted, iLIMO does not state how Amazing Adventures' proposed sightseeing authority would "substantially impact" iLIMO's "pecuniary or tangible interests."¹⁵ iLIMO will therefore be required to explain how its

¹⁴ Rule 1401(c), 4 CCR 723-1.

¹⁵ *Id.*

pecuniary and/or tangible interests will be substantially impacted should Amazing Adventures be granted sightseeing authority by the deadline established by this decision, or risk having its Intervention dismissed.

25. iLIMO is not represented by an attorney, but its Intervention states that it is a closely-held entity, has no more than three owners, and that the amount in controversy does not exceed \$15,000.¹⁶ iLIMO asks that its president and owner, Yassine Chanane, a non-attorney, be allowed to represent it in this proceeding.¹⁷ Based on the foregoing, and the record as a whole, the ALJ finds that iLIMO meets the requirements of Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-127, C.R.S., to be represented by a non-attorney, Yassine Chanane, and will allow him to represent iLIMO in this Proceeding.

2. The Colorado Sightseer

26. The Colorado Sightseer did not attach a copy of its Letter of Authority with its Intervention.¹⁸ Instead, The Colorado Sightseer states that it holds CPCN No. 54166, which grants it the authority to provide:

sightseeing service, between hotels with a minimum of 50 rooms located in the area comprised of the Counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson, State of Colorado, on the one hand, and all points in the Counties of Adams, Arapahoe, Broomfield, Boulder, Denver, Douglas, Jefferson, Alamosa, Clear Creek, El Paso, Fremont, Grand, Larimer, Park, Pueblo, Saguache, Summit, and Teller, State of Colorado, on the other hand.¹⁹

27. As noted above, Rule 1401(f)(I), 4 CCR 723-1, mandates that intervenors in transportation proceedings must provide “a copy of the common carrier’s letter of authority,” and

¹⁶ *Id.* at 3.

¹⁷ *Id.*

¹⁸ *See generally*, The Colorado Sightseer’s Intervention.

¹⁹ *Id.*, p. 1.

provide certain information establishing the scope of its authority, the potential conflict with the authority sought by the Applicant, and the consequences to the public interest of granting the Application. Although The Colorado Sightseer has described its authority and the potential conflict and consequences should the Application be granted, it did not provide a copy of its Letter of Authority as required by the applicable Rule. Based on the foregoing, the ALJ concludes that The Colorado Sightseer failed to provide a copy of its Letter of Authority as required by Rule 1401(f)(I), 4 CCR 723-1. As such, the ALJ will require The Colorado Sightseer to file a copy of its Letter of Authority. If it fails to do so by the established deadline, The Colorado Sightseer's Intervention will be dismissed.

28. The Colorado Sightseer is not represented by an attorney, but its Intervention states that it is a closely-held entity, has no more than three owners, and that the amount in controversy does not exceed \$15,000.²⁰ The Colorado Sightseer asks that its controlling members and co-owners, Richard Grover "and/or" Christin Grover, non-attorneys, be allowed to represent it in this Proceeding.²¹ Based on the foregoing, and the record as a whole, the ALJ finds that The Colorado Sightseer meets the requirements of Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-127, C.R.S., to be represented by non-attorneys Richard Grover and Christin Grover in this Proceeding and will permit them to do so.

3. Explorer Tours

29. Explorer Tours attached a copy of its Letter of Authority with its Intervention.²² It holds CPCN No. 54166, which grants it the authority to provide:

²⁰ *Id.* at 2.

²¹ *Id.*

²² *See generally*, Explorer Tours' Intervention.

call-and-demand sightseeing service originating in Denver and Boulder Counties, to all points in the Counties of Denver, Boulder, Clear Creek, Douglas, El Paso, Grand, Jefferson, and Larimer, State of Colorado, returning to the origination point.²³

In addition, its Letter of Authority authorizes it to provide call-and-demand shuttle services between Denver, Eagle, and Pitkin counties.²⁴

30. Explorer Tours' Intervention also asserts in detail the extent of its authority, how the proposed Application will conflict with Explorer Tours' authority, and the consequences to the public interest should the Application be granted.

31. As noted above, Rule 1401(f)(I), 4 CCR 723-1, mandates that intervenors in transportation proceedings must provide "a copy of the common carrier's letter of authority" and provide certain information. Based on the foregoing, the ALJ concludes that Explorer Tours has complied with the requirements of Rule 1401(f)(I) and has intervened as of right in this Proceeding.

32. Explorer Tours is not represented by an attorney, but its Intervention states that it is a closely-held entity, has no more than three owners, and that the amount in controversy does not exceed \$15,000.²⁵ Explorer Tours asks that its president and owner, Roman Lysenko, a non-attorney, be permitted to represent its interests in this proceeding.²⁶ Based on the foregoing, and the record as a whole, the ALJ finds that Explorer Tours meets the requirements of Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-127, C.R.S., to be represented by a non-attorney, Roman Lysenko, in this proceeding and will permit him to do so.

²³ *Id.* attached Letter of Authority.

²⁴ *Id.*

²⁵ Explorer Tours' Intervention at 2.

²⁶ *Id.*

4. Aspire Tours

33. Aspire Tours' is authorized to provide call-and-demand shuttle and sightseeing transportation services in numerous Colorado counties. Aspire Tours attached a copy of its Letter of Authority, CPCN No. 55865, to its Intervention.²⁷ It also asserted how Amazing Adventures' proposed authority would conflict with its own and affect the public interest. Accordingly, the ALJ finds that iLIMO has complied with Rule 1401(f)(I), 4 CCR 723-1, which requires intervenors in transportation cases to provide a copy of their Letters of Authority with their intervention and has established an intervention as of right.

34. However, Aspire Tours' Intervention was not filed by an attorney, and it appears Aspire Tours is not represented by counsel. Its Intervention was filed by Kathrin Troxler, who indicated she is the owner of Aspire Tours. However, Aspire Tours has not offered any description of its organization or indicated whether it is a closely-held entity with no more than three owners. Nor has it identified the amount it believes is in controversy in this Proceeding, and, specifically, whether the amount in controversy exceeds \$15,000.²⁸ As explained above, Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-127, C.R.S., require an entity seeking to be represented by a non-attorney to demonstrate that (1) the entity is closely-held with three or less owners²⁹; (2) the amount in controversy does not exceed \$15,000³⁰; and (3) that the non-attorney it seeks to have represent it is authorized and eligible to do so.³¹ In order to proceed without an attorney, Aspire Tours will be required to establish that it and its intended representative meet these criteria by the deadline established by this decision, or risk having its Intervention dismissed.

²⁷ See generally, Aspire Tours' Intervention.

²⁸ *Id.*

²⁹ Rule 1201(b)(II), 4 CCR 723-1; § 13-1-127(1)(a), (2).

³⁰ § 13-1-127(2)(a), C.R.S.

³¹ § 13-1-127(2)(b), C.R.S.

D. Remote Prehearing Conference.

35. To move this matter forward, and in anticipation of a hearing on the Application, the ALJ is scheduling a fully remote prehearing conference per Rule 1409(a), 4 CCR 723-1.

36. Participants will appear at the prehearing conference from remote locations by video conference and may not appear in person for the prehearing conference. The remote prehearing conference will be held using the web-hosted service, Zoom. Attachment A hereto includes important technical information and requirements to facilitate holding the prehearing conference remotely. All those participating in the hearing must carefully review and follow all requirements in this Decision and Attachment A.

37. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link and meeting ID or access code to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.³²

38. At the prehearing conference, an evidentiary hearing will be scheduled, and related procedural deadlines will be established. The ALJ anticipates that a hybrid evidentiary hearing will be held in person and via Zoom at the Commission's offices in Denver, Colorado, and that it must be held by June 23, 2022. The participants should keep this in mind when preparing for the prehearing conference. Other issues relevant to this proceeding may be raised or addressed at the

³² Participants will receive an email with the information to join the hearing at the email addresses on file with the Commission for this proceeding. The ALJ anticipates that the hearing will be webcast, consistent with Commission practice; this means that those wishing to observe the hearing may do so without the need to join the hearing as a participant.

prehearing conference, including whether Intervenor has met the requirements of this Decision and relevant Commission rules, and whether they should be permitted to intervene.

39. *All parties are on notice* that failure to appear at the prehearing conference may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application. The ALJ will deem any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

IV. ORDER

A. It Is Ordered That:

1. A remote prehearing conference in this Proceeding is scheduled as follows:

DATE: Friday, April 21, 2023

TIME: 10:30 a.m.

PLACE: Join by video conference using Zoom

2. Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

3. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision.

4. Applicant Amazing Adventures Tours may be represented in this matter by Jeremy Jenkin, a non-attorney.

5. The Application is amended to incorporate the following restriction:

RESTRICTION: All transportation provided by Amazing Adventures Tours will originate and terminate in the counties of Arapahoe, Denver, Douglas, and Jefferson and no other counties.

6. CKIMY, LLC, doing business as iLIMO (iLIMO), may be represented in this matter by Yassine Chanane, a non-attorney.

7. Ullr Tours, LLC, doing business as The Colorado Sightseer (The Colorado Sightseer), may be represented in this matter by Richard Grover and/or Christin Grover, non-attorneys.

8. Mountain Star Transportation, LLC, doing business as Explorer Tours (Mountain Star) may be represented in this matter by Roman Lysenko, a non-attorney.

9. **No later than 5:00 p.m. on April 14, 2023**, Aspire Tours must either obtain counsel and have that attorney file an entry of appearance on Aspire Tours' behalf, or, if Aspire Tours wishes to be represented in this Proceeding by a non-attorney, it must identify the non-attorney it seeks to have represent it in this Proceeding and demonstrate that it has complied with and established the criteria set forth in Rule 1201, 4 CCR 723-1 and § 13-1-127, C.R.S., for representation by a non-attorney. Failure to do so will result in the dismissal of Aspire Tours' Intervention.

10. **No later than 5:00 p.m. on April 14, 2023**, iLIMO shall file a statement supporting its request to permissively intervene in this Proceeding, and specifically explain how its pecuniary and tangible interests will be "substantially impacted" by the sightseeing authority sought by Amazing Adventures. Failure to do so will result in the dismissal of iLIMO's Intervention.

11. **No later than 5:00 p.m. on April 14, 2023**, The Colorado Sightseer must file and serve a copy of its Letter of Authority with the Commission. Failure to do so will result in the dismissal of The Colorado Sightseer's Intervention.

12. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN
Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read 'G. Harris Adams'.

G. Harris Adams,
Interim Director