

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0602CP

IN THE MATTER OF THE APPLICATION OF COLORADO NATURE TOURS, LLC, 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
ROBERT I. GARVEY
GRANTING INTERVENTIONS, REQUIRING FILINGS,
AND SETTING PREHEARING CONFERENCE**

Mailed Date: January 13, 2020

I. STATEMENT

1. On October 31, 2019, Colorado Nature Tours, LLC (Colorado Nature) initiated the captioned proceeding by filing an application seeking a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application) with the Colorado Public Utilities Commission (Commission).

2. On November 12, 2019, the Commission provided public notice of the application to extend the permit by publishing a summary of the same in its Notice of Applications Filed:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in-call-and-demand sightseeing service

originating in Denver County, to all points in Boulder County, El Paso County, Jefferson County, Larimer County, and Rocky Mountain National Park, State of Colorado, returning to the origination point.

3. On December 11, 2019, Ullr Tours LLC, doing business as The Colorado Sightseer (Sightseer) filed its Intervention through Rich Grover. Ms. Grover is identified as a member in the filing. This filing attached Commission Authority No. 54166 held by Sightseer.

4. On December 11, 2019, Ckimy LLC, doing business as ilimo (ilimo) filed its Intervention through Yassine Chanane, who is identified in the filing as the president of ilimo. This filing attached Commission Authority No. 55931 held by ilimo.

5. On December 11, 2019, Mountain Star Transportation LLC, doing business as Explorer Tours (Explorer) filed its Intervention through Roman Lysenko. Mr. Lysenko is identified as the president and owner in the filing. This filing noted Commission Authority No. 55952 held by Explorer.

6. On December 12, 2019, Aspire Tours (Aspire) filed its Entry of Appearance and Petition of Intervention through Kathrin Troxler, a co-owner owner of Aspire, and its counsel, Scott Dunbar. This filing attached Commission Authority No. 55865 held by Aspire.

7. On December 16, 2019, Explorer filed Commission Authority No. 55952 held by Explorer.

8. On December 17, 2019, the Commission deemed the application complete and referred it to the undersigned Administrative Law Judge (ALJ) for disposition.

II. INTERVENTIONS

9. Finding good cause, and in the absence of any objection from Applicant, the ALJ finds that Aspire has established its standing as an intervenor in accordance with the Commission's Rules of Practice and Procedure

A. Legal Representation

10. The undersigned ALJ notes that the interventions of Sightseer, ilimo, and Explorer were not executed by an attorney. The Interventions do not state that the person making the filing is an attorney at law currently in good standing before the Supreme Court of the State of Colorado. It is unknown who intends to represent the interests of Sightseer, ilimo, and Explorer.

11. Sightseer, ilimo, and Explorer are not individuals and have not entered an appearance through counsel. Under Rule 1201(b) 4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of Practice and Procedure, a party in an adjudicatory proceeding before the Commission shall be represented by an attorney *unless* the party is an individual appearing for the sole purpose of representing her/his own interests **or** for purposes of representing the interests of a closely-held entity pursuant to § 13-1-127, C.R.S. The Commission has emphasized that this requirement is mandatory and has found that if a party does not meet the criteria of this rule a non-attorney may not represent a party in such a proceeding. *See, e.g.*, Decisions No. C05-1018, Proceeding No. 04A-524W issued August 30, 2005; No. C04-1119, Proceeding No. 04G-101CP issued September 28, 2004; and No. C04-0884, Proceeding No 04G-101CP issued August 2, 2004.

12. Since Sightseer, ilimo, and Explorer are not individuals, if they wish to proceed in this matter without an attorney, they must establish that it is a closely-held entity; *i.e.*, that it has no more than three owners. *See*, Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-127(1)(a), C.R.S. It must also demonstrate that it meets the requirements of § 13-1-127(2), C.R.S. This portion of the statute provides that an officer¹ may represent a closely-held entity before an administrative agency if both of the following conditions are met: (a) the amount in controversy does not exceed \$15,000; and (b) the officer provides the administrative agency with evidence, satisfactory to the agency, of the authority of the officer to represent the closely-held entity.²

¹ Section 13-1-127(1)(i), C.R.S., defines "Officer" as "a person generally or specifically authorized by an entity to take any action contemplated by" § 13-1-127, C.R.S.

² As pertinent here, § 13-1-127(2.3), C.R.S., states that a person in whom management of a limited liability company is vested or reserved "shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person's holding the specified office or status[.]"

13. Sightseer, ilimo, and Explorer shall be ordered either to obtain counsel or to show cause why Rule 1201, 4 CCR 723-1 does not require it to be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

14. If Sightseer, ilimo, and Explorer elect to obtain counsel, then its counsel must enter an appearance in this matter on or before close of business on January 24, 2020.

15. If Sightseer, ilimo, and Explorer elect to show cause, then, on or before close of business on, January 24, 2020, it must show cause why Rule 1201, 4 CCR 723-1 does not require it to be represented by legal counsel in this matter. To show cause, each party must make a verified (*i.e.*, sworn) filing that: (a) establishes that it is a closely-held entity as defined above; (b) establishes that the amount in controversy in this matter does not exceed \$15,000 (including a statement explaining the basis for that assertion); (c) identifies the individual whom the party wishes to have as its representative in this matter; (d) establishes that the identified individual is an officer of the party's company; and (e) if the identified individual is not an officer of the party's company, has appended to it a resolution from the party's Board of Directors that specifically authorizes the identified individual to represent the party in this matter.

16. Sightseer, ilimo, and Explorer are advised, and are on notice, that if it fails either to show cause or to have legal counsel file an entry of appearance on or before close of business on January 24, 2020 then the ALJ may dismiss the Intervention.

17. If the ALJ permits a party to proceed *pro se* (that is, without an attorney) in this matter, that party is advised, and is on notice, that its representative will be bound by the same procedural and evidentiary rules as an attorney.

III. PREHEARING CONFERENCE

18. Given the procedural posture of the case, it is appropriate to hold a prehearing conference to address several issues. The parties to this proceeding should be prepared to discuss all procedural and substantive issues, including, but not limited to, deadlines for witness lists, exhibits, and a date(s) for a hearing on the Application.

19. All parties are expected to appear at the prehearing conference.

20. Failure to appear for the prehearing conference may result in dismissal of the respective application or intervention.

21. A prehearing conference in this matter will be scheduled as ordered.

IV. ORDER

A. It Is Ordered That:

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

DATE: February 4, 2020

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1560 Broadway, 2nd Floor
Denver, Colorado

2. The Intervention of Aspire Tours is granted.

3. Ullr Tours LLC, doing business as The Colorado Sightseer (Sightseer), Ckimy LLC, doing business as ilimo, and Mountain Star Transportation LLC, doing business as Explorer Tours (Explorer) shall make the filing concerning legal representation described in ¶ 16 above on or before close of business on January 24, 2020.

4. Alternatively, in the event that Sightseer, ilimo, and Explorer elect to retain an attorney, such attorney shall enter an appearance in this proceeding on or before close of business on January 24, 2020.

5. All parties are required to appear for the prehearing conference.

6. The Parties shall be held to the advisements in this Decision.

7. This Decision is effective immediately/

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director