

Decision No. R23-0227-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0559CP

IN THE MATTER OF THE APPLICATION OF 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
ESTABLISHING DEADLINES,
SCHEDULING EVIDENTIARY HEARING,
AND DISMISSING INTERVENTIONS**

Mailed Date: April 27, 2023

I. STATEMENT AND PROCEDURAL HISTORY

A. Summary

1. This Decision schedules a fully remote evidentiary hearing, establishes deadlines related to that hearing, and dismisses an intervention.

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, amendments 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, 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. By Decision No. R23-0192-I, issued March 23, 2023, the Application was amended to incorporate the December 28th Amendment.

6. On January 23, 2023, Ullr Tours, LLC, doing business as The Colorado Sightseer (The Colorado Sightseer), and Aspire Tours LLC (Aspire Tours) both filed Interventions as of right.

7. On January 24, 2023, CKIMY, LLC, doing business as iLIMO (iLIMO) filed a timely “Intervention & Entry of Appearance” (iLIMO’s Intervention).

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

² *Id.*

8. Finally, on January 25, 2023, Mountain Star Transportation LLC, doing business as Explorer Tours (Mountain Star) filed a timely “Petition for Intervention and Entry of Appearance” (Mountain Star’s Intervention).

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.

10. Decision No. R23-0192-I ordered some of the Intervenors to take certain actions required by the applicable Rules to avoid dismissal of their respective Interventions:

- a) Aspire Tours was ordered to provide additional information supporting its request to appear without counsel and be represented by its non-attorney owners/operators. It provided the requested additional information on April 7, 2023.
- b) iLIMO was ordered to provide additional information in support of its request for permissive intervention. It did so on April 14, 2023.
- c) Finally, The Colorado Sightseer was ordered to provide a copy of its Letters of Authority as required by Rule 1401(f)(I) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, no later than April 14, 2023. However, it did not do so.

11. Because Mountain Star, The Colorado Sightseer, and iLIMO had provided information supporting their representation by their respective, non-attorney owners in their Interventions, Decision No. R23-1092-I permitted Roman Lysenko to appear on behalf of Mountain Star; Richard Grover and/or Christin Grover to appear on behalf of The Colorado Sightseer; and Yasmine Chanane to appear on behalf of iLIMO.

12. In addition, Decision No. R23-0192-I set a remote prehearing conference at which procedural issues concerning the Application and evidentiary hearing would be discussed. The ALJ warned that any party’s failure to appear at the prehearing conference may result in decisions adverse to that party’s interest, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application; and that 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.

13. On April 21, 2023, at 10:30 a.m. the undersigned ALJ held the remote prehearing conference as noticed. Jeremy Jenkin appeared on behalf of Applicant. The following individuals appeared on behalf of Intervenors:

- Roman Lysenko appeared on behalf of Mountain Star;
- Yasmine Chanane appeared on behalf of iLIMO; and
- Kathrin Troxler appeared on behalf of Aspire Tours.

The Colorado Sightseer did not appear.

14. Below, the ALJ outlines the matters addressed during the prehearing conference.

C. Aspire Tours' Representation

15. Because Aspire Tours supplemented and amended its Intervention with additional information supporting its representation by its non-attorney owners, Kathrin Troxler and/or Brian Erdner, the ALJ permitted Ms. Troxler to appear at the prehearing conference on Aspire Tours' behalf. Further, the undersigned ALJ finds that the amendment to Aspire Tours' Intervention adequately supports its representation in this Proceeding by Ms. Troxler and/or Mr. Erdner and they will be permitted to appear on Aspire Tours' behalf in this Proceeding.

D. iLIMO's Intervention

16. The undersigned ALJ also noted that on April 14, 2023, iLIMO complied with the order in Decision No. R23-0192-I to file an additional statement supporting its Intervention in this Proceeding. The undersigned ALJ advised the parties that the additional statement will be treated as a Motion for Permissive Intervention, and that, pursuant to Rule 1400(b),

4 CCR 723-1, Applicant may file a written response to the motion within fourteen days of service of the motion, or on or before April 28, 2023.

E. The Colorado Sightseer's Intervention

17. As noted above, The Colorado Sightseer did not comply with Decision No. R23-0192-I by filing a copy of its Letters of Authority as required by Rule 1401(f)(I), 4 CCR 723-1. Nor did The Colorado Sightseer appear at the prehearing conference. The undersigned ALJ cautioned The Colorado Sightseer that failure to take either of those actions — filing its Letters of Authority or appearing at the prehearing conference — could result in the dismissal of its Intervention. The ALJ finds that The Colorado Sightseer failed to comply with Decision No. R23-0192-I requiring it to file a copy of its Letters of Authority and to appear at the prehearing conference. Its failure to take these actions warrants the dismissal of its Intervention. In addition, the ALJ deems The Colorado Sightseer's Intervention abandoned, as it has plainly failed to pursue it. Finally, the ALJ finds that The Colorado Sightseer had ample opportunity to pursue its Interventions by complying with Decision No. R23-0192-I and appearing at the prehearing conference but did not do so. For all these reasons, the ALJ dismisses The Colorado Sightseer's Intervention. It is not a party to this Proceeding.

18. As noted in Decision No. R23-0192-I, Mountain Star and Aspire Tours have properly intervened as of right and are parties to this Proceeding. iLIMO's Intervention, and any written response submitted by Amazing Adventures, will be reviewed and the merits thereof addressed after the period to file a written response to iLIMO's motion to intervene has expired.

F. Scheduling of Evidentiary Hearing

19. During the prehearing conference, the parties who appeared indicated their preference to hold the evidentiary hearing fully remotely. Accordingly, the ALJ scheduled a fully remote evidentiary hearing to be held Thursday, June 15, 2023, commencing at 9:00 A.M., via Zoom. With the parties' input, the ALJ scheduled the hearing and established procedural deadlines as detailed in the ordering paragraphs below.

20. **Instructions for Participating in, and Observing, the Remote Hearing:** Attachment A to this Decision provides the information addressing how to use the Zoom platform for participating in the remote hearing.

G. Informal Video-Conference Practice Session

21. The ALJ will hold an informal practice video-conference session if requested by any party to give the parties an additional opportunity to practice using Zoom and box.com before the hearing.

22. The parties may contact a Commission Legal Assistant by email at casey.federico@state.co.us or stephanie.kunkel@state.co.us, to schedule an informal practice video-conference session.

23. The parties will receive information and a link to participate in the informal practice session by email.

H. Advisements

24. *All parties are on notice* that failure to appear at the evidentiary hearing 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 hearing to be a waiver of that party's objection to the rulings made during the prehearing conference.

25. Amazing Adventures bears the burden of proof by a preponderance of the evidence that it should be granted the requested authority.³ The preponderance standard requires that the evidence of the existence of a contested fact outweighs the evidence to the contrary.⁴ That is, the fact finder must determine whether the existence of a contested fact is more probable than its non-existence.⁵ A party meets this burden of proof when the evidence, on the whole, slightly tips in favor of that party.

26. *The parties are on notice* that filing an exhibit with the Commission does not, by itself, admit an exhibit into the record of the proceeding. An exhibit is any document or other tangible item the party wishes the ALJ to consider in reaching a decision in this matter.

27. *The parties are also on notice* that if circumstances change before the hearing date, the ALJ may modify this hearing to be held in person or hybrid (in person with the option for witnesses, parties, and/or representatives to appear virtually), or may enter such other orders as appropriate in the circumstances.

³ §§ 24-4-105(7); 13-25-127(1), C.R.S.; Rule 1500, 4 CCR 723-1.

⁴ *Mile High Cab, Inc. v. Colo. Pub. Utils. Comm'n*, 302 P.3d 241, 246 (Colo. 2013).

⁵ *Swain v. Colo. Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

28. All parties must be familiar with and follow the Commission's Rules of Practice and Procedure, 4 CCR 723-1, and the Commission's Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. The parties may obtain a copy of these rules from the Commission in hard copy or on the Commission's website at:

<https://www.colorado.gov/pacific/dora/pucrules>

29. The parties are reminded that no witness will be permitted to testify, except in rebuttal, unless that witness has been identified on a list of witnesses filed in accordance with the procedural schedule set forth below. Likewise, no exhibit will be received in evidence, except in rebuttal, unless filed in accordance with the procedural schedule as ordered below.

30. The ALJ is entering additional orders necessary to ensure the evidentiary hearing moves forward efficiently.

II. ORDER

A. It Is Ordered That:

1. An evidentiary hearing on the merits of the Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire in this proceeding is scheduled as follows:

DATE: June 15, 2023

TIME: 9:00 a.m.

PLACE: Join by video conference using Zoom

2. **Instructions for Remote Hearings Via Zoom:** Detailed instructions governing participation in and procedures for remote hearings conducted via Zoom are set out in Attachment A to this order, which is incorporated into and made part of this order.

3. Aspire Tours LLC (Aspire Tours) may be represented in this matter by Kathrin Troxler and/or Brian Erdner, non-attorneys.

4. Consistent with the above discussion, the Intervention filed by Ullr Tours, LLC, doing business as The Colorado Sightseer on January 23, 2023, is dismissed. The Colorado Sightseer is not a party in this proceeding.

5. The Interventions of right filed by Mountain Star Transportation, LLC, doing business as Explorer Tours (Mountain Star) and Aspire Tours are acknowledged. Both Mountain Star and Aspire Tours are parties to this Proceeding.

6. **Deadlines for Witness Lists, Exhibit Lists, and Exhibits.** Applicant Amazing Adventures Tours (Amazing Adventures) must file with the Commission and serve on all parties, its pre-marked exhibits, witness lists, and exhibit lists **by the close of business on May 11, 2023**. Intervenors must file with the Commission and serve on all parties, their pre-marked exhibits, witness lists, and exhibit lists **by the close of business on May 25, 2023**. Amazing Adventures may supplement its witness and exhibit lists in response to Intervenors' witness lists and exhibits, but must do so by filing and serving amended witness and exhibit lists, and any additional exhibits not already filed **by the close of business on June 8, 2023**. Any amended witness and exhibit lists filed by Amazing Adventures on or before June 8, 2023, should list all the witnesses and exhibits that Amazing Adventures intends to present at the hearing, including those listed in its previous witness and exhibit lists, and will supersede its prior witness and exhibit lists.⁶ As

⁶ This is intended to avoid Colorado Mobile Music filing supplemental witness and exhibit lists, which would require the ALJ and the parties to review the original and the supplemented lists in order to determine the full lists.

noted, the parties must mark their exhibits for identification *before* filing and serving them; additional information on marking exhibits for identification is set forth below.

7. **Requirements for Witness Lists.** Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information.

8. **Requirements for Exhibit Lists.** Exhibit lists must include the hearing exhibit number assigned to each exhibit and a brief description of the exhibit. Any party may offer any exhibit sponsored by another party and is not required to include such an exhibit on their own exhibit list.

9. **Requirements for Exhibits.**

a. **Assigned Hearing Exhibit Numbers & Pre-Marking Exhibits.** The parties must mark hearing exhibits for identification using a number within their assigned hearing exhibit number block, as set forth below, and this proceeding number (22A-0559CP).

- Amazing Adventures is assigned hearing exhibit numbers 1 through 99;
- Aspire Tours is assigned hearing exhibit numbers 100 through 199;
- Mountain Star is assigned hearing exhibit numbers 200 through 299; and
- iLIMO, should its motion to permissively intervene be granted, will be assigned hearing exhibit numbers 300 through 399.

By way of example, Amazing Adventures should pre-mark its first exhibit as "Hearing Exhibit 1, Proceeding No. 22A-0559CP" and file and serve the pre-marked exhibit consistent with the above deadlines.

b. Detailed instructions governing the preparation and presentation of exhibits at the hearing are set out in Attachment B to this order, which is incorporated into and made part of this order.

10. **Deadline to File Statements of Position.** After the evidentiary hearing, the parties may file a statement of position, in lieu of verbal closing arguments; any party wishing to do so must file with the Commission and serve on all parties their statement of position by the close of business on **June 30, 2023**.

11. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in black ink, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge