

Decision No. R23-0392-I

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
GRANTING PERMISSIVE INTERVENTION
AND GRANTING AMENDMENT RESTRICTING
APPLICATION**

Mailed Date: June 12, 2023

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

1. This decision addresses the outstanding issues concerning the Intervention of CKIMY, LLC, doing business as iLIMO (iLIMO), and the proposed restriction to the scope of the Application filed by Amazing Adventures Tours (Amazing Adventures or Applicant). The decision grants iLIMO's permissive Intervention and grants Applicant's motion to amend its Application to restrict its proposed service area.

B. Procedural History

2. On December 16, 2022, Amazing Adventures 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, 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. *See* Notice of Applications and Petitions filed on December 27, 2022 (Notice), p. 2. As noticed, the Application seeks authority 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.

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. Ullr Tours, LLC, doing business as The Colorado Sightseer (The Colorado Sightseer), Aspire Tours LLC (Aspire Tours), and Mountain Star Transportation LLC, doing business as Explorer Tours (Mountain Star) filed timely Interventions as of right. CKIMY, LLC, doing business as iLIMO (iLIMO) also filed a timely “Intervention & Entry of Appearance”.

7. 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 Proceeding was subsequently assigned to the undersigned ALJ.

8. 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 and did provide additional information supporting its request to appear without counsel and be represented by its non-attorney owners/operators. By Decision No. R23-0277-I, issued April 27, 2023, Aspire Tours was granted permission to be represented by a non-attorney in this Proceeding.
- b) 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, because it did not do so, The Colorado Sightseer’s Intervention was dismissed, and it is not a party to this Proceeding. See Decision No. R23-0277-I.

- c) Finally, iLIMO was ordered to provide additional information in support of its request for permissive intervention. It did so on April 14, 2023.

9. Decision No. R23-0277-I memorialized issues discussed and addressed at a prehearing conference held on April 21, 2023, and scheduled this Proceeding for an evidentiary hearing, to be held on Thursday, June 15, 2023

10. Subsequently, on May 4, 2023, Applicant filed an amendment to the Application restricting the area within which Applicant proposes to operate. As detailed below, among other restrictions, the amendment specifies that all transportation will originate and terminate in the City and County of Denver.

C. iLIMO's Intervention

11. 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.

12. In its motion and statement, iLIMO asserts that its authority overlaps with that proposed by Amazing Adventures. Its Letter of Authority (Certificate No. 55931) authorizes it to provide call-and-demand shuttle and charter service “between all points in the Counties of Denver, El Paso, Jefferson, and Larimer, State of Colorado.” Amazing Adventures proposes providing sightseeing services to the same counties that iLIMO serves, as well as several other counties.

13. iLIMO notes in its motion and statement that, unlike sightseeing authority, call-and-demand shuttle and charter service need not originate and terminate at the same location. Thus, iLIMO argues, its authority is *broader* than that sought by Amazing Adventures. Accordingly, it contends, Amazing Adventures’ Application overlaps with and infringes upon its existing authority. Further, it notes, because its interests are broad enough to overlap with the authority sought by Amazing Adventures, its tangible and pecuniary interests could be directly

impacted by any decision in this proceeding. It therefore seeks permission to intervene in this Proceeding.

14. At the prehearing conference held on April 14, 2023, Applicant was advised of its opportunity to file a written response to iLIMO's Intervention. However, Applicant has not filed a responsive pleading contesting iLIMO's permissive Intervention. iLIMO's request to permissively intervene in this Proceeding is consequently unopposed.

15. Two classes of parties may intervene in proceedings such as this: parties with a statutory right or 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 and would not otherwise be adequately represented (permissive intervention). Rule 1401(b) and (c), of the Commission's Rules of Practice and Procedure, 4 CCR 723-1; *see* § 40-6-109(1), C.R.S., *RAM Broadcasting of Colo. Inc., v. Pub. Utils. Comm'n*, 702 P.2d 746, 749 (Colo. 1985) ("This provision creates two classes that may participate in [Commission] proceedings: those who may intervene as of right and those whom the Commission permits to intervene.").

16. Commission Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, requires persons seeking permissive intervention to show the following:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented. . . . The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Anyone desiring to respond to the motion for permissive intervention shall have seven days after service of the motion,

or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide motions to intervene by permission prior to expiration of the notice period.

17. The requirement in Rule 1401(c) requiring persons or entities seeking permissive intervention in a proceeding to demonstrate that their interests "would not otherwise be adequately represented" is similar to Colorado Rule of Civil Procedure 24(a), which provides that even if a party seeking intervention in a case has sufficient interest in the case, intervention is not permitted if the interest is adequately represented by the existing parties. *See Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Owners Ass'n*, 214 P.3d 451, 457 (Colo. App. 2008). This is true even if the party seeking intervention will be bound by the case's judgment. *See Denver Chapter of the Colo. Motel Ass'n v. City & Cnty. of Denver*, 374 P.2d 494, 495-96 (Colo. 1962) (affirming the denial of an intervention by certain taxpayers because their interests were already represented by the city). The test for adequate representation is whether there is an identity of interests, rather than a disagreement over the discretionary litigation strategy of the representative. The presumption of adequate representation can be overcome by evidence of bad faith, collusion, or negligence on the part of the representative. *Id.*; *Estate of Scott v. Smith*, 577 P.2d 311, 313 (Colo. App. 1978).

18. Here, iLIMO has asserted, without opposition, that its pecuniary interests may be impacted by any decision in this Proceeding. It has also demonstrated that the proposed Application overlaps with its broader authority.

19. The ALJ finds and concludes that the authority sought by Amazing Adventures' Application could substantially affect the pecuniary interests of iLIMO. Further, the ALJ finds that because no other party to this Proceeding is representing iLIMO's interests, iLIMO's interests

may not be adequately represented and protected in this Proceeding if it is not granted permissive intervention.

20. For these reasons, the ALJ will grant iLIMO's request to permissively intervene in this Proceeding.

D. Amazing Adventures' Restriction of Application

21. As noted above, Applicant Amazing Adventures filed its original Application for Authority on December 16, 2022. Before the Commission sent out Notice of the Application, Amazing Adventures amended it. As noticed, the Application seeks authority 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.

22. Applicants may amend their application by right during the notice period. *See* Rule 1309(a), 4 CCR 723-1. After the notice period closes, an Applicant must obtain permission to file an amendment to its Application altering its proposed authority. *Id.*

23. On May 4, 2023, Amazing Adventures filed another amendment to its Application, limiting the scope of its proposed service area as follows:

Transportation will originate and terminate in the county of Denver and no other counties.

Transportation of passengers in sightseeing service between all points in the counties of Denver, and all points in the counties of Jefferson County (not including Lookout Mountain), Garfield, Clear Creek (not including Mt Evans), Gilpin, Summit, Gunnison, Lake, Chaffee, Montrose, Ouray, San Juan, La Plata, Alamosa, Teller, Douglas and El Paso on the other hand.

24. Having examined the Application as noticed by the Commission, the December 28th Amendment granted by Decision No. R23-0192-I, and the further restrictive amendment Applicant submitted on May 4, 2023, the undersigned ALJ finds that the proposed restrictive amendment is narrower than the Application as noticed by the Commission. Because the scope of Applicant's proposed service area is not broadened by the restrictive amendment, no further notice is required. *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").

25. None of the Intervenors has objected to Applicant's proposed restriction to its Application.

26. Applicant's May 4, 2023 submission further amending its Application will therefore be treated as a motion to amend its Application, it will be granted, and Applicant's restrictive amendment will be accepted. Applicant's Application will be amended to incorporate the following restriction:

Transportation will originate and terminate in the county of Denver and no other counties.

Transportation of passengers in sightseeing service between all points in the counties of Denver, and all points in the counties of Jefferson County (not including Lookout Mountain), Garfield, Clear Creek (not including Mt Evans), Gilpin, Summit, Gunnison, Lake, Chaffee, Montrose, Ouray, San Juan, La Plata, Alamosa, Teller, Douglas and El Paso on the other hand.

II. ORDER

A. It Is Ordered That:

1. The Intervention of CKIMY, LLC, doing business as iLIMO (iLIMO) is granted. iLIMO is a party to this Proceeding.

2. Applicant's May 4, 2023, amended application restricting its proposed service area is construed as a motion to amend its Application and is granted. The Application is amended to restrict service as follows:

Transportation will originate and terminate in the county of Denver and no other counties.

Transportation of passengers in sightseeing service between all points in the counties of Denver, and all points in the counties of Jefferson County (not including Lookout Mountain), Garfield, Clear Creek (not including Mt Evans), Gilpin, Summit, Gunnison, Lake, Chaffee, Montrose, Ouray, San Juan, La Plata, Alamosa, Teller, Douglas and El Paso on the other hand.

3. The fully remote evidentiary hearing remains scheduled for Thursday, June 15, 2023.

4. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director