

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 22A-0326CP-EXT

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IN THE MATTER OF THE APPLICATION OF ETUK DENVER LLC DOING BUSINESS AS ETUK RIDE FOR PERMANENT AUTHORITY TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 55861.

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**INTERIM DECISION OF  
ADMINISTRATIVE LAW JUDGE  
ALENKA HAN  
ADDRESSING REPRESENTATION,  
AND PROVIDING OPPORTUNITY FOR EACH PARTY  
TO FILE A STATEMENT REGARDING HEARING**

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Mailed Date: September 29, 2022

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**I. STATEMENT**

**A. Background**

1. Applicant, eTuk Denver LLC, doing business as eTuk Ride (eTuk), holds

Certificate of Public Convenience and Necessity Number 55861.

2. On July 14, 2022, Applicant filed the application described in the caption above (Application) to extend its authority. Josh Smith, a Project Manager for Applicant, signed the Application on behalf of eTuk. In addition to Mr. Smith, the Application identified Lewis Davis as eTuk's CEO, and Jared Ozga as its Operations Manager.

3. On July 25, 2022, the Public Utilities Commission (Commission) issued notice of the Application.

4. The Notice identified Applicant's requested extension of its authority as follows:

Transportation of passengers in call-and-demand charter, shuttle, and sightseeing service:

(1) between the RTD Train Station at the intersection of 38th Street and Blake Street, Denver, Colorado, on the one hand, and all points within a 4-mile radius of the intersection of Arapahoe Avenue and Folsom Street, Boulder, Colorado, on the other hand;

(2) between the RTD Train Station at the intersection of 38th Street and Blake Street, Denver, Colorado, on the one hand, and all points within a 4-mile radius of the intersection of Highway 74 and Titans Road, Morrison, Colorado, on the other hand;

(3) between the RTD Train Station at the intersection of 38th Street and Blake Street, Denver, Colorado, on the one hand, and all points within a 4-mile radius of the intersection of 24th Street and Illinois Street, Golden, Colorado;

(4) between the RTD Train Station at the intersection of 38th Street and Blake Street, Denver, Colorado, on the one hand, and all points within a 10-mile radius of the intersection of Manitou Avenue and Oak Place, Manitou Springs, Colorado;

(5) between the RTD Train Station at the intersection of 38th Street and Blake Street, Denver, Colorado, on the one hand, and all points within a 10-mile radius of the intersection of Tunnel Road (aka Colorado Highway 66) and Nimbus Drive, Estes Park, Colorado.

5. Three entities timely filed entries of appearance and intervention each claiming that the authority sought by Applicant will overlap with their own authorities as described in their respective Certificates of Public Convenience and Necessity. The identities of the

Intervenors, their respective Certificate Numbers, and the dates on which they filed their Interventions are as follows:

<b>Intervenor</b>	<b>CPCN No.</b>	<b>Intervention Filing Date</b>
Mountain Star Transportation LLC dba Explorer Tours (Explorer Tours)	55952	August 11, 2022
Ckimy LLC dba ilimo (ilimo)	55931	August 12, 2022
Ullr Tours, llc dba The Colorado Sightseer (Colorado Sightseer)	54166	August 24, 2022

6. On August 14, 2022, an Intervention was purportedly filed on behalf of Aspire Tours LLC (Aspire Tours).

7. On August 31, 2022, the Commission deemed the Application complete and referred the proceeding to an Administrative Law Judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

**B. Representation**

8. Roman Lysenko filed the Intervention on behalf of Explorer Tours. Mr. Lysenko states he is the owner of Explorer Tours and will represent Explorer Tours in this proceeding. Similarly, non-attorney Yassine Chanane signed ilimo’s Intervention and stated therein that she is the owner of ilimo and will represent the company in this proceeding. And Colorado Sightseer’s Intervention was signed and filed by Richard Grover, who indicated his intention to represent Colorado Sightseer in this proceeding. The Intervention purportedly filed by Aspire Tours was signed by Kathrin Troxler and stated that Ms. Troxler would be representing Aspire Tours.

9. In the Application and the Interventions, Applicant, Explorer Tours, ilimo, and Colorado Sightseer each state that: (a) they do not believe the amount in controversy in this proceeding exceeds \$15,000; (b) none has more than three owners; and (c) Mr. Smith is

Applicant's Project Manager; Mr. Lysenko is the owner of Explorer Tours; Ms. Chanane is owner of ilimo; and Mr. Grover, along with Christin Grover, is co-owner of Colorado Sightseer.

10. Based on the foregoing, the undersigned ALJ finds and concludes that, under Rule 1201(a) of the Commission's Rules of Practice and Procedure<sup>1</sup> and § 13-1-127, C.R.S, Applicant, Explorer Tours, ilimo, and Colorado Sightseer have established that Mr. Smith, Mr. Lysenko, Ms. Chanane, and Mr. Grover are permitted to represent Applicant, Explorer Tours, ilimo, and Colorado Sightseer, respectively. Applicant, Explorer Tours, ilimo, and Colorado Sightseer are on notice that they will be bound by, and held to, the same procedural and evidentiary rules that attorneys must follow. None of the parties will be held to a lesser standard because it has chosen not to have an attorney represent it in this proceeding.

11. It is unclear whether Aspire Tours is represented by counsel in this matter. Although Aspire Tours' purported Intervention states that it will be represented by Ms. Troxler, it does not indicate whether Ms. Troxler is an attorney licensed to practice law in the State of Colorado.

12. Rule 1201(a), 4 *Code of Colorado Regulations* (CCR) 723-1 of the Rules of Practice and Procedure requires a party in a proceeding before the Commission to be represented by an attorney authorized to practice law in the State of Colorado, except that, pursuant to Rule 1201(b), 4 CCR 723-1, an individual may appear without an attorney: (a) to represent her/his own interests; or (b) to represent the interests of a closely-held entity, as provided in § 13-1-127, C.R.S. The Commission has emphasized that this requirement is mandatory and has

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<sup>1</sup> 4 *Code of Colorado Regulations* (CCR) 723-1.

found, if a party does not meet the criteria of this Rule, that a filing made by non-attorneys on behalf of that party is void and of no legal effect and that a non-attorney may not represent a party in Commission adjudicative proceedings. *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.

13. Aspire Tours has the burden to prove that it is entitled to proceed in this case without an attorney or that this is not an adjudicative proceeding. To meet that burden of proof under Rule 1201(b)(II), 4 CCR 723-1, a party **must** do the following: **First**, a party must establish that it is a closely-held entity. This means that a party must establish that it has “no more than three owners.” Section 13-1-127(1)(a), C.R.S. **Second**, a party must demonstrate that it meets the requirements of § 13-1-127(2), C.R.S. That statute provides that an officer<sup>2</sup> 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.<sup>3</sup>

14. Aspire Tours will be ordered **either** to obtain counsel **or** to show cause why Rule 4 CCR 723-1-1201 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.

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<sup>2</sup> 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.

<sup>3</sup> As pertinent here, § 13-1-127(2.3), C.R.S., states that an officer of a corporation “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[.]”

15. If Aspire Tours elects to obtain counsel, then its counsel must enter an appearance in this matter on or before **close of business on October 10, 2022**.

16. If Aspire Tours elects to show cause, it **must make, on or before October 10, 2022, a verified (*i.e.*, sworn) filing** establishing either that representation is not required or that: (a) establishes that a party is a closely-held entity (that is, has no more than three owners); (b) states that the amount in controversy in this matter does not exceed \$15,000 and explains the basis for that statement; (c) identifies the individual who will represent a party in this matter; (d) establishes that the identified individual is an officer of a party; and (e) if the identified individual is not an officer of a party, has appended to it a resolution from a party's Board of Directors that specifically authorizes the identified individual to represent a party in this matter.

17. To proceed without an attorney in this matter, Aspire Tours must make the filing described in ¶ 16.

18. **Aspire Tours is advised that failure to make the filing described in ¶ 16 above or file Counsel's entry of appearance, by October 10, 2022, will result in dismissal of its Intervention without prejudice.**

### C. Hearing

19. Aspire Tours has requested a hearing in this matter but did not specify a preferred location or manner for the hearing. In their Interventions, Explorer Tours, ilimo, and Colorado Sightseer did not specifically request a hearing or address the location or the method of conducting the hearing. The Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which all of the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission's hearing rooms in

Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location.

20. Each party will be given the opportunity to file a Statement Regarding Hearing identifying the party's preference for an in-person, remote, or hybrid hearing. If a party prefers an in-person hearing, the party must identify its preferred location and provide an explanation of why the hearing should be conducted at the party's preferred location. Any additional information supporting a request for a particular method of conducting the hearing (*e.g.*, remote, hybrid, or in-person) can be included in a Statement Regarding Hearing.

21. The deadline for the filing of the Statements Regarding Hearing will be **October 14, 2022**. The parties are on notice that the ALJ will retain discretion to decide the method by which the hearing will be conducted (*e.g.*, remote, hybrid, or in-person) and/or the location of the hearing.

22. The parties are advised that in order to give the Commission sufficient time to consider this Application and issue its decision before the expiration of the 250-day statutory period, the undersigned ALJ anticipates holding a hearing on this Application before the middle of January 2023.

**D. Additional Advisements**

23. The Parties are further advised and are on notice that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1. The ALJ expects the Parties to be familiar with and to comply with these rules. The rules are available on the Commission's website (<http://www.dora.colorado.gov/puc>) and in hard copy from the Commission.

**II. ORDER**

**A. It Is Ordered That:**

1. eTuk Denver LLC, doing business as eTuk Ride; Mountain Star Transportation LLC dba Explorer Tours; Ckimy LLC dba ilimo; and, Ullr Tours, llc dba The Colorado Sightseer are currently the parties in this proceeding.

2. The deadline to file any Statement Regarding Hearing containing the information described above is **October 14, 2022**.

3. Aspire Tours LLC (Aspire Tours) must choose either to obtain legal counsel or to make a show cause filing that comports with Paragraph No. 16 above, or both.

4. If Aspire Tours elects to obtain legal counsel, then legal counsel shall enter an appearance in this proceeding on or before **October 10, 2022**.

5. If Aspire Tours elects to show cause, then on or before **October 10, 2022**, it shall show cause why it is not required to be represented by legal counsel. The show cause filing shall meet the requirements set out in Paragraph Nos. 13 and 16, above.

6. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ALENKA HAN

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director