

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0072CP

IN THE MATTER OF THE APPLICATION OF ADVENTURE COLORADO 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
CONOR F. FARLEY
ADDRESSING REPRESENTATION, SCHEDULING
HEARING, AND SETTING PROCEDURAL SCHEDULE**

Mailed Date: April 24, 2020

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I. STATEMENT**A. Background**

1. On February 27, 2020, Adventure Colorado Tours (ACT) filed the application described in the caption above (Application).

2. On March 2, 2020, the Commission issued a notice of the Application.

3. On March 30, 2020, Aspire Tours LLC (Aspire Tours) and The Colorado Sightseer (Colorado Sightseer) filed separate interventions in this proceeding.

4. On April 1, 2020, Mountain Star Transportation LLC, doing business as Explorer Tours (Explorer Tours), and CKIMY, LLC, doing business as iLIMO (iLIMO), filed separate interventions in this proceeding. Aspire Tours, Colorado Sightseer, Explorer Tours, and iLIMO shall be referred to collectively as Intervenors.

5. On April 8, 2020, the Commission deemed the Application complete and referred it to an Administrative Law Judge (ALJ) for disposition. The proceeding was subsequently assigned to the undersigned ALJ.

B. Representation**1. ACT and Explorer Tours**

6. Tyler DeVries signed the Application on behalf of ACT and states in the Application that Noah Liszewski, who is not identified as an attorney, will represent ACT in this proceeding. Similarly, Roman Lysenko signed the intervention of Explorer Tours and states in the Intervention that he will represent Explorer Tours in this proceeding, but does not identify himself as an attorney. In the Application and Explorer Tours' Intervention, ACT and Explorer Tours state that: (a) they do not believe the amount in controversy in this proceeding exceeds \$15,000; (b) ACT and Explorer Tours do not have more than three owners; and

(c) Messrs. DeVries and Liszewski are managers of ACT, and Mr. Lysenko is the President and owner of Explorer Tours.

7. Based on the foregoing, the undersigned ALJ finds and concludes that, under Rule 1201(a) of the Commission's Rules of Practice and Procedure¹ and § 13-1-127, C.R.S., ACT has established Mr. Liszewski is permitted to represent ACT, and that Explorer Tours has established that Mr. Lysenko is permitted to represent Explorer Tours. ACT, Explorer Tours, Mr. Liszewski, and Mr. Lysenko are on notice that they will be bound by, and held to, the same procedural and evidentiary rules that attorneys must follow. ACT and Explorer Tours will not be held to a lesser standard because they have chosen not to have an attorney represent them in this proceeding.

2. Colorado Sightseer and iLIMO

8. Colorado Sightseer and iLIMO are parties to this adjudicatory proceeding. Rich Grover and Yassine Chanane signed Colorado Sightseer's and iLIMO's Interventions, respectively. Colorado Sightseer's and iLIMO's interventions do not state, however, that the signatory is an attorney currently in good standing before the Supreme Court of the State of Colorado.

9. Commission Rule 1201(a) requires a party in a proceeding before the Commission to be represented by an attorney authorized to practice law in the State of Colorado.² An exception to this rule allows a non-attorney "officer" to represent the interests of a closely-held entity in a proceeding in which no more than \$15,000 is in controversy.³ A

¹ 4 *Code of Colorado Regulations* (CCR) 723-1.

² 4 CCR 723-1.

³ § 13-1-127, C.R.S.

closely-held entity has no more than three owners.⁴ Evidence must be provided that the officer has the authority to represent the interests of the closely-held entity.⁵

10. Colorado Sightseer and iLIMO must each either obtain counsel or show cause why Rule 1201, 4 CCR 723-1 does not require them to be represented in this proceeding by an attorney currently in good standing before the Supreme Court of the State of Colorado. The deadline for counsel for Colorado Sightseer and iLIMO to enter appearances in this matter or to show cause why Rule 1201, 4 CCR 723-1, does not require them to be represented by legal counsel in this matter is **May 15, 2020**. Colorado Sightseer and iLIMO are advised that failure either to show cause or to have legal counsel file an entry of appearance on its behalf on or before **May 15, 2020** may result in dismissal of their interventions.

C. Hearing

11. The hearing in this matter shall be scheduled for **July 13, 2020**. If any party cannot attend the hearing on this date, the party with the scheduling conflict must file a motion to reschedule the hearing by **May 15, 2020**. Before filing the motion to reschedule, the filing party must confer with the other parties about whether any other party opposes the motion and the dates that all of the parties are available between July 6, 2020 and July 17, 2020. The motion to reschedule must then: (a) state whether it is opposed or unopposed; (b) identify the dates that all of the parties are available for a hearing between July 6, 2020 and July 17, 2020; and (c) identify the number of days that the parties anticipate the hearing will take.

⁴ See Rule 1201(b)(II), 4 CCR 723-1. See also § 13-1-127(2.3(c)), C.R.S. (stating 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[.]”).

⁵ 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.

D. Procedural Schedule

12. To facilitate the orderly and efficient litigation of this proceeding, the ALJ finds and concludes that a procedural schedule should be adopted, so that each party will have an opportunity prior to the hearing to review a summary of the anticipated testimony of each witness the other party intends to call at the hearing, and to review copies of the exhibits the other party will present at the hearing. Therefore, this Decision will order the parties to file, and to serve on each other, a list of witnesses, a summary of the testimony of each witness, and copies of the exhibits the filing party intends to present at the hearing.

13. On or before **May 22, 2020**, ACT will be ordered to file and serve on the Intervenor: (a) a list that identifies the witnesses ACT intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits ACT will present at the hearing.

14. On or before **June 19, 2020**, each of the Intervenor will be ordered to file and serve on ACT: (a) a list that identifies the witnesses each Intervenor intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits each Intervenor will present at the hearing.

15. As referenced in this Decision, serving a party with any document (*e.g.*, witness and exhibit lists and exhibits) means that the party is required to give the document to the other party or parties to the proceeding. Service must be accomplished pursuant to Rule 1205 of the Commission's Rules of Practice and Procedure.⁶ The Commission's Rules (including Rule 1205) are available on the Commission's website and in hard copy from the Commission.

⁶ 4 CCR 723-1.

16. All parties must establish through a certificate of service that they have served a filed document on all other parties in the proceeding. A certificate of service is a statement indicating how and when a document was served on the other party (*e.g.*, the filing was served by placing the document in the United States mail, first class postage-prepaid to an identified address on an identified date).⁷

17. All exhibits shall be identified by sequential numbers (*e.g.*, Exhibit 1, Exhibit 2, and Exhibit 3). Each exhibit shall include the following information: exhibit number, proceeding number, name of the witness who will testify to the exhibit's foundation, and the date of the hearing. The parties shall work together to ensure that there are no overlaps in the numbering of the exhibits.

18. Each party shall bring to the hearing an original and three copies of each exhibit it intends to introduce at the hearing. The filing of an exhibit with the Commission does not, by itself, admit an exhibit into the evidentiary record of the hearing.

19. If any exhibit is longer than two pages, the party offering the exhibit shall sequentially number each page of the exhibit.

20. The parties are on notice that: (a) any witness may be prohibited from testifying, except in rebuttal, unless that witness is identified on the list of witnesses filed and served as required herein; (b) failure to provide an accurate description of the anticipated testimony of a witness may also result in an order prohibiting such witness from testifying; and (c) any exhibit may not be received in evidence, except in rebuttal, unless filed and served as required herein.

⁷ See Rule 1205(e), 4 CCR 723-1.

E. Additional Advisements

21. The Parties are 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. Adventure Colorado Tours (ACT), Aspire Tours LLC (Aspire Tours), The Colorado Sightseer (Colorado Sightseer), Mountain Star Transportation LLC, doing business as Explorer Tours (Explorer Tours), and CKIMY, LLC, doing business as iLIMO (iLIMO), are parties to this proceeding (Aspire Tours, Colorado Sightseer, Explorer Tours, and iLIMO are collectively referred to as Intervenors).

2. On or before **May 15, 2020**, Colorado Sightseer and iLIMO must each either obtain counsel or show cause why Rule 1201 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, does not require them to be represented in this proceeding by an attorney currently in good standing before the Supreme Court of the State of Colorado.

3. An evidentiary hearing in this proceeding is scheduled as follows:

DATE: July 13, 2020

TIME: 9:00 a.m.

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

4. On or before **May 15, 2020**, any party that cannot attend the hearing on July 13, 2020 must file a motion to reschedule the hearing, as described above.

5. On or before **May 22, 2020**, ACT shall file and serve on the Intervenor: (a) a list that identifies the witnesses ACT intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits ACT will present at the hearing.

6. On or before **June 19, 2020**, each of the Intervenor shall file and serve on ACT: (a) a list that identifies the witnesses each Intervenor intends to call at the hearing, the last known address and telephone number of each witness, and a summary of the anticipated testimony of each witness; and (b) copies of the exhibits each Intervenor will present at the hearing.

7. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director