

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0163CP

IN THE MATTER OF THE APPLICATION OF ADVENTURE MARA INK LLC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
ACCEPTING AMENDMENT OF
APPLICATION, ACCEPTING WITHDRAWAL OF
INTERVENTION, GRANTING APPLICATION WITH
AMENDMENTS, AND CLOSING PROCEEDING**

Mailed Date: August 25, 2020

I. STATEMENT

A. Background

1. On April 13, 2020, Mara Ink LLC (Mara Ink) filed the application described in the caption above (Application).
2. On April 20, 2020, the Commission issued a notice of the Application.
3. On April 27, 2020, Ramblin' Express, Inc. (Ramblin') filed an Entry of Appearance and Intervention in this proceeding.
4. On May 20, 2020, the following entities filed interventions in this proceeding:
(a) CKIMY, LLC, doing business as iLIMO (iLIMO); (b) Aspire Tours LLC (Aspire); and

(c) Ullr Tours, LLC, doing business as The Colorado Sightseer (Colorado Sightseer). Ramblin', iLIMO, Aspire, and Colorado Sightseer shall be collectively referred to as Intervenors.

5. On May 27, 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.

6. On June 16, 2020, the ALJ issued Decision No. R20-0444-I that, among other things: (a) established a deadline of July 10, 2020 for Colorado Sightseer to either have legal counsel enter an appearance in this proceeding or show cause why Rule 1201 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, does not require it to be represented in this proceeding by an attorney currently in good standing before the Supreme Court of the State of Colorado; (b) established a schedule for prehearing disclosures by the parties; and (c) scheduled the remote hearing in this proceeding for August 21, 2020.

7. No attorney entered an appearance on behalf of Colorado Sightseer and Colorado Sightseer did not file a document showing cause why Commission Rule 1201¹ did not require it to be represented in this proceeding by an attorney.

8. On July 31, 2020, the ALJ issued Decision No. R20-0561-I that dismissed the intervention of Colorado Sightseer for failure to comply with the directive in Decision No. R20-0444-I to either have legal counsel enter an appearance on Colorado Sightseer's behalf

¹ 4 *Code of Colorado Regulations* (CCR) 723-1 of the Rules of Practice and Procedure.

or show cause why Commission Rule 1201² did not require it to be represented by an attorney. Decision No. R20-0561-I also scheduled a prehearing conference for August 10, 2020. Finally, Decision No. R20-0561-I noted that, while there had been filings by Mara Ink and Ramblin’ addressing restrictive amendments and putative agreements by Aspire Tours and Ramblin’, the record at the time did not clearly reflect the restrictive amendments proposed by Mara Ink and whether Aspire Tours and/or Ramblin’ agreed to withdraw their interventions if the restrictive amendments were accepted by the ALJ. Decision No. R20-0561 concluded that if Mara Ink, Ramblin’, and/or Aspire Tours filed documents before the prehearing conference clearly identifying any agreement as to restrictive amendments in return for the conditional withdrawal of interventions, there was a possibility that Ramblin’ and/or Aspire Tours would be dismissed from the proceeding in advance of the prehearing conference.

9. On August 3, 2020, Aspire Tours filed a Conditional Request for Dismissal of Intervention in which Aspire stated that it would withdraw its intervention if the Commission accepted the modifications to Mara Ink’s proposed authority stated in the Motion to Amend filed by Mara Ink on July 28, 2020. The amendment requested by Mara Ink was to remove call-and-demand sightseeing service from the authority and to add that: (a) “[t]he authority is restricted to the use of a maximum of three vehicles;” and (b) “[t]he authority is further restricted to service provided by sport-utility vehicles (SUVs) with a maximum seating capacity of eight passengers.”³

² *Id.*

³ Conditional Request at 1; *see also* Stipulation to Amend Application filed by Mara Ink on July 28 at 1.

10. On August 7, 2020, the ALJ issued Decision No. R20-0583-I that granted the restrictive amendment requested by Mara Ink and Aspire Tours, amended the authority sought by Mara Ink consistent with the agreement of Mara Ink and Aspire Tours, and dismissed Aspire Tours as an intervenor in this proceeding.

11. On August 10, 2020, the ALJ held the prehearing conference starting at 1:00 p.m. At the prehearing conference, the ALJ noted that, while the record contained several documents addressing an alleged agreement between Mara Ink and Ramblin' concerning a restrictive amendment of the authority sought by Mara Ink and the conditional withdrawal of Ramblin's intervention, there was a lack of clarity concerning that agreement. Specifically, Mara Ink appeared to believe that the agreement was to delete Gilpin County and restrict its proposed authority to service provided by sport utility vehicles (SUVs) with a maximum seating capacity of **eight** passengers.⁴ However, Ramblin' appeared to believe that the agreement was to delete Gilpin County and restrict the proposed authority to service provided by SUVs with a maximum seating capacity of **seven** passengers.⁵ At the prehearing conference, the parties agreed that in return for Mara Ink deleting Gilpin County and restricting its proposed authority to service provided by SUVs with a maximum seating capacity of **eight** passengers, Ramblin' would dismiss its intervention. The ALJ instructed the parties that the restrictive amendment would be accepted and Ramblin's intervention dismissed in a written interim decision that would issue soon after the prehearing conference. The ALJ went on to discuss various prehearing issues with the remaining parties.

⁴ Stipulation to Amend Application #3 filed by Mara Ink on July 28, 2020 at 2.

⁵ Conditional Withdrawal filed by Ramblin' on July 8, 2020.

12. On August 12, 2020, the ALJ issued Decision No. R20-0590-I accepting the amendments proposed by Mara Ink and Ramblin', granting Ramblin's Conditional Withdrawal, and dismissing Ramblin' from the proceeding. Finally, Decision No. R20-0590-I stated that the amended authority sought by Mara Ink was as follows:

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

passengers in call-and-demand charter service and call-and-demand shuttle service

between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Clear Creek, Denver, Douglas, Jefferson, and all points in Weld County that are located south of Colorado Highway No. 14 and west of U.S. Highway No. 85.

RESTRICTIONS:

Restricted to the use of a maximum of three vehicles; and

Restricted to service provided by sport-utility vehicles (SUVs) with a maximum seating capacity of eight passengers.

13. On August 21, 2020, the ALJ convened the remote hearing at approximately 9:00 a.m. During the opening statements, both parties indicated a willingness to engage in settlement discussions. The ALJ instructed the parties to converse via telephone and recessed the hearing. The parties discussed a potential settlement during the recess and returned to inform the ALJ that they had reached a settlement in which Mara Ink agreed to further amend the authority it sought by deleting Clear Creek County and including a restriction against the provision of sightseeing service in return for iLIMO withdrawing its intervention. The ALJ granted the oral Motion to Amend the authority sought by Mara Ink and iLIMO's Conditional Motion to Withdraw its Intervention, instructed the parties that a Recommended Decision would issue reflecting the ALJ's rulings, and adjourned the hearing.

B. Analysis

14. As stated at the hearing, because the amendments proposed by Mara Ink and iLIMO are restrictive in nature, clear and understandable, administratively enforceable, and contained wholly within the scope of the authority sought in the Application, Mara Ink's Oral Motion to Amend Application stated at the hearing shall be granted. The further amended authority sought by Mara Ink is as follows:

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

passengers in call-and-demand charter service and call-and-demand shuttle service

between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, and all points in Weld County that are located south of Colorado Highway No. 14 and west of U.S. Highway No. 85.

RESTRICTIONS:

Restricted to the use of a maximum of three vehicles

Restricted to service provided by sport-utility vehicles (SUVs) with a maximum seating capacity of eight passengers.

Restricted against the provision of sightseeing service.

15. In addition, because the amendments have been accepted, iLIMO's Oral Conditional Motion to Withdraw Intervention stated at the hearing shall be granted.

16. Accepting the amendments and granting iLIMO's conditional withdrawal of its intervention has two relevant results. First, the authority sought in the Application will be amended to conform to the restrictive amendments set forth in paragraph 14 above. Second, because all interventions have been withdrawn, the Application, as revised by the amendments, is

unopposed and, pursuant to § 40-6-109(5), C.R.S., and Commission Rule 1403⁶, will be considered under the modified procedure, without a formal hearing.

17. The Application establishes that Mara Ink is familiar with the Rules Regulating Transportation by Motor Vehicle and agrees to be bound by, and to comply with, those Rules.⁷ The Application and its supporting documentation establish that Mara Ink has or will have sufficient equipment with which to render the proposed service, and is financially, operationally, and managerially fit to conduct operations under the authority requested. Finally, the Application and the lack of opposition thereto indicate a need for the proposed service as amended. The ALJ finds that the Application, as amended, is reasonable and in the public interest. For the foregoing reasons, the requested amended authority will be granted.

18. Therefore, in accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The restrictive amendment requested by Mara Ink LLC (Mara Ink) and CKIMY, LLC, doing business as iLIMO (iLIMO) at the hearing on August 21, 2020 is granted.

2. The Conditional Request for Dismissal of Intervention stated by iLIMO at the hearing held on August 21, 2020 is granted.

3. Intervenor iLIMO's intervention in this proceeding is dismissed. Intervenor iLIMO is dismissed from this proceeding.

4. The Application is amended as set forth in paragraph 14 above.

⁶ 4 CCR 723-1 of the Rules of Practice and Procedure.

⁷ 4 CCR 723-6.

5. The Application, as amended as set forth in paragraph 14 above, is granted.

6. Mara Ink is granted authority to operate as a common carrier by motor vehicle for hire as follows:

Transportation of

passengers in call-and-demand charter service and call-and-demand shuttle service

between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, and all points in Weld County that are located south of Colorado Highway No. 14 and west of U.S. Highway No. 85.

RESTRICTIONS:

Restricted to the use of a maximum of three vehicles.

Restricted to service provided by sport-utility vehicles (SUVs) with a maximum seating capacity of eight passengers.

Restricted against the provision of sightseeing service.

7. Mara Ink shall operate in accordance with all applicable Colorado law and Commission rules.

8. Mara Ink shall not commence operation under the extended authority until it has complied with the requirements of Colorado law and Commission rules, including without limitation:

- a. causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
- b. paying to the Commission, the motor vehicle fee for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paying the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
- c. having an effective tariff on file with the Commission. Mara Ink shall file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff shall be filed as a new Advice Letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. (Additional tariff

information can be found on the Commission's website at Colorado.gov/dora/puc and by following the transportation common and contract carrier links to tariffs); and

d. paying the applicable issuance fee.

9. If Mara Ink does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee within 60 days of the effective date of this Decision, then the grant of the extended authority shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

10. The Commission will notify Mara Ink in writing when the Commission's records demonstrate compliance with paragraph 8.

11. Proceeding No. 20A-0163CP is closed.

12. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

13. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the

Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

14. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge