

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0929BP-EXTENSION

IN THE MATTER OF THE APPLICATION OF RLJ III MH DENVER AIRPORT LESSEE
DOING BUSINESS AS DENVER AIRPORT MARRIOT AT GATEWAY PARK FOR
AUTHORITY TO EXTEND OPERATIONS UNDER CONTRACT CARRIER PERMIT
NO. B-9894.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
SETTING PREHEARING CONFERENCE**

Mailed Date: November 12, 2014

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I. STATEMENT

1. RLJ III Denver Airport Lessee, doing business as Denver Airport Marriot at Gateway Park (Denver Airport or Applicant), initiated the captioned proceeding on September 10, 2014, by filing an application seeking authority to extend contract carrier Permit No. B-9894 with the Colorado Public Utilities Commission (Commission).

2. On September 22, 2014, the Commission provided public notice of the application to extend the permit by publishing a summary of the same in its Notice of Applications Filed:

Currently, Permit No. B-9894 authorizes the following:

Transportation of
passengers

between Residence Inn Marriott, 16490 East 40th Circle, Aurora, Colorado 80011, Hilton Garden Inn, 16475 East 40th Circle, Aurora, Colorado 80011, and Aloft Hotel, 16470 East 40th Circle, Aurora, Colorado 80011 and between said points, on the one hand, and Denver International Airport, Denver, Colorado, on the other hand.

RESTRICTIONS:

- (A) To providing transportation service for Residence Inn Marriott, 16490 East 40th Circle, Aurora, Colorado 80011;
- (B) To providing transportation service for Hilton Garden Inn, 16475 East 40th Circle, Aurora, Colorado 80011;
- (C) To providing transportation service for Aloft Hotel, 16470 East 40th Circle, Aurora, Colorado 80011; and
- (D) To the operation of five (5) vehicles with a seating capacity of not more than twenty-one (21) persons including the driver.

The proposed extension of authority seeks to eliminate restriction (D) from the Permit.

3. On October 8, 2014, MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi (Metro Taxi) filed their Entry of Appearance and Notice of Intervention of Right through counsel. This filing attached Commission Authority No. 1481 held by Metro Taxi and a preliminary list of witnesses and exhibits.

4. On November 5, 2014, the Commission deemed the application complete and it was referred to an Administrative Law Judge (ALJ).

II. APPLICATION DEEMED COMPLETE AND TIME FOR COMMISSION DECISION

5. On November 5, 2014, by Minute Order, the Commission deemed the Application complete as of that date. When it filed the Application, Denver Airport provided neither its supporting testimony and exhibits nor a detailed summary of its direct testimony and copies of its exhibits in support of the Application.

6. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission¹ or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue on or before 210 days from the date on which the Commission deemed the Application to be complete.

III. LEGAL COUNSEL/SELF REPRESENTATION

7. *Rule 1201(a) of the Rules of Practice and Procedure, 4 Code of Colorado Regulations* (CCR) 723-1, requires a party in a proceeding before the Commission to be represented by an attorney except that, pursuant to *Rule 1201(b)*, 4 CCR 723-1, and as relevant here, an individual who is not an attorney may appear to represent the interests of a closely-held entity, provided the Commission grants permission.

8. Applicant is a Colorado limited liability company, is a party in this matter, and is not represented by an attorney in this proceeding.

9. The ALJ notes that the application of Denver Airport was executed by James Peck who wishes to represent the Applicant. The application does not identify Mr. Peck as an attorney. In order to be represented in this matter by an individual who is not an attorney,

¹ Section 40-6-109.5(4), C.R.S., permits the Commission to extend the time for decision an additional 90 days upon a finding of extraordinary conditions.

Applicant must establish that: (a) it is a closely-held entity within the meaning of § 13-1-127(1)(a), C.R.S.; (b) the amount in controversy does not exceed \$ 15,000; and (c) the individual who will represent Applicant has authority to represent Applicant.

10. In the Application, Mr. Peck attests that he is an owner of Denver Airport, there are three or fewer owners of Denver Airport, and that the amount in controversy does not exceed \$15,000.

11. Review of the information provided by Mr. Peck and the information provided in the Application establishes that Denver Airport is a closely-held entity within the meaning of § 13-1-127(1)(a), C.R.S., the amount in controversy is less than \$15,000, and Mr. Peck has authority to represent the Applicant.

12. Having met the requirements of *Rule 1201(b)*, 4 CCR 723-1, Mr. Peck shall be allowed to represent Denver Airport.

13. Applicant is advised, and is on notice, that Mr. Peck is the only non-attorney who is authorized to be Denver Airport's representative in this proceeding.

14. Mr. Peck is advised, and is on notice, that he shall be bound by the same procedural and evidentiary rules as attorneys. The Colorado Supreme Court has held that,

[b]y electing to represent himself [in a criminal proceeding,] the defendant subjected himself to the same rules, procedures, and substantive law applicable to a licensed attorney. A pro se defendant cannot legitimately expect the court to deviate from its role of impartial arbiter and [to] accord preferential treatment to a litigant simply because of the exercise of the constitutional right of self-representation.

People v. Romero, 694 P.2d 1256, 1266 (Colo. 1985).

This standard applies as well to civil proceedings.

Negron v. Golder, 111 P.3d 538, 541 (Colo. App. 2004).

If a litigant, for whatever reason, presents his own case to the court, he is bound by the same rules of procedure and evidence as bind those who are admitted to practice law before the courts of this state.

Loomis v. Seely, 677 P.2d 400, 402 (Colo. App. 1983).

A judge may not become a surrogate attorney for a *pro se* litigant.

Id.

IV. PREHEARING CONFERENCE

15. Given the procedural posture of the case, it is appropriate to hold a prehearing conference to address several issues. The parties to this proceeding should be prepared to discuss all procedural and substantive issues, including, but not limited to, deadlines for witness lists, exhibits, and a date for hearing on the Application.

16. A pre-hearing conference in this matter will be scheduled as ordered.

V. ORDER

A. **It Is Ordered That:**

1. A prehearing conference is scheduled in this matter as follows:

DATE:	November 25, 2014
TIME:	10:00 a.m.
PLACE:	Hearing Room Colorado Public Utilities Commission 1560 Broadway, Suite 250 Denver, Colorado

2. RLJ III Denver Airport Lessee, doing business as Denver Airport Marriott at Gateway Park, is authorized to proceed with James Peck as its non-attorney representative in this matter. Mr. James Peck is the only non-attorney who is authorized to represent RLJ III Denver Airport Lessee, doing business as Denver Airport Marriott at Gateway Park in this Proceeding. The Parties shall be held to the advisements in this Decision.

3. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge