

Decision No. C24-0214

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24F-0470T

LARIMER EMERGENCY TELEPHONE AUTHORITY,

COMPLAINANT,

V.

QWEST CORPORATION D/B/A CENTURYLINK QC,

RESPONDENT.

**COMMISSION DECISION DENYING REQUEST TO
OVERTURN INTERIM DECISION R25-0056-I**

Issued Date: March 26, 2025

Adopted Date: February 19, 2025

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I. BY THE COMMISSION

A. Statement

1. This matter comes to the Commission for a review of Interim Decision No. R25-0056-I issued by Administrative Law Judge (“ALJ”) Robert I Garvey on January 24, 2025, denying a motion by Larimer Emergency Telephone Authority (“LETA”) requesting the ALJ disqualify himself from participating in this Complaint proceeding, a formal Complaint filed by LETA against Qwest Corporation, doing business as, CenturyLink QC (“CenturyLink”). LETA requests in its pleading filed on January 29, 2025, captioned, *LETA’s Request for Full Commission Review of the Interim Decision Denying LETA’s Motion to Disqualify Administrative Law Judge Robert I Garvey* (“Request for Review”), that the Commission review the ALJ’s decision denying its Motion and find the ALJ should have disqualified himself, and assigned a different Administrative Law Judge to this proceeding.

B. Background

2. This matter arises from a previous Application Proceeding filed by CenturyLink seeking Commission approval of its 2023 Improvement Plan as a Basic Emergency Service Provider.¹ LETA intervened in the Application Proceeding to represent its interests and those of the Colorado Council of Authorities, Inc. (“CCOA”), of which it is a member.

3. After the issuance of the final Commission Decision in the CenturyLink Application proceeding,² LETA filed its Complaint in this Proceeding on October 30, 2024. The Complaint against CenturyLink involves allegations by LETA arising from a wildfire on

¹ Proceeding No. 23A-0197T, Application of Lumen, d/b/a CenturyLink QC, for 2023 Basic Emergency Service Provider Improvement Plan, filed April 24, 2023.

² See, Commission Decision No. C24-0688, issued September 24, 2024, Commission Decision Granting Motion to Modify Recommended Decision and Granting In Part, Exceptions to Recommended Decision.

July 29, 2024, west of Loveland, Colorado in Larimer County, known as the Alexander Mountain fire, which burned for 14 days. and which was, according to the Complaint, moving in a direction that potentially threatened critical infrastructure, including one of the paths connecting CenturyLink's basic emergency service network between Estes Park, Colorado and Loveland, Colorado.

1. Motion to Disqualify

4. Subsequent to filing the Complaint in this Proceeding, LETA filed its Motion seeking to disqualify ALJ Garvey on December 11, 2024. LETA argues ALJ Garvey created the impression in the previous CenturyLink Application proceeding that he may not be impartial in this Complaint Proceeding based on his statements, interactions with witnesses and legal counsel, and his procedural determinations.

5. LETA maintains ALJ Garvey's words and conduct during the hearing indicate his lack of impartiality in the Application proceeding and questions the manner in which the ALJ conducted the proceeding as favoring CenturyLink. LETA points to several examples of what it believes is bias such as misstating the status of the Application; his failure to "discount" CenturyLink witness testimony; and instances it notes in the hearing transcript when ALJ Garvey joked with a CenturyLink witness was friendly with the witness and thanked him for testifying in the proceeding.

6. LETA also refers to various statements by ALJ Garvey for the proposition that he acted as an advocate for granting CenturyLink's application in full. Other instances that show bias towards CenturyLink, according to LETA, include a rush to complete the hearing and issue a decision; comments that appear to discourage the presentation of evidence; that the ALJ was not interested in relevancy and interrupted testimony or questions by LETA counsel

Ms. Tracy Oldemeyer to express that view; or, questions by the ALJ Ms. found objectionable during her questioning. In addition, Ms. Oldemeyer takes umbrage with the ALJ pointing out she had exceeded her previously agreed to cross-examination time. Ms. Oldemeyer maintains ALJ Garvey expressed annoyance with offers of evidence and argument about evidence that did not support CenturyLink's application in full.

7. LETA accuses ALJ Garvey of not fully and fairly considering the evidence in his Recommended Decision which granted CenturyLink's application; nor did he explain why he was discounting an exhibit LETA entered into evidence in which a number of Colorado's governing bodies requested the Commission not rush to a decision, as well as deny CenturyLink's application, and require 911 stakeholders to continue discussing other 9-1-1 projects. LETA maintains the ALJ found in favor of CenturyLink even though it did not meet its burden of proof.

8. CenturyLink filed a Response to LETA's Motion to Disqualify, arguing LETA's motion and supporting materials are based on disagreement with rulings and decisions in a prior Commission proceeding which fail under the high standards for disqualification. CenturyLink states the references LETA refers to as being indicative of bias and a bent of mind favoring CenturyLink are professionally courteous exchanges on the record. CenturyLink takes the position that there is no threshold showing by LETA that ALJ Garvey is impartial or of a bent of mind which would prevent him from dealing fairly with the parties in the Complaint proceeding.

2. ALJ Decision Denying Motion to Disqualify

9. ALJ Garvey issued his Interim Decision denying LETA's motion to disqualify on January 24, 2025. Regarding LETA's claim that holding a remote hearing benefitted CenturyLink, the ALJ noted that apart from not stating any reason that a remote hearing benefits CenturyLink,

LETA failed to explain why it did not make this claim at any time before filing the Motion to Disqualify. Further, ALJ Garvey noted that three days after Decision No. R24-0334-I was issued which stated that the hearing was to be held remotely, a motion to compel response to discovery was held. At no time during the motion hearing was a request made to convert the evidentiary hearing to an in-person or hybrid hearing. Rather, he received an email from LETA counsel inquiring whether a hybrid hearing was possible. ALJ Garvey responded that any party could file a motion to convert the hearing into a hybrid or in-person hearing. No party filed such a motion.

10. As to LETA's claim that the ALJ showed favoritism towards CenturyLink, the ALJ states LETA failed to note that at the start of the hearing a request was made by Staff to allow for additional live sur-rebuttal testimony to be presented by its witness due to supplemental direct testimony being filed by CenturyLink after answer testimony was filed. There was no objection from CenturyLink and the request was granted. LETA requested that it also be allowed to provide live sur-rebuttal testimony in response to the supplemental direct testimony filed by CenturyLink which was also granted.

11. While LETA's motion indicates concern with the last-minute substitution of CenturyLink's chief witness, the ALJ points out it was LETA that informed the ALJ of the substitution, to which LETA did not object. Without an objection, the ALJ allowed the substitution and remarked that the substitution of a witness is not an unusual situation in a Commission hearing and if the substitute witness was unable to answer questions that would reflect on the weight afforded his testimony.

12. LETA also cites examples of the ALJ joking with and thanking witnesses. ALJ Garvey replies that LETA fails to understand that the Commission cannot function without the testimony of witnesses. ALJ Garvey provides that the role of an ALJ is not an adversarial one.

The ALJ needs information to create a full record that will allow for a just and reasonable decision to be made based upon the information provided. He notes that it is his general practice during hearings to thank witnesses for their participation and keep them at ease, so they answer his cross-examination questions, which typically occur after hours of cross examination from intervenor counsel. ALJ Garvey provides transcript examples of his courtesy to and thanking other witnesses, including the LETA witness during the course of the hearing.

13. Regarding LETA's list of other actions it claims are indicative of bias or a lack of impartiality, ALJ Garvey responds that most of these incidents are evidentiary issues, unsupported statements or taking issue with the Recommended Decision issued in Proceeding No. 23A-0197T. As to LETA's specific claim that the Recommended Decision failed to "discount" CenturyLink's substitute witness testimony since he was unable to answer some questions. Although the term "discount" is not clarified by LETA, the Recommended Decision made it clear that the ALJ was not pleased with all of the answers given by CenturyLink's witness and expected better in the future.

14. ALJ Garvey explains that he was tasked with determining if the evidence was sufficient to approve certain projects and costs for the 9-1-1 system. Because he found in the favor of a party on an issue, does not show bias to that party, rather, it shows that the party met their burden of proof. ALJ Garvey noted should a party disagrees with the finding of the ALJ, the proper forum to dispute the finding is in exceptions, not determining the ALJ was biased.

15. In addition, documents entered into the record speak for themselves, according to ALJ Garvey. Therefore, his determination to not allow those already admitted documents to be read into the record likewise do not show bias. ALJ Garvey opines the ALJ has the duty to control the hearing and allow only relevant evidence into the record. Additional documents that the ALJ

deems irrelevant only create a larger record with no benefit and potential confusion for a reviewing court. Procedurally, the ALJ explains a party can object and make a record if they disagree with the finding of the ALJ. If this caused an error in the decision, filing exceptions is the appropriate place to make the argument.

16. ALJ Garvey also notes LETA was the only party to file exceptions to his Recommended Decision approving CenturyLink's application. LETA believes that bias is shown by not addressing certain arguments in the Recommended Decision. ALJ Garvey notes this is also an argument for exceptions. ALJ Garvey asserts he indicated all arguments were considered, even if not listed in the Recommended Decision.

17. ALJ Garvey concludes, in denying the motion, LETA's belief that assigning a different ALJ to this Proceeding would lead to a different result is unfounded. He avows the Motion to Disqualify in no way changes the handling of this proceeding going forward. The above-captioned case will be judged on its merits and whether a party has met its burden as it would before any Commission ALJ.³

3. LETA's Request for Review of ALJ Garvey's Decision

18. LETA filed its Request for Review on January 29, 2025. LETA argues that under the applicable legal standard, ALJ Garvey was required to disqualify himself because its Motion to Disqualify and supporting affidavits stated facts from which it may reasonably be inferred that ALJ Garvey may not be impartial. LETA argues its Motion to Disqualify and supporting affidavits were sufficient to show ALJ Garvey demonstrated a "bent of mind" requiring disqualification in order to ensure fairness and impartiality to all the litigants.

³ Decision No. R25-0056-I at ¶ 79, issued on January 24, 2025.

19. LETA relies heavily on three cases to set forth what it argues is the proper standard of review in considering a motion for disqualification. *Wilkerson v. District Court in and for El Paso County*, 925 P.2d 1373, 1375 (Colo. 1996) which holds that a judge has the duty to “eliminate every semblance of reasonable doubt or suspicion that a trial by a fair and impartial tribunal may be denied,” even if the judge is convinced of his or her own impartiality. *Pierce v. United Bank*, 780 P.2d 6 (Colo. App. 1989) for the holding that when ruling on the sufficiency of LETA’s request for disqualification, the ALJ “must accept the factual statements in the motion and affidavits as true, even if he believes them to be false or erroneous.” LETA’s Motion to Dismiss at p. 5, *citing*, *Pierce* at 7. Additionally, LETA argues “[i]t is not the prerogative of the trial judge to pass upon the truth or falsity of the sworn statements, but rather it is the judge’s duty only to pass upon the legal sufficiency of the factual averments in the affidavit.” *Id.*, *citing*, *Goebel v. Benton*, 830 P.2d 995, 999 (Colo. 1992).

20. LETA’s Request for Review refers to the supporting affidavits of Ms. Oldemeyer and Ms. Kimberly Culp submitted with its Motion to Disqualify, stating those affidavits “clearly, fully, and fairly articulated the alleged facts upon which ALJ Garvey’s impartiality may reasonably be questioned.”⁴

21. LETA Request for Review reiterates its claim in its Motion to Disqualify that ALJ Garvey set a two-day remote hearing without input from the parties. LETA claims a remote hearing benefitted the applicant, CenturyLink because of the importance of the issues and the volume of exhibits. LETA adds CenturyLink’s witness travelled to Colorado to testify from their counsel’s office which is near the Commission’s building.

⁴ LETA Request for Review at ¶ 11.

22. A statement by ALJ Garvey on a motion to compel by LETA was also cited stating he believed the case had been laying around for a long time and the parties wanted the proceeding to go forward. LETA states the application had only been pending for three months.

23. LETA refers to its affidavits and excerpts of the hearing transcript to reiterate in its Request for Review that the ALJ, through his jovial nature towards CenturyLink's witness and politeness, demonstrated camaraderie, favoritism and undue deference toward CenturyLink. LETA states this was supported by two emails it received from two other parties stating their belief ALJ Garvey was biased. LETA did not identify the parties or provide the emails in its affidavits.

24. LETA cites an example it believes shows the ALJ acted as an advocate for CenturyLink. When LETA offered an exhibit for admission. LETA claims ALJ Garvey inquired as to whether there was any objection to its admission or if CenturyLink wanted LETA counsel to lay a foundation for its admission. LETA also finds prejudice in the ALJ failing to take administrative notice of four emergency service outage reports filed in a separate Miscellaneous docket proceeding.

25. LETA provides transcript excerpts of cross-examination of CenturyLink's witness by the ALJ for the proposition that he was biased towards CenturyLink where he questioned the relevancy of questioning by LETA of its witness without an objection by opposing counsel. LETA states that the ALJ further expressed annoyance with offers of evidence and argument about evidence that did not support granting CenturyLink's application.

26. LETA asserts the ALJ's Recommended Decision did not fully and fairly consider the evidence and the argument in reaching a conclusion. LETA states the ALJ did not explain why he was "discounting" Hearing Exhibit 700 which was entitled "Voice of Colorado Council of Authorities, Inc." in which twenty of Colorado's fifty-seven 9-1-1 governing bodies requested the

ALJ not rush into a decision. LETA also expresses dismay the ALJ failed to address its carrying costs argument.

II. ANALYSIS

A. Standard of Review and Applicable Legal Principles

27. Pursuant to § 40-6-123(1), C.R.S.:

Members and staff of the commission shall conduct themselves in such a manner as to ensure fairness in the discharge of the duties of the commission, to provide equitable treatment of the public, utilities, and other parties, to maintain public confidence in the integrity of the commission's actions, and to prevent the appearance of impropriety or of conflict of interest. The standards set forth in this section apply at all times to the commissioners, to their staff, including administrative law judges, and to parties under contract with the commission for state business.

28. Disqualification of a Commissioner or presiding ALJ is set forth in § 40-6-124(1),

C.R.S., which states in relevant part:

Commissioners and presiding administrative law judges shall disqualify themselves in any proceeding in which their impartiality may reasonably be questioned, including, but not limited to, instances in which they:

- (a) Have a personal bias or prejudice concerning a party;
- (b) Have served as an attorney or other representative of any party concerning the matter at issue, or were previously associated with an attorney who served, during such association, as an attorney or other representative of any party concerning the matter at issue;
- (c) Know that they or any member of their family, individually or as a fiduciary, has a financial interest in the subject matter at issue, is a party to the proceeding, or otherwise has any interest that could be substantially affected by the outcome of the proceeding; or
- (d) Have engaged in conduct which conflicts with their duty to avoid the appearance of impropriety or of conflict of interest.

29. Commission Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1109 provides the procedure for filing a motion to disqualify:

Whenever any party has a good faith belief that a Commissioner or Administrative Law Judge has engaged in a prohibited communication or may not be impartial, the party may file a motion to disqualify the Commissioner or Administrative Law Judge. Such a motion shall be supported by an affidavit describing the nature and extent of the alleged prohibited communication or bias. Within ten days after any response has been filed, the Commissioner or Administrative Law Judge shall rule on the motion on the record. If the motion is denied, the movant may file a request within ten days, requesting the full Commission to review the denial of the motion. All Commissioners may fully participate in such review.

30. The Code of Judicial Conduct and Colorado Rules of Civil Procedure (C.R.C.P.) 97 are not controlling here since the Commission's own statutes and rules, as set forth above, directly address disqualification of an ALJ, the matter at issue here.⁵ The Code of Judicial Conduct for ALJs is inapplicable here as well, since those standards were established for the Office of Administrative Courts, a separate agency from the Commission. While the Commission is not directly subject to those standards, it nonetheless adheres to the underlying principles through its rules and statutory requirements as set forth above.

31. Case law provides there is generally a presumption of regularity and validity of administrative action and decisions. "This presumption necessarily exists to support the official actions of public officials and courts should presume that they have properly performed their official duties." *Public Utils. Comm'n v. District Court*, 431 P.2d 773, 775 (1967). "[I]n the absence of clear evidence to the contrary, courts presume that [administrative agencies] have properly discharged their official duties." *Id* at 776-77, citing *United States v. Chemical Foundation*, 272 U.S. 1, 14-15 (1926).

⁵ See, Commission Decision No. C17-0275 at ¶ 23, in *Proceeding* No. 16AL-0326E, issued on April 7, 2017; see also, Decision No. C17, 0454 at ¶26, in *Proceeding* No. 16AL-0326E, issued on June 7, 2017.

32. It is well settled law that a movant seeking to disqualify a decision-maker must overcome the rebuttable presumption that actions of administrative bodies are regular and valid absent a personal, financial or official stake in the outcome. *Mountain States Tel. & Tel. Co. v. Public Utilities Comm'n.*, 763 P.2d 1020, 1028 (Colo. 1988) (“[T]here is a presumption of integrity, honesty, and impartiality in favor of those serving in quasi-judicial capacities.”); *Venard v. Department of Corrections*, 72 P.3d 446, 449 (2003) (“Absent a personal, financial or official stake in the outcome evidencing a conflict of interest on the part of the decisionmaker, an adjudicatory hearing is presumed to be impartial.”); *Rice v. Department of Corrections*, 950 P.2d 676, 681 (Colo. App. 1997) (“The decision to disqualify, however is within the discretion of the [decision-maker], whose ruling will not be disturbed absent an abuse of that discretion.”).

33. In ruling on the sufficiency of a motion to disqualify, a judge must accept the factual statements contained in the motion and affidavits as true and determine as a matter of law whether they allege legally sufficient facts for disqualification. *S.S. v. Wakefield*, 764 P.2d 70, 73 (Colo. 1988). Where the motion and supporting affidavits merely allege opinions or conclusions, unsubstantiated by facts supporting a reasonable inference of actual or apparent bias or prejudice, they are not legally sufficient to require disqualification. *Id.*; *see also, People v. Schupper*, 2014 COA 80M, 353 P.3d 880 (the record must clearly establish bias, meaning that there must be more than mere speculation).

34. Disqualification is appropriate when the motion and supporting affidavits allege sufficient facts from which it may reasonably be inferred that the judge is prejudiced or biased, or appears to be prejudiced or biased, against a party or counsel to the litigation. *Johnson v. District Court*, 674 P.2d 952, 955-56 (Colo. 1984); *People v. Roehrs*, 2019 COA 31, 440 P.3d 1231 (“The court must examine both the actuality and the appearance of fairness in light of the facts alleged.”).

35. Actual bias exists if “a judge has a bias or prejudice that in all probability will prevent him ... from dealing fairly with a party.” *People v. Julien*, 47 P.3d 1194, 1197 (Colo. 2002). Even where there is no actual bias, a judge must disqualify himself if his “involvement with a case might create the appearance of impropriety.” *People in Interest of A.G.*, 262 P.3d 646, 650 (Colo. 2011).

36. In civil cases, a trial judge's decision whether to disqualify himself is discretionary and will not be reversed unless an abuse of discretion is shown. *Spring Creek Ranchers Association v. McNichols*, 165 P.3d 244, 245 (Colo. 2007). A judge's failure to disqualify himself in the face of a legally sufficient motion is an abuse of discretion. *Zoline v. Telluride Lodge Association*, 732 P.2d 635, 640 (Colo. 1987).

37. Given the gravity of the matter LETA requests us to review, we find it imperative to undertake this review by analyzing ALJ Garvey’s Interim Decision overlaid with LETA’s Motion to Dismiss and its request for full Commission review of the ALJ’s Interim Decision as requested, as well as a careful analysis of Recommended Decision No. C24-0688 in Proceeding No. 23A-0197T.

B. LETA’s Factual Assertions Regarding the Remote Hearing

38. The factual statements averred by LETA in its Motion to Disqualify and attendant affidavits refer to several matters it claims form the basis of its request to disqualify ALJ Garvey. LETA points to a decision by the ALJ to schedule a two-day remote evidentiary hearing on CenturyLink’s application without seeking input from the parties to that proceeding determine if that was their preference. LETA counsel, Ms. Oldemeyer, states in her affidavit it is usually the practice of a presiding ALJ to ask for and respects the parties’ requests for an in-person hearing or hybrid hearing. Ms. Oldemeyer indicates it was her preference for an in-person or hybrid hearing

for ease of cross-examining CenturyLink’s witness about voluminous exhibits, and for the benefit of the court reporter transcribing the hearing so that there was a clear and clean record.⁶

39. In response to an email ALJ Garvey received from all the parties to the Application Proceeding inquiring whether the hearing could be converted to a hybrid hearing, Ms. Oldemeyer avers the ALJ responded he would entertain a motion that establishes good cause to convert the hearing to in-person or hybrid. However, no party chose to file such a motion. In its Motion to Disqualify, LETA believes “a fully remote hearing benefitted CenturyLink.”⁷

40. ALJ Garvey, in his Interim Decision, notes he issued Decision No. R24-0334-I on May 20, 2024, setting a remote hearing for June 24 and June 25, 2024. However, LETA did not send it’s email to the ALJ until June 18, 2024, less than a week prior to the commencement of the hearing requesting “whether it is possible that the hearing be converted to a hybrid hearing.”⁸ ALJ Garvey responded to the email from Ms. Oldemeyer indicating that “... any party may file a motion to convert the hearing into a hybrid or a full in person hearing. If good cause is found, the motion may be granted.”⁹ LETA concluded the remote hearing benefitted CenturyLink since a substitute CenturyLink witness travelled to Colorado to testify on June 24 from CenturyLink’s attorney’s office which was near the Commission building.

41. ALJ Garvey explains his rationale for requesting the parties file a motion in his Interim Decision. As a general standard, the Commission applies a requirement to show good cause to sustain the grant of motions. The ALJ also points out LETA did not accept his invitation to file a motion to modify the procedural schedule and did not argue in its exceptions to his

⁶ See, Affidavit of Tracy Oldemeyer in Support of LETA’s Motion to Disqualify Administrative Law Judge Robert I. Garvey (“Oldemeyer Affidavit”) filed December 11, 2024, at p. 3.

⁷ LETA Motion to Disqualify at p. 7.

⁸ See, Decision No. R25-0056-I at ¶ 47, issued May 20, 2024.

⁹ *Id.* At ¶ 48.

Recommended Decision it was at a disadvantage due to the remote hearing.¹⁰ ALJ Garvey provided additional explanation why a remote hearing did not benefit CenturyLink.¹¹

42. We agree with ALJ Garvey's assertion regarding LETA's position that a remote hearing favored CenturyLink is not evident. We agree with the ALJ's assertion that had the hearing been held as a hybrid hearing, CenturyLink's witness would have still had the option to take part remotely. LETA makes no affirmation that if the hearing had been hybrid, it would have insisted CenturyLink's witness appear in person and LETA provides no evidence it requested an in-person hearing at any time.

43. Relating the facts stated by LETA leading to its conclusion the remote hearing favored CenturyLink, we are not persuaded these factual statements are sufficient to support the conclusory statement that disqualification is necessary. Statements of mere conclusions cannot form the basis of a legally sufficient motion to disqualify. *Johnson v. District Court*, 674 P.2d at 956 (quoting, *Carr v. Barnes*, 580 P.2d 803, 805 (1978)). LETA conclusion that ALJ Garvey's decision, coupled with his invitation to the parties to file a motion to convert the hearing to a hybrid or in-person hearing, somehow shows favoritism towards CenturyLink is speculative at best.

C. The ALJ's Demeanor During the Evidentiary Hearing and His Evidentiary Decisions.

44. In its Motion for Disqualification, LETA asserts ALJ Garvey's demeanor was such that it indicated he was not neutral and did not treat all parties equally or equitably. Ms. Oldemeyer

¹⁰ Interim Decision No. R25-0056-I, at ¶¶ 47-50.

¹¹ ALJ Garvey states: "By definition, a hybrid hearing is in part, remote and part in person. A party may choose to partake in the hearing remotely or in person. So CenturyLink could have still taken part in the hearing remotely even if, based on the email of June 18, 2024, the undersigned without a motion, *sua sponte*, converted the remote hearing to a hybrid hearing. According to LETA's argument in the Motion to Disqualify, this would still have 'benefitted CenturyLink.' Based on LETA's argument the only way to assure that CenturyLink did not 'benefit' from a remote hearing would have been to convert the hearing to in person. The only time an in-person hearing was mentioned was in the undersigned's reply email." *Id.* at ¶ 51.

finds remarks the ALJ made during hearing indicate camaraderie with CenturyLink, as well as favoritism and undue deference.¹²

45. As examples of this deference and favoritism, LETA cites to the hearing transcript for the ALJ's response when LETA claims it expressed concern over the last-minute substitution of CenturyLink's chief witness:

THE COURT: It's not unusual in our proceedings to substitute the testimony of someone. I didn't see it. I mean, if he's not able to answer anything on cross-examination, it is certainly going to taint the ability of his testimony. So we will see. If you have no objection, I would probably allow it, anyway.¹³

46. ALJ Garvey responded to LETA's concern in his Interim Decision, observing he was unaware of the substitution of CenturyLink's witness until Ms. Oldemeyer advised him that CenturyLink made a last-minute witness substitution.¹⁴ The ALJ noted LETA did not object or express concern to the substitution of CenturyLink's witness at that time and so ALJ Garvey allowed the substitution and made his comment to Ms. Oldemeyer that such a procedure was not unusual in Commission hearings and the witness's performance would determine the weight assigned to his testimony.

47. Considering the facts avowed in Ms. Oldemeyer's Affidavit, coupled with the citations to ALJ Garvey's Interim Decision and his citations to the hearing transcript, we cannot find any indication of bias or favoritism towards CenturyLink here or reason for concern. These appear to be straightforward processes and statements occurring in a Commission proceeding. We find no indication of favoritism towards CenturyLink by conducting a remote

¹² Affidavit of Oldemeyer at ¶¶ 18-21.

¹³ *Id.* at ¶ 23.

¹⁴ ALJ Garvey Interim Decision Denying Motion to Disqualify, R25-0056-I, issued January 24, 2025 at ¶ 56.

hearing. It is within the sound discretion of a decision maker to determine the proper venue for an evidentiary hearing.

48. We agree that had any party to the proceeding filed a motion (or joint motion) for change of venue to a hybrid or in-person hearing showing good cause for such a change, the ALJ would have been hard pressed to find a reason to keep the hearing remote. However, such was not the case here. Commission practice does not contemplate approval of a procedural pre-hearing request through informal email communications. Rather, proper procedure requires a party to a proceeding to file a motion for relief pursuant to Commission Rule 1400.¹⁵ LETA's claim of bias or favoritism based on the facts presented do not support a reasonable inference of actual or apparent bias or prejudice. The facts presented are not legally sufficient to require disqualification. *People v. Schupper*, 2014 COA 80M, 353 P.3d 880 (the record must clearly establish bias, meaning that there must be more than mere speculation).

D. The findings and determinations in ALJ Garvey's Recommended Decision.

49. Ms. Oldemeyer further asserts in her affidavit that ALJ Garvey approved CenturyLink's Application over the objections of LETA, CCOA, and Commission Staff. LETA asserts its Motion to Disqualify and Affidavits do not represent "sour grapes" over the outcome of CenturyLink's Application, nor does it express disagreement with ALJ Garvey's past decisions and rulings. LETA asserts its Motion, and Ms. Oldemeyer's affidavit, explain why LETA has a good faith belief that ALJ Garvey may not be impartial in this proceeding.

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

50. LETA asserts the ALJ did not explain why he was discounting LETA's Hearing Exhibit No. 700, Attachment AD-2, a four-page document titled "Voice of Colorado Council of Authorities, Inc." which LETA describes as:

twenty of Colorado's fifty-seven governing bodies requesting that ALJ Garvey not rush, recognize that single points of failure in the 911 call path will remain despite these projects, deny CenturyLink's Second Amended Improvement Plan Application, and send 9-1-1 stakeholders back to the drawing board to further discuss what those twenty governing bodies had listed as more cost effective projects, including the Telluride to Norwood project that CenturyLink pulled from its application when CCOA proposed an alternative to a new fiber build.¹⁶

51. LETA asserts ALJ Garvey never addressed LETA and CCOA's argument that the 15 percent carrying costs were prohibited under Commission Rule and were out of line. LETA argues that while the burden of proof was on CenturyLink, ALJ Garvey concluded in part:

While it would be beneficial to have a more detailed listing of these costs in the future, this is the first time this process is being implemented and has been beset with delays. The Parties and the Commission are both learning how to make this process efficient and complete. The citizens of Colorado need the 911 system to be fully functional with sufficient redundancy and diversity to reduce the likelihood of outages and failure. Additional delays to improving the 911 system are not warranted for this reason.¹⁷

¹⁶ LETA Motion to Disqualify ALJ Robert I. Garvey at p. 16.

¹⁷ *Id.* at ¶ 16, *citing*, Recommended Decision at ¶ 107.

52. LETA takes the position that although CenturyLink's witness, Mr. Carlson, was unable to answer several questions on cross-examination, ALJ Garvey did not "discount"¹⁸ his testimony in the Recommended Decision. LETA refers to ALJ Garvey's footnote 50 in the Recommended Decision which stated as follows:

The ALJ was especially concerned about the testimony of Mr. Carlson stating that previous applications have used a higher percentage rate for overhead costs but could not explain why the rate in this proceeding was lower, or why if it was lower than previous proceedings that the rate couldn't be even lower than what is proposed. Hr. Tr. June 24, 2024, p. 206:2 207:3. CenturyLink should work to provide a better explanation for the overhead and carrying costs in future proceedings that fall under this rule. Some of the difficulty experienced by Mr. Carlson could be due to his adopting the testimony of Mr. DeLoach. In future hearings CenturyLink would be wise to ensure that its witnesses are available on the hearing date or, if the testimony is adopted, that the new witness is better able to explain these costs.¹⁹

Ms. Oldemeyer "felt ALJ Garvey did not fully and fairly consider the evidence and the argument despite his cursory statement that he considered the evidence and the argument."²⁰

53. Regarding his consideration of the testimony and evidence in general, ALJ Garvey notes he made the following statement in his Interim Decision: "[i]n reaching this Recommended Decision the ALJ has considered all arguments presented by the parties, including those arguments not specifically addressed in this Decision. Likewise, the ALJ has considered all evidence presented at the hearing, even if the evidence is not specifically addressed in this Decision."²¹

54. We observe that the statement by ALJ Garey is not unusual. Given the myriad issues that can present themselves in Commission proceedings, addressing each and every issue

¹⁸ LETA uses the term "discount" several times referring to testimony and evidence but does not define what it means in legal terms. While we can interpret several meanings to that term, in the context of the use of the term, we will proceed to interpret it to mean the weight the ALJ assigned to a witness's testimony or evidence.

¹⁹ LETA Motion to Disqualify at pp. 8-9.

²⁰ ALJ Garvey Interim Decision at ¶ 30, *citing*, ALJ Garvey's Recommended Decision No. R24-0566 at ¶ 22, in Proceeding No. 23A-0197, issued August 7, 2024

²¹ *Id.*

can be unwieldy and result in unnecessarily dense, and difficult to read decisions. While not a specific statutory or Commission standard, it is left to the discretion of the decision-maker what findings are considered most relevant to be addressed in detail in a final decision that comport with a party's right to adequate due process. *See, Caldwell v. Pub. Utils. Comm'n*, 613 P.2d 328 (1980) (while findings of fact need not be presented in any particular form and may even be implied, they nonetheless, should be discernible to a reviewing court).

55. In her Affidavit, Ms. Oldemeyer cites an exchange between ALJ Garvey and the CenturyLink witness in which the ALJ questions the witness concerning overhead costs and what is included in those costs. The dialogue indicates the witness was not providing the answers the ALJ sought. While not specifically stating so, ostensibly, this portion of the transcript was provided to support LETA's argument that ALJ Garvey failed to assign less credibility to the witness's testimony despite Ms. Oldemeyer's expressed reservations about its credibility. Also cited are references to evidentiary rulings Ms. Oldemeyer believes show bias against her and LETA and comments she felt were discouraging to the presentation of evidence.

56. ALJ Garvey provides additional context to his decision regarding CenturyLink's witness and the acceptance of his testimony despite his expressed concerns with faults he found in the testimony. ALJ Garvey for example, cites to his Recommended Decision where he found:

106. As far as the costs for each project, none of the Intervenors presented any evidence or even claimed that the estimate was out of line for the cost of material or labor for any projects. Intervenors main argument is that carrying costs and overhead costs were vague and could not be justified. But all intervenors admitted that CenturyLink would have carry [*sic*] costs and overhead costs. While there could be questions or concerns about the effort that CenturyLink put into the calculation of the carrying and overhead costs, no Intervenor claimed that these costs did not exist or that they were out of line.²²

²² ALJ Garvey Interim Decision at ¶ 67, *citing*, Recommended Decision at ¶ 106.

57. After clearly weighing the evidence received, with the testimony of CenturyLink's witness, ALJ Garvey, in our view, made a clear and convincing determination for why he accepted CenturyLink's carrying and overhead cost calculations. A review of the transcript and evidence offered and admitted into the record confirms his findings were reasonable. We consequently find nothing contained within these statements in ALJ Garvey's Recommended Decision demonstrating favoritism or a bias toward CenturyLink.

58. LETA provides additional excerpts from the Recommended Decision as follows:

Since this was the first time this process has been used there was some confusion and possible missteps along the way. A common thread throughout many SOPs, the hearing and hearing process was frustration with the stakeholder participation process from both sides. As these proceedings occur in the future, the Parties are encouraged to work collaboratively to reach a consensus. Parties are urged to keep their animosity in check. We all have an important duty to keep Colorado's 911 system reliable and the citizens of Colorado safe. That should be at the forefront of decisions made by the parties in future proceedings.²³

59. While LETA expresses uncertainty as to whom ALJ Garvey was referring, it appears, nonetheless, it believes the comment was directed towards LETA. Given the statements in the Recommended Decision, Ms. Oldemeyer believes, should ALJ Garvey preside in this Complaint Proceeding, he will disapprove of her professional advocacy and "ultimately penalize LETA or favor CenturyLink."²⁴

60. Notably, none of the substantive, evidentiary and procedural issues raised by LETA here, were sought through the filing of its exceptions to the Recommended Decision. LETA's exceptions to the Recommended Decision included seven points of argument with a total

²³ LETA Motion to Disqualify at ¶ 32, *citing*, Recommended Decision at p. 23, fn. 53.

²⁴ *Id.*

of twenty-two sub-arguments. None of those exceptions addressed the claims and concerns asserted in its Motion to Disqualify and its request for review of the Interim Decision.

61. LETA also directs us to the Affidavit of Kimberly Culp, filed in conjunction with LETA's Motion to Disqualify as well as Ms. Oldemeyer's Affidavit. The essence of Ms. Culp's affidavit is that she has been involved in multiple Commission hearings and rulemakings related to 9-1-1 and is therefore in a position to compare ALJ Garvey with other ALJ's at the Commission.²⁵ Her impression of ALJ Garvey is he was unreceptive to the testimony of all intervenors in the CenturyLink Application Proceeding. To Ms. Culp, he discounted the qualifications and opinions of witnesses and appeared to have "great deference" to CenturyLink. Ms. Culp had the impression "that [ALJ Garvey] and the witness were 'in this together,' that they had a high level of familiarity, and ultimately, they were against intervenors who opposed the projects."²⁶ Ms. Culp charges that ALJ Garvey "acted as an advocate for granting CenturyLink's Second Amended Application in full" and "no matter what evidence intervenors presented, no matter what arguments intervenors made, and regardless of whether CenturyLink met its burden of proof, ALJ Garvey was going to approve CenturyLink's Second Amended Application in its entirety."²⁷ These sentiments echo Ms. Oldemeyer's feelings expressed in her Affidavit.

62. We find Ms. Culp's Affidavit to contain mostly hyperbole and conclusory speculations. Those conclusions are unsupported by facts. Additionally, we find the facts set forth by Ms. Oldemeyer likewise, fail to state facts upon which we can reasonably find bias or prejudice on the part of ALJ Garvey. *Carr v. Barnes*, 580 P.2d 803 (1978) citing, *People v. District Court*, 560 P.2d 828 (1977); see also, *Walker v. People*, 248 P.2d 287 (1952). (To be legally sufficient,

²⁵ Affidavit of Kimberly Culp in Support of LETA's Motion to Disqualify Administrative Law Judge Robert I. Garvey ("Culp Affidavit"), filed December 10, 2024 at ¶ 4.

²⁶ *Id.* at ¶¶ 12 - 15.

²⁷ *Id.*

the motion and affidavits must state *facts* from which it may be reasonably be inferred that the respondent judge has a bias or prejudice that will in all probability prevent him or her from dealing fairly with the petitioner) (emphasis in original). It is not sufficient merely to state an opinion or conclusion, unsubstantiated by supporting facts, that the judge is biased. *Carr v. Barnes* at 804 *supra*, citing *Walker v. People supra*.

63. Ms. Oldemeyer further maintains two statements by the ALJ indicate his rush to issue a ruling because the annual surcharge proceeding was required to be completed by October 1, 2024. A cited example of concern was his statement that the case had been “laying around for a long time” and that he wanted to move the case forward because public safety issues were involved and a limit on time he placed (on all parties) to make statements in a motion to compel hearing.²⁸ Ms. Oldemeyer also believes the ALJ took a “narrow view” of relevance during the course of the hearing and interrupted testimony to express that opinion, even when opposing counsel had not objected.²⁹

64. Citations are also made to the hearing transcript for the proposition that ALJ Garvey only asked questions of witnesses for which he sought answers to fit his narrative. In support of this position, Ms. Oldemeyer cites ALJ questions to a Commission Staff witness on whether Staff would recommend he approve the projects which were the subject of the Application. According to Ms. Oldemeyer, the transcript reveals that ALJ Garvey stopped the questioning because the Staff witness indicated that the projects should go forward if the costs can be documented and supported, but the witness had not seen that.³⁰

²⁸ Oldemeyer Affidavit. at ¶¶ 25-26.

²⁹ *Id.* at ¶ 27(b).

³⁰ *Id.* at ¶ 29.

65. We again reviewed the record including transcripts, evidence, and the Recommended Decision to determine whether a reasonable inference of bias existed, taking the factual statements of Ms. Oldemeyer as true. Again, we find nothing in our review to support such a finding. The fact that ALJ Garvey made rulings and decisions LETA did not agree with are not grounds for disqualification. *See, Brewster v. District Court*, 811 P.2d 812, 814 (Colo. 1991) (A ruling by a judge on a legal issue does not require disqualification absent facts in the motion or affidavits from which it may reasonably be inferred that the judge is biased or prejudiced or has a bent of mind). Reviewing ALJ Garvey’s evidentiary rulings, we find nothing to indicate any sort of prejudice or bias in those rulings. Each was reasonable and within the ALJ’s discretion. While LETA provided portions of the record or transcript to support its positions, when read in full context, we are satisfied ALJ Garvey did not exhibit bias against LETA or favoritism towards CenturyLink.

66. Likewise, we find nothing in the Recommended Decision demonstrating bias or prejudice. The findings made by the ALJ were based on the record and testimony of the parties. When a finding was made concerning carrying and overhead costs, we find the ALJ’s explanation as to his decision sound.

E. ALJ Garvey’s Interim Decision Denying the Motion for Disqualification

67. LETA addresses its additional concern regarding ALJ Garvey’s Interim Decision which denied its Motion for Disqualification. LETA argues it was the ALJ’s duty to “... *only* [] pass upon the legal sufficiency of the factual averments in the affidavits, not to pass upon the truth or falsity of them.”³¹ (emphasis in original). According to LETA, the ALJ failed to accept its allegations as true and did not pass on their legal sufficiency. LETA notes statements in the Interim

³¹ LETA Request for Review at ¶ 12.

Decision in which ALJ Garvey stated LETA's Motion to Disqualify would be treated as a misunderstanding of the ALJ's actions.³²

68. LETA takes umbrage with the Interim Decision's failure to mention the ALJ had a duty to "eliminate every semblance of reasonable doubt or suspicion that a trial by a fair and impartial tribunal may be denied."³³ It is LETA's contention the Interim Decision "takes an entirely defensive tone..."³⁴ LETA further cites to several passages from ALJ Garvey's Interim Decision it believes demonstrate examples of intimidation and insult to LETA.³⁵

69. LETA cites with particularity, several passages from the Interim Decision indicating LETA's unfamiliarity with Commission procedures and processes. LETA raises concern that ALJ Garvey suggests it replace its legal counsel, which will necessarily result in additional costs.

70. LETA finally notes two inaccuracies it finds in the Interim Decision. The first is the ALJ's statement that LETA was the only party to file exceptions to the Recommended Decision in the Application Proceeding, when exceptions were filed jointly by LETA and CCOA. The second is a statement that Staff denied all exceptions and sub-arguments with one exception. LETA then notes ALJ Garvey subsequently corrected his statement through an *Errata* in Decision No. R25-0056-IE.

71. After a thorough review of ALJ Garvey's Interim Decision and the issues of concern raised by LETA, we find the claims raised by LETA as to the insulting and defensive nature of the Interim Decision are non-availing. Reviewing the Interim Decision impartially and pragmatically, we cannot discern the tone to exist as claimed by LETA. The passages LETA cites

³² *Id.* at ¶ 13, *citing*, Interim Decision at ¶ 33.

³³ *Id.* at ¶ 14, *citing*, *Pierce*, 780 P.2d at 7.

³⁴ *Id.*, *citing*, Interim Decision at ¶ 78.

³⁵ *Id.* at pp. 9-11, *citing*, Interim Decision at ¶¶ 59, 68, 72, 73, 77, 81 and fn. 9.

as being defensive appear to us to instead reflect the ALJ's explanations in direct response to matters claimed by LETA to represent bias and favoritism.

72. Further, there is nothing to indicate the ALJ intended to insult or intimidate LETA through the statements contained in the Interim Decision. We do not find any statements that can be construed as disputing the facts asserted by LETA. Rather, we find those statements to be reasonable explanations that do not dispute the facts, but the conclusions reached and their sufficiency as a matter of law as asserted by LETA.

III. FINDINGS AND CONCLUSIONS

73. Reviewing the totality of LETA's factual allegations in the motion along with the Interim Decision, we do not find the requisite grounds to require disqualification. *Cf. Goebel v. Benton*, 830 P.2d 995, 1000 (Colo. 1992) (finding disqualification was required based on the totality of the allegations).

74. As set forth above, most of the factual allegations asserted in the motion consist of opinions, speculation, and unsubstantiated conclusions, which are legally insufficient to warrant disqualification. *See Wakefield*, 764 P.2d at 73. The sheer number of these allegations does not, by itself, make disqualification more appropriate.

75. For the reasons stated above, we find no basis for ALJ Garvey's disqualification on the allegations LETA now asserts on appeal. Nor do these subsequent allegations change our assessment of whether the totality of LETA's allegations require disqualification. In sum, ALJ Garvey did not abuse his discretion in denying LETA's motion to disqualify, nor does the tone of his Interim Decision show prejudice or a bent of mind favoring CenturyLink.

76. We note with particularity *Johnson v. District Court*, 674 p.2d 952, 956 (Colo. 1984) which states in relevant part as follows:

Ordinarily, the question of whether a judge should be disqualified in a civil case is a matter within the discretion of the trial court. *In re Marriage of Mann*, 655 P.2d 814 (Colo. 1984). However, where an attorney for one of the litigants signs a verified affidavit alleging conduct and statements on the part of the trial judge which, if true, show bias or prejudice or the appearance of bias or prejudice on the part of the trial judge, it is an abuse of discretion if that judge does not withdraw from the case, even though he or she believes the statements are false or that the meaning attributed to them by the party seeking recusal is erroneous. In such a case, the judge should not pass upon the truth or falsity of the facts alleged in the affidavit, but only upon the adequacy of the motion as a matter of law. 'The motion and supporting affidavit speak for themselves and the only question involved is whether the facts alleged are sufficient to compel the judge to disqualify himself.' *Kovacheff v. Langhart*, 147 Colo. 339, 343-44, 363 P.2d 702, 705 (1961). *The motion and affidavits are legally adequate if they 'state facts from which it may reasonably be inferred that the judge has a bias or prejudice that will prevent him from dealing fairly' with the party seeking recusal. People v. Botham*, 629 P.2d 589, 595 (Colo. 1981). (emphasis supplied).

77. While the judge or tribunal must accept the facts as true, the analysis does not end there. Rather, in order for the motion and affidavits to be legally adequate, the facts stated must *reasonably infer* that the ALJ is prejudiced or biased. As we emphasized previously, we cannot infer such a reasonable finding from the facts set forth in the Affidavits of Ms. Oldemeyer and Ms. Culp submitted with LETA's Motion.

78. Ms. Oldemeyer's Affidavit cites quite a few factual assertions claiming to demonstrate bias or prejudice of ALJ Garvey in favor of CenturyLink. Our analysis of the statements asserted by LETA and the Affidavits of Ms. Oldemeyer and Ms. Culp, however, does not reveal a reasonable basis to believe ALJ Garvey is impartial. Rather, we find LETA's factual assertions to be quite subjective in their associated conclusions. The leap from the decision to hold a remote hearing, to the politeness the ALJ displayed to CenturyLink's (and all other) witnesses

during the hearing, as well as his evidentiary rulings and determinations in the Recommended Decision, to a finding of bias or prejudice is, in our determination, unreasonable. A motion for recusal based on a subjective belief that a judge is not impartial is insufficient as a matter of law when it is unsupported by factual allegations that would reasonably indicate that the judge is interested or prejudiced with respect to the case, parties, or counsel. *Edmond v. City of Colorado Springs*, 226 P.3d 1248, 1252 (Colo. App. 2010). Indeed, the facts alleged in a motion to disqualify must not be based on mere suspicion, speculation, conjecture, or innuendo; nor may they be statements of mere conclusions. *Johnson v. District Court*, 674 P.2d at 956.

79. We find the facts cited by LETA in its Motion to Disqualify and attached affidavits refer to statements, evidentiary rulings and findings of fact and law that typically appear in a Commission proceeding. We find nothing unusual, out of the ordinary or egregious in any of those factual citations to lead us to conclude any sort of untoward behavior, deeds or conduct by ALJ Garvey that would indicate bias, prejudice or favoritism towards CenturyLink. That critical nexus does not exist. When most of the factual allegations asserted in the motion consist of opinions, speculation, and unsubstantiated conclusions, which are legally insufficient to warrant disqualification, the sheer number of these allegations does not, by itself, make disqualification more appropriate. *Walker v. People*, 248 P.2d 287, 295 (1952) (“Suspicion, surmise, speculation, rationalization, conjecture, innuendo, and statements of mere conclusions of the pleader may not be substituted for a statement of facts.”)

80. “To permit such allegations to form the basis of a legally sufficient motion to disqualify would be to permit any party dissatisfied with the outcome of a [proceeding] to file a motion to disqualify and consequently create unwarranted delay and chaos.” *Litinsky v. Querard*, 683 P.2d 816, 818 (Colo. App. 1984) (For example, disqualification is unwarranted where counsel

alleged judge “exhibited an extraordinary impatience and animosity toward” party and counsel, “consistently ridiculed questions asked, comments made and objections made by ... counsel,” and “interrupted ... counsel's questions with objections and comments of his own”).

81. As we stated previously in articulating the standard of review for this matter, there is a presumption of integrity, honesty, and impartiality in favor of those serving in quasi-judicial capacities. Absent a personal, financial or official stake in the outcome evidencing a conflict of interest on the part of the decisionmaker, an adjudicatory hearing is presumed to be impartial. *See, Mountain States Tel. & Tel. Co. v. Public Utilities Comm’n*, and *Venard v. Department of Corrections, supra*. We find LETA has failed to rebut those presumptions of impartiality. LETA’s factual statements describe the archetypal Commission proceeding, but do not support its claims of bias and prejudice.

82. We have carefully read ALJ Garvey’s Recommended Decision, LETA’s Motion to Disqualify, ALJ Garvey’s Interim Decision denying that motion, as well as LETA’s Request for Review by the full Commission, in addition to the transcript of the evidentiary hearing in the Application Proceeding. We have read each of these documents keeping in mind our duty to consider LETA’s factual statements as true and determine as a matter of law whether they allege legally sufficient facts for disqualification.³⁶ We find that LETA failed to show through those affidavits and arguments any bent of mind of the ALJ or favoritism towards CenturyLink that would reveal an unfair advantage to the applicant or affect LETA’s due process rights in this proceeding.

83. The bulk of the factual allegations asserted in the motion and attendant affidavits consist of opinions, speculation, and unsubstantiated conclusions, which are legally insufficient to

³⁶ *S.S. v. Wakefield*, 764 P.2d 70, 73 (Colo. 1988).

warrant disqualification. The volume of the allegations does not, by itself, make disqualification more appropriate.

84. Finally, we take note of two matters that give us pause. First, the fact that LETA did not file its Motion to Disqualify in the proceeding in which it claims the prejudice or bias occurred. Rather, it waited to file its motion in this Complaint Proceeding. We would expect a matter of such urgency be filed in a timely manner in the proceeding in which the alleged bias occurred. *Holland v. Board of County Comm'rs*, 883 P.2d 500 (Colo. App. 1994) (where petitioner waited until after the legal proceedings had occurred before seeking recusal based on comments made in an earlier case, the motion was untimely). Second, we note LETA's statement in its Request for Review pointing out the Commission "has several ALJs" so "another ALJ should be assigned to this proceeding."³⁷ This gives rise to a concern that LETA, unhappy with ALJ Garvey's evidentiary rulings and the decisions he made in his Recommended Decision raised the specter of bias, which cannot form the basis for recusal. *See, Brewster v. District Court*, 811 P.2d 812 (Colo. 1991); *Bocian v. Owners Ins. Co.*, 2020 COA 98, 482 P.3d 502.

85. Therefore, the request to the full Commission by LETA to find ALJ Garvey's impartiality in this proceeding may reasonably be questioned and determine that ALJ Garvey should have disqualified himself under applicable legal standards and assign a different ALJ to this proceeding is denied.

IV. ORDER

A. The Commission Orders That:

1. The request of the Larimer Emergency Telephone Authority ("LETA") for Full Review of the Interim Decision Denying LETA's Motion to Disqualify Administrative Law Judge

³⁷ LETA Request for Review at ¶ 15.

(“ALJ”) Robert I Garvey filed on January 29, 2025, and find ALJ Garvey was required to disqualify himself because LETA’s Motion and supporting affidavits allege facts from which it may reasonably be inferred that ALJ Garvey may not be impartial, is denied.

2. The Interim Decision Denying Motion to Disqualify Administrative Law Judge Robert I. Garvey and Scheduling Pre-Hearing Conference, issued January 24, 2025, is upheld.

3. This Decision is effective immediately upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETING-
March 12, 2025.**

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners

Rebecca E. White,
Director