

Decision No. R25-0056-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24F-0470T

LARIMER EMERGENCY TELEPHONE AUTHORITY,

COMPLAINANT,

V.

QWEST CORPORATION DOING BUSINESS AS CENTURYLINK QC,

RESPONDENT.

**INTERIM DECISION
DENYING MOTION TO DISQUALIFY ADMINISTRATIVE
LAW JUDGE ROBERT I. GARVEY AND SCHEDULING
PREHEARING CONFERENCE**

Issued Date: January 24, 2025

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I. STATEMENT

1. On October 30, 2024, the Larimer Emergency Telephone Authority (“LETA” or “Complainant”) filed a Complaint against Qwest Corporation doing business as CenturyLink QC (“CenturyLink ‘or “Respondents”). That filing commenced this proceeding.

2. On November 5, 2024, Rebecca White, Director, served a copy of the Complaint together with an order requiring the Respondents to satisfy or answer said complaint within 20 days, in accordance with § 40-6-108, C.R.S. An evidentiary hearing was scheduled for January 13, 2024.

3. On November 6, 2024, the above captioned proceeding was referred by minute entry to an Administrative Law Judge (“ALJ”).

4. On November 22, 2024, CenturyLink filed its Unopposed Motion to Vacate the Procedural Schedule, Request a Prehearing Conference and Request a Waiver of Response Time (“Unopposed Motion”).

5. On December 3, 2024, by Decision No. R24-0888-I, the Unopposed Motion was granted and a prehearing conference was scheduled for January 13, 2025.

6. On December 11, 2024, LETA filed its Motion to Disqualify Administrative Law Judge Robert I. Garvey (“Motion to Disqualify”).

7. On December 18, 2024, by Decision No. R24-0924-I, the prehearing conference scheduled for January 13, 2024, was vacated due to the pending Motion to Disqualify.

8. On December 26, 2024, CenturyLink filed its Response to Lamar Emergency Telephone Authority’s Motion to Disqualify Administrative Law Judge Robert I. Garvey (“Response”).

9. On January 17, LETA filed its Motion to Set Prehearing Conference to Establish Procedural Schedule and Shorten Response Time (“Motion to Set Prehearing Conference”).

10. On January 21, LETA filed its Motion to Compel Discovery Responses from Qwest Corporation doing business as CenturyLink QC and Shorten Response Time (“Motion to Compel”).

II. TEN-DAY REQUIREMENT UNDER RULE 1109

11. LETA filed its Motion to Disqualify under Rule 1500 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1. This rule provides that “within ten days after any response has been filed, the Commissioner or Administrative Law Judge shall rule on the motion on the record.”

12. The Motion to Disqualify became ripe on December 26, 2024. The undersigned ALJ began a previously scheduled holiday vacation on December 25, 2024. The vacation lasted until January 6, 2025. This was beyond the 10- day timeframe.

13. The undersigned was additionally on bereavement leave January 9 and 10, 2025.

14. The undersigned was also scheduled to start multi-day hearings on January 15, 2025, January 23, 2025, and a one-day hearing on January 28, 2025¹.

15. In addition, since the filing of the Motion to Disqualify, LETA has requested subpoenas on January 7, 2025, and filed two subsequent motions.

16. The above captioned proceeding is not under any statutory clock at this time, no procedural schedule has been agreed to and the matter is not currently scheduled for a hearing. . Finally, the Motion to Disqualify is of great significance and no prejudice will be suffered by either party by the waiving of the 10-day timeframe.

17. The undersigned shall *sua sponte* waive the 10-day timeframe contained in Commission Rule 1500 to allow ample time to address the arguments contained in the Motion to Disqualify.

III. MOTION TO DISQUALIFY

18. LETA argues that under §40-6-124(1) the undersigned ALJ should disqualify himself from the above captioned proceeding because his impartiality may be reasonably questioned.

19. LETA argues that “ALJ Garvey created the impression that he may not be impartial in this proceeding²” based upon actions taken in Proceeding No. 23A-0197T.

20. LETA states it has a good faith belief that “ALJ Garvey’s approach is to: (i) adopt CenturyLink’s positions, (ii) discourage evidence contrary to CenturyLink’s positions or treat it as presumptively inferior, and (iii) avoid fair and unbiased consideration of all evidence when determining disputed facts³.”

¹ 24AL-0307E, 24A-0303G and 24F-0204E.

² Motion to Disqualify, p.6.

³ Id. at 2.

21. LETA also states that two unnamed people⁴ emailed counsel for LETA that “ALJ Garvey did not appear impartial and showed bias toward CenturyLink⁵.”

22. LETA states there is a precedent for a disqualification based upon appearances and cites Proceeding No. 09A-0325E. In that proceeding due to *ex parte* communications between Commissioner Tarpey and a party he disqualified himself.⁶

23. LETA in its argument lists instances from Proceeding No. 23A-0197T which LETA believes indicates some bias on the part of the undersigned ALJ.

IV. RESPONSE

24. CenturyLink argues that the Motion to Disqualify is “based on disagreement with rulings and decisions in a prior Commission proceeding, references to professionally courteous exchanges in the record, and the subjective belief that ALJ Garvey is biased and impartial⁷.”

25. CenturyLink avers that the standard is necessarily high for disqualification. “Any other standard whereby parties could pick their judges simply by alleging impartiality without support would quickly become unworkable in practice by encouraging allegations of bias, slowing proceedings and, over time, casting a long shadow on Commission credibility⁸.”

26. CenturyLink requests the Motion to Disqualify be denied.

V. APPLICABLE LAW

27. “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

⁴ These people are never disclosed, nor does LETA state why they are not disclosed. It can be assumed that they are not other intervenors in Proceeding No. No. 23A-0197T since they should have the same concerns and at no point in the Motion to Disqualify is it stated that any other party in Proceeding No. 23-0197T agrees with LETA’s argument or allegations.

⁵ Id at 8.

⁶ Id. at p.5.

⁷ Response, p.3.

⁸ Id.

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.” § 40-6-123 C.R.S.

28. (1) 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. § 40-6-124 C.R.S.

29. It is 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. Dep't of Corr.*, 72 P.3d at 449 (“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. Dep't of Corr.*, 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.”).

30. Judges are presumed to have known and applied the law and are not presumed to have violated the Colorado Code of Judicial Conduct. *People ex rel. S.G.*, 91 P.3d 443, 450 (Colo. App. 2004). Judges also have the duty to sit on the case unless the movant has established a reasonable basis for disqualification. *Moody v Corsentino*, 843 P.2d 1355, 1374 (Colo. 1993). These presumptions and duties set forth in statute and rule exist to guarantee that no movant is forced to litigate before a judge with a “bent of mind.” *Johnson v. District Court of County of Jefferson*, 674 P.2d 952, 956 (Colo. 1984); *In re Marriage of McSoud*, 131 P.3d 1208, 1223 (Colo. App. 2006) (recusal is necessary only when “facts have been set forth that create a reasonable inference of a ‘bent of mind’ which will prevent the judge from dealing fairly with the party seeking disqualification.”). A “bent of mind” sufficient to support a reasonable inference that a decision-maker is prejudiced or appears to be prejudiced does not exist unless a movant factually avers that a communication manifested “an actual or apparent bias or prejudice against the party or [its] attorney.” *S.S. v. Wakefield*, 764 P.2d 70, 73-74 (Colo. 1988).

VI. DISCUSSION

31. The undersigned ALJ has been an adjudicator for 15 years. In that time, I have served as a Federal Administrative Judge and currently serve both as a State ALJ and a Municipal Court Judge. I was an ALJ for the Commission from 2012 through 2022 and returned in May of 2024.

32. This is the first time that anyone has ever questioned the undersigned’s impartiality, fairness or accused the undersigned of bias. It is an allegation taken personally and seriously. The

undersigned has strived to prevent any party before me in any venue ever feeling that they were not given a fair and impartial hearing.

33. This Motion to Disqualify shall be treated as a misunderstanding by LETA of the undersigned's actions in Proceeding No. 23A-0197T. LETA. LETA is not before the Commission often, this perhaps led to a misunderstanding⁹.

A. Prior Disqualification

34. LETA correctly cites the only instance where a commissioner or ALJ has removed themselves due to the appearance of impropriety. This occurred in consolidated Proceeding Nos. 09A-324E & 09A-325E ¹⁰.

35. It that proceeding a motion to disqualify was filed against all three Commissioners due to alleged *ex parte* communications with a party. The Commission denied the motion to disqualify Commissioners Baker and Benz since the communications occurred before the application at issue had been filed and the communications did not concern the application. The Commission found that these communications did not fit under the definition of *ex parte* communications.

⁹ LETA has shown an unfamiliarity and/or misunderstanding of Commission procedures in the past. In Proceeding 17R-0488T, LETA filed exceptions to the Recommended Decision. Responses filed to LETA's exceptions included "Exceptions to the Recommended Decision now rhetorically ask a host of questions, but propose no actual alternative rule language for the Commission to consider. It is not altogether clear what LETA is asking the Commission to do." *CITA Response to Larimar Emergency Telephone Authority's Exceptions, Proceeding 17R-0488T*. Additionally, "LETA's exceptions do not point out any error of law, fact or policy made by the recommended decision, but rather only ask questions." *CenturyLink's Response to LETA's Excerptions to Decision No. R17-0821, Proceeding 17R-0488T*. The Commission rejected the exceptions stating "LETA's questions are best addressed through Commission proceedings outside of this rulemaking, including the processes established through the rules adopted by this Decision." *Decision No. C17-1066, at ¶ 21 issued in Proceeding 17R-0488T on November 29, 2017*.

¹⁰ There may be other instances of disqualification, but the undersigned could not find any. Also, LETA cites to Proceeding No. 09A-325E in its Motion to Disqualify. Again, LETA's perhaps unfamiliarity with procedures of the Commission is shown again. Proceeding No. 09A-325E was consolidated with Proceeding No. 09A-324E and the lead proceeding was 09A-324E. All filings in the consolidated proceeding were in 09A-0324E and all citations to that proceeding should be to Proceeding Nos. 09A-324E & 09A-325E.

36. The allegation against Commissioner Tarpey was of eight separate *ex parte* communications that fell under the Commission's definition of *ex parte* communications. The Commission found that this did not show bias or prejudice, but the appearance of impropriety could exist.

37. The situation in consolidated Proceedings Nos. 09A-324E & 09A-325E is easily distinguishable from the instant Motion to Disqualify. While LETA vociferously argues that the undersigned lacks impartiality,¹¹ they hedge their bets and state this bias could lead to appearance of impropriety. Either way, the decision in consolidated Proceedings Nos. 09A-324E & 09A-325E does little more than show that a commissioner was disqualified on a factual pattern totally distinguishable to the instant case.

38. There is no allegation of *ex parte* communication between the undersigned ALJ and CenturyLink. There was no allegation of bias in Proceedings Nos. 09A-324E & 09A-325E. It is unclear why the disqualification in the consolidated proceeding is cited to other than to showcase that a commissioner has been disqualified in the past.

39. LETA fails to provide any other instances when a party moved for disqualification. Here are other examples of where a party has moved to have a commissioner or ALJ disqualified:

- a. In 10M-245E - The Colorado Mining Association moved to disqualify all three Commissioners due to *ex parte* communications.
- b. In 07A-265E – Tri State Generation moved for the disqualification of ALJ Adams due to ALJ Adams having intervened in a proceeding as a private citizen four years earlier opposing a similar request by a different utility.

¹¹ A small sampling of how LETA describes the undersigned in the Motion to Disqualify: "LETA reasonably believes that the risk of ALJ Garvey's lack of impartiality or bias is too great" p.1; "By his words and conduct, ALJ Garvey appears to be more of an advocate for CenturyLink than an open minded, impartial, non-prejudiced, patient, and engaged fact finder." P.2; "ALJ Garvey was not neutral and did not treat all parties equally or equitably." P.8.; "LETA reasonably believes ALJ Garvey acted as an advocate for granting CenturyLink's application in full, versus holding CenturyLink to its burden of proof.: p.10.

- c. In 16AL-0326E – Pueblo County moved to disqualify Commissioner Moser in a Black Hills Electric rate case due to her having formerly been an employee of Black Hills.
- d. In 07A-009R – BNSF railroad moved to disqualify ALJ Fritzel due to BNSF railroad’s belief that the ALJ “has an unyielding opinion that the costs of all grade separation applications should be equally split between the roadway authority and the railroad regardless of any facts presented to the contrary.”
- e. In 16AL-0326E – Black Hills Electric Utility moved to disqualify Commissioner Koncilja during Rehearing, Reargument or Reconsideration due to comments made by Commissioner Koncilja during the evidentiary hearing and deliberations. The comments included:
 - i. Black Hills is “a regulated utility that knows they can put this turd in the pocket of the ratepayers;
 - ii. “This is a company that if they were going to be competing in the market would be bankrupt”;
 - iii. The Company has spent money “like a drunken sailor”
 - iv. “I would say you are the most despised company down in the southern part of the state”; and
 - v. “[Black Hills] acts like a colonial power that can loot the citizens of Southern Colorado.”

40. The Commission rejected the motion to disqualify in each of these proceedings. The standard to disqualify an ALJ or commissioner is high and was not reached in any of these proceedings. The allegations made in the Motion to Disqualify in the instant proceeding are based on less evidence of an appearance of impropriety than these previous proceedings where a motion to disqualify was denied. The undersigned has not engaged in *ex parte* communications with CenturyLink, has never worked for CenturyLink, has never intervened as a private citizen in a similar proceeding, or made any disparaging comments about LETA. The undersigned only granted an application after a hearing which LETA opposed and filed exceptions which were denied.

B. Alleged Incidents That LETA Believes Show Bias**1. Remote Hearing**

41. LETA argues that the hearing being set as a remote hearing “benefitted CenturyLink¹².” This statement is made with explaining how CenturyLink benefitted from a remote hearing.

42. Apart from not stating any reason that a remote hearing benefits CenturyLink, LETA fails to explain why it failed to make this claim at any time before filing the Motion to Disqualify.

43. On May 6, 2024, a remote prehearing conference was held to set a procedural schedule. All parties agreed to the schedule. At no time during the prehearing conference did LETA state a preference for a hybrid or an in-person hearing. No party voiced a preference for a format for the hearing.

44. On May 20, 2024, Decision No. R24-0334-I was issued. This decision provided a procedural schedule that included a remote hearing scheduled for June 24 & June 25, 2024, and included an attachment for instructions. Ordering paragraph three stated the following:

3. A remote evidentiary hearing on the above-captioned Amended Application is scheduled as follows:

DATE: June 24 & June 25, 2024

TIME: each day at 9:00 a.m.

PLACE: Join by videoconference using Zoom

45. The procedural schedule also included a date for a discovery dispute conference to be held remotely on May 23, 2024, by request of LETA.

¹² Motion to Disqualify, p. 7.

46. Three days after Decision No. R24-0334-I was issued which stated that the hearing was to be held remotely, the discovery dispute conference was held. At no time during the discovery dispute conference was a request made to convert the hearing to an in-person or hybrid hearing.

47. On June 18, 2024, at 12:58 pm the undersigned received an email from counsel for LETA that stated the following:

Good afternoon. In preparation for the hearing that starts on Monday, June 24, at 9 am, counsel for the parties just participated in a conference call. Paragraph (II)(3) of Interim Decision R24-0334-I indicates that this is a remote evidentiary hearing. A question arose about whether it is possible that the hearing be converted to a hybrid hearing. I copy all counsel here on this joint inquiry as to whether a hybrid hearing is an option.

48. Since the scheduled hearing was less than a week away from commencing, the undersigned promptly responded to the email two hours later:

Parties,
The hearing has been set as a remote hearing since May 20. After conferral, 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. Until I see a motion and if motion establishes good cause I can't tell you if it will be granted.

Not sure if this answers your question, but hopefully it helps. ¹³

49. The email from counsel for LETA appeared to be asking only if or how it would be possible to convert the hearing to a hybrid hearing. As with any request to modify a procedural schedule it should be done through a motion. The email response only instructed counsel that a motion was necessary. The email from counsel was also unclear as to if all parties agreed with converting the hearing to a hybrid hearing, that is why the reminder is made that conferral is necessary. Until an ALJ sees a motion specifying who agrees with the motion and what if any

¹³ See Appendix A.

objections are to the motion, it cannot be ruled on. Finally, as with any motion to modify a procedural schedule, the standard used to grant a motion is good cause.

50. LETA never filed a motion to modify the procedural schedule. LETA filed 17 pages of exceptions to the Recommended Decision R24-0566 (“Recommended Decision”) in Proceeding No. 23A-0197T, at no time does LETA argue that they were at a disadvantage due to the evidentiary hearing being held remotely¹⁴.

51. Additionally, LETA has asserted that a remote hearing somehow “benefitted CenturyLink¹⁵” and only mentions the potential of converting the hearing to a hybrid hearing. 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 CenturyLink¹⁶.” 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.

¹⁴ LETA also fails to disclose how they think the undersigned was aware that a remote hearing benefited CenturyLink. This knowledge is necessary to assert that the ALJ scheduled the hearing as a remote hearing to benefit CenturyLink. They do not allege an *ex parte* communication in which this information was disclosed to the ALJ.

¹⁵ Motion to Disqualify, p. 7.

¹⁶ *Id.*

52. LETA has provided no evidence it ever requested a hybrid hearing, that the undersigned denied a hybrid hearing or that LETA was prejudiced by the evidentiary hearing being held remotely. This allegation is without merit.¹⁷

C. Favoritism Toward CenturyLink Witness

53. LETA next claims that the undersigned did not treat all parties fairly and showed favoritism toward CenturyLink's witness. This claim is also without merit.

54. LETA fails to note that at the start of the hearing a request was made by Staff of the Public Utilities Commission ("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 granted¹⁸.

55. LETA then requested that it be allowed to also provide live sur-rebuttal testimony in response to the supplemental direct testimony filed by CenturyLink. The request was also granted.¹⁹

56. LETA then advised the court that CenturyLink would be having a substitute witness stating:

Ms. OLDEMAYER It will be Jim Carlson. And I don't know if Your Honor has had the opportunity to be notified of that. But we don't know the basis of the reasons, so we take no position.²⁰

¹⁷ Although a motion to convert the hearing to a remote hearing was never made and therefore never denied, it should be noted that the Commission legal assistants and court reporters were very busy on the day the hearing commenced. The Commission had three hearings occurring on June 24, 2024; 23A-0197T, 24R-0184T and 24R-0078GPS.

¹⁸ Hr. Tr. June 24, 2024, pp. 11-12 I, 21-8.

¹⁹ Id at l.11-18.

²⁰ Id. at p.13, l-1-5.

57. While LETA describes this as “expressed concern,²¹” LETA did not object to the substitution of CenturyLink’s witness. Without an objection, the undersigned 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 taint his testimony.²²

58. LETA then cites to examples of the undersigned joking with the witness or thanking him for his testimony.

59. LETA fails to understand that the Commission cannot function without the testimony of witnesses. The role of an ALJ is not an adversarial one. The ALJ needs information to create a full record that will allow for just a reasonable decision to be made based upon the information provided.

60. If an ALJ is aggressive or indifferent towards a witnesses there is the potential to make the witness feel uncomfortable and potentially reluctant to answer questions for fear of angering an ALJ. The undersigned strives to ensure all witnesses are comfortable so they feel free to honestly answer questions.

61. Often the first witness is on the stand for hours of adversarial cross-examination.²³ The questions of the ALJ will come after cross-examination from an adversarial party or parties. It is important that the witness feel comfortable to answer the ALJs questions when the time comes for the ALJ to ask questions.

²¹ Motion to Disqualify, p 8.

²² Hr. Tr. June 24, 2024, p. 13 I, 7-13.

²³ The undersigned does not recall the amount of time Mr. Carlson testified. A quick look at the transcript shows that the transcript takes up 285 pages, Mr. Carlson took the stand on page 19 and remained on the stand until page 236.

62. If, as in this case, a witness is substituting for a witness so the proceeding can go forward, it is nothing but common courtesy to thank that witness and do everything to make the witness feel comfortable. The goal is to have a complete and full record, and the undersigned believes that showing common courtesy and being friendly and appreciative of witness testimony promotes that goal.

63. In addition, the undersigned showed the same courtesy to all witnesses. There were four total witnesses in the hearing. Conveniently left out by the Motion to Disqualify is the fact that the undersigned tried to make all witness comfortable and demonstrated appreciation for their time and testimony.

LETA witness Kimberly Culp:

THE COURT: All right. Ms. Culp, thank you very much. You may go about the rest of your day. Thank you for -- I don't know how long you were waiting around, but I do appreciate you waiting. And I do appreciate your testimony very much. Hr. Tr. June 24, 2024, pp. 248, l., 9-13.

CCOA Witness Andrew Dameron

THE COURT: All right. Mr. Dameron, thank you very much. Thank you for waiting around. Thank you for taking questions. I do very much appreciate that. And you may go on your way, or you can hang out if you want to. All up to you. Hr. Tr. June 24, 2024, pp. 257-258 l, 25-4

Staff Witness Jennifer Kirkland

THE COURT: All righty. Ms. Kirkland, thank you. The two people I feel sorry for are the first witness because the first witness never gets off the stand, and the last one has to wait around all day. And generally, no one asks them any questions. So I do appreciate you hanging around and appreciate your testimony. It is very helpful. But you are free to enjoy 5:30 p.m. Hr. Tr. June 24, 2024, pp. 283-284 l, 24-7.

64. The undersigned was appreciative of all witnesses and thanked each individually for their time and testimony.²⁴ Any claim that the undersigned showed favoritism to CenturyLink's witness is without merit.

D. Other Miscellaneous Claims Of Bias

65. LETA lists other actions it claims are indicative of bias or a lack of impartiality. Most of these incidents are evidentiary issues, unsupported statements or taking issue with the recommended decision issued in Proceeding No. 23A-0197T. None of these incidents is inductive of a bias and indicates LETA continues to not understand the role of an ALJ in an administrative hearing.

66. LETA claims that the recommended decision failed to "discount" Mr. Carlson's testimony since he was unable to answer some questions. While not knowing what LETA means by the term "discount" his testimony, it is assumed they are claiming the evidence was not sufficient for approval of the projects.

67. The Recommended Decision made it clear that the ALJ was not pleased with all of the answers given by Mr. Carlson and expects better in the future.²⁵ In addition the following direct finding, subject to exceptions, was made:

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

²⁴ It is curious that LETA selected portions from the transcript where the undersigned implied that Mr. Carlson (CenturyLink) had been lazy in preparation of estimate and showed the undersigned frustration in getting a reliable answer to a question. See Motion to Disqualify p. 10-11.

²⁵ 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 assure that its witnesses are available on hearing date or if the testimony adopted, the new witness is better able to explain these costs. *Decision No. R24-0384-I, at footnote 50 issued in Proceeding 23A-0197T on August 7, 2024.*

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 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.²⁶

68. Rather than showing bias by the undersigned, this claim shows LETA's continued misunderstanding of what exceptions are and how to a recommended decision. In this proceeding the ALJ was tasked with determining if the evidence was sufficient to approve certain projects and costs for the 9-1-1 system. If the ALJ finds in the favor of a party on an issue, it does not show bias to that party, rather, it shows that the party met their burden. If 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. Based upon LETA's twisted logic, denial of the application in Proceeding No. 23A-0197T would show bias towards LETA.

69. LETA also claims other instances of bias were the ALJ requesting that document exhibits not be read into the record; only allowing evidence the ALJ found relevant to be admitted into the record; and asking counsel which of the proposed projects a line of cross-examination concerned.

70. Documents speak for themselves and do not need to be read into the record. The exhibit is already in the record. The undersigned appreciates the time the parties, witnesses, court reporters, and legal assistants spend on a proceeding. Needlessly reading into the record an exhibit that is already in a proceeding benefits no one, but takes up time and needless effort for court reporters. But again, if LETA believed that this was an incorrect ruling, they failed to ask to put their argument into the record and then failed to file exceptions to this ruling.

²⁶ Id at ¶ 106.

71. 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. A party can object and make a record if they disagree with the finding of the ALJ. It does not indicate bias. Again, if this caused an error in the decision, filing exceptions is the place to make the argument. Simply finding against a party does not show bias.

72. It is unclear how asking how a line of questioning in cross-examination relates to the issues in a hearing shows bias. The ALJ is the finder of fact. If the testimony is unclear to the ALJ, simply asking counsel what issue the cross-examination relates to would appear to be more help to the party asking the questions than evidence of bias toward the witness. To believe this shows bias appears to be a misunderstanding of the role of the ALJ and Commission proceedings.

73. Finally, LETA believes that bias is shown by not addressing certain arguments in the Recommended Decision. This also is an argument for exceptions. In addition, as noted in the Recommended Decision, all arguments were considered, even if not listed in the recommended decision.²⁷ This again shows LETA's difficulty in grasping the purpose of exceptions.

74. LETA was the only party to file exceptions to the Recommended Decision in 23A-0197T. LETA's exceptions contained ten separate arguments, each of which contained additional sub-arguments. In Commission Decision No. C24-0688, Staff denied all exceptions and all sub-

²⁷ In 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. Decision No R24-0566. at ¶22 issued in Proceeding No. 23A-0197T on August 7, 2024.

arguments other than the correction of an incorrect number pointed out by all parties in a jointly-filed motion to amend²⁸. None of the exceptions filed by LETA alleged bias by the ALJ.

75. These claims are not instances of bias but simply evidentiary and scope disagreements from a party during a hearing. The proper place to make these arguments was during the hearing and exceptions.

E. Integrity Of Commissioners And ALJs

76. This type of motion is not often filed in Commission proceedings and rarely does one allege bias or claim a lack of impartiality. It is even more rare for a motion to disqualify to be granted. As stated in case law “there is a presumption of integrity, honesty, and impartiality in favor of those serving in quasi-judicial capacities. *Soon Yee Scott v. City of Englewood*, 672 P.2d 225 (Colo.Ct.App.1983). That presumption is not overturned due to an ALJ simply finding against a party in a proceeding.

77. Most cases dealing with a motion to disqualification assert an *ex parte* communication. This Motion to Disqualify does not assert such a communication. This Motion to Disqualify is only based on the failure of LETA to prevail in a hearing, and that is why it is troubling.

78. Having served the Commission and the people of Colorado for over a decade, I have the utmost confidence in the integrity of this agency. That is why the undersigned takes this Motion to Disqualify seriously and is concerned that it was filed.

²⁸ One other exception is stated in the decision as partially granted due to the fact that LETA incorrectly believed a permanent recurring cost had been approved. LETA interpreted the language “The plain language of Rule 2143 in no way contemplates recovery beyond the two-year period. The provision cited by Staff is persuasive that recovery, to be approved in a proceeding pursuant to Rule 2143, is limited to two years.” to be approval for a permanent recurring charge. Again, just a basic misunderstanding. Decision No R24-0566 at ¶117 issued in Proceeding No. 23A-0197T on August 7, 2024.

79. This Commission and those who serve it take their responsibility seriously. Any belief that a different ALJ would lead to a different result is unfounded. This 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.

80. While individual styles may differ between ALJs or commissioners, the core principals of a proceeding are the same no matter which ALJ or commissioner hears a case. Additionally, no unfounded claims can lessen the responsibility each of us feels to the people of Colorado.

81. I believe that LETA has demonstrated a misunderstanding of the Commission, the function of Commission ALJs and/or general hearing procedures. There has been evidence in the past that LETA has not fully understood the Commission's procedures, this most likely is just another instance.

VII. CONCLUSION

82. The Motion to Disqualify is denied.

VIII. PREHEARING CONFERENCE

83. As stated in Decision No. 24F-0470-I, with the decision on the Motion to Disqualify being denied, the matter shall be set for a prehearing conference.

84. The parties should be prepared to discuss a procedural schedule and any other matters at the prehearing conference.

85. A prehearing conference shall be scheduled for February 11, 2024.

IX. ORDER

1. The Motion to Disqualify Administrative Law Judge Robert I. Garvey filed by the Larimer Emergency Telephone Authority on December 11, 2024, is denied.

2. Appendix A is attached to and incorporated in this Decision.

3. A prehearing conference in this proceeding is scheduled as follows:

DATE: February 11, 2025

TIME: 11:00 a.m.

PLACE: Join by video conference using Zoom

4. Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.

5. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated into this Decision.

6. The Parties shall be held to the advisements in this Decision.

7. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director