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BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

Arizona Corporation Commission

DOCKETED

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October 2, 2015

RE: Applications for Rehearing on Decision 75251, Docket No. E-01345A-13-0248

Dear Colleagues, Parties and Stakeholders:

In the Applications for Rehearing that have been filed in this matter by certain Interveners, it has been alleged that spending by independent expenditure committees during the 2014 election has created bias or at least the perception of bias in this proceeding. It is also alleged that a conflict exists and that even if there is no actual conflict of interest, there is an appearance of impropriety that taints Decision No. 75251. The Interveners further allege that I should have recused myself because I was disqualified by bias and impropriety from voting on this matter.

I disagree.

I have duly considered the allegations and the entire record, and I conclude that I have acted fairly, impartially and without bias in all aspects of this proceeding. I am not disqualified from decision-making by any conflict of interest because none exists. It is clear to me that if there were an appearance of potential conflict, that appearance is not founded on fact, but instead on mere speculation. I came to this case with an open mind, and based my decision exclusively on the record. I did not and will not prejudge any issue. My reasons for declining to recuse or disqualify myself are more fully discussed below.

Certain Interveners allege that the existence of “significant and continuing press and social media discussion that the likely source of contributions to the Arizona Free Enterprise Club and Save Our Future Now is Pinnacle West and/or APS” necessarily means that I must be biased.

They claim that the simple fact that such a narrative exists is all that is necessary for me to be found biased, without regard to whether or to what extent I had any personal knowledge of that narrative.

They further state “there is at least the appearance of high likelihood that Commissioners Stump, Forese, and Little have received information, true or false, about contributions by Pinnacle West and/or APS”. This statement is based on nothing but supposition, rumor, innuendo and a claim of “broadly held” belief for which there is no objective evidence.

Using the same logic that the Interveners have used to come to their conclusion, had either of my primary opponents prevailed in the election, they would be subject to recusal as well since it has been documented in the Arizona Secretary of State campaign finance reports that T.U.S.K., Solar

City, Sunrun, and The Alliance for Solar Choice spent over \$550,000 advocating on behalf of my opponents or against my own candidacy.

I find it extremely self-serving for the Interveners to have omitted information about solar industry campaign expenditures in their Applications for Rehearing. This omission might be viewed as an attempt to obscure the complete picture of what actually transpired during the 2014 Arizona Corporation Commission campaign.

Further, the allegation that I am unable to make an unbiased decision regarding any case, including this one, is something I take very seriously as the Interveners have essentially called into question my personal and professional integrity. It is an overriding principal for me in this office that I will fairly and honestly assess this and all matters that come before me and decide the case based on the record developed during the hearing process.

In *Withrow v. Larken* 421 U.S. 35, 47(1975), administrative officers are presumed to be unbiased. The case noted a general rule that government officials have a "presumption of honesty and integrity" that it is a "difficult burden of persuasion" to overcome. In *Havasu Heights Ranch and Development Corporation v. Desert Valley Wood Products, Inc.* 167 Ariz. 383, 807 P.2d 1119 (1990) the court similarly stated that there is a "presumption of honesty and integrity of those serving as adjudicators." The Interveners' allegations against me certainly do not dispel these presumptions of honesty and integrity on my behalf.

Similarly, the Interveners allegations do not establish that I have an "irrevocably closed mind." On the contrary, it is clear from the record that my intent throughout this case was to get as much information as possible so that a fair, unbiased decision could be based on evidence and sworn testimony. Quoting from the August 18th, 2015 Open Meeting Transcript, I said:

I am not convinced that we have enough information to make a decision about whether or not we should move forward with [the LFCR Reset] or not. Because if you look at just what has happened in the last several months, and I am talking about the last two or three months in the industry, there have been some significant changes in both adoption rates and dropping costs and all these kinds of things. And *I think we need to look further at that in order to make some sort of reasonable decision about whether or not there should be a reset to the LFCR.*[emphasis added] (Docket E-01345A-13-0248, Page 49-50)

In addition, I also said:

First, all we are talking about is whether or not to have a hearing. We aren't discussing potential outcomes of the hearing. We have no idea what the outcome will be. *Until the evidence is presented, (and) we evaluate the evidence, we don't know what the outcome will be...the outcome of the hearing is completely unknown at this point.*"[emphasis added] (Docket E-01345A-13-0248, Page 134-135.)

For legal justification for their positions, the Interveners cite the Supreme Court decision, *Caperton v. A.T. Massey Coal Company*, 556 U.S. 868 (2009). In my view, this decision has no relevance to this particular situation.

Although I am not an attorney, it appears to me that there are obvious differences between the circumstances currently before the Commission and those in *Caperton*. Comparing *Caperton* to our current situation is a little like comparing a horse and a table. They both have four legs, but the similarity pretty much ends there.

- The *Caperton* case involved a judge's election in West Virginia and his subsequent adjudication of an appealed lawsuit involving a \$50 million judgment. In *Caperton*, it was well known the timing of the election meant that the appeal would come before whoever was elected to the Court.
- In contrast, during the primary and general election last year, I had no idea that the Commission would be dealing with APS' current application.
- In *Caperton*, there was direct evidence that a party to the lawsuit was the source of funding for the non-profit corporation that supported the judge's campaign.
- In contrast, the source of the money spent by Save Our Future Now and the Arizona Free Enterprise Club is unknown. Additionally, I did not know who was funding Save Our Future Now or the Arizona Free Enterprise Club during my campaign. As a sitting Commissioner I still do not know who funded them.
- In *Caperton*, there was a \$50 million dollar judgment at stake. In Decision No. 75251, there is no direct financial impact at all since the decision was to simply proceed to an evidentiary hearing.
- In *Caperton*, the individual in question was a jurist on the West Virginia Supreme Court. Arizona Corporation Commissioners are not judges but are called upon to make decisions on and act legislatively in rate matters.

Additionally, from the dissents in the *Caperton* decision, one could argue the opinion was a stretch to begin with. In the 5 to 4 decision, Chief Justice Roberts wrote in his dissent that the probability of bias standard formulated by the Court was excessively vague and "inherently boundless." Justice Scalia noted in his separate dissent, that the ruling would permit due process claims asserting judicial bias "in all litigated cases in those 39 states that elect their judges."

As to the Interveners allegations related to due process, it is my understanding that due process is generally evaluated by considering the fairness of the proceeding in its totality. Although the Interveners have alleged a failure to receive due process, all the Commission has decided to do is hold an evidentiary hearing. The decision to have an evidentiary hearing where all parties can present evidence and challenge the evidence presented by others is consistent with due process, rather than the claimed violation.

Regarding my two letters to Docket No. AU-00000A-15-0309 discussing the First Amendment rights that may be exercised by corporations and non-profits, none of the statements in either of the letters indicate animosity or favoritism for any party. Both letters are, in fact, academic arguments supportive of First Amendment rights and recent court decisions that support the exercise of those

First Amendment rights by any and all parties. How does that possibly indicate bias for or against any party or point of view in a case involving utility ratemaking?

In conclusion, our job as Commissioners is to uphold our constitutional responsibilities, to set just and reasonable rates for Arizona consumers and to enforce and interpret laws and rules that come from the Arizona Corporation Commission, the Arizona Legislature and the Arizona Constitution. When we take office, we each swear an oath to protect and defend the constitutions of the United States and of the State of Arizona.

We are charged to make decisions that are in the public interest and benefit all ratepayers – regardless of our personal beliefs or the positions held by any corporation, stakeholder, association or out-of-state special interest.

My decisions are and will always be based on the objective facts of the case, what is fair and just, and what will provide the greatest benefit to the citizens of Arizona.

Accordingly, I do not believe it is either necessary or appropriate for me to recuse or disqualify myself from this or any other proceeding based on the Interveners' allegations. Moreover, I look forward to hearing the evidence presented in future proceedings and giving these matters my future full consideration.

Sincerely,



Doug Little
Commissioner
Arizona Corporation Commission

Docketed October 2, 2015

Mailed October 2, 2016 to the Service List in Docket No. E-1345A-13-0248