

terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request no later than ten days after service of a notice of hearing issued pursuant to § 1-26-17. **This section does not apply to any contested case before the Public Utilities Commission.**

This exemption is evidence of the legislature's intent for the Commission to lack the authority to delegate its power.

The legislature has gone so far as to establish a statute specific to the Commission to address proper to procedure to be implemented in the event that a commissioner has a conflict or is otherwise unable to participate. SDCL 49-1-9 provides:

Proceedings before commission--Quorum--Disqualification. Such Public Utilities Commission may in all cases conduct its proceedings, when not otherwise particularly prescribed by law, in such manner and places as will best conduce to the proper dispatch of business and to the ends of justice.

A majority of the commissioners shall constitute a quorum for the transaction of business, but no commissioner shall participate in any hearing or proceeding in which he has any conflict of interest or if he is temporarily incapacitated. If a commissioner determines that he is incapacitated or disqualified from participating for any reason in any hearing or proceeding, he shall certify that determination to the Governor, or if the character of the incapacity of any commissioner is such that he is unable to certify his incapacity to the Governor, the commission may make such certification. In the event of any such certification, the Governor shall then appoint an elected constitutional officer, other than the attorney general, to act as a member of the commission in place of the disqualified or incapacitated commissioner for the purpose of such hearing or proceeding only.

By providing this alternative process, it is clear that the legislature intended for all matters that come before the Commission be heard by a commissioner or other person equally accountable to the electorate. While not directly relevant to the request at issue, it does demonstrate the significance the legislature places on Commission decisions being made before elected officials.

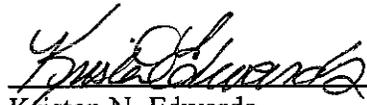
Therefore, Staff submits that the Commission lacks the authority to delegate its authority to conduct this proceeding.

Should the Commission determine that it does have the authority to employ the services of a special master, a point which Staff does not concede; Movants further request the special master be paid by the Commission. Again, Movants cite no authority for Commission to utilize its legislatively-approved budget in this manner.

Conclusion

Staff respectfully recommends the Commission deny the Motion for want of authority. However, should the Commission decide to order the appointment of a special master, Staff recommends the cost be borne by those parties requesting the appointment of a special master, rather than the Commission.

Dated this 8th day of April, 2015.



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