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Governor's Regulatory Review Council
100 N Fifteenth Ave, Suite 302
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grrc@azdoa.gov

RE: Arizona Corporation Commission March 3, 2025 Letter

Dear Members of the Governor's Regulatory Review Council,

This letter is a response to the March 3, 2025 letter sent to you by the Arizona Corporation Commission ("Commission"). The Commission makes a lot of arguments that are irrelevant to the questions before you.

A. The Governor's Regulatory Review Council ("GRRC") Does Have Authority

Arizona Revised Statutes ("A.R.S.") § 41-1057(B) states that the Commission may opt into the GRRC process. The Commission advised Underground Arizona that it could appeal pursuant to A.R.S. § 41-1033(E), which exclusively refers to the GRRC process. Moreover, the Commission did not advise Underground Arizona of an equivalent Commission-established independent process and we remain unaware of an equivalent independent process at the Commission.

A.R.S. 41-1044 mandates that exemptions under A.R.S. 41-1057 are subject to attorney general review. It would seem to us that if GRRC denies itself jurisdiction then the attorney general's office has jurisdiction. However, we see no reason for GRRC to deny itself jurisdiction when the Commission's actions clearly align with A.R.S. § 41-1057(B) and it is best equipped to issue an opinion. To deny jurisdiction is to leave Underground Arizona and similar parties at the mercy of non-existent processes.

B. The Issue is Line Siting Jurisdiction Not Ratemaking Jurisdiction

Again, as with its original response, the Commission spends most of its letter arguing red herrings. The issue before GRRC is a line siting policy statement not a ratemaking policy statement. Decision 79140 makes this fact very clear.¹ Frankly, reading the policy statement alone makes it clear because the leading sentence is effectively, “we don’t have jurisdiction over any of this.”² Can you issue policy statements or rules on issues for which you lack jurisdiction? Can you avoid having a rule reviewed by calling it a policy statement? We believe the answers to both are obviously no. Again, the Commission’s own counsel said as much in a public legal memo on June 14, 2023.³ By focusing only on its ratemaking jurisdiction and ignoring the limits of its line siting jurisdiction and the memo of its legal counsel, it seems the Commission is trying to confuse you and sidestep the actual issue because it has no arguments responsive to the actual issue.

Line siting jurisdiction is limited to overhead transmission lines under A.R.S. § 40-360(10). The Commission cannot expand line siting jurisdiction beyond its statutory limitations with policy statements or rules. Additionally, line siting is a creature of statute not the Arizona Constitution. Thus, the constitutional questions the Commission is attempting to raise by mischaracterizing a line siting policy statement as a ratemaking policy statement are a distraction and not responsive to the actual issue.

C. Conclusion

For the aforementioned reasons, Underground Arizona requests that GRRC determine the Commission’s line siting policy statement is a rule, and that whether it is a policy statement or a rule, it is invalid and contrary to the very statute that created the Line Siting Committee.

Sincerely,

/s/ Daniel Dempsey

Daniel Dempsey, Director

Underground Arizona

¹ Decision 79140 Finding of Fact 1: “On December 23, 2023, Arizona Corporation Commission Chairwoman Marquez Peterson opened this docket by memorandum to consider the adoption of a substantive policy statement to guide the Line Siting Committee” <https://docket.images.azcc.gov/0000209995.pdf>

² “3. The Commission does not have jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission’s jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders’ preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 et. seq.”

³ See page 16 of Decision 79140: <https://docket.images.azcc.gov/0000209995.pdf>