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ARIZONA CORPORATION COMMISSION

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March 3, 2025

Chairperson Jessica Klein
Governor's Regulatory Review Counsel
100 N 15th Avenue Suite 302
Phoenix, AZ 85007

Re: Arizona Corporation Commission Decision 79140, Policy Statement 3

Dear Chairperson Klein:

This letter is to put forth the Arizona Corporation Commission's ("Commission") legal office's position on an appeal to the Governor's Regulatory Review Council ("GRRC") from Underground Arizona dated November 8, 2024. Thank you for taking the time to listen to our concerns. When we were notified of the petition, we were also informed "[a]t this time there is nothing the Arizona Corporation Commission need to do with regards to this petition." Therefore, we did not have a representative attend the February 25, 2025, meeting.

A. The Governor's Regulatory Review Council Does Not Have Authority to Review the Arizona Corporation Commissions Rules or Policy Statements

Arizona Revised Statutes ("A.R.S.") title 41 article 5 establishes and identifies powers given to GRRC. A.R.S. § 41-1057(A) states that this article does not apply to the Commission. Because the article that establishes GRRC specifically exempts the ACC from the powers given to GRRC, our rules and policies are not subject to review in this forum.

A.R.S. § 41-1057(A)(2) states that the Commission shall adopt substantially similar rule review procedures, but we are outside of the procedures adopted and administered by GRRC. The Commission's rules are published in the Arizona Administrative Code Title 14 and have complied with the rulemaking process and have been published accordingly. The policy statement issued in Commission decision 79140 is not a rule and is not required to go through the formal rulemaking process. The guidance issued in the form of a policy statement, as discussed below, is simply a restatement of existing laws and rules.

B. Costs Associated with Undergrounding Transmission Lines Are Part of The Ratemaking Process

At issue is Commission decision number 79140 dated October 4, 2023, and specifically, the guidance provided in policy statement 3 contained in the decision. Policy statement 3 basically restates existing state law and properly promulgated rules. The policy states that installing electric transmission lines underground is more expensive to install and more costly and challenging to maintain and repair. Because of the additional expense, they should only be installed if necessary for reliability or safety purposes. If the stakeholder wants them underground for other reasons, they should form an improvement district as provided in A.R.S. § 48-620 et. seq. Forming an improvement district will ensure that the additional cost of undergrounding the transmission lines will be paid for by the stakeholders making the request.

The cost of undergrounding transmission lines is significantly more expensive than above ground. Costs associated with installation of transmission lines feed directly into rates and ratemaking and is a constitutionally directed function of the Commission. The Arizona Constitution, Article 15, Section 3 provides that "[t]he corporation commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the state for service rendered therein." The section goes on to grant the Commission the power to "make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transactions within the state."

All aspects of ratemaking, including determining appropriate costs, and issuing rules, are core constitutional duties of the Commission. Because these matters are constitutionally directed, the executive and legislature do not have the authority to reduce or alter the scope of responsibilities tasked to the Commission.

The Commission determines the rates that a public service corporation (a "utility") may charge. The Commission sets rates by finding the "fair value" of a utility's in-state property. Because the cost of undergrounding transmission lines directly impacts the fair value of those lines, the costs associated with installing and maintaining transmission lines is directly included in ratemaking. The Commission's guidance that requires the stakeholder to directly pay for the additional expense is following the law, as set forth below, and directly within the Commission's ratemaking authority.

C. The policy is Well Grounded in Existing State Law

Arizona law has three distinct statutes that address apportioning additional costs of undergrounding directly to the person requesting the change.

First, under A.R.S. § 40-341 et. seq. petitioners can form an underground conversion service area. When an underground service area is proposed, the utility for that area shall make a study to determine the "underground conversion cost." "Underground conversion cost means the costs to be paid by each owner to each public service corporation or public agency by the property owners within an underground conversion service area, as provided in this article." The statute directly requires the cost to be paid by each owner in the area, and not be apportioned to all utility ratepayers.

Second, A.R.S. § 48-620 allows a municipal governing body to establish an underground utility facility. And again, costs are determined prior to approval, and then if approved, the expense shall be collected through a tax assessment not to exceed fifteen years.

Third, A.A.C. R 14-2-206.B(2)(c) states a “customer requesting an underground service line in an area served by overhead facilities shall pay for the difference between an overhead service connection and the actual cost of the underground connection to the nonrefundable contribution.”

These are the direct basis for the guidance issued in Decision 79140 through policy statement 3. The policy is merely a restatement of the law and is intended to provide guidance of the stakeholder’s responsibility to pay additional costs associated with undergrounding transmission lines.

The reason for the policy is to assure that the cost of any unnecessary undergrounding is bore by the stakeholders that want it. Under A.R.S. §§ 40-341 et seq., public service corporations can install underground transmission lines (1) at their own expense (i.e., that cannot be recovered in general rates) or (2) pursuant to a conversion service area. The legislature has created a statewide scheme for the creation of “underground conversion service area” and each landowner with the conversion area must pay the costs for undergrounding to the public service corporation.

Underground Arizona, in its petition, cites Arizona Public Service Co. v. Town of Paradise Valley, 125 Ariz. 447 (1980), for the premise that state law allows municipalities to require undergrounding at utility expense. APS v Paradise Valley did say that state law does not prevent a city from mandating undergrounding of utilities at utility expense, but that was in a motion for summary judgment in which the Supreme Court accepted “the Town’s allegations that although the initial cost of undergrounding may be more, the maintenance costs are less and the long term cost is the same or less that the cost of above ground utility poles.” Because this was an issue of fact, the Court had to look at it in a light most favorable to the Town. Forty-five years later, and same policy statement at issue here, included a statement that underground lines are much more expensive to install and can be more costly and challenging to maintain and repair.

D. Conclusion

For the reasons stated above, the Commission requests that GRRC take no action on Underground Arizona’s appeal of the Commission’s determination. If you have any questions, feel free to reach out to our office.

Sincerely,

Robert Ridenour

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cc: Rana Lashgari, member
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