

Underground Arizona
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(I consented to service by email.)

June 24, 2025

Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, AZ 85007
grrc@azdoa.gov

RE: Arizona Corporation Commission June 16, 2025 Letter

Dear Members of the Governor's Regulatory Review Council (GRRC),

The Arizona Corporation Commission's (Commission) June 16, 2025 letter repeats the same arguments it already made before GRRC. You can review the record for Underground Arizona's full counterarguments, but they can be summarized as follows:

1. The policy statement was not a ratemaking policy statement but a line siting policy statement.¹
2. The Commission referred the public and Underground Arizona to the A.R.S. § 41-1033 GRRC petition process repeatedly in the line siting docket and advised us of a right to appeal to GRRC in response to our petition. These actions are not consistent with exemption from the APA.²
3. A.R.S. § 41-1057, which is under Article 5 of Chapter 6 of Title 41, only exempts the Commission from the automatic GRRC review requirements of Article 5, not from the petition process outlined in Article 3.³ The Commission is not exempt under the Chapter 6-wide exemptions found in A.R.S. § 41-1005.
4. A.R.S. § 41-1057(A)(2) exemption requires an equivalent review process be established by the Commission. The Commission has not established an arms-length third-party review equivalent to GRRC. The Commission merely reviews its own rules, which defeats the purpose of the APA.

¹ The policy statement exclusively references line siting statutes and is the result of a line siting docket not a ratemaking docket, among other things. See original petition.

² If the Commission were exempt, these actions are consistent with an A.R.S. § 41-1057(B) opt-in.

³ A.R.S. 41-1057 begins: "...this article does not apply to:"

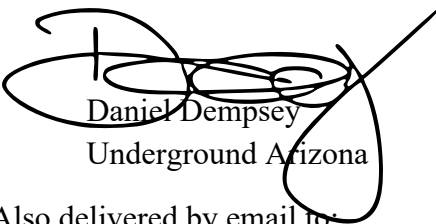
The courts have been quite clear that the Commission cannot simply call every rule it makes a ratemaking rule to avoid the checks and balances of the APA. In *Phelps Dodge Corp. v. Arizona Elec. Power Co-op., Inc.* (App. Div.1 2004) 207 Ariz. 95, 83 P.3d 573, the Court systematically shot down rules that the Commission claimed were ratemaking rules for not complying with the APA (e.g. supra Paragraph 91: “We affirm the court's ruling that the other challenged rules were promulgated outside the Commission's plenary power and were therefore subject to attorney general review and certification.”) Automatic attorney general review of new Commission rules prior to effectiveness is a requirement of the APA (A.R.S. § 41-1044) just like GRRC’s review of petitions is a requirement of the APA.

See also, *U S West Communications, Inc. v. Arizona Corp. Com'n* (App. Div.1 1999) 197 Ariz. 16, 3 P.3d 936 (Rules promulgated by Corporation Commission are subject to review by attorney general to ensure that they are clear, concise, understandable, in proper form, and within agency's power to make.)

The Commission already made these arguments before GRRC and has introduced no new evidence that GRRC lacks the power to review A.R.S. § 41-1033 petitions of Commission rules. The Commission is most certainly not exempt from the APA for a line siting policy statement petition. The Commission goes on to cite a recent lower court decision on an entirely different policy statement, with a different set of facts, that is still subject to appeal. In our view, the Court clearly erred in applying A.R.S. 41-1057(A)(2) to the entirety of Chapter 6 and that reasoning should fail on appeal. It certainly is not binding on GRRC or any other reviewer should it not be appealed.

The Commission voluntarily referred us to and participated in the GRRC process and lost. If the Commission wants the public to ignore GRRC’s decision, it should seek a declaratory judgment against GRRC. Until it successfully does so, Underground Arizona will treat the policy statement as voided.

Sincerely,



Daniel Dempsey
Underground Arizona

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