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Office of General Counsel

## ARIZONA CORPORATION COMMISSION

Office of General Counsel

June 16, 2025

Governor's Regulatory Review Council  
100 N. 15th Avenue, Suite 302  
Phoenix, AZ 85007  
[grrc@azdoa.gov](mailto:grrc@azdoa.gov)

**Re: Decision on A.R.S. § 41-1033(E) and (G) Appeal/Petition Related to Corporation Commission Substantive Policy Statement 3 of Decision No. 79140**

Dear Members of the Governor's Regulatory Review Council:

On June 11, 2025, the Arizona Corporation Commission ("Commission") met in an Open Meeting to discuss the "Decision" made at the June 3, 2025, Governors Regulatory Review Council ("GRRC") meeting. In a 5-0 decision, the Commission instructed the Office of General Counsel to address this letter to the members of GRRC and to explain the Commission's position.

First, the Commission thanks you for taking the time to listen to the parties' positions. While appreciated, the purported decision from GRRC has no force and effect, and the Commission writes to inform you that the policy stands as written, and the Commission will continue to leave the policy in place as advisory guidance to interested parties.

Article 15, section 3 of the Arizona Constitution grants the Commission the "full power to... make reasonable rules, regulations, and orders" with which to regulate public service corporations within the state. The ultimate authority over all rules relating to rates charged by public service corporations is granted exclusively to the ACC, subject only to judicial review. As such GRRC does not have authority to declare a policy statement to be a rule or invalidate an ACC policy statement. This position has repeatedly been upheld by Arizona Courts.

The commission's power goes beyond strictly setting rates and extends to enactment of the rules and regulations that are reasonably necessary steps in ratemaking. *Ethington v. Wright*, 66 Ariz. 382, 189 P.2d 209 (1948).

In 1992, the court invalidated a statute that required ratemaking rules to go before the Attorney General for approval.

The statute provides for a review of the results of the proceedings before the commission and gives the attorney general the power to reject the commission's ratemaking rules. Article 15, § 6 ***does not give the legislature the power to enact laws giving the executive branch the authority to review and reject such rules.*** The form of the proposed rule, its language, the authority of the commission to adopt the rule and whether or not it was adopted in compliance with appropriate procedures ***is within the sole and exclusive jurisdiction of the corporation commission***, subject, of course, to judicial review.<sup>1</sup>

Thus, the Arizona Supreme Court has held that rules and policies are “within the sole and exclusive jurisdiction of the corporation commission.” The Arizona Supreme Court later ruled on the Commission’s rule and policy authority.

The legislature has enacted two methods under the APA to review rules enacted by state agencies. Certain agencies are subject to oversight by the Governor's Regulatory Review Council. *See* A.R.S. §§ 41–1051 to –1057 (Supp.1998). ***The Commission's rules are not subject to council oversight, however.*** *See* A.R.S. § 41–1057(2). They are therefore subject to review by the attorney general to ensure that they are clear, concise, understandable, in proper form, and within the agency's power to make. *See* A.R.S. § 41–1044(A). The attorney general's review is set forth in A.R.S. section 41–1044.<sup>2</sup>

When looked at in *toto*, the Arizona Supreme Court has established that the Commission has the “sole and exclusive” authority to establish its own policies and rules, and it has expressly held that these policies and rules “are not subject to council oversight.” Thus, the June 3, 2025, letter from the Council is an oddity at best and lacks the force of law.

The Council did not need to read any case law to gain access to this guidance. A reading of the Council’s own jurisdictional statute, A.R.S. § 41-1057(A)(2), would suffice, which specifically exempts the Commission from the entirety of the Administrative Procedures Act (“APA”).

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<sup>1</sup> *State ex rel. Corbin v. Ariz. Corp. Comm’n*, 174 Ariz. 216, 219 (1992).

<sup>2</sup> *U.S. West Communications, Inc. v. Ariz. Corp. Comm’n*, 197 Ariz. 16, 22-23 (App. 1999).

As recently as June 13, 2025, a court reviewed extensive, detailed briefing from numerous parties on this issue and ruled that: (1) the Commission's exemption from the APA; and, (2) that the sole process for challenging a Commission policy/rule, is under A.R.S. § 40-254(A). As explained by the court:

While Plaintiff argues that the Commission's actions violated the APA, Title 41 clearly states that APA "applies to all agencies and proceedings not expressly exempted." A.R.S. § 41-1002. ***Section 41-1057 clearly and unambiguously states that "this article does not apply to...the corporation commission[.]"*** Instead, this section directs that the Commission "shall adopt substantially similar rule review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business." Additionally, while section 41-1034(A), allows "[a]ny person who is or may be affected by a rule" under the APA to "obtain a judicial declaration of the validity of the rule by filing an action for declaratory relief," see *Republican National Committee v. Fontes*, 566 P.3d. 984 ¶ 12 (App 2025), this is limited to rules implemented under the APA. As noted above, assuming the Commission's actions constitute a rule, that alleged rule was not subject to the procedures set forth in the APA but, instead subject to the "rule review procedures" the legislature directed the Commission to implement while exempting it from the APA. A challenge to the Commission's alleged rule making and whether it was done in violation of the procedures developed by the commission are reviewable under A.R.S. §40-254(A).

***Because Plaintiffs' claim for declaratory relief is solely based on the erroneous premise that the Commission's actions are subject to the APA, Plaintiff has failed to state a claim of action that can move forward. Dismissal is warranted*** because Plaintiffs fails to state a claim upon which relief can be obtained.

*Residential Utility Consumer Office v. Arizona Corporation Commission*, CV2025-011288 (June 13, 2025) (emphasis added). This is simply the latest iteration of established law, that has been clear for over 30 years now. It is all but black letter law that the Commission is exempt from the APA, it has its own rules process that is Constitutionally grounded, and the Commission has the authority to create policies and rules that govern its ratemaking and other actions. When and if the Commission updates its policy or makes a rule pertaining to the costs of undergrounding, it will follow its own rule making process and submit it to the Arizona Secretary of State for publication.

In light of the law governing this issue, and in response to GRRC's unauthorized assertion of jurisdiction over Commission rules and policies, the Commission unanimously voted to

affirm its previous position issued in Policy Statement 3 of Decision 79140 at its June 11, 2025, open meeting.

This vote, and this accompanying letter, constitutes notice to the public, the regulated public service corporations, and anyone else, that Policy No. 3 of Decision 79140 remains in full force and effect for all Commission business.

This letter will also be posted in the Commission Docket.

At this point, the Commission considers this matter to be closed.

Sincerely,

Thomas Van Flein, General Counsel  
Arizona Corporation Commission  
Office of General Counsel

Cc: Chairman Kevin Thompson  
Vice-Chair Nick Myers  
Commissioner Lea Márquez Peterson  
Commissioner Rachel Walden  
Commissioner Rene Lopez  
  
Governor Katie Hobbs  
Attorney General Kris Mayes  
Assistant Attorney General Lynnette Evans