

Arizona's Energy Issues are Best Handled by Experts, but the High-Level Policy is Best Handled at the Legislature

Representative Paul Boyer's (R-Glendale/Phoenix) penned an opinion piece in the Arizona Republic last week that he believes energy policy should be made in the Corporation Commission by the experts, and not in the Legislature. Corporation Commission Candidates Nick Myers and Kevin Thompson offer their response.

The roll of the Arizona Corporation Commission in Utility Regulation

The Arizona Corporation Commission (ACC) is tasked with the regulation and oversight of Arizona's private, non-municipal, for-profit utilities. A portion of that oversight includes working with the utilities on their Integrated Resource Plans (the utilities roadmaps for the future) which identifies how much energy they will need to generate to maintain a reliable grid, the sources of energy generation they wish to include, the prudence of the decisions made by the companies, and ultimately the costs of implementing those plans. All of this affects the future utility rates that all of us pay as consumers.

Recently, the Arizona Corporation Commission has attempted to expand its reach by mandating a carbon reduction plan to limit the percentage of emissions. This is where the line has been crossed. The Commission does not have the authority, expertise, or budget to enact this type of statewide policy. This is an overall Arizona public health and safety issue. Which is exactly what the legislature is set up to address.

The Legislature Works for the People

The Legislature was established in 1912 to be the voices of all of Arizona's citizens. They were given authority to set statewide policies for Arizona, and they have been doing so ever since. They encompass representatives from all over the state, including both rural Arizona and urban Arizona. They also consist of two separate branches of Legislature; Senate and House, and they routinely deal with issues at a state level that range from education to water. The ACC has no constitutional authority to attempt to set policy that affects all utilities, but the Legislature does.

A topic as important as Arizona's energy future should be discussed by the body that represents Arizonan's; has experience setting statewide policy, where 30 Senators and 60 Representatives can openly debate with stakeholder input; and where checks and balances are in place. The legislature should deal with ALL issues that have a direct impact on the entire state, like disconnect rules.

It is Simply Dangerous for Three Unqualified Electors to Make Major Policy Decisions

The ACC was established by our forefathers as an independent body under Article 15 of the Arizona Constitution. Our charge is to ensure safe, reliable, and affordable utility services. The Commission's Constitutional authority is overarching in that we operate in an Executive, Legislative, and Judicial capacity by adopting rules and regulations and passing judgement on contested issues that may come before the Commissioner's.

There are five Commissioners on the Corporation Commission, so there only needs to be three aligned to pass rules, regulations, and judgements. To some extent, candidates running for Commission have had little to no experience in the energy sector, so is it really wise to give 3 people the power to control energy policy for Arizona? While it is true that the Arizona Corporation Commission has a very

knowledgeable and experienced staff, the Legislature was established to be the voice of the citizens in their Districts, giving greater representation to the people. The legislative process allows for full vetting of policy. This includes established committees, legal analysis, stakeholder input, debate, and ultimately a fully fleshed out discussion before the decision is made. The ACC has processes in place for dispute resolution, but that does not equate to good policy making.

At the Commission, there are no committees, there is not much in the way of debates, and usually there is only one attempt at an amendment process. Commissioners are not even allowed to talk to more than one other commissioner about any subject without violating open meeting law. Sure, there might be a couple of workshops, a hearing, and a “RECOMMENDED Order and Opinion” made by the judge, but that judge has no actual authority over the final decision. This is left up to the five commissioners that likely did not attend the hearings, likely have no background in energy, and can’t even talk to one another except in a public meeting held once a month. Then, only three of them need to agree to adopt or reject the recommendation or amendments.

HB2248 and SB1175

Last year, the Legislature attempted to put into place HB2248 and SB1175, which was an attempt to reign in the Corporation Commission before it headed down the path of massively disruptive changes to its own rules that would force major portfolio changes to all private electric utilities in Arizona. Neither Bill attempted to circumvent the Commission’s Constitutional responsibilities of setting utility rates, but rather to keep the Commission on task.

In the Johnson Utilities L.L.C. vs Arizona Corporation Commission case, the presiding judge recognized the separation of powers of the legislature and the ACC by clearly stating, “The permissive clause does not, either expressly or impliedly, limit or divest the legislature of its police power to protect the health, safety, and welfare of the public.” Thus, stating the Commission has plenary authority to set utility rates, but everything else is only permissive. The legislature retains ultimate authority regarding the health, safety, and welfare of the public.

Arizona has, and should, continue to have a thriving economy, and energy pricing and grid reliability are essential to meeting that goal. The Corporation Commission is tasked, Constitutionally, with ensuring the consumers are protected from price gouging by allowing a “fair and reasonable return on investment” and ensuring reliability in the energy grid. The biggest goal is to make sure the lights come on when the switch is turned on. Allowing three people, who have little or no experience in the energy industry and get fed a handful of consolidated and summarized information is foolish at best. Energy policy should not be an “easy” process or discussion, and consumers should have the benefit of fair representation from across the state. The Arizona Corporation Commission amounts to an “Expert Witness” and should be treated as such by the Legislature. Anything else is foolish, and potentially detrimental to the reliability of our electric grid and threatens the economic fabric of Arizona.

Note: Nick and Kevin have a combined 23 years of utility experience, making them the exception rather than the rule.