

SENATOR FRANK PRATT

1700 WEST WASHINGTON, SUITE 310
PHOENIX, ARIZONA 85007
CAPITOL PHONE: (602) 926-5761
TOLL FREE: 1-800-352-8404
fpratt@azleg.gov

COMMITTEES:

CHAIRMAN, NATURAL RESOURCES & ENERGY
VICE CHAIR, TRANSPORTATION & PUBLIC SAFETY
VICE CHAIR, WATER & AGRICULTURE
GOVERNMENT

DISTRICT 8

February 5, 2019

Via email: AGOpinionRequests@azag.gov

Mark Brnovich
Arizona Attorney General
1275 W. Washington St.
Phoenix, AZ 85007

Re: the scope of Arizona's public works eminent domain statutes

Dear Attorney General Brnovich:

In my capacity as Chairman of the Natural Resources & Energy Committee for the Arizona State Senate, I write to ask for a formal legal opinion pursuant to ARS 41-193 regarding Arizona's public works eminent domain statutes, A.R.S. §§ 12-1141 through 1162. Arizona has an interest in establishing partnerships that enable it to develop certain "public works" projects that serve the broad public interest. I respectfully request your opinion regarding whether a private developer may use Arizona's public works eminent domain statutes as needed to build a transmission line that connects an Arizona substation with a California substation, allowing the bidirectional delivery of electricity to Arizonans and Californians alike. This transmission line has been included in the Arizona Corporation Commission's ("ACC") Biennial Transmission Assessment for more than a decade, was actively solicited for development by the California Independent System Operator Corporation ("CAISO"), and the line developer's construction and post-construction activities will be heavily regulated by the ACC, the Federal Energy Regulatory Commission, the North American Electric Reliability Corporation, the California Public Utilities Commission, and the CAISO, among others. It seems to me that building a transmission line of this sort is precisely the kind of "public works project" that the Arizona legislature intended for eminent domain authority to apply.

Had the CAISO awarded the construction of this line to a public service corporation, there would be no doubt that the utility would have the power of eminent domain to build the line along whatever route is ultimately approved by the ACC. I find it unlikely that Arizona's statutory scheme would deprive the successful bidder of eminent domain authority needed to build the same public project, simply because the successful party is not a "public utility" as Arizona defines that term. The attached legal analysis supports allowing the developer to use Arizona's public works eminent domain statutes in furtherance of this project.

Thank you for your assistance in this matter. I look forward to your response.

Sincerely,

Senator Frank Pratt
Chairman, Natural Resources & Energy Committee
Legislative District 8