

COMMISSIONERS
Jim O'Connor - Chairman
Lea Márquez Peterson
Anna Tovar
Kevin Thompson
Nick Myers



Anna Tovar
COMMISSIONER

(602) 542-3935 OFFICE
Tovar-Web@azcc.gov

ARIZONA CORPORATION COMMISSION
OFFICE OF COMMISSIONER ANNA TOVAR

October 30, 2023

VIA EMAIL
kris.mayes@azag.gov

The Honorable Kris Mayes
Arizona Attorney General
2005 N Central Ave
Phoenix, AZ 85004-2926

Dear Attorney General Mayes:

As authorized by A.R.S. § 41-193(A)(7), I write to request a written opinion on the following questions of law relating to my office as an Arizona Corporation Commissioner:

1. Does a letter signed by a quorum of Arizona Corporation Commissioners to Governor Hobbs constitute 'legal action' that should have occurred during a public meeting pursuant to A.R.S. §§ 38-431 *et seq.*?
2. Does A.R.S. §§ 38-431 *et seq.* require the subject matter of a legal action to be within the jurisdiction of the Arizona Corporation Commission?
3. For purposes of A.R.S. §§ 38-431 *et seq.*, does an Arizona Corporation Commissioner signing a letter on Commission letterhead and using their official title as Commissioner in the signature block constitute acting in the Commissioner's official capacity?
4. Does A.R.S. §§ 38-431 *et seq.* give a quorum of Arizona Corporation Commissioners acting in their official capacity the authority to propose, discuss, deliberate, or edit a letter, either in person or via electronic communication, and then execute that same letter outside of a public meeting?
5. Does A.R.S. §§ 38-431 *et seq.* give a single Commissioner from the Arizona Corporation Commission the authority to send one-way electronic communications to a quorum of members of the Arizona Corporation Commission soliciting signatures for a letter to be signed in the member's official capacity outside of a public meeting?

Background

On October 11, 2023, four Arizona Corporation Commissioners executed a letter to Governor Katie Hobbs requesting that she work collaboratively with the Arizona Corporation Commission to intervene

on behalf of the customers of San Carlos Irrigation Project (SCIP) (the “Letter”).¹ The Letter was sent on Arizona Corporation Commissioner stationary from the office of Commissioner Kevin Thompson. Commissioners Lea Márquez Peterson, Commissioner Nick Myers, and Chairman Jim O’Connor joined Commissioner Thompson in signing the letter. All signatories used their official titles as Commissioners or Chairman in the signature block.

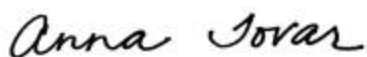
In the Letter, the signatories suggest Governor Hobbs should intervene with the Corporation Commission to address a “massive” rate increase for SCIP customers that federal regulators approved earlier this year. According to the Letter, SCIP “has long overextended its original 1928 mission” and intervention was required to “free SCIP customers from federal authority.” The Letter raises divestiture of SCIP as a solution “which could potentially allow current SCIP ratepayers to become customers of Arizona electric utilities.” The Letter notes that the divestiture approach would have an “end goal of transferring generation, transmission, and customer responsibility to regulated Arizona utilities.”

Also on October 11, 2023, my office was contacted by Commissioner Thompson’s office via email with a request to sign the draft Letter. The request made no mention of other offices being contacted and did not provide any detail on the origins or discussions surrounding the letter. I declined to take a position on the issue and declined to sign the letter.²

On October 25, 2023, Commissioner Kevin Thompson issued a press release entitled “Four Commissioners Urge Governor to Intervene on Behalf of San Carlos Irrigation Project Ratepayers” with a link to the Letter.³ To my knowledge, neither the Letter, nor the San Carlos Irrigation Project have been discussed at an open meeting pursuant to A.R.S. §§ 38-431 *et seq.* The Commission’s most recent open meeting after October 11th was October 26, 2023, and this issue was not included on the agenda.

I look forward to hearing from you in this matter. If you have any questions, please do not hesitate to contact my office.

Sincerely,



Anna Tovar
Commissioner



¹ A copy of the Letter dated October 11, 2023 regarding San Carlos Irrigation Project (SCIP) is enclosed for your reference.

² Copies of the electronic communications dated October 11, 2023 between Commissioner Tovar’s office and Commissioner Thompson’s office regarding the Letter are enclosed for your reference.

³ A copy of the October 25, 2023 press release entitled “Four Commissioners Urge Governor to Intervene on Behalf of San Carlos Irrigation Project Ratepayers” is enclosed for your reference.

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KEVIN THOMPSON
Commissioner

ARIZONA CORPORATION COMMISSION

October 11, 2023

Governor Katie Hobbs
Office of the Arizona Governor
1700 W. Washington
Phoenix, AZ 85007

Dear Governor Hobbs:

As you and your team are aware, electricity customers of the San Carlos Irrigation Project (SCIP) were recently hit with massive price increases in their monthly utility bills, in many cases more than doubling their previous payments. The sudden increase is purportedly related to the U.S. Department of Interior's Bureau of Indian Affairs' (BIA) application of new purchased Power Cost Adjustment (PCA) agreements which soared to \$0.056 per kilowatt hour (kWh). This new PCA rate is in addition to customers' existing electric power rates.

The unfortunate situation in Central Arizona highlights the dangers of any utility subject to the volatility of disproportionately purchasing power on the open market. It has now become painfully obvious that SCIP has long overextended its original 1928 mission of providing irrigation water and minimal power to tribal lands and surrounding communities. It is estimated that roughly 80% of SCIP's approximately 10,000 customers are located on non-tribal lands.

As you are also well aware, neither the Arizona Corporation Commission (ACC) nor the State of Arizona has any regulatory authority over SCIP, and any solution will likely require federal intervention. Among suggested proposals is the divestiture of SCIP, which could potentially allow current SCIP ratepayers to become customers of Arizona electric utilities. It is worth noting that divestiture has been attempted before but was unsuccessful for reasons that are too complicated to detail here.

The first piece of federal legislation proposing divestiture of SCIP was introduced in 1987, but it wasn't until Arizona Congressman Jim Kolbe introduced H.R. 1476 (San Carlos Indian Irrigation Project Divestiture Act of 1991), that the Act would be signed into law (Public Law No: 102-231). The bill had bipartisan support from Arizona's delegation, but unfortunately, the plan to complete divestiture and free SCIP customers from federal authority never manifested.

Costly upgrades to the SCIP electrical system are necessary. Perhaps it is time to reignite collaborative discussions with our federal partners exploring divestiture of the federally owned utility with the end goal of transferring generation, transmission, and customer responsibility to regulated Arizona utilities. Additionally, we believe federal funds could be requested to provide necessary maintenance and improvements to the SCIP grid. We have heard anecdotally from SCIP customers that it is not uncommon for rolling blackouts to impact the SCIP electrical system for multiple days.

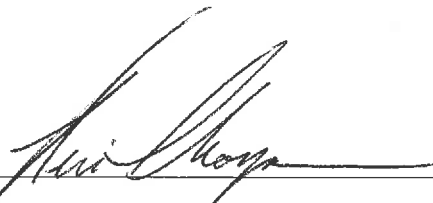
More immediately, we welcome the exploration of financial protections that can be provided to SCIP customers to increase the safety net and protect vulnerable ratepayers. For example, the Biden-Harris Administration recently announced more than \$167 million in “grid resilience formula” grants to states and tribes across the country. While we are unclear whether your Office of Resiliency will have any role in dispersing the \$13 million allocated to Arizona, we believe it is worth exploring if any of these funds can be devoted to reducing “rate shock” for this community or providing necessary improvements to the SCIP electrical system.

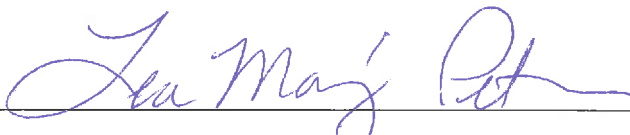
In July of this year, you wrote to Arizona utilities expressing your concerns regarding the unprecedented heatwave and medical dangers posed to customers at risk of losing electricity service due to financial constraints and nonpayment. We share those same concerns for the public and were not surprised by the regulated utilities collective response that there are well-established policies in place ensuring vulnerable customers will not have their power shut off during the most grueling days of summer. Unfortunately, similar protections do not exist for SCIP customers. And while Arizona’s extreme weather is finally beginning to subside, there is no guaranteed protection for SCIP customers in the future when our temperatures dangerously begin reaching the 100-degree mark next summer.

More than 30 years ago the U.S. Congress led the charge to address the problems with SCIP and attempted to implement changes that would allow the system to operate efficiently and provide ratepayers with an improved experience. Given the fact the Act never manifested into reality, it is unsurprising that history is repeating itself and the dire situation for these Arizonans will only continue to worsen. During the House floor debate in November 1991, former Congressman Kolbe promoted the idea of “getting the government out of the business that private enterprise ought to be doing.” We completely agree.

It should be acknowledged that we recognize the vast majority of potential long-term solutions are outside of your control and authority as governor. However, like us, we know you are looking for meaningful solutions, and we would appreciate your willingness to advocate for Arizona ratepayers. We write to you today in our individual capacities, and we welcome an opportunity to provide any assistance to you or your office on this important matter.

Sincerely,


COMMISSIONER KEVIN THOMPSON


COMMISSIONER LEA MÁRQUEZ PETERSON


COMMISSIONER NICK MYERS


CHAIRMAN JIM O’CONNOR

Erin Ford Faulhaber

From: Nikki Farha
Sent: Wednesday, October 11, 2023 9:54 AM
To: Erin Ford Faulhaber
Cc: Ryan Anderson
Subject: Letter Re: SCIP - Feedback requested today
Attachments: SCIP Letter Final 10.11.23.pdf

Importance: High

Hi Erin,

Our office intends to transmit a letter to the Governor today regarding SCIP district. Commissioner Thompson requested we send your way for consideration of Commissioner Tovar to sign on. I tried to knock on your door this morning but did not find you.

Apologies for the short turn around. If you could let us know by OM lunch break, we would appreciate it. Please find the final version of the letter attached. I will add lines for signature at the end.

Thanks,
Nikki

Nikki Farha
Deputy Policy Advisor
Commissioner Kevin Thompson
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007
480-901-9011
www.azcc.gov



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KEVIN THOMPSON
Commissioner

ARIZONA CORPORATION COMMISSION

October 11, 2023

Governor Katie Hobbs
Office of the Arizona Governor
1700 W. Washington
Phoenix, AZ 85007

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The unfortunate situation in Central Arizona highlights the dangers of any utility subject to the volatility of disproportionately purchasing power on the open market. It has now become painfully obvious that SCIP has long overextended its original 1928 mission of providing irrigation water and minimal power to tribal lands and surrounding communities. It is estimated that roughly 80% of SCIP's approximately 10,000 customers are located on non-tribal lands.

As you are also well aware, neither the Arizona Corporation Commission (ACC) nor the State of Arizona has any regulatory authority over SCIP, and any solution will likely require federal intervention. Among suggested proposals is the divestiture of SCIP, which could potentially allow current SCIP ratepayers to become customers of Arizona electric utilities. It is worth noting that divestiture has been attempted before but was unsuccessful for reasons that are too complicated to detail here.

The first piece of federal legislation proposing divestiture of SCIP was introduced in 1987, but it wasn't until Arizona Congressman Jim Kolbe introduced H.R. 1476 (San Carlos Indian Irrigation Project Divestiture Act of 1991), that the Act would be signed into law (Public Law No: 102-231). The bill had bipartisan support from Arizona's delegation, but unfortunately, the plan to complete divestiture and free SCIP customers from federal authority never manifested.

Costly upgrades to the SCIP electrical system are necessary. Perhaps it is time to reignite collaborative discussions with our federal partners exploring divestiture of the federally owned utility with the end goal of transferring generation, transmission, and customer responsibility to regulated Arizona utilities. Additionally, we believe federal funds could be requested to provide necessary maintenance and improvements to the SCIP grid. We have heard anecdotally from SCIP customers that it is not uncommon for rolling blackouts to impact the SCIP electrical system for multiple days.

More immediately, we welcome the exploration of financial protections that can be provided to SCIP customers to increase the safety net and protect vulnerable ratepayers. For example, the Biden-Harris Administration

recently announced more than \$167 million in “grid resilience formula” grants to states and tribes across the country. While we are unclear whether your Office of Resiliency will have any role in dispersing the \$13 million allocated to Arizona, we believe it is worth exploring if any of these funds can be devoted to reducing “rate shock” for this community or providing necessary improvements to the SCIP electrical system.

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It should be acknowledged that we recognize the vast majority of potential long-term solutions are outside of your control and authority as governor. However, like us, we know you are looking for meaningful solutions, and we would appreciate your willingness to advocate for Arizona ratepayers. We write to you today in our individual capacities, and we welcome an opportunity to provide any assistance to you or your office on this important matter.

Sincerely,

Erin Ford Faulhaber

From: Erin Ford Faulhaber
Sent: Wednesday, October 11, 2023 10:04 AM
To: Nikki Farha
Cc: Ryan Anderson
Subject: RE: Letter Re: SCIP - Feedback requested today

Nikki and Ryan,

Thank you for reaching out to our office. At this time, Commissioner Tovar is not prepared to take a position on the issue. Please extend her thanks to Commissioner Thompson for extending the offer to cosign his letter.

Erin

Erin Ford Faulhaber
Policy Advisor to Commissioner Anna Tovar
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007
602-542-0837
efordfaulhaber@azcc.gov

From: Nikki Farha <nfarha@azcc.gov>
Sent: Wednesday, October 11, 2023 9:54 AM
To: Erin Ford Faulhaber <EFordFaulhaber@azcc.gov>
Cc: Ryan Anderson <randerson@azcc.gov>
Subject: Letter Re: SCIP - Feedback requested today
Importance: High

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Thanks,
Nikki

Nilda Farina
Deputy Policy Advisor
Commissioner Kevin Thompson
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1200 W. Washington St.
Phoenix, AZ 85007
480-931-3311
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News Release

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Four Commissioners Urge Governor to Intervene on Behalf of San Carlos Irrigation Project Ratepayers

Phoenix, Ariz. — Four Arizona Corporation Commissioners recently wrote to Governor Hobbs requesting intervention on behalf of customers of the federally-run San Carlos Irrigation Project (SCIP). The customers were recently informed of massive price increases to their monthly utility bills as a result of the federal government's inability to purchase power on the open market at a reasonable cost. SCIP is a federally-run utility and is not subject to regulation by the Commission or the State of Arizona. Roughly 10,000 customers in Central Arizona are members of SCIP, including approximately 80% located on non-tribal lands.

In the October 11th letter led by Commissioner Thompson and signed by Commissioners Márquez Peterson, Myers, and Chairman O'Connor, the group noted previous attempts of the federal divestiture of SCIP. In 1991, former Congressman Jim Kolbe introduced H.R. 1476 (San Carlos Indian Irrigation Project Divestiture Act of 1991). The bill experienced bipartisan support from Arizona's delegation and was signed into law in December 1991. Unfortunately, the plan to complete divestiture and release SCIP customers from the federal authority never fully manifested. The Commissioners urged the Governor to reignite collaborative discussions with federal partners to explore a solution for customers that is responsive and accountable to Arizonans, including possible divestiture.


Additionally, the Commissioners urged the Governor to explore interim financial protections the State could provide to SCIP customers to increase the safety net and protect vulnerable ratepayers most impacted by the recent dramatic rate shock. The Commissioners highlighted possibly accessing the roughly \$13 million recently provided by the federal government to Arizona in "grid resilience formula" grants. The Commissioners also noted federal funds could be requested to provide necessary and costly maintenance and improvements to the SCIP grid.

Finally, the Commissioners noted that while the Governor heard from Arizona utilities in July that customers were not at risk for losing electricity service due to financial hardships or nonpayment during the hot summer months, similar federal protections do not exist for SCIP customers. The Commission has adopted protections for Arizona customers of utilities regulated by the Commission, ensuring vulnerable customers' power will not be shut off during the most dangerous parts of the summer. The Commissioners expressed concerns that dangers will continue to emerge for SCIP customers once high temperatures return, short of any assurances from the federal government that vulnerable customers will be protected.


Please see a copy of the letter, [attached \(/docs/default-source/news-release-files/azcc-scip-letter-to-governor-hobbs.pdf?sfvrsn=f4e9213e_1\)](/docs/default-source/news-release-files/azcc-scip-letter-to-governor-hobbs.pdf?sfvrsn=f4e9213e_1).


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