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April 3, 2025

Re: HB 2679 Should Not be Passed as Written

Dear Members,

I have been closely following efforts by the Legislature, Arizona's utilities, ratepayer advocates, and other stakeholders to develop utility securitization legislation. Securitization has merit and could lower utility—and utility customer—costs as Arizona's economy booms over the next decade and utilities transition to lower cost, reliable, clean electric generating resources. Nevertheless, I must oppose HB 2679 ("the Bill"), because it unconstitutionally intrudes on the Corporation Commission's ("Commission") exclusive ratemaking authority and because it disincentivizes utility spending discipline.

To create the legal certainty required for securitization, the Bill necessarily infringes on the Commission's exclusive, constitutional authority to set utility rates. Our state Constitution commands that "[t]he corporation commission shall have ***full power* to**, and shall, **prescribe**…**just and reasonable rates and charges to be made and collected, by public service corporations**[.]"[1] The Commission's ratemaking authority is exclusive.[2] And while the Legislature may enlarge the Commission's regulatory authority, the Legislature may not limit the Commission's constitutionally vested ratemaking powers.[3]

Yet, the Bill necessarily and explicitly does so. Transition bonds will be paid for by a mandatory, nonbypassable charge on all utility customer bills.[4] The Bill would bar the Commission from exercising any oversight authority over the costs associated with transition bond issuance, the nonbypassable charges created to pay off the bonds, the revenue collected by utilities through nonbypassable customer

1 Ariz. Const. Art. 15 § 3 (emphasis added).
2 *Residential Util. Consumer Office v. Arizona Corp. Comm'n*, 240 Ariz. 108, 111, ¶ 12, 377 P.3d 305, 308 (2016).
3 *Selective Life Ins. Co. v. Equitable Life Assur. Soc. of U. S.*, 101 Ariz. 594, 600, 422 P.2d 710, 716 (1967) ("The legislature may enlarge the powers and extend the duties of the corporation commission, but may not decrease its powers."); *Arizona Corp. Comm'n v. Superior Court In & For Maricopa Cnty.*, 105 Ariz. 56, 62, 459 P.2d 489, 495 (1969); *see also Ethington v. Wright,* 66 Ariz. 382, 392, 189 P.2d 209, 216 (1948) ("[I]n the matter of prescribing classifications, rates, and charges of public service corporations and in making rules, regulations, and orders concerning such classifications, rates, and charges by which public service corporations are to be governed…**the Commission is supreme and such exclusive field may not be invaded by the courts, the legislature, or the executive**.") (emphasis added).
4 A.R.S. § 40-608(A) (proposed).

charges, or the year-to-year changes in the size of the nonbypassable customer charge.[5] The Bill even strips the Commission of authority to adjust the size and distribution of nonbypassable charges between different customer classes.[6]

Stated plainly: the Bill prohibits the Commission from regulating a portion of customer rates, collected by utilities from their ratepayers, via a charge on ratepayers' monthly bills, to pay for bonds backed by utility assets. The Bill's recognition that the Commission would still have authority to regulate utilities in matters *related to* the transition bonds does not solve the problem.[7] Setting rates is the Commission's sole, constitutional prerogative.

The Bill also incentivizes utility wastefulness by allowing utilities to securitize all manner of operational costs. Many jurisdictions allow utilities to securitize the remaining book cost of a retiring power plant (In the parlance of the Bill, the "Transition Asset Retirement Cost" of a "Transition Asset"). This Bill goes far further, permitting utilities to securitize "unrecovered fuel costs," "significant event recovery costs," and the remaining book cost of a power plant—even if that power plant doesn't actually retire.[8]

The Bill allows utilities to securitize "unrecovered fuel costs" caused by vague categories like "market volatility," "substantial customer load growth," or by "[a]ny other reasonably unforeseen circumstances."[9] "Significant events," meanwhile, include costs "arising from or related to weather," or "other significant events or incidents" that "threaten to cause…financial loss."[10] In other words, a utility can completely securitize its operational uncertainty.

This carte blanche approach to securitization will strongly disincentivize utility cost discipline. For example, utilities will be disincentivized to select the most advantageous or cost-effective fuel contracts or power purchase agreements, knowing that they can securitize any unrecovered costs. The costs of lackadaisical utility operations—even if partially offset by the benefits of securitization—will be borne, mandatorily, by ratepayers.

And while ratepayers won't benefit from the Bill's approach to securitization, utility shareholders certainly will. The Bill allows utilities to benefit twice from the same transaction by claiming that the utility will retire a power plant, securitizing the cost of the to-be-retired power plant, and then selling the power plant to a third party, which can continue operating the power plant. The utility can thus collect the revenues from securitizing the remaining book value of a power plant *and* sell the

5 A.R.S. § 40-608(E) (proposed).
6 A.R.S. § 40-608(B) and (D) (proposed).
7 *See* A.R.S. § 40-604 (proposed).
8 *See* A.R.S. § 30-903(C) (proposed) and A.R.S. § 40-603(A)(1) (proposed); *see also* A.R.S. § 30-901(17) (proposed) and A.R.S. § 40-601(17) (proposed) (definitions of "Transition Asset").
9 A.R.S. § 30-30-903(C)(1)(b) (proposed) and A.R.S. § 40-603(A)(1)(b) (proposed).
10 A.R.S. § 30-902(A)(3) (proposed) and A.R.S. § 40-602(A)(3) (proposed).

power plant. This is an exceptional deal for utilities with zero, commensurate upside for utility customers.

Securitization deserves careful consideration by all stakeholders to ensure that Arizonans benefit as much as possible from this innovative financial tool.[11] Ultimately, the Commission said it best: utility securitization initiatives should be developed through a Commission-led stakeholder process.[12] A Commission-led process can address the thorny, constitutional issues at play and ensure that securitization proposals are developed with ratepayers' best interests in mind.

If the Legislature is intent on moving forward with the Bill, however, I recommend the Senate make a number of changes, including:

- Requiring power plants be retired—not just scheduled to be retired—to be securitized; and
- Eliminating the "unrecovered fuel costs" category of securitization-eligible costs.

These changes would not resolve the fundamental, constitutional issues with the Bill, but would substantially increase securitization's benefit for ratepayers.

Please do not hesitate to contact me to discuss this issue further.

Sincerely,

Kris Mayes
Attorney General
State of Arizona

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11 One stakeholder perspective apparently absent from the Bill is that of coal-impacted communities. Arizona Public Service Co. initially proposed securitization during its 2019 rate case to provide financial assistance to communities negatively impacted by the closure of coal-fired power plants in Northern Arizona and New Mexico. Properly structured, securitization can provide much-needed revenues for communities that powered Arizona for decades and that are now facing severe, economic dislocation. *See* Herman Trabish, *APS's plan for closing coal plants could be a gamechanger, analysts say, but who will pay?* Utility Dive, December 18, 2020, https://www.utilitydive.com/news/apss-plan-for-closing-coal-plants-could-be-a-gamechanger-analysts-say-bu/591468/.

12 *See* Douglas Clark, *RE: HB 2679: Power; public utilities; UCC; securities,* February 25, 2025, https://docket.images.azcc.gov/0000212848.pdf?i=1743618646185 at 3.