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Renewable energy - Featured Article

April 08, 2011

Arizona Appeals Court Upholds Renewable Energy Regulations



By Cheryl Kaften

TMCnet Contributor

The [Goldwater Institute](#) is likely to appeal a decision it lost in the Arizona Court of Appeals on April 7, which would have blocked the [Arizona Corporation Commission \(ACC\)](#) from requiring utilities to get 15 percent of their electricity from alternative sources, such as solar and wind, by 2025.



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This was the fourth legal challenge by the Institute's watchdog group, the [Scharf-Norton Center for Constitutional Litigation](#), to the renewable energy regulations established by the Commission in 2006. The lawsuit, [Miller v. Arizona Corporation Commission](#), made the argument that the rules exceed the Commission's limited constitutional and statutory authority, violate separation of powers, and impermissibly interfere with the relationship of all utilities and their customers.

Simply put, the Center accused the Commission of a power grab because, under the Arizona Constitution, the ACC ["has jurisdiction over the quality of service and rates charged by public service utilities."](#) The Center argued that the ACC does not have the authority to set energy policy, which is the legislature's role, and does not have the authority to require utilities to charge more.

Second, as part of the mandate to convert to clean energy, the ACC required electricity companies to impose a surcharge on each of their customers. The Center argued that consumers would have to pay millions of dollars in tariffs to help their power providers offset the costs of implementing solar and other renewables requirements—including \$48.2 million in one year, alone, for the 1.1 million customers of [Arizona Public Service \(APS\)](#)

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"These regulations may be the largest intrusion into private business in Arizona's history—and consumers are picking up the tab," said Clint Bolick, director of the Scharf-Norton Center. The Court of Appeals' opinion was that the elected commissioners do have the authority to make such rules because they relate to power rates. "In formulating the [renewable energy] rules, the commission considered the price fluctuations, transportation disruptions, and shortages associated with conventional fuel sources, noting that renewable resources are not subject to these same vagaries," the judges wrote.

Corporation Commission Chairman Gary Pierce said that he thought there was "no question" the regulators would prevail and that the commissioners' main goal is protecting utility ratepayers. Bolick said the institute plans to review the decision, and is likely to appeal to the Arizona Supreme Court by the May 9 deadline. "Obviously it's a bad decision for ratepayers who are bearing the burden of these rates in a difficult economic time," Bolick said. "Whenever we lose a case, we have an internal discussion to appeal or not, and we almost always do," he said. The Phoenix-based Goldwater Institute is an independent agency supported by people "[who are committed to expanding free enterprise and liberty.](#)" The Goldwater Institute was founded in 1988 with the blessing of five-time U.S. Senator and 1964 Presidential candidate Barry Goldwater (R-AZ).

*Cheryl Kaften is an accomplished communicator who has written for consumer and corporate audiences. She has worked extensively for MasterCard ([News - Alert](#)) Worldwide, Philip Morris USA (Altria), and KPMG, and has consulted for Estee Lauder and the Philadelphia Inquirer Newspapers. To read more of her articles, please visit her [columnist page](#).*

Edited by [Janice McDuffee](#)

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