

AZ Supreme Court rules on broad discretion in utility rates

By Jennifer A. Cranston

The Arizona Corporation Commission is charged with the constitutional authority and obligation to regulate public utilities.



In August, the Arizona Supreme Court issued a decision confirming the broad discretion that the Commission holds in carrying out one of its most important regulatory functions – setting utility rates.

In *RUCO v. Ariz. Corp. Commission*, the Residential Utility Consumer Office (RUCO, a state agency responsible for representing the interests of residential utility ratepayers) challenged the Commission's approval of a mechanism that allowed a water company to adjust its rates between rate cases. RUCO objected to the adjustment mechanism because it would allow the utility to charge higher rates without the kind of detailed analysis that the Commission typically employs to set rates in a full rate case.

A full rate case, as the Court explained, is the procedure used by the Commission to evaluate a utility's operations and finances and determine what rates are just and reasonable. The Commission considers a variety of rate-related factors in a rate case, including the value of the company's property and its reasonable operating expenses. As the Court acknowledged, rate cases can be complex, litigious and time consuming, which is why utilities favor mechanisms that allow rate adjustments between full rate cases.

Based on prior appellate court decisions, RUCO argued that rate adjustments between rate cases are only permissible under very limited circumstances, specifically in response to emergencies or to account for



price fluctuations in a narrow category of operating expenses. Accordingly, RUCO claimed that the Commission's approval of the water company's adjustment mechanism was improper because it allowed annual rate increases based on infrastructure projects completed between rate cases. According to RUCO, such an increase should only be considered in the context of a rate case, where the Commission can evaluate whether the new rates are truly reasonable in light of all relevant and up-to-date information.

The Arizona Supreme Court disagreed with RUCO's analysis and confirmed the Commission's broad discretion in setting utility rates, including discretion to authorize rate adjustments between full rate cases. In the context of monopoly, for-profit utilities (like the water company at issue in the lawsuit), the Court held that the Commission could authorize rate adjustments between rate cases based on updated or summary financial information.

The Court's ruling emphasizes the significance of the Corporation Commission to both utility companies and ratepayers. And the timing of the decision is a good reminder of the important role that voters play in electing the individual Commissioners who ultimately exercise this broad discretion in setting utility rates. In the upcoming November election, voters will have the opportunity to elect three of the five Commissioner positions.

— Jennifer A. Cranston is a shareholder at Gallagher & Kennedy. For more information about Ms. Cranston, visit gknet.com.

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Is Denver's Market a Model for Phoenix's Future?

Friends, I'm writing this month from Denver, Colorado, where my wife and I are on a quick 3-day trip to visit family in the Fort Collins area...home of Colorado State University and New Belgium Fat Tire for you beer drinking types. Before we headed north, I had to see what all of this Denver real estate hype was about as my friends who live here talk about real estate more than I do...which is strange considering that one is a chiropractor and the other is a teacher. Upon further research, I discovered that prices are up over 10% in the past year and that the median home price is \$355,000 compared to that in Phoenix of only \$210,000. These statistics aren't too surprising as Denver is light years ahead of Phoenix in terms of its urban design, cleanliness, and quality retail offerings.

Like any good Arcadians would, we decided to start our self-guided real estate tour at a place that is very familiar to all of us....Postino. Yes, Postino has a location in a hip little neighborhood called LoHi which sits just west of Coors Field and the I-25 freeway. I figured that if the savvy business owners over at Upward Projects had a location here that it must be special. LoHi has a very eccentric, downtown San Diego kind of feel where condominium living is preferred. There are neighborhood restaurants on almost every corner with yoga studios sprinkled in between. The average 1,700 square foot condo will set you back about \$650,000 in this little millennial hotspot.

Next, we toured the "Wash Park" neighborhood. Washington Park is one of the most sought-after neighborhoods in Denver with beautiful single family homes lining both sides of the street and a 165 acre park for all of your outdoor activities. This neighborhood feels like Phoenix's Willow District on steroids. Most of the homes here were built in the 1890s and sit on tight 6,000 sq.ft. lots, but over the past 5 years, almost every home has been remodeled or built new which gives the neighborhood a clean, consistent look. The average Wash Park home is currently listed at \$509 per square foot!

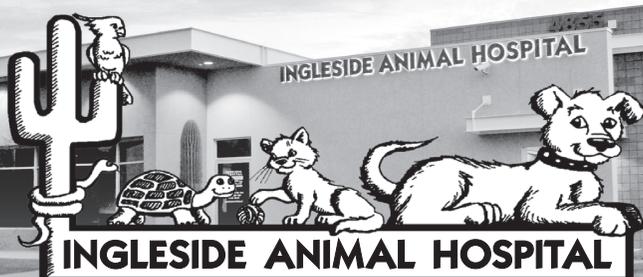
I love exploring new cities because it gives me a different perspective on the real estate market around us. While the Camelback Corridor is ahead of the game by Phoenix standards, I think there is a lot that we can do as residents and business owners to take it to the next level. Developing creative neighborhood businesses and quality urban infill projects will continue to help us get up to par with what is taking place in other cities such as Denver. Lets make sure that we are supporting the community and working together to create more special places that will encourage a vibrant lifestyle. :)

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