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IN THE MATTER OF ARIZONA
PUBLIC SERVICE COMPANY AND
VERIZON CALIFORNIA, INC.'S
JOINT PETITION FOR THE
ESTABLISHMENT OF AN
UNDERGROUND CONVERSION
SERVICE AREA.

DOCKET NO. E-01345A-07-0663
T-01846B-07-0663

ARIZONA PUBLIC SERVICE
COMPANY'S, VERIZON
CALIFORNIA INC'S AND ARIZONA
CORPORATION COMMISSION
STAFF'S JOINT CLOSING BRIEF
ANALYZING THE STANDARD FOR
COMMISSION APPROVAL OF AN
UNDERGROUND CONVERSION
SERVICE AREA.

I. INTRODUCTION.

At the January 18, 2008 hearing, the Administrative Law Judge ("ALJ") requested that Arizona Public Service Company ("APS"), Verizon California, Inc. ("Verizon"), and Arizona Corporation Commission ("Commission"), Utilities Division ("Staff") identify and analyze the standard for the Commission to approve an underground conversion service area.¹ Pursuant to A.R.S. § 40-346, the relevant inquiry includes an analysis of whether the conversion is economically and technically feasible, whether the area under consideration is reasonably compact and of reasonable size, and whether any of the service area will not benefit from the conversion.

¹ The ALJ also requested that either APS or Verizon provide a copy of the original legislation adopting A.R.S. § 40-346, along with any amending legislation. A.R.S. § 40-346 was originally adopted in 1968. See 1968 Ariz.Sess.Laws 519, Ch. 160, § 2, attached hereto as Exhibit A18. In 1972 the Arizona Legislature sought to amend the statute conditioned upon amendment of the Arizona Constitution. See 1972 Ariz.Sess.Laws Ch. 87, § 87. The constitutional amendment, which would have eliminated the Corporation Commission and replaced it with a public utilities commission, failed, rendering the proposed amendments to A.R.S. § 40-346 obsolete. In 1975, the first and only amendment to A.R.S. § 40-346 was passed, adding "city or town councils" to expand the scope of the statute, as well as language requiring approval by all government entities with overlapping jurisdiction of a conversion area. See 1975 Ariz.Sess.Laws, Ch. 120, § 6, attached hereto as Exhibit A19.

1 **II. DISCUSSION.**

2 The statutory scheme that provides for an analysis of underground conversion
3 service area petitions is found at A.R.S. § 40-341, *et seq.* Upon receiving a petition from
4 a public service corporation, the Commission, consistent with the statutory framework,
5 must conduct a hearing to evaluate the proposed conversion. A.R.S. § 40-346(A). This
6 hearing involves a two pronged analysis of the conversion.

7 **1. The Threshold Inquiry.**

8 Before the Commission can exercise its discretion, it must determine whether the
9 threshold procedural requirements for conversion have been satisfied. This threshold
10 inquiry includes:

11 i) An analysis of whether, *inter alia*, the public service corporation
12 performed a cost study, a petition from the requisite number of land
13 owners owning the required amount of land was filed, and the public
14 service corporation recorded a notice of proposed liens with a legal
15 description and statement of the estimated costs of the conversion.
16 A.R.S. §§ 40-342, -343(D), -346(A); and

17 ii) A determination “that owners of no more than forty per cent of the
18 real property within the underground conversion service area, or no
19 more than forty per cent of the owners of real property, have not
20 objected to the formation of the underground conversion service
21 area.” A.R.S. § 40-346(A).

22 In the present case, Commission Staff, after reviewing the joint filing, determined
23 that the threshold criteria were satisfied and that the application for an underground
24 conversion service area should be approved. Staff Report, Exhibit S1 at 8.

25 **2) The Commission’s Exercise of Discretion.**

26 Once the Commission conducts its threshold analysis and finds that the
27 underground conversion petition’s requirements have been met, the Commission is
28 afforded a certain level of discretion in determining whether conversion is appropriate.

1 The Commission's evaluation is guided by three criteria:

- 2 i) A review of whether the cost of conversion is "*economically and*
3 *technically feasible* for the public service corporations...." A.R.S. §
4 40-346(A) (emphasis added); *see also In re Tucson Electric Power*
5 *Company*, Decision 55490 ("Aside from the Commission's finding
6 regarding feasibility of conversion, the Commission's only function
7 herein is to determine whether 40 per cent or more of all the property
8 owners have objected to the formation of the underground
9 [conversion service area].");
- 10 ii) A determination as to whether the proposed "conversion service area
11 is a reasonably compact area of reasonable size." A.R.S. § 40-
12 346(A); and
- 13 iii) An analysis of whether the any portions of the proposed underground
14 conversion service area "will not be benefited by the establishment of
15 the underground conversion service area...." A.R.S. § 40-346(B);
16 *see In re Mountain States Telephone and Telegraph*, Decision 57051
17 (Aug. 22, 1990) (finding that three property owners should be
18 excluded because they will not benefit from the underground
19 conversion).

20 Although the Commission's decisions in *In re Mountain States* and *In re Tucson*
21 *Electric Power* only offer a cursory analysis of the feasibility requirement, the Staff
22 Report in *In Re Tucson Electric Power* provides guidance as to the Commission's exercise
23 of discretion. In its analysis, Staff concluded that "[a]side from the Commission's finding
24 regarding feasibility of conversion, the Commission's only function is to determine
25 whether 40 percent or more of all the property owners have objected to the formation of
26 the underground conversion service area." (*Tucson Electric Power Staff Report* at 5).
27 Staff essentially suggests that the feasibility inquiry entails nothing more than a
28 determination that the majority of property owners "support the conversion of their

1 overhead facilities to underground and are willing to pay the cost of such conversion”
2 (*Tucson Electric Power Staff Report* at 10). Similarly, Staff in *In re Mountain States*
3 found that based on cost and engineering data the conversion was economically and
4 technically feasible. (*Mountain States Staff Report* at 1). The relevant costs under
5 consideration “were prorated and assessed to each property owner based on the size of the
6 lot(s) owned” (*Mountain States Staff Report* at 2). Staff also determined that it was not
7 beneficial to include several lots that were already served by underground facilities, and
8 therefore excluded them from the petition.

9 In general, A.R.S. § 40-346 is a rarely used statute with a vague legal standard
10 regarding feasibility and reasonableness. The few guiding decisions on this matter place
11 an emphasis on the threshold requirements, with secondary consideration of the
12 Commission’s exercise of discretion. To the degree the Commission has analyzed the
13 feasibility of a conversion; it generally has done so in an equitable manner that is
14 consistent with the will of the petitioners. Essentially, if the people have requested the
15 conversion after receiving a cost analysis, then the Commission has deemed the project
16 economically feasible. In fact, Staff in this case has, at least in part, taken a similar
17 approach. When recommending approval of the underground conversion service area,
18 Staff reasoned that approval is appropriate because “63.18 percent of the property owners
19 have indicated that they are in favor of establishment of the underground conversion
20 service area and are willing to pay the cost of such conversion.” Exhibit S1 at 6. Staff
21 also believes that un-obstructed views, increased property values, and increased reliability
22 bolster the feasibility determination, as do cost savings based upon APS’ proposal.
23 Exhibit S1 at 6.

24 As for the Commission’s determination of whether the proposed conversion area is
25 a reasonably compact area of reasonable size, it depends significantly on whether the
26 individual lot or lots under review are already served by underground facilities. If they
27 are, then as in *In re Mountain States*, conversion is likely not appropriate. However, if the
28 petitioners have agreed to the conversion with full understanding of the cost implications,

1 the Commission generally seems amenable to granting the conversion petition subject to
2 the conditions set forth in the original cost study. In conducting its reasonableness
3 determination here, Staff also considered whether there was an area where a
4 disproportionate number of property owners objected to the conversion. Exhibit S1 at 6.
5 Staff was unable to discern a pattern between those in favor and those opposed to the
6 conversion, concluding that the proposed area was reasonable. Exhibit S1 at 6.

7 Based upon the foregoing criteria, in this case, Staff recommended approval of the
8 Joint Application determining that:

9 1) "owners of no more than forty per cent of the real property
10 within the underground conversion service area, or no more
11 than forty per cent of the owners of real property, have not
12 objected to the formation of the underground conversion
13 service area";

14 2) "the cost of the conversion as reflected in the report
15 prepared pursuant to § 40-342 is economically and technically
16 feasible for the public service corporations or public agencies
17 involved in and the property owners affected"; and

18 3) "the underground conversion service area is a reasonably
19 compact area of reasonable size".

20 Exhibit S1 at 8.

21 **III. CONCLUSION.**

22 The principal inquiry is whether the petition satisfies the threshold requirements
23 regarding signatures, objections, and filing notice. Once these requirements are met, the
24 Commission has discretion, but generally has exercised it in favor of the informed will of
25 the petitioners seeking the conversion.
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1 RESPECTFULLY SUBMITTED this 19th day of February, 2008.

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CONVERSION OF FACILITIES
Ch. 2

§ 40-347

objected to the conversion of such other facilities, in which event the commission, board of supervisors or city or town council shall order the establishment of the underground service area for the conversion of electric facilities only. If the owners of not more than forty per cent of the real property within the underground conversion service area and no more than forty per cent of the owners of real property have not objected to the conversion of electric facilities and such other facilities and the commission or board makes such further determinations as are required by subsection A of this section, then the city or town council, the board of supervisors or the commission may order the establishment of an underground conversion service area for the purpose of converting the electric facilities and such other facilities and the cost of converting such other facilities shall be included in the underground conversion costs and shall be assessed to each lot or parcel of real property in the same manner as provided for in § 40-347.

F. The order of the commission, the board of supervisors or the city or town council establishing the underground conversion service area shall set forth the underground conversion costs to be charged to each lot or parcel.
Added by Laws 1968, Ch. 160, § 2. Amended by Laws 1975, Ch. 120, § 5.

Historical and Statutory Notes

Laws 1972, Ch. 87, § 87 amended this section upon the condition that the Arizona constitution be amended to abolish the corporation commission and create a public utilities commission. The proposed amendment to which Laws 1972, Ch. 87 referred was rejected by the electorate. See Historical and Statutory Notes following § 40-101.

The 1975 amendment substituted "commission, board of supervisors or city or town council"

for "commission or board of supervisors" throughout the section; added the second sentence in subsec. A; and substituted "then the city or town council, the board of supervisors or the commission may order" for "then the board of supervisors or the commission may order" in the third sentence of subsec. E.

§ 40-347. Establishment of conversion costs; apportionment of costs; method of payment

A. The order authorizing the establishment of the underground conversion service area shall authorize each public service corporation or public agency whose overhead electric or communication facilities are to be converted to charge the underground conversion costs to each lot or parcel of real property within the underground conversion service area. The underground conversion costs shall be in an amount sufficient to repay the public service corporation or public agency for the following:

1. The remaining undepreciated original costs of the existing overhead electric and communication facilities to be removed as determined in accordance with the uniform system of accounts applicable to the public service corporation or public agency.
2. The actual costs of removing such overhead electric and communication facilities, less the salvage value of the facilities removed.
3. The contribution in aid of construction which the public service corporation or public agency would require under its rules and regulations applicable to underground conversion service areas.

A-18

1968 SESSION LAWS STATE OF ARIZONA

Twenty-eighth Legislature

SECOND REGULAR SESSION



WESLEY BOLIN

Secretary of State

A-19

CONVERSION SERVICE AREA; PROVIDING FOR CONSTRUCTION OF UNDERGROUND FACILITIES; PRESCRIBING PAYMENT OF COST BY PROPERTY OWNERS; PROVIDING FOR LIEN IN FAVOR OF PUBLIC SERVICE CORPORATION AND PUBLIC AGENCY; PROVIDING FOR REIMBURSEMENT FOR RELOCATIONS TO AVOID INTERFERENCE WITH PUBLIC WORKS, AND AMENDING TITLE 40, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 6.1.

Be it enacted by the Legislature of the State of Arizona:

Section 1. LEGISLATIVE INTENT

The legislature finds that in many areas of this state landowners, cities, public service corporations and public agencies desire to convert existing overhead electric and communication facilities to underground locations by means of establishing underground conversion service areas for the purpose of effecting such conversion. The legislature declares that a public purpose will be served and that the public welfare will be promoted by providing a procedure to accomplish such conversion and that it is in the public interest to provide for such conversion as provided in this act.

Sec. 2. Title 40, chapter 2, Arizona Revised Statutes, is amended by adding article 6.1, sections 40-341 to 40-355, inclusive, to read:

**ARTICLE 6.1. CONVERSION OF OVERHEAD
ELECTRIC AND COMMUNICATION FACILITIES**

40-341. DEFINITIONS

In this article, unless the context otherwise requires:

1. "Clerk" means the clerk of the board of supervisors or any person or officer who acts as clerk of the board of supervisors.
2. "Convert" or "conversion" means the removal of existing overhead electric or communication facilities and the replacement thereof with underground electric or communication facilities constructed at the same or different locations.
3. "Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including but not limited to poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insula-

tors, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances. "Electric facilities" shall not include any facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of twenty-five thousand volts or having a circuit capacity in excess of twelve thousand kva. "Communication facilities" shall not include facilities used or intended to be used for the transmission of intelligence by microwave or radio, apparatus cabinets or outdoor public telephones.

4. "Local government" means the city or town council if all or any part of the underground conversion service area is located within the limits of an incorporated city or town or the county board of supervisors if the underground conversion service area is located in an unincorporated area.

5. "Lot" includes any portion, piece, parcel or subdivision of land, but not property owned or controlled by any person as a right of way.

6. "Owner" means the person in whom legal title appears by recorded deed, or the person in possession under claim of title, or the person exercising acts of ownership for himself or as the personal representative of the owner, including the boards of trustees of school districts and the boards of education of high school districts owning property within the underground conversion service area.

7. "Overhead electric or communication facilities" means electric or communication facilities located above the surface of the ground, except as provided for in paragraphs 3 and 12 of this section.

8. "Public agency" means any irrigation, power, electrical or agricultural improvement district now or hereafter organized that provides electric or communication service to the public by means of electric or communication facilities.

9. "Public place" includes streets, alleys, roadways, sidewalks, rights of way, easements and similar properties as to which a city, town, county, the state, the public service corporation or the public agency may have a right.

10. "Public service corporation" means any person or corporation that provides electric or communication service to the public by means of electric or communication facilities.

11. "Real property" means the real estate owned in fee, but not inclusive of buildings or structures located thereon, or any

property owned or controlled as a railroad or street right of way.

12. "underground conversion service area" means an area in which existing electric and communication facilities are to be placed underground, exclusive of any lines or facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of twenty-five thousand volts or having a circuit capacity in excess of twelve thousand kva and facilities used or intended to be used for the transmission of intelligence by microwave or radio and facilities such as transformers, pull boxes, service terminals, pedestal terminals, splice closures, apparatus cabinets and similar facilities which normally are above the surface in areas where service lines are underground in accordance with standard underground practices, and on-the-ground facilities attached to overhead facilities which are used to connect an underground system to overhead facilities.

13. "Underground conversion cost" means the cost to be paid by each owner to each public service corporation or public agency by the property owners within an underground conversion service area, as provided in this article.

40-342. PETITIONS OF OWNERS FOR COST STUDY ESTABLISHING AN UNDERGROUND CONVERSION SERVICE AREA

A. In the event that not less than sixty per cent of the owners of contiguous real property within a reasonably compact area of reasonable size, and who own not less than sixty per cent on a square foot basis of the real property within such area, seek to establish an underground conversion service area they shall petition each public service corporation or public agency serving such area by overhead electric or communication facilities to make a study of the costs which will be related to the establishment of such area as an underground conversion service area.

B. The petition shall set forth:

1. The necessity for the proposed underground conversion service area.

2. That the public convenience, necessity or welfare will be promoted by the establishment of the underground conversion service area and that the property to be included therein will be benefited.

3. The name and address of the owner of each parcel or lot

within the proposed underground conversion service area as reflected on the records of the county assessor.

4. Such other matters as may be required by the public service corporation or public agency.

C. Each copy of the petition shall be verified by one of the petitioners and shall be accompanied by a plat or sketch indicating the boundaries of the proposed underground conversion service area and size in square feet of each parcel or lot within the proposed underground conversion service area.

D. Each public service corporation or public agency serving such area by overhead electric or communication facilities shall, within one hundred twenty days after receipt of the petition, make a study of the cost of conversion of its facilities in such area to underground service, and shall in its office make available to the petitioners and to all owners of land within the proposed underground conversion service area a joint report of the public service corporations or public agencies affected as to the results of the study. The joint report shall set forth an estimate of the costs to be assessed to each lot or parcel of real property located within the proposed underground conversion service area for the conversion of facilities within public places. The joint report shall also indicate the estimated cost to be assessed to each lot or parcel of real property for placing underground the facilities of the public service corporation or public agency located within the boundaries of each parcel or lot then receiving service. The costs of preparing the joint report shall be borne by the public service corporation or public agency whose overhead electric or communication facilities are to be included in the proposed underground conversion service area unless the corporation commission or board of supervisors orders the establishment of the underground conversion service area, in which event such costs shall be included in the underground conversion costs.

E. In the event the petitioners desire to convert any facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of twenty-five thousand volts, or having a current capacity in excess of twelve thousand kva, the petition shall so state, and the joint report of the public service corporation or public agency serving such area by overhead electric or communication facilities shall state separately the costs of conversion of such facilities to underground service.

F. A summary of the estimate of the costs to be assessed against each lot or parcel of real property located within the proposed underground conversion service area for the conver-

sion of facilities within public places and the estimated costs to be assessed to each lot or parcel of real property for placing underground the facilities of the public service corporation or public agency located within the boundaries of each parcel or lot then receiving service shall be mailed by the public service corporation or public agency to each owner of real property located within the proposed underground conversion service area to the address of such owner as set forth on the petition for the cost study.

40-343. PETITION OF OWNERS AND PETITION OF PUBLIC SERVICE CORPORATION OR PUBLIC AGENCY FOR ESTABLISHMENT OF UNDERGROUND CONVERSION SERVICE AREA

A. Within ninety days after the joint report referred to in section 40-342 is made available to the petitioners, not less than sixty per cent of the owners of real property within the area who own not less than sixty per cent of the real property within the area excluding public places may petition each public service corporation or public agency rendering electric or communication service in the area for establishment of an underground conversion service area in the same area as described in the original petition or petitions.

B. The public service corporation or corporations shall within sixty days thereafter petition the corporation commission for establishment of such an underground conversion service area.

C. The public agency or agencies shall within sixty days thereafter petition the board of supervisors for establishment of an underground conversion service area.

40-344. HEARING ON PETITION; NOTICE

A. Upon receipt of a petition to establish an underground conversion service area, the corporation commission or board of supervisors shall set a date for a hearing on the petition, which date shall be not later than sixty days after receipt of such petition. At the hearing all interested property owners owning property within the proposed underground conversion service area may appear and be heard on the matter. Any person owning property within the proposed underground conversion service area and wishing to object to the establishment of the underground conversion service area or to the underground conversion costs as contained in the joint report pertaining to his lot or parcel included within the proposed underground conversion service area shall, before the date set for the hearing,

file his objections with the clerk of the board of supervisors or with the corporation commission, as the case may be.

B. Notice announcing the hearing and describing the boundaries of the proposed underground conversion service area and stating that the estimated underground conversion costs for each lot or parcel included within the proposed underground conversion service area are available at the office of each public service corporation or public agency shall be posted in not less than three public places within the proposed underground conversion service area for not less than thirty days prior to the date of the hearing and shall be published once in a newspaper published in the county and of general circulation within the proposed underground conversion service area. The publication in the newspaper shall be not less than ten days prior to the date of the hearing.

C. In the case of public service corporation, the corporation commission shall mail a notice announcing the hearing and stating the boundaries of the proposed underground conversion service area to each owner of a lot or parcel of land within the boundaries of the proposed underground conversion service area, as reflected on the records of the county assessor and to those governmental agencies having rights in public places within said area. The public service corporation or corporations involved and all property owners within the underground conversion service area shall be deemed parties to the proceedings for the purposes of applications for rehearings or appeals as provided in sections 40-253 and 40-254.

D. If the corporation commission issues an order establishing an underground conversion service area, the public service corporation shall not be required to commence conversion until the time for requesting rehearing has expired and no application has been filed, or if an application for rehearing has been filed, until the commission has declined to modify or reverse the order, and until either the time for commencing an action in the superior court to set aside the order has expired and no application has been filed, or if application has been filed, until a final order, not subject to appeal, approving or refusing to set aside the commission's order has been issued.

E. In case of public agencies, the board of supervisors shall mail a notice announcing the hearing and stating the boundaries of the proposed service area to each owner of a lot or parcel of land within the boundaries of the proposed service area, as reflected on the records of the county assessor and those governmental agencies having rights in public places within the area as provided by section 40-344. If the board of

supervisors issues an order establishing an underground conversion service area, the public agency shall not be required to commence conversion until the time for commencing any action to set aside the order as provided by subsection F has expired and no such action has been commenced, or if commenced, such action has been finally disposed of.

F. Any party aggrieved by any act of the board of supervisors in the establishment of an underground conversion service area may bring an action in the superior court of the county in which the underground conversion service area is located to set aside the action of the board of supervisors not later than twenty days after the order of the board of supervisors establishing the underground conversion service area.

G. The cost of posting, publication and mailing provided for in this section shall be assessed by the board of supervisors or the corporation commission on a pro rata basis to each public service corporation or public agency whose overhead electric or communication facilities are to be included in the proposed underground conversion service area.

H. The corporation commission or the board of supervisors shall not establish any underground conversion service area without prior approval of such establishment by resolution of the local government.

I. If the underground conversion service area contains overhead electric or communication facilities of a public service corporation and public agency, then neither the public service corporation nor the public agency shall be required to commence conversion until the corporation commission's order and the board of supervisor's order have become final.

40-345. PROCEDURE FOR MAKING AND HEARING PROTESTS AND OBJECTIONS

In determining protests and objections, the corporation commission or the board of supervisors shall be guided by the following rules:

1. Each paper containing signatures shall have attached thereto an affidavit of an owner of real estate within the proposed underground conversion service area, stating that each signature was affixed in his presence and is the signer's genuine signature.
2. The protest or objection shall be counted only for the property described as belonging to the signer, and a signature without the description shall not be counted.

3. The signature of one co-tenant or, if community property, the signature of either spouse, shall be sufficient for a protest.

4. A protest or objection signed by a guardian, executor, administrator or trustee shall be valid without an order of court therefor.

5. A protest or objection by a person in possession under contract of purchase shall be valid.

6. When several persons have a claim to or an interest in property, the signature of any of them shall be sufficient unless questioned by another having such claim or interest, whereupon the wishes of the person legally entitled to possession of the property at the date of the protest shall control.

7. A protest or objection signed by an agent or attorney-in-fact shall be disregarded unless the authority of the agent has been recorded with the county recorder, or written or telegraphic authority is attached to the protest or objection before expiration of the time for filing the protest or objection.

8. A signature may be withdrawn from a protest or objection by filing the withdrawal with the clerk of the board of supervisors or the corporation commission, as the case may be, at or before five o'clock p.m. of the last day set for the filing of protests.

9. An objection to the signature of a co-tenant, spouse, claimant or person interested may be filed, and the authority of an agent or attorney-in-fact questioned, at any time before the board of supervisors or the corporation commission finally passes upon the sufficiency of the protest, but the authority of an agent or attorney-in-fact may not be revoked as to the signature after the expiration of the protest period.

40-346. HEARING ON PETITION BY CORPORATION COMMISSION OR BOARD OF SUPERVISORS; DETERMINATION OF ECONOMIC AND TECHNICAL FEASIBILITY; ADDITION OR ELIMINATION OF CERTAIN AREAS

A. The corporation commission or board of supervisors, as the case may be, shall hold a hearing, upon notice as provided in this article, to establish the fact that the requirements for the establishment of an underground conversion service area have been satisfied, and that owners of no more than forty per cent of the real property within the underground conversion service area, or no more than forty per cent of the owners of real property, have not objected to the formation of the under-

ground conversion service area, and if the commission or board of supervisors so determines, and if the commission or board of supervisors further determines after considering all objections, that the cost of conversion as reflected in the joint report prepared pursuant to section 40-342 is economically and technically feasible for the public service corporations or public agencies involved and the property owners affected and that the underground conversion service area is a reasonably compact area of reasonable size, the commission or board of supervisors shall then issue an order establishing the area as an underground conversion service area.

B. If the corporation commission or board of supervisors, as the case may be, should conclude at the hearing that territory not included in the petition should be included within the underground conversion service area, the real property owners in the additional territory shall be notified in like manner as provided in connection with the original hearing, and a subsequent hearing shall be held on the question of including the additional territory. In establishing the underground conversion service area, the corporation commission or the board of supervisors shall eliminate any territory described in the petition which it finds will not be benefited by the establishment of the underground conversion service area or in which it finds that conversion is not economically or technically feasible.

C. Additions to and alterations of an underground conversion service area shall be made in the manner provided for the establishment of the underground conversion service area.

D. Upon the order of the commission or board of supervisors establishing the area as an underground conversion service area, the commission or board of supervisors shall then direct the public service corporations or public agencies owning overhead electric or communication facilities, as defined in section 40-341, within the underground conversion service area to convert such facilities to underground in accordance with standard underground practices.

E. If the petition for the establishment of an underground conversion service area requests the conversion of facilities used or maintained to be used for the transmission of electric energy at nominal voltages in excess of twenty-five thousand, or having a current capacity in excess of twelve thousand kva, protests and objections may be filed separately for the conversion of electric facilities and such other facilities. The commission or board of supervisors may order the conversion of electrical facilities if the owners of no more than forty per cent of the real property within the underground conversion serv-

ice area and no more than forty per cent of the owners of real property have not objected to the conversion of the electric facilities but have objected to the conversion of such other facilities, in which event the commission or board of supervisors shall order the establishment of the underground service area for the conversion of electric facilities only. If the owners of not more than forty per cent of the real property within the underground conversion service area and no more than forty per cent of the owners of real property have not objected to the conversion of electric facilities and such other facilities and the commission or board makes such further determinations as are required by subsection A of this section, then the board of supervisors or the commission may order the establishment of an underground conversion service area for the purpose of converting the electric facilities and such other facilities and the cost of converting such other facilities shall be included in the underground conversion costs and shall be assessed to each lot or parcel of real property in the same manner as provided for in section 40-347.

F. The order of the commission or the board of supervisors establishing the underground conversion service area shall set forth the underground conversion costs to be charged to each lot or parcel.

**40-347. ESTABLISHMENT OF CONVERSION COSTS AP-
PORTIONMENT OF COSTS; METHOD OF PAY-
MENT**

A. The order authorizing the establishment of the underground conversion service area shall authorize each public service corporation or public agency whose overhead electric or communication facilities are to be converted to charge the underground conversion costs to each lot or parcel of real property within the underground conversion service area. The underground conversion costs shall be in an amount sufficient to repay the public service corporation or public agency for the following:

1. The remaining undepreciated original costs of the existing overhead electric and communication facilities to be removed as determined in accordance with the uniform system of accounts applicable to the public service corporation or public agency.
2. The actual costs of removing such overhead electric and communication facilities, less the salvage value of the facilities removed.
3. The contribution in aid of construction which the public service corporation or public agency would require under its

rules and regulations applicable to underground conversion service areas.

4. If not paid in full as provided in section 40-348, the actual cost of converting to underground the facilities from the public place to the point of delivery on the lot or parcel owned by each owner receiving service, in the case of an electric public service corporation or public agency, or to the connection point within the house or structures, in the case of a communication corporation, less any credit which may be given such owner under the line extension policy of the public service corporation or public agency then in existence.

5. If property belonging to the United States, the state of Arizona, county, city, school district or any other political subdivision or institution of the state or county is included in the underground conversion service area, and they do not voluntarily assume such costs, the underground conversion costs applicable to such property shall be charged pro rata against the remaining property included within the underground conversion service area.

B. The cost incurred in placing underground the facilities in public places shall be apportioned among the owners of property within the area on the basis of relative size of each parcel by the corporation commission or the board of supervisors. The underground conversion cost, as determined by the method prescribed in subsection A shall not exceed the estimated costs indicated in the joint report prepared by the public service corporation or public agency pursuant to subsection D of section 40-342 and, may be paid in cash by the property owners within sixty days from the date the overhead facilities are removed from public places, or may be paid by a uniform plan applicable to all property owners not paying within the sixty-day period in equal periodic installments over a reasonable period of time, not exceeding fifteen years, as established by the corporation commission or the board of supervisors, together with interest at the legal rate.

C. If funds become available from other public or private sources to pay all or any part of the underground conversion costs, any such funds shall be applied on a pro rata basis to reduce the underground conversion cost charged against each parcel or lot.

D. Notwithstanding the provisions of subsection B, the public service corporation or public agency serving such area may by agreement with all the owners of the property in an underground conversion service area provide for reimburse-

ment to it of the cost of such conversion on a different basis as to payment or security than that set out by the terms of this article.

40-348. CONVERSION OF SERVICE LINES ON OWNER'S PROPERTY; PAYMENT; NOTICE OF DISCONNECTION TO OWNER

A. The service facilities within the boundaries of each lot or parcel within an underground conversion service area shall be placed underground at the same time as or after the underground system in private easements and public places is placed underground. The public service corporation or public agency involved, directly or through a contractor, shall, at the expense of the owner, convert to underground its facilities on any such lot or parcel up to the point of delivery, in the case of an electric public service corporation or public agency, or to the connection point within the house or structure, in the case of a communication corporation, upon being requested by the owner. Overhead electric service facilities beyond the point of delivery to the service entrance shall be placed underground by the owner, acting directly or through a contractor.

B. If the property owner does not reimburse the public service corporation or public agency in cash for all such costs or expenses so incurred by it within thirty days after completion of such conversion, or reach other agreement with the public service corporation or public agency involved for payment in some other manner, such costs shall be included in the costs on which the underground conversion cost for such property is calculated, as provided by this article.

C. Upon completion of the underground system in public places the corporation commission or board of supervisors, as the case may be, shall mail a notice to each owner of a lot or parcel located therein advising him of the provisions of subsection A and stating that unless such owner complies with the requirements of such subsection within thirty days thereafter, all buildings, structures and improvements located upon the lot or parcel will be subject to disconnection from the electric or communication facilities providing service thereto. Thereafter if the owner of any lot or parcel shall fail to comply within the time specified, the public service corporation or public agency providing electric or communication service shall disconnect and remove all overhead electric or communication facilities providing service to any building, structure or improvement located upon such lot or parcel. Written notice of the proposed disconnection shall be given at least thirty days prior to disconnection by leaving a copy of such notice at the

principal building, structure or improvement located upon such lot or parcel.

40-349. PERMIT OR EASEMENT FOR CONVERSION OF SERVICE LINES TO BE FURNISHED BY OWNER

A. The public service corporation or corporations or public agency or agencies shall not commence the work referred to in section 40-348 on property other than private easements or public places until the owner has furnished a permit or easement to the public service corporation or public agency, expressly authorizing such public service corporation or public agency and its representative officers, employees, agents and contractors to enter upon such lot or parcel for such purpose and agreeing to the inclusion of the costs thereof in the underground conversion service costs in the event such costs or any part thereof remain unpaid thirty days after completion.

B. The public service corporation or public agency shall remove its overhead facilities replaced by underground facilities in accordance with this article in the area after the underground system in the private easements and public places has been energized, thereby discontinuing service to those parcels or lots whose owners have not furnished a permit or easement as provided in subsection A of this section.

40-350. LIEN FOR COST OF CONVERSION; PROCEDURE TO PERFECT LIEN; RECORDING NOTICE OF LIEN; DEFAULT; LIMITATION OF ACTION TO FORECLOSE LIEN; DISCONNECTION OF SERVICE UPON DEFAULT

A. Upon completion of the conversion of the overhead electric and communication facilities, the public service corporation or public agency shall determine the total conversion costs as provided in section 40-347 and shall prepare and file a verified statement of such costs with the corporation commission or the board of supervisors, as the case may be. In the event the verified statement of the underground conversion costs for the removal of the overhead electric and communication facilities from public places is less than the estimate of such costs, the underground conversion costs to be paid by each owner shall be reduced proportionately, or in the event the actual cost of converting to underground the facilities from the public place to the point of delivery is less than the estimated cost for such conversion, then the underground conversion costs to be paid by the owner of such lot for such conversion shall be reduced. Upon completion of the conversion and the filing of the verified statement of costs, the corporation commission or the board of supervisors, as the case may be,

shall mail to each owner a statement of the underground conversion costs setting forth the revisions, if any, which such statement shall specify the date payments are to commence. In the event the statements or the verified statement of costs contain any revisions, any owner desiring to object to such revisions shall file a written objection with the corporation commission or the board of supervisors, as the case may be, within twenty days following receipt of such notice. In the event any objections are filed, the corporation commission or the board of supervisors, as the case may be, shall fix a time for a hearing thereon not later than twenty days from the date of the filing of such objections. Notice of the time and place of such hearing shall be given by the corporation commission or the board of supervisors to the owner filing the written objections and to the public service corporation or public agency whose overhead facilities were converted. It shall be a condition of maintaining any objection or appeal from an order of the corporation commission or board of supervisors that the person objecting continue to make payments in the manner prescribed by the order of the corporation commission or board of supervisors, which such payments may be made under protest and subject to refund if the verified statement, computation or allocation is determined to be improper.

B. The underground conversion cost to be paid by each owner to each public service corporation or public agency concerned shall be a lien separately on each privately owned parcel of real property within the underground conversion service area in favor of such public service corporation or public agency upon recording in the office of the county recorder of the county in which the underground conversion service area is located, of a notice or notices of lien within ninety days after completion of the removal of the overhead system in public places, whether or not the connections to serve the individual lots have been completed, as provided in section 40-349. Such lien shall only apply to each parcel of property to the extent determined by the apportionment provided for in section 40-347 plus any amount included pursuant to section 40-348. Upon payment of such entire sum, any lien herein created shall be released.

C. The lien shall be perfected upon recording a notice of lien in the office of the county recorder of the county in which the underground conversion service area is located as provided in subsection A of this section. The notice of lien shall contain the following:

1. The legal description of each lot or parcel upon which a lien is claimed.

2. The public service corporation or public agency claiming the lien.

3. That portion of the underground conversion costs allocated to each lot or parcel.

4. A certified copy of the order of the corporation commission or board of supervisors authorizing the establishment of the underground conversion service area.

5. The periodic installments to be made on account of the repayment of the underground conversion costs allocated to each lot or parcel.

6. The date of completion of removal of the overhead facilities in private easements and public places.

D. In the event of a default in the payment of a periodic installment of the underground conversion cost, the unpaid balance of such underground conversion cost may, at the election of the public service corporation or public agency involved, immediately become due and payable, and the public service corporation or public agency involved may, not later than one year after the final installment would have become due and payable, institute an action in superior court to foreclose its lien against such parcel or lot. A lien granted under the provisions of this section shall continue until the entire underground conversion cost apportioned to each such parcel or lot has been paid, notwithstanding the provisions of section 33-998, except that action to enforce the lien shall be commenced not later than one year after the final installment would have become due and payable. The election to accelerate the periodic payment of installments shall become effective thirty days after mailing written notice thereof to the owner of such parcel or lot as reflected on the records of the county assessor and by recording a copy thereof in the office of the county recorder of the county where such parcel or lot is located.

E. Any lien created under this article shall be inferior to any lien of any municipal corporation which has arisen or may arise by reason of any ad valorem tax assessment or any improvement or assessment district assessment, or bond assessment as provided by law.

F. In the event of a default in the payment of the equal periodic installment, the public service corporation or public agency involved may, after thirty days' written notice of such default, discontinue service to such meter or account until such time as the delinquent amount has been paid.

40-351. SALE OF PROPERTY TO SATISFY LIEN

No sale of property to satisfy a lien granted under the provisions of this article shall be made except upon judgment of foreclosure and order of sale.

40-352. RELOCATION OF UNDERGROUND FACILITIES; PUBLIC SERVICE CORPORATION OR PUBLIC AGENCY TO BE REIMBURSED FOR COST THEREOF

When facilities converted to underground pursuant to this article are thereafter moved, relocated or removed to avoid interference with public works or improvements, the public service corporation or public agency owning such facilities shall be reimbursed by the state, county, municipality, improvement district or other public authority constructing such works or improvements for the cost of such relocation or removal if such facilities are moved, relocated or removed within ten years following the date of their installation.

40-353. APPLICATION OF ARTICLE; REINSTALLATION OF OVERHEAD FACILITIES PROHIBITED

A. The provisions of this article shall apply only to the relocation underground of existing utilities.

B. Once removed, no overhead electric or communication facilities shall be installed in an underground conversion service area.

C. Following the conversion of overhead electric or communication facilities, the public service corporation or public agency whose facilities were converted may install lines or facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of twenty-five thousand volts or having a current carrying capacity in excess of twelve thousand kva, provided that prior to the installation of such facilities the public service corporation or public agency desiring to install such facilities shall pay to the then existing owners of real property within the underground conversion service area the principal cost paid by such owners and their predecessors in interest for the conversion of overhead electric or communication facilities.

40-354. NO EXTENSION OF CORPORATION COMMISSION JURISDICTION TO PUBLIC AGENCIES

Nothing contained in this article shall vest any jurisdiction over public agencies in the Arizona corporation commission.

**40-355. FRANCHISES, CHARTERS AND ORDINANCES
OF LOCAL GOVERNMENTS NOT AFFECTED**

The provisions of this article shall be supplemental and cumulative of existing rights, laws, local charters, ordinances and franchises and shall not be deemed to abrogate or modify the provisions of any franchise granted to public service corporations by any local government or to abrogate or modify in any way existing rights, laws, charters or ordinances of any local government.

40-356. NONSEVERABILITY

If any provision of this article be held invalid, such invalidity shall invalidate this article in its entirety, and to this end the provisions of this article are declared to be nonseverable.

Approved by the Governor—March 19, 1968.

Filed in the Office of the Secretary of State—March 20, 1968.

CHAPTER 161

Senate Bill 111

AN ACT

RELATING TO INSURANCE; DEFINING HOSPITAL AND MEDICAL SERVICE CORPORATIONS; INCLUDING CARE IN EXTENDED CARE FACILITIES AND HOME HEALTH AGENCIES AND SERVICES OF PODIATRISTS AND OF PERSONNEL UNDER A PHYSICIAN; PRESCRIBING REQUIREMENTS FOR EXPENSES AND INVESTMENT OF FUNDS OF INSURANCE CORPORATIONS; PROVIDING FOR TAX ON NET PREMIUMS RECEIVED BY SUCH CORPORATIONS, AND AMENDING SECTIONS 20-822, 20-830 AND 20-837, ARIZONA REVISED STATUTES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Sec. 20-822, Arizona Revised Statutes, is amended to read:

20-822. DEFINITIONS

“Hospital service corporations”, “medical service corporations” and “hospital and medical service corporations” are corporations organized under the laws of this state for the purpose

SESSION LAWS STATE OF ARIZONA

THIRTY-SECOND LEGISLATURE

FIRST REGULAR SESSION

CONVENED—JANUARY 13, 1975

SINE DIE—JUNE 13, 1975



WESLEY BOLIN

Secretary of State

1975

Corrected Edition

CHAPTER 120

1 Sec. 5. Section 40-346, Arizona Revised Statutes, is amended
2 to read:

3 40-346. Hearing on petition by corporation commission, board
4 of supervisors or city or town council; determina-
5 tion of economic and technical feasibility; addi-
6 tion or elimination of certain areas

7 A. The corporation commission, or board of supervisors OR CITY
8 OR TOWN COUNCIL, as the case may be, shall hold a hearing, upon notice
9 as provided in this article, to establish the fact that the requirements
10 for the establishment of an underground conversion service area have
11 been satisfied, and that owners of no more than forty per cent of the
12 real property within the underground conversion service area, or no
13 more than forty per cent of the owners of real property, have not
14 objected to the formation of the underground conversion service area,
15 and if the commission, or board of supervisors OR CITY OR TOWN COUNCIL
16 so determines, and if the commission, or board of supervisors OR CITY
17 OR TOWN COUNCIL further determines after considering all objections,
18 that the cost of conversion as reflected in the joint report prepared
19 pursuant to section 40-342 is economically and technically feasible
20 for the public service corporations or public agencies involved and
21 the property owners affected and that the underground conversion ser-
22 vice area is a reasonably compact area of reasonable size, the com-
23 mission, or board of supervisors OR CITY OR TOWN COUNCIL shall then
24 issue an order establishing the area as an underground conversion
25 service area. IN THOSE CASES WHERE THE COMMISSION, THE BOARD OF
26 SUPERVISORS AND THE CITY OR TOWN COUNCIL HAVE JURISDICTION, ALL MUST
27 ISSUE ORDERS ESTABLISHING THE AREA AS AN UNDERGROUND CONVERSION SER-
28 VICE AREA BEFORE THE PUBLIC SERVICE CORPORATIONS AND PUBLIC AGENCIES
29 OWNING OVERHEAD ELECTRICAL OR COMMUNICATION FACILITIES THEREIN SHALL
30 BE REQUIRED TO CONVERT SUCH FACILITIES TO UNDERGROUND.

31 B. If the corporation commission, or board of supervisors OR
32 CITY OR TOWN COUNCIL, as the case may be, should conclude at the hear-
33 ing that territory not included in the petition should be included
34 within the underground conversion service area, the real property
35 owners in the additional territory shall be notified in like manner
36 as provided in connection with the original hearing, and a subsequent
37 hearing shall be held on the question of including the additional
38 territory. In establishing the underground conversion service area,
39 the corporation commission, or the board of supervisors OR THE CITY
40 OR TOWN COUNCIL shall eliminate any territory described in the
41 petition which it finds will not be benefited by the establishment
42 of the underground conversion service area or in which it finds that
43 conversion is not economically or technically feasible.

44 C. Additions to and alterations of an underground conversion
45 service area shall be made in the manner provided for the establishment
46 of the underground conversion service area.

47 D. Upon the order of the commission, or board of supervisors
48 OR CITY OR TOWN COUNCIL establishing the area as an underground con-
49 version service area, the commission, or board of supervisors OR CITY
50 OR TOWN COUNCIL shall then direct the public service corporations or

CHAPTER 120

1 public agencies owning overhead electric or communication facilities,
2 as defined in section 40-341, within the underground conversion ser-
3 vice area to convert such facilities to underground in accordance
4 with standard underground practices.

5 E. If the petition for the establishment of an underground con-
6 version service area requests the conversion of facilities used or
7 maintained to be used for the transmission of electric energy at nominal
8 voltages in excess of twenty-five thousand, or having a current capacity
9 in excess of twelve thousand kva, protests and objections may be filed
10 separately for the conversion of electric facilities and such other
11 facilities. The commission, or board of supervisors OR CITY OR TOWN
12 COUNCIL may order the conversion of electric facilities if the owners
13 of no more than forty per cent of the real property within the under-
14 ground conversion service area and no more than forty per cent of the
15 owners of real property have not objected to the conversion of the
16 electric facilities but have objected to the conversion of such other
17 facilities, in which event the commission, or board of supervisors OR
18 CITY OR TOWN COUNCIL shall order the establishment of the underground
19 service area for the conversion of electric facilities only. If the
20 owners of not more than forty per cent of the real property within
21 the underground conversion service area and no more than forty per cent
22 of the owners of real property have not objected to the conversion of
23 electric facilities and such other facilities and the commission or board
24 makes such further determinations as are required by subsection A of
25 this section, then THE CITY OR TOWN COUNCIL, the board of supervisors
26 or the commission may order the establishment of an underground conver-
27 sion service area for the purpose of converting the electric facilities
28 and such other facilities and the cost of converting such other facili-
29 ties shall be included in the underground conversion costs and shall
30 be assessed to each lot or parcel of real property in the same manner
31 as provided for in section 40-347.

32 F. The order of the commission, or the board of supervisors OR
33 THE CITY OR TOWN COUNCIL establishing the underground conversion ser-
34 vice area shall set forth the underground conversion costs to be
35 charged to each lot or parcel.

36 Sec. 6. Section 40-347, Arizona Revised Statutes, is amended
37 to read:

38 40-347. Establishment of conversion costs; apportionment
39 of costs; method of payment

40 A. The order authorizing the establishment of the underground
41 conversion service area shall authorize each public service corpora-
42 tion or public agency whose overhead electric or communication fa-
43 cilities are to be converted to charge the underground conversion
44 costs to each lot or parcel of real property within the underground
45 conversion service area. The underground conversion costs shall be
46 in an amount sufficient to repay the public service corporation or
47 public agency for the following:

48 1. The remaining undepreciated original costs of the existing
49 overhead electric and communication facilities to be removed as