

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 3. CORPORATION COMMISSION RULES OF PRACTICE AND PROCEDURE

[R06-433]

PREAMBLE

- 1. Sections Affected**
R14-3-113
R14-3-220
- Rulemaking Action**
Amended
New Section
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: Arizona Constitution Article XV, § 6; A.R.S. §§ 40-202, 40-243(A), and 40-360.01(D)
Implementing statute: Arizona Constitution Article XV, § 6; A.R.S. §§ 40-202, 40-243(A), and 40-360.01(D)
- 3. The effective date of the rules:**
December 25, 2006
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 12 A.A.R. 114, January 6, 2006
Notice of Proposed Rulemaking: 12 A.A.R. 70, January 6, 2006
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Chris Kempley, Esq.
Address: Attorney, Legal Division, Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
Telephone: (602) 542-3402
Fax: (602) 542-4870
E-mail: ckempley@azcc.gov
- 6. An explanation of the rule, including the agency's reason for initiating the rule:**
The rules changes clarify the application of unauthorized communications in proceedings before the Line Siting Committee and Line Siting proceedings before the Commission. The proposed rules will assist members of the Arizona Power Plant and Line Siting Committee and Commissioners in avoiding the possibility of prejudice, real or apparent, to the public interest in Line Siting proceedings.
- 7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
A study was not necessary.
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 9. The summary of the economic, small business, and consumer impact:**

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NOTE – The Arizona Corporation Commission is exempt from the requirements of A.R.S. § 41-1055 relating to economic, small business, and consumer impact statements. See A.R.S. § 41-1057(2). However, under A.R.S. § 41-1057(2), the Arizona Corporation Commission is required to prepare a “substantially similar” statement.

The Arizona Corporation Commission does not anticipate any negative economic, small business, or consumer impact related to, or created by, the rules.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

None.

11. A summary of the comments made regarding the rule and the agency response to them:

Hearing and public comment will be held in the Hearing Room of the Arizona Corporation Commission located at 1200 West Washington, Phoenix, Arizona 85007 on February 16, 2006, beginning at 1:30 p.m. Hearing requests initial written comments be received on or before January 19, 2006 and responsive comments be received on or before February 9, 2006. However, written comments will be accepted through February 16, 2006. Comments should be submitted to Docket Control at the above address. Please reference docket number ACC-00000A-05-0613 on all documents.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATIONS**

**CHAPTER 3. CORPORATION COMMISSION
RULES OF PRACTICE AND PROCEDURE**

ARTICLE 1. RULES OF PRACTICE AND PROCEDURE BEFORE THE CORPORATION COMMISSION

Section

R14-3-113. Unauthorized communications

**ARTICLE 2. RULES OF PRACTICE AND PROCEDURE BEFORE POWER PLANT AND TRANSMISSION
LINE SITING COMMITTEE**

Section

R14-3-220. Unauthorized communications

ARTICLE 1. RULES OF PRACTICE AND PROCEDURE BEFORE THE CORPORATION COMMISSION

R14-3-113. Unauthorized Communications

- A. Purpose.** It is the purpose of this rule to assist the members of the Arizona Corporation Commission, and its employees, in avoiding the possibility of prejudice, real or apparent, to the public interest in proceedings before the Commission and hearings before the Arizona Power Plant and Transmission Line Siting Committee.
- B. Application.** The provisions of this rule apply from the time a contested matter is set for public hearing before the Commission and from the time a notice of siting hearing is published pursuant to A.A.C. R14-3-208(A). The provisions of this rule do not apply to rulemaking proceedings.
- C. Prohibitions.**
1. No person shall make or cause to be made an oral or written communication, not on the public record, concerning the substantive merits of a contested proceeding or siting hearing to a commissioner or commission employee involved in the decision-making process for that proceeding or siting hearing.
 2. No commissioner or commission employee involved in the decision-making process of a contested proceeding or siting hearing shall request, entertain, or consider an unauthorized communication concerning the merits of the proceeding or siting hearing.
 3. The provisions of this rule shall not prohibit:
 - a. Communications regarding procedural matters;

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- b. Communications regarding any other proceedings;
- c. Intra-agency or non-party communications regarding purely technical and legal matters;
- d. Comments from the general public;
- e. Communications among hearing officers, non-party staff and commissioners.

D. Remedy.

1. A commissioner, commission employee, who receives an oral or written offer of any communication prohibited by this rule must decline to receive such communication and will explain that the matter is pending for determination and that all communication regarding it must be made on the public record. If unsuccessful in preventing such communications, the recipient will advise the communicator that the communication will not be considered, a brief signed statement setting forth the substance of the communication and the circumstances under which it was made, will be prepared, and the statement will be filed in the public record of the case or proceeding.
2. Any person affected by an unauthorized communication will have an opportunity to rebut on the record any facts or contentions contained in the communication.
3. If a party to a contested proceeding or siting hearing makes an unauthorized communication, the party may be required to show cause why its claim or interest in the proceeding or siting hearing should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

**ARTICLE 2. RULES OF PRACTICE AND PROCEDURE BEFORE POWER PLANT AND TRANSMISSION
LINE SITING COMMITTEE**

R14-3-220. Unauthorized Communications

A. Purpose. It is the purpose of this rule to assist members of the Arizona Power Plant and Line Siting Committee in avoiding the possibility of prejudice, real or apparent, to the public interest in proceedings before the Siting Committee.

B. Application. The provisions of this rule apply from the time a notice of siting hearing is published pursuant to A.A.C. R14-3-208(A).

C. Prohibitions.

1. No person shall make or cause to be made an oral or written communication, not on the public record, concerning the substantive merits of siting hearing to member of the Siting Committee involved in the decision-making process for that siting hearing.
2. No member of the Siting Committee shall request, entertain, or consider an unauthorized communication concerning the merits of a siting hearing.
3. The provisions of this rule shall not prohibit:
 - a. Communications regarding procedural matters;
 - b. Communications regarding any other proceedings;
 - c. Intra-agency or non-party communications regarding purely technical and legal matters.

D. Remedy.

1. A member of the Siting Committee who receives an oral or written offer of any communication prohibited by this rule must decline to receive such communication and will explain that the hearing is pending for determination and that all communication regarding it must be made on the public record. If unsuccessful in preventing such communications, the recipient will advise the communicator that the communication will not be considered, a brief signed statement setting forth the substance of the communication and the circumstances under which it was made, will be prepared, and the statement will be filed in the public record of the siting hearing.
2. Any person affected by an unauthorized communication will have an opportunity to rebut on the record any facts or contentions contained in the communication.
3. If a party to a contested siting hearing makes an unauthorized communication, the party may be required to show cause why its claim or interest in the siting hearing should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.