

## **INTERVENTION IN UTILITY CASES AT THE COMMISSION**

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## **What is intervention?**

Intervention is a process that allows a person who is not an original party to a case, but who will be directly and substantially affected by the outcome, to participate in the case as a party. The Commission's rule on intervention is Arizona Administrative Code ("A.A.C.") R14-3-105, available [here](#).

*Example: In a rate case, the original parties are the applicant utility and the Commission's Utilities Division ("Staff"). Sometimes a utility customer, for whom there would be a significant economic impact from the rates proposed in the application, desires to present the Commission evidence specifically related to the impact that the rates will have on the customer. To be able to do this, the customer would need to request and be granted intervention, which would make the customer a party to the case—an intervenor.*

In a case that will have a hearing, the presiding Administrative Law Judge ("ALJ") will issue a Procedural Order that schedules the matter for hearing and includes a specific deadline to request intervention. Generally, the Procedural Order will require the utility involved to provide public notice including the hearing schedule and the deadline to request intervention. In a case that is not required to have a hearing, the utility involved is generally required to provide public notice of its application and the deadline to request intervention.

A person desiring to intervene should file a request to intervene as promptly as possible after receiving notice of a case.

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## **What does it mean to be an intervenor?**

An intervenor is a party to the case, just like the utility, Staff, and any other party of record. Party status comes with both rights and responsibilities.

It provides the **right**:

- to participate in discovery to learn about other parties' cases
- to present evidence, through witnesses and/or documents
- to cross-examine other parties' witnesses
- to file Exceptions to a Recommended Opinion and Order (the ALJ's order)
- to request rehearing of a Commission Decision
- to appeal a Commission Decision

It creates the **responsibility**:

- to participate in discovery so that other parties can learn about your case
- to attend and participate in all proceedings (procedural conferences, prehearing conferences, the hearing, and the Open Meeting at which the Commission discusses the ALJ's order)
- to make all required filings and serve the other parties with all filings you make
- to have your witnesses subjected to cross-examination

- to comply with the Commission’s [rules for practice and procedure](#) and with all Procedural Orders

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### **What is the difference between being an intervenor and providing “public comment”?**

An intervenor is a party to a case, with all the rights and responsibilities that entails (see above). A person providing public comment is not a party to a case and does not have those rights and responsibilities.

A person who does not desire to intervene, or who is ineligible to intervene, still has an opportunity to provide the Commission information about a case, by providing oral or written public comment or both.

Public comment, whether made in person or in writing, becomes part of the official docketed record of the case. Public comment is not admitted as evidence, however, and is not afforded the weight of sworn testimony because public commenters are not under oath and are not subject to cross examination. Nonetheless, all public comment received is considered by the ALJ and the Commission when considering a case.

A person who is not an intervenor can attend hearings to observe and to provide public comment at the time allotted, but cannot provide any testimony or other evidence or participate in the questioning of witnesses. To be permitted to question witnesses and provide evidence on the record, a person must file a request to intervene and be granted intervenor status (*i.e.*, party status).

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### **I don’t want to intervene. How do I provide Public Comment?**

You can take advantage of the opportunities to provide oral public comment afforded by the Commission. Usually, interested persons have an opportunity to provide public comment on the first day of an evidentiary hearing. In some cases, the Commission schedules public comment proceedings expressly to hear what the public has to say about a case. In addition, at the discretion of the Commissioners, interested persons may have an opportunity to provide public comment during Open Meeting when the Commission schedules the case for discussion and vote. At each of these, each person indicating a desire to speak is called forward, in turn, to provide comment.

You can submit written public comment to the Commission by:

- Using the [“Submit a Public Comment on a Utility”](#) function of the Commission’s website ([www.azcc.gov](http://www.azcc.gov));
- Sending or delivering your hard-copy comments, which must comply with [filing requirements](#), to [Docket Control](#) at 1200 West Washington Street, Phoenix, AZ 85007; or

- Sending an email to a Commissioner using one of the [email addresses](#) provided on the Commission's website.

You can also submit public comment to the Commission's Consumer Services Section telephonically. Consumer Services will convert the comments into writing and file them in the appropriate docket. The Commission's Consumer Services Section can be reached by phone as follows:

- Within Metro Phoenix: 602-542-4251
- Within Metro Tucson: 520-628-6550
- In Arizona but outside the Metro Phoenix or Metro Tucson areas:
  - Phoenix Office: 1-800-222-7000
  - Tucson Office: 1-800-535-0148

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### **What do I need to include in my public comment?**

However you submit your public comment, you should include at a minimum:

1. Your full name and address;
2. The utility name and docket number for the case on which you are commenting;
3. Why you are interested in the case; and
4. Whatever it is you want to say about the case, including how you will be impacted by the outcome of the case.

**\*If you do not include the docket number for the case, Commission personnel may not be able to identify which case your comments discuss, and your comments may not be filed in the correct docket. \***

[What is the docket number and where do I find it?](#)

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### **I want to intervene. How do I request intervention?**

To request intervention, you must file an **original and 13** hard copies of a written request to intervene with [Docket Control](#) (Docket Control, 1200 West Washington, Phoenix, AZ 85007) by the deadline specified or as promptly as possible after you learn of the case.

Your request to intervene must contain the following:

1. Your name, address, and telephone number, and the name, address, and telephone number of any person upon whom service of documents is to be made, if not yourself;
2. The docket number for the case in which you are requesting to intervene;
3. A short statement explaining:
  - a. Your interest in the proceeding (e.g., a customer of the utility, a shareholder of the utility, a property owner in the proposed service area for the utility, etc.),

- b. How you will be directly and substantially affected by the outcome of the case, and
  - c. Why your intervention will not unduly broaden the issues in the case;
4. If there has been no indication that a hearing is to be held in the case, whether you desire for a hearing to be held and why or why not;
  5. A statement certifying that you have served a copy of the request to intervene on the utility or its attorney and all other parties of record in the case; and
  6. If you are not represented by an attorney who is an active member of the Arizona State Bar, and you are not representing yourself as an individual, sufficient information and any appropriate documentation to demonstrate compliance with Arizona Supreme Court Rules 31, 38, and 42, as applicable.

You **must** serve a copy of the request to intervene on each party of record. Service must be completed on the same day that you file the request to intervene with the Commission.

[Where do I find the parties of record?](#) [How do I serve documents on other parties?](#)

A sample request to intervene is available here: [Sample Intervention Request](#)

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### **Will I be allowed to intervene?**

Intervention is not automatic. You will not be granted intervention unless you have demonstrated a direct and substantial interest in the outcome of the case and that your intervention would not unduly broaden the issues before the Commission in the case. The ALJ will not act on your request to intervene until the parties of record have had an opportunity to object to your requested intervention. You will be notified in writing, or orally during a procedural conference or other proceeding, regarding the decision on your request to intervene.

If Arizona Supreme Court Rule 31 requires that you (e.g., your company or organization) be represented by an attorney, and you do not yet have an attorney to represent you, your request to intervene will not be granted until you have obtained an attorney to represent you.

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### **Do I need an attorney?**

If you are an individual representing only yourself (i.e., not your company, another individual, or any type of organization), you may represent yourself before the Commission and are not required to hire an attorney to represent you.

An individual may not represent anyone other than himself or herself unless that individual is authorized to practice law in Arizona. The Arizona Supreme Court restricts the practice of law to licensed attorneys, with certain exceptions (see generally [Arizona Supreme Court Rule 31](#)).

Because a company organized as a corporation or limited liability company (or using another legal form) is not an individual, the company must be represented by a licensed attorney, unless one of the permitted exceptions is met.

The Arizona Supreme Court has created an exception that allows a public service corporation (utility), an interim operator appointed by the Commission, or a non-profit organization to be represented by a corporate officer, employee, or member who is not a licensed attorney if:

1. The utility, interim operator, or non-profit organization has specifically authorized the officer, employee, or member to represent it;
2. The representation is not the person's primary duty to the public service corporation, interim operator, or non-profit organization, but only secondary or incidental to other duties relating to the management or operation of the public service corporation, interim operator, or non-profit organization; and
3. The person is not receiving separate or additional compensation for the representation (other than reimbursement for costs).

(See [Arizona Supreme Court Rule 31\(d\)\(28\)](#).)

An attorney who is licensed in another state, but not in Arizona, may represent an individual or entity before the Commission only if that attorney is admitted to practice law in Arizona *pro hac vice*.

(See [Arizona Supreme Court Rule 38](#) regarding admission *pro hac vice*.)

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### ***If I don't hire an attorney, where can I get legal advice and assistance?***

You cannot obtain legal advice from Commission personnel. However, Commission personnel can try to help you understand and follow the procedures necessary for you to present the information you desire to have considered by the ALJ and Commission. If you need legal advice, you must consult a licensed Arizona attorney.

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### ***Whom do I talk to if I have a question about the pending case?***

If, after obtaining and reviewing all relevant Procedural Orders, you still have a procedural question concerning a case that is before the Hearing Division, you may contact the Hearing Division at (602) 542-4250. You will need to identify who you are and to provide the docket number for the case so that administrative staff of the Hearing Division can locate the information about the case necessary to respond to your question. Depending on the question, administrative staff may need to call you back with a response.

Administrative staff of the Hearing Division are prohibited from answering questions concerning any substantive aspects of a case and are prohibited from providing legal advice.

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### **Can I communicate directly with a Commissioner or the ALJ?**

After a hearing has been scheduled in a contested case or the Commission's unauthorized communications rule ("ex parte rule," A.A.C. R14-3-113) has been invoked, you **may not** communicate with the ALJ or with any Commissioner (or Commissioner's Advisor) concerning any substantive aspect of the pending case, except on the record during an official proceeding or in a writing that is filed with Docket Control and served on all parties of record. Such a substantive communication with the ALJ or any Commissioner (or Commissioner's Advisor), if made off the public record concerning a pending case, would be considered an *ex parte* communication in violation of the Commission's unauthorized communications rule (A.A.C. R14-3-113). This restriction does not apply to rulemakings.

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### **What if I want the ALJ to do something before the hearing?**

If you want the ALJ to take a particular action in the case (such as resolve a discovery dispute, extend a filing deadline, or reschedule the hearing), you must file a formal motion containing the request. You need to file the original motion and 13 copies with Docket Control, and you need to ensure that the motion is served on all parties of record in the case on the day of filing. Before filing the motion, you should contact the other parties informally to find out whether they will agree to your request.

The motion should include an explanation of your request, an explanation of the good cause that supports the granting of your request, and a statement of the other parties' positions regarding the request. If all parties to a case are in agreement about the request, the ALJ should be able to act upon it quickly. If the motion does not provide the other parties' positions, or not all parties are in agreement, the ALJ generally will not act on the motion until the other parties have had an opportunity to respond. Depending on the circumstances surrounding the motion, the ALJ may schedule a procedural conference at which the motion will be discussed.

Responses to motions are generally due within 10 days, and replies are generally due within 5 days after any responses are filed.

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### **If I don't intervene, how can I keep track of the case?**

If you do not intervene, you will not be sent copies of the filings made in the docket by the ALJ or the parties of record. **However, all documents filed in the docket are available online** (usually within 24 hours after docketing) at the Commission's website, [www.azcc.gov](http://www.azcc.gov), using the [eDocket](#) function. You may also receive RSS feeds about a case using the [eDocket Subscription Service](#).

Even if you choose **not** to intervene, or your request to intervene is denied, you will still be able to attend the hearing, provide public comment, and review all of the documents filed in the case.

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### **What is the docket number and where do I find it?**

The unique number assigned to each Commission case by Docket Control is included on the first page of each official document filed for the case. It is generally located on the upper portion of the page, to the right of the caption that includes the case name.

A docket number generally looks similar to this:

W-12345A-15-0123

The letter indicates the type of utility involved (e.g., W for water, E for electric, etc.), the group of five numbers and one letter indicates the specific utility involved (each has a unique number), the two numbers indicate the year the case file was opened, and the final four numbers indicate where the case file falls within that year (i.e., the above example would be the 123rd case file opened in 2015).

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### **Where do I find the parties of record?**

To determine who the parties are, you should go to the Commission's website, select "eDocket," enter the last six digits of the case number (including the hyphen, i.e., 15-0123) in the search window to bring up the specific case page, and then select the "Service List" tab within the case page. All of the parties to the case, independently and/or through attorneys, should be listed there, with mailing addresses. If a party is represented by an attorney, you must serve a copy of your filings on the attorney. You may also serve a copy on the party who is represented by the attorney.

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### **How do I serve documents on other parties?**

Generally, service may be made by sending the documents by First Class U.S. Mail, postage paid, to a proper address. You may also send the documents through an alternate delivery service (e.g., Federal Express) or have the documents delivered personally by a courier. In some cases, the parties agree to accept service by email. To determine whether email service can be used for parties in a case, review the filings made and the Procedural Orders issued in the case. If you desire to have service upon you made by email, you may consent to such service by complying with, completing, and submitting this form: [Consent to Email Service](#)

On the original and docketed copies of documents required to be served, you must include either an acknowledgment of service from the recipient or a signed and dated certification stating that all parties of record have been served and identifying the manner of service. (See [A.A.C. R14-3-107\(C\)](#).)

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### **I've been granted intervenor status. Now what?**

As an intervenor, you will be expected to make a reasonable effort to educate yourself about the Commission's rules and procedures. You should start by familiarizing yourself with the Commission's Rules of Practice and Procedure ([A.A.C. Title 14, Chapter 3](#)).

You should also review the documents already filed in the docket for the case, to become familiar with all of the requirements and deadlines included therein. You should pay special attention to any Procedural Orders issued, as this is where most requirements and deadlines will be found. You will be expected to have knowledge of the documents filed in the case, even those filed prior to your involvement, and you will be required to comply with any applicable requirements and deadlines found therein. To make sure the process is fair for all participants, a party's failure to file a document by the established deadline could result in the exclusion of the document.

You can see what has been filed in a case by going to the Commission's website ([www.azcc.gov](http://www.azcc.gov)) and searching for the case using the eDocket function and the assigned docket number. [\*What is the docket number and where do I find it?\*](#)

Because the Commission's procedural rules refer to the Arizona Rules of Civil Procedure, it may be helpful for you to review those as well. Those rules are available through the Arizona Judicial Branch website (<http://www.azcourts.gov/rules/Home.aspx>) by selecting the "Current Arizona Rules" link and then the link for the "Rules of Civil Procedure for the Superior Courts of Arizona."

As an intervenor, you are expected to share information with other parties upon request and to obtain information from other parties through a process known as **Discovery**. You are allowed to communicate directly with any other party or, if the party is represented by an attorney, the attorney for the party. The discovery process is intended to allow parties to prepare for hearing by learning the positions and supporting documents of the other parties, so that hearings can run efficiently without surprises. The most common methods of discovery used in cases before the Commission are written questions submitted by one party to another, commonly referred to as data requests.

In many cases, a procedural conference (or more than one) is held before the scheduled hearing date. A procedural conference can be scheduled whenever the ALJ determines that an issue or motion can best be addressed through live discussion rather than filings in the docket or upon the request of a party. As an intervenor, you will be expected to attend all procedural conferences.

In some cases, a pre-hearing conference will be held approximately one week prior to the hearing. This usually occurs in larger or more complicated cases with multiple parties. At a pre-hearing conference, the ALJ and parties will discuss procedural issues (such as the scheduling of witnesses and whether there are any objections to pre-filed testimony) as well as the procedural guidelines that will be used to govern the hearing (these could include the length of opening statements, whether written briefs will be required in lieu of closing arguments, etc.). The ALJ may also make the parties aware of specific questions or topics that the ALJ desires the parties to address at hearing, to help ensure that the record is clear and complete. As an intervenor, you will be expected to attend any pre-hearing conference.

Your job as an intervenor is to present the information and argument that you believe best demonstrates why the ALJ and the Commission should support your position. You should

ensure that you are prepared for that role. You may be required to file written testimony, and you will generally be expected to provide live testimony and to offer exhibits at hearing. (Sometimes intervenors offer no evidence and only cross examine other parties' witnesses.)

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### **What happens at hearing, and what do I have to do as an intervenor?**

Hearings at the Commission resemble trial court proceedings, but are less formal. Each hearing is presided over by an Administrative Law Judge ("ALJ"), and sometimes one or more Commissioners also attends and joins the ALJ on the bench. The Rules of Evidence and Rules of Civil Procedure are not strictly applied in Commission hearings, although they are used for guidance. This flexibility allows for development of a more comprehensive record from which the Commission can reach its decision.

At the hearing, you should be prepared to present a brief opening statement, present evidence through witness testimony and documents, cross-examine other parties' witnesses, and make closing arguments (parties may be required to file briefs instead of or in addition to providing closing arguments).

If there are documents that you desire to have admitted as evidence in the case, you need to bring to hearing sufficient copies of those documents to provide one to the court reporter, one to the ALJ, and one to each other party in the case. You should organize the documents beforehand and label each document sequentially in the order you expect to offer them. (For example, if you are the only intervenor, you might label your first document INT-1, the second INT-2, and so on. If you are not the only intervenor, you might use your initials instead—e.g., if your name were John Alan Doe, you might label your first document JAD-1, and so forth.) The court reporter at the hearing can provide you with exhibit labels upon request.

When you offer a document at hearing, you will generally need a witness to identify it, explain what it is and who made it, explain how the witness is familiar with it, and explain why it is important. If you are your only witness, you would be expected to do that yourself from the witness stand.

Hearings generally proceed as follows:

- The ALJ takes the appearances of the parties.
- Any outstanding motions or other issues affecting the hearing are discussed.
- Public comment is taken.
- Each party makes an opening statement (a brief recitation of the issues and what the party believes the evidence will show, not a time to present evidence).
- Each party, in turn, provides evidence, in the form of witness testimony and documentary evidence. Each witness is subject to cross examination by other parties.
- Each party makes a closing argument, or the ALJ directs that closing briefs must be filed (whether verbal or in writing, closing argument provides an opportunity to explain why the ALJ should rule one way or another).
- The ALJ adjourns the hearing.

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### **What happens after the hearing?**

Following the hearing, the ALJ will take the case under advisement. The transcript for the hearing will be available 10 business days after the hearing adjourns, unless an expedited transcript has been ordered by a party at that party's expense. (To obtain a copy of the transcript, a party must make arrangements with the court reporting agency.) Once the transcript is available, the ALJ will review it along with the exhibits admitted in the case and then prepare a Recommended Opinion and Order ("ROO"). The ROO will provide the ALJ's recommendations for how the Commission should decide the case. The ROO will be filed with Docket Control and sent to all parties of record on the day that it is issued. Each ROO is sent out with a cover letter that contains a deadline for parties to file Exceptions to the ROO. The cover letter generally also identifies the Commission Open Meeting at which the ROO is expected to be discussed.

Exceptions are a party's written response to a ROO, in which the party expresses disagreement or concern with something in the ROO or provides clarification concerning something in the ROO. Parties are not required to file Exceptions.

In most cases, the ROO will be placed on the agenda for an Open Meeting soon after the ROO is issued. The Commission decides when the ROO for a case will be considered at Open Meeting and creates the Open Meeting Agenda. [Open Meeting information](#), including schedules and Agendas, are available on the Commission's website.

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### **What happens at Open Meeting?**

If the ROO for a case is on the agenda for an Open Meeting, you generally can expect the Commission to reach a decision regarding the outcome for the case at that Open Meeting. If the ROO is listed on the Commission's Consent Agenda, it will usually only be discussed upon the request of a Commissioner or a member of the public and may be voted upon without discussion. If the ROO is listed on the Commission's Regular Agenda, the Commission will discuss the ROO at least briefly and then will generally vote on the ROO. The Commission can decide to adopt a ROO as is or with minor or major changes made through amendments, can vote not to adopt a ROO at all, or can decide not to have a vote on a ROO. The Commission can also hold a ROO instead of placing it on an Open Meeting Agenda. The Commission makes the ultimate decision in each case before it and is not bound by the recommendations of the ALJ as set forth in the ROO or by the submissions of any party to the case.

As an intervenor, you should come to the Open Meeting at which the ROO for your case will be considered by the Commission (i.e., is on the agenda). In their discussion and consideration of a ROO during Open Meeting, the Commissioners may have questions for the parties. If the Commissioners have questions for you, and you are not present to respond to them, you could lose the opportunity to present your position to the Commissioners directly before they vote on the ROO.

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### ***Can I attend the Open Meeting telephonically?***

In certain circumstances, the Commission may allow an intervenor to appear telephonically at an Open Meeting. If you are unable to attend the Open Meeting in person, you should contact Shaylin Bernal, at [sabernal@azcc.gov](mailto:sabernal@azcc.gov) or 602-542-3931, to request other arrangements.

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