

Exploring Municipal Authority to Encourage a Greater Scale of Productive Investments in Community Well-Being for the Pima County/Tucson MSA

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on Behalf of Sustainable Tucson
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This memorandum reflects the current stage of analysis and is intended as a living document that will evolve with ongoing discussions, stakeholder input, and policy development.

Abstract

This legal and policy memorandum lays out the legal authority available to the City of Tucson and Pima County to pursue a broader set of energy, resilience, and infrastructure-related actions than is often assumed. It examines both a narrower reading of existing law, which points toward the clearest and least contestable local options, and a broader reading, which remains bounded by state law but gives greater weight to present conditions, including lagging energy and resource productivity (hence lagging economic productivity), extreme heat, rising energy burden, outage risk, aging infrastructure, and growing load pressures. If read together, those authorities suggest that Tucson and Pima County are not limited to a false choice between inaction and the immediate creation of a competing municipal electric utility. But building on the emerging successes in other communities, existing law supports a portfolio of lawful options - including public investment, shared delivery, community cost reduction, and resilience infrastructure - that can be pursued now, while recognizing that actions resembling a competing electric utility would trigger heavier election, acquisition, and regulatory constraints. In that sense, this memorandum does not treat current legal limits as a reason for paralysis, but as a framework for identifying which forms of local action are both lawful and most necessary under present conditions.

I. Introduction

Like all economies, the Pima County/Tucson MSA maintains a large infrastructure that underpins its overall economic performance. Working estimates indicate on the order of \$190 to \$220 billion in existing outlays in the region’s existing capital stock (buildings, roads, bridges, and related infrastructure including consumer durables including cars, appliances and other equipment). Much of that scale must be substantially upgraded if the regional economy is to improve its overall performance. In effect, a more productive infrastructure can increase both productivity and provide a greater level of resilience for both consumers and businesses within the region. At normal rates of replacement, however, one can imagine that it may require 40 or 50 years to fully modernize the economy from what we might think of as a 1980s level of performance to meet expectations of a sustainable economy. And that scale of infrastructure and assets might increase by yet another ~\$100 to \$125 billion by 2050.¹ Consequently, there is a need to quickly aggregate both the supply

¹ For a more complete economic perspective that underpins this legal memorandum, see Laitner, John A. “Skip” (2026). “An Updated Energy and Resource Perspective for a More Resilient Community Throughout Tucson and

of, and the demand for, more productive uses of energy, water and other resources, and to accelerate the redirection of capital away from the old and into the new. This brings us then to the central ideas which underpin this memorandum.

II. The Problem

Too often, the public and the municipalities designed to enhance general prosperity and protect our public safety, health, and morals are pushed into what feels like an all-or-nothing choice. One big recent example is the idea that we must accept major rate increases from a private electric utility, or step into the messy, politically difficult, and legally complicated transition to a city-run utility. That choice feels even more urgent during a time shaped by an eroding growth in per capita income, an aging grid, rising utility costs, major new load demands from data centers, and Tucson's record-setting heat in March of this year. But once the legal landscape is examined more carefully, the picture is less binary than it first appears. The better question is not whether the City of Tucson must choose between doing nothing and creating a new electric utility. It is the full array of lawful options Tucson and Pima County have, within constraints, to reduce costs, protect health, and strengthen resilience.

III. Laying out the Program and Investment Statutory Authority within the City or County

Tucson and Pima County are not starting from zero. The problem is not a total lack of authority, but a tendency to read existing authority too narrowly.

Dillon's Rule, which earned its name after Justice John Dillon in *Clinton v. Cedar Rapids and the Missouri River Railroad* (24 Iowa 455 (1868)) and is also known as general-law government, is a type of governance where a local government, such as a City or County, has authority only as expressly granted by the state legislature.²

Pima County is a Dillon's Rule County. With a population approaching 1.1 million people, it is eligible to pursue a county charter under article XII, section 5 of the constitution, but has not done so.³ By contrast, Tucson has adopted a charter, making it a Home Rule city. Home Rule is a system of self-governance for local government that is authorized by the Arizona Constitution. This is important to note because Tucson, as a charter city, is the local government directly situated within Arizona's municipal-utility framework, whereas Pima County's strength lies in its separate authorities over public health, land use, incentives, intergovernmental coordination, and implementation.

Pima County." A working document prepared on behalf of Sustainable Tucson for the *Renew Tucson Summit* to be convened on April 23, 2026.

² *City of Clinton v. Cedar Rapids & Missouri River R.R. Co.*, 24 Iowa 455 (1868).

³ Ariz. Const. art. XII, § 5. Although Arizona law allows counties above a certain population threshold to adopt a charter, doing so requires a multi-step process including voter approval, and no Arizona county has adopted a charter to date.

TUCSON

Tucson is a charter city under article XIII, section 2 of the Arizona Constitution, which gives it more local flexibility than a general-law city. While Tucson does not have unlimited authority, it is authorized to act in any way, as long as that action is not inconsistent with the state constitution and law. Tucson's Charter already provides implementation authority for infrastructure improvements, including the power to construct and maintain public works and public-service infrastructure, work in streets and rights-of-way, finance projects, partner with other public entities, acquire property for public and utility-related purposes, and borrow money for authorized City purposes. These powers could support practical resilience investments such as public-building retrofits, solar and storage on City facilities, cooling and resilience centers, right-of-way coordination, and other public infrastructure projects that reduce costs and improve resilience.⁴ That is why the legal question is not whether Tucson has any authority at all. Rather, it is whether Tucson is willing to use its existing authority while working carefully within state-law constraints and avoiding actions that could invite unnecessary legal conflict.⁵

Tucson's Charter also provides public-welfare and regulatory sections that apply to present conditions. The Charter allows the City to promote health and welfare, care for vulnerable residents, prevent disease, and adopt police and sanitary regulations. Those provisions do not displace state utility regulation, but they support local action to enable a more productive infrastructure, to proactively address heat resilience, cooling access, public-health protection, and related resilience investments which could include the upgrading of existing older infrastructure which enable greater resilience outcomes.⁶

PIMA COUNTY

Counties in Arizona are more directly creatures of state law. Arizona law allows Pima County to levy taxes for county expenses, adopt ordinances necessary or proper in the conduct of county business so long as they do not conflict with state law, and adopt provisions necessary to preserve county health.⁷

Pima County may also use intergovernmental agreements and Renewable Energy Incentive District tools to support infrastructure and renewable deployment in unincorporated areas. A Renewable Energy Incentive District, or REID, is a statutory tool that allows a county to designate an eligible area in unincorporated county land and adopt an incentive plan to encourage renewable energy and storage development. That plan may include expedited zoning or rezoning, expedited processing of plans and permits, waivers or abatements of

⁴ Ariz. Const. art. XIII, § 2; Tucson, Ariz., Charter ch. IV, § 1(11), (13), (15), (23), (24), (27), (29).

⁵ Municipal caution may be understandable where state-law boundaries are contested, and there is potential risk of litigation. Even so, carefully designed local action within existing legal limits can help clarify the workable scope of municipal authority while also delivering concrete public-health, resilience, and economic benefits. In that sense, Tucson's choices may matter not only locally, but as a potential example for other Arizona communities confronting similar challenges.

⁶ Tucson, Ariz., Charter ch. IV, § 1(6), (10), (19), (29).

⁷ A.R.S. § 11-251(12), (17); A.R.S. § 11-251.05(A)(1).

certain county fees and assessments, and waiver or abatement of certain development standards and procedural requirements. The statute itself gives the County those tools.⁸

Arizona law also confirms that municipalities may engage in enterprises carried on under franchise authority and may acquire sites and rights-of-way for public utility purposes.⁹ So the legal question is less whether authority exists, and more whether local governments are willing to use that authority in ways that might enhance local economic resilience.

Arizona state law gives cities power to engage in utility business, but it also places limits on how that power can be exercised. Under A.R.S. § 9-511, a city may engage in public-utility business and acquire utility property. But A.R.S. § 9-514 requires voter approval before certain utility acquisitions, construction, or lease steps may proceed. A.R.S. §§ 9-515 and 9-516 make the barrier higher still when adequate service is already being rendered. A city generally cannot just institute a competing service in an already-served area without first acquiring the existing utility plant, system, and business used and useful there. And A.R.S. § 9-501 requires voter approval before a city grants a public-utility franchise. While Arizona law does not say a city can never move in this space, once local action begins to look like a competing electric utility, the logistics become much more legally complex.¹⁰

The proposed Energy Collaboration Agreement (ECA) and franchise agreements between the City of Tucson and Tucson Electric Power reinforce state law. The ECA describes TEP as the sole regulated provider of electric service in its service territory, makes the agreement effective only if voters approve a new franchise, and says the annual payments stop, and the agreement may be terminated, if the City authorizes condemnation of TEP assets or takes formal action for the purpose of creating a municipal electric utility. The proposed franchise would also grant TEP a 25-year right to construct, maintain, and operate electric transmission and distribution facilities in city rights-of-way. The combination of the ECA and franchise agreement documents do not make local clean-energy action impossible. Instead, they create strong incentives toward collaboration, project finance, resilience investments, and policy. At the same time, the agreement is not a fixed or irrevocable barrier, as it allows termination or withdrawal under certain conditions, reinforcing that it functions more as a practical and strategic framework than a permanent legal constraint.¹¹

This regulatory backdrop has also shifted at the state level. In March 2026, the Arizona Corporation Commission voted to repeal the Renewable Energy Standard and Tariff rules. That change does not remove Tucson's Charter powers, Pima County's REID under A.R.S. § 11-254.07, or other implementation tools, or other local authority discussed here. It does, however,

⁸ A.R.S. § 11-254.07(A)-(C); Pima County, Ariz., Code tit. 14, ch. 14.01, § 14.01.020; id. tit. 14, ch. 14.03, § 14.03.020.

⁹ A.R.S. § 9-511(A), (C).

¹⁰ A.R.S. §§ 9-501, 9-511, 9-514, 9-515, 9-516; *City of Mesa v. Salt River Project Agric. Improvement & Power Dist.*, 92 Ariz. 91, 373 P.2d 722 (1962); *Sende Vista Water Co. v. City of Phoenix*, 127 Ariz. 42, 617 P.2d 1158 (App. 1980).

¹¹ City of Tucson Mayor and Council Memorandum SS/MAR17-26-69, Update and Discussion on the Energy Collaboration Agreement between the City of Tucson and Tucson Electric Power (Mar. 17, 2026); TEP-COT Proposed Franchise Agreement §§ 2, 2A, 3.

weaken the broader state renewable-policy backdrop and further support a local approach centered on implementation, resilience, shared delivery, and public investment.¹²

IV. Understanding that Local Police Power Is Not Static

The question is not just what authority exists, but how it should be interpreted under present conditions.

Local police powers are “not static, but dynamic, changing and accommodating to the complexities of modern society.” *Transamerica Title Ins. Co. v. City of Tucson*, 23 Ariz. App. 385, 387, 533 P.2d 693, 695 (App. 1975).

Here, Tucson’s public-welfare authority and Pima County’s public-health, safety, and general-welfare authority both have to be read against present conditions. Tucson may act to promote health and welfare, care for vulnerable residents, prevent disease, and adopt police and sanitary regulations. Pima County’s zoning and ordinance powers are likewise grounded in public health, safety, and general welfare. In a place like Pima County, where extreme heat, rising energy burden, outage risk, and aging infrastructure now shape daily life, those are no longer just technical utility concerns. They are also public-health and public-welfare concerns.¹³

The cost of inaction in the Sonoran Desert matters now more than ever. Pima County’s Climate Action materials on public health and heat response show why the steps already taken by local governments and partner agencies should be strengthened, not treated as the outer edge of what is possible. The County describes extreme heat as an urgent climate-related public-health issue, and County materials citing the Pima County Health Department report that in 2023 extreme heat caused thousands of heat-related injuries and more than one hundred heat-related deaths in Pima County.¹⁴ The County’s 2024 heat-season reporting documented 787 hospital visits with heat-related illness symptoms and 95 certified heat-related deaths between May 1 and September 30. Pima County has already expanded cooling-center access, improved coordination, and supported a broader heat-response network, including 36 cooling and respite centers during the early 2025 heat season.¹⁵ Not only is there a steep public-health price to pay for heat, but an economic one as well. The Arizona Department of Health Services also reported that heat-related hospitalization charges increased from \$11 million in 2008 to \$87 million in 2022, while emergency-room visit charges increased from \$4.7 million to \$28 million.¹⁶ These figures support a big “yes-and” approach: yes, important steps have already been taken, and the scale of the public-health and economic burden justifies reading existing local authority broadly enough to support additional practical measures that reduce risk, lower costs, and

¹² Arizona Corporation Commission, *ACC Votes to Eliminate Renewable Energy Standard and Tariff (REST) Rules*, News Release (Mar. 4, 2026).

¹³ Tucson, Ariz., Charter ch. IV, § 1(6), (10), (19), (29); Pima County, Ariz., Code tit. 18, ch. 18.01, § 18.01.020; A.R.S. § 11-251(17); A.R.S. § 11-251.05(A)(1).

¹⁴ Pima County, *Pima Climate Action NOW! Climate Action Plan for County Operations, Chapter 3: Extreme Heat*.

¹⁵ Pima County Health Department Office of Climate & Environmental Health Justice, *2024 Heat Season in Pima County*, at 17–18; Pima County Health Department, *Heat Season Updates – May through June 2025* (July 7, 2025), at 1, 3

¹⁶ Arizona Department of Health Services, *Recommendations and Findings for the Arizona Extreme Heat Preparedness Plan* (Mar. 1, 2024), at 8.

also deepen economic and social resilience.

It is important to note that a broader reading can have limits and that police power does not override state law. It does not transfer authority from the Arizona Corporation Commission to the City or County. And it does not allow Tucson or Pima County to regulate retail electric rates or certificated service territory. What it can support is cooling and resilience centers, building retrofits and energy-burden reduction, land-use and permitting reform, right-of-way coordination, infrastructure siting, and distributed and small-scale energy solutions. In other words, local governments may not do everything. But they may do more than a narrow business-as-usual reading often assumes.¹⁷

None of this means legal constraints disappear. They do not. But if there were ever a time to use existing local authority with greater confidence, it is now. In a region shaped by extreme heat, rising energy burden, outage risk, and infrastructure strain, the more responsible reading is not paralysis, but full use of the lawful implementation, resilience, finance, and coordination tools already available.

V. Moving Beyond Business-as-Usual Toward Practical Implementation

Once the issue is no longer framed as “do nothing” versus “become a utility,” a much more practical path becomes visible. The lawful path can be understood not as a single program, but as a portfolio through public investment, shared delivery, community cost reduction, and resilience infrastructure, all structured to stay on the implementation side of the line rather than the regulated-utility side.

Before turning to a narrower or broader reading, it helps to discuss what those terms mean here. A narrower reading means relying on the clearest, least contestable grants of authority and staying farther away from anything that begins to look like a competing retail electric utility. A broader reading does not mean ignoring state law or acting as if the City or County has authority to do absolutely whatever they want. It does mean reading existing implementation, public-health, welfare, finance, permitting, and coordination powers with more confidence in light of present conditions.

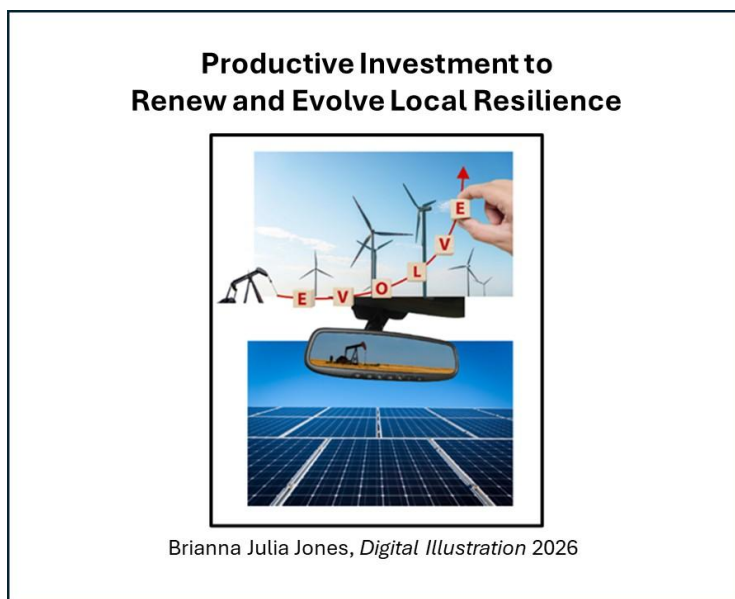
The issue is not whether Tucson and Pima County should act aggressively for its own sake. It is whether present conditions justify using the full lawful range of authority already on the books. Here, they do.

Tucson may work in streets and rights-of-way, build supporting infrastructure, partner with other public entities, and finance projects through multiple mechanisms. Pima County also has concrete implementation tools that deserve to be stated directly. In unincorporated areas, the County’s authority over the control, regulation, and use of the public right-of-way remains superior to the rights of other users with facilities there. The County may also require undergrounding in the public right-of-way when it determines that undergrounding is necessary for public safety. And it may use REID tools to accelerate renewable and storage

¹⁷ Ariz. Const. art. XV, § 3; A.R.S. § 40-202(A); A.R.S. § 40-281(A), (C).

projects. Those powers show that the County can do more than comment from the sidelines. It can help shape siting, reduce delay, support distributed infrastructure, and make resilience projects easier to deploy where it has jurisdiction.¹⁸

That lawful lane can be organized as a practical sustainable investment portfolio. First, public investment includes public-building retrofits, solar and storage on public assets, cooling centers, resilience hubs, and other projects that reduce operating costs while improving public safety. Second, shared delivery includes intergovernmental agreements, cooperative purchasing, shared technical staff, and common contract vehicles that let the City and County move projects through a coordinated structure rather than fragmented one-off administration. Third, community cost reduction includes home energy audits, retrofit support, technical assistance, targeted low-income energy-burden relief, and other incentive or program tools that help households and vulnerable communities reduce costs without creating a competing retail utility. Fourth, resilience infrastructure includes right-of-way coordination, permitting reform, REID tools in unincorporated areas, undergrounding where lawful, and other distributed infrastructure measures that make the system more durable under heat and outage stress.



VI. Enabling Community Investment Opportunities

A Sustainable Energy Utility (SEU) is generally understood as an entity or program that helps households, businesses, and public institutions save energy and money through energy-efficiency, renewable-energy, and related clean-energy services. Under a narrower reading of Arizona local-government and municipal-utility authority, the strongest path is not a classic SEU, but a Tucson/Pima Sustainable Investment Finance Authority built through

¹⁸ Tucson, Ariz., Charter ch. IV, § 1(11), (13), (15), (23), (24), (27); Pima County, Ariz., Code tit. 10, ch. 10.50, § 10.50.020; id. § 10.50.070; A.R.S. § 11-254.07(C); Pima County, Ariz., Code tit. 14, ch. 14.03, § 14.03.020.

familiar local-government tools. A.R.S. § 11-952 allows public agencies to jointly exercise shared powers and even form a separate legal entity, including a nonprofit corporation, for joint work. A.R.S. § 41-2632 allows cooperative purchasing, shared contracts, shared personnel, and shared technical services. These are powerful tools for bundling public-building retrofits, solar and storage on public facilities, cooling centers, resilience hubs, and other implementation work without stepping as directly into regulated-utility territory. This is why the finance-authority model has a cleaner legal path. It is a lawful public investment and project-delivery vehicle rather than a second electric company.¹⁹

A broad interpretation leaves some additional room. Tucson or Pima County might support an SEU-like entity if it were clearly structured as a voluntary, supplemental, non-rate-setting vehicle rather than a competing retail electric utility. That means no rate setting, no operating the distribution system, and no attempt to displace TEP as the regulated provider. Instead, the entity would stay on the program side of the line: audits, retrofits, behind-the-meter solar and storage, resilience-hub support, demand-flexibility efforts, and related public-benefit services. That argument is stronger because the proposed Energy Collaboration Agreement itself already contemplates collaboration on distributed energy resources, battery storage, microgrid resilience hubs, home energy audits and retrofits, cooling centers, workforce development, and streamlined permitting. In that sense, the better posture here is to complement, not compete.²⁰

But it would still draw more scrutiny than a finance-authority model, and it does not create a clean path to a classic parallel citywide electric utility inside TEP territory.

Examples from elsewhere strengthen the case for action. The DC Sustainable Energy Utility is the best mature example of a public-facing clean-energy platform judged by measurable savings and performance. [Official DCSEU materials](#) say the program has generated more than \$1.4 billion in lifetime energy cost savings since 2011, and its FY2024/FY2025 reporting shows both measurable outcomes and visible oversight. One community-solar project at Cloisters Apartments is expected to deliver up to \$2.53 million in electricity-bill savings over 15 years, with households saving up to \$500 a year. Ann Arbor is useful in a different way: its newer, [voter-authorized SEU](#) is better treated as a design and inspiration example than as a mature savings case, although the city's related [Solarize work reports](#) almost 5.2 MW installed across 690 installations, more than \$2.3 million in upfront installation savings, and an estimated \$22.8 million in energy-cost savings over 25 years. Tucson and Pima do not need to copy either model exactly. They can borrow the best elements: measurable savings, public accountability, community buy-in, and a project structure tied to public benefit.²¹

The local cost case is just as important as the legal one. [Fairfax County reports](#) nearly \$8

¹⁹ A.R.S. § 11-952; A.R.S. § 41-2632.

²⁰ City of Tucson Mayor and Council Memorandum SS/MAR17-26-69 (Mar. 17, 2026); TEP-COT Proposed Franchise Agreement § 2A.

²¹ DC Sustainable Energy Utility Advisory Board FY24/FY25 report; Ann Arbor Sustainable Energy Utility; Ann Arbor Solarize / 5 MW milestone.

million in avoided utility costs in FY2024 from efficiency work, solar installations, and fleet electrification. Pima County has also already treated household stability and weatherization as legitimate public purposes in its own budgeting and program decisions. Tucson and Pima do not just need to show that heat and infrastructure stress are costly; they need to show that the response can save money too. A finance authority is strongest precisely because it lets local government treat public-building upgrades, solar and storage on public assets, cooling infrastructure, and resilience hubs not as side projects, but as a cost-control and public-safety portfolio.²²

A related point is that intergovernmental agreements and cooperative purchasing are not just administrative side notes. They serve as implementation tools. Arizona's joint-powers statute allows two or more public agencies or public procurement units to contract for services, jointly exercise powers common to them, enter agreements for joint or cooperative action, and even form a separate legal entity, including a nonprofit corporation. Arizona's cooperative purchasing statute separately authorizes joint or multiparty contracts, shared use of materials and services, shared warehousing and capital equipment, provision of personnel, and provision of technical, informational, or software services that improve procurement efficiency or economy. These statutes give Tucson and Pima County a lawful way to lower overhead, pool expertise, and move projects through shared delivery structures rather than fragmented one-off administration.²³

Applied here, an intergovernmental agreement could begin more narrowly as a joint project-delivery structure for public-building retrofits, public-site solar and storage, cooling centers, resilience hubs, and related distributed infrastructure using the shared-powers and cooperative-purchasing authorities already described above. That starting point is supported by existing local funding and collaboration documents. The proposed Energy Collaboration Agreement already contemplates annual shareholder-funded support from TEP for collaborative climate and resilience work and identifies distributed energy resources, battery storage, microgrid resilience hubs, home energy audits and retrofits, and energy improvements in City facilities as potential areas of collaboration. Pima County's recent Project Blue proceeds allocations likewise show that local capital has already been directed toward countywide solar projects, environmental health initiatives, and utility assistance or weatherization-type programs. Read together, these sources support the idea that a Tucson/Pima IGA could function as a lawful coordinating structure for shared project delivery, pooled administrative capacity, and phased public-facility investment aimed at reducing operating costs over time while also improving heat and outage resilience.²⁴

²² Fairfax County, County Energy Data Shows Nearly \$8 Million in Utility Cost Savings in FY24; Additional Material to the Board of Supervisors Meeting, March 3, 2026, Addendum Item #5 - Recommended Use of Project Blue Land Sales Proceeds (Feb. 27, 2026).

²³ A.R.S. § 11-952; A.R.S. § 41-2632.

²⁴ City of Tucson Mayor and Council Memorandum SS/MAR17-26-69 (Mar. 17, 2026); Additional Material to the Board of Supervisors Meeting, March 3, 2026, Addendum Item #5 - Recommended Use of Project Blue Land Sales Proceeds (Feb. 27, 2026).

VII. We Need City/County Efforts to Enable Positive Outcomes and Make Them Happen

When deciding a path forward, the law should come first, but not as a reason to retreat. It should come first because it tells Tucson and Pima County what kind of architecture is most defensible. The narrower reading points toward a portfolio built through public investment, shared delivery, community cost reduction, and resilience infrastructure, using IGAs, cooperative purchasing, public-facility investment, cooling infrastructure, resilience hubs, and solar and storage on public assets. The broader reading may leave room for some SEU-like features so long as they remain voluntary, supplemental, and outside core utility functions. Either way, the City and County do not have to choose between rate hikes and full public power. They can build the version that best fits Arizona law and the world they are living in: one with more extreme heat, more infrastructure strain, and a greater need for public institutions willing to act before the crisis becomes even more expensive. If we choose to make it happen.

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PDF www.naco.org/sites/default/files/event_attachments/DRAFT_Arizona_012022.pdf

Arizona Corporation Commission

<https://azcc.gov/news/home/2026/03/05/acc-votes-to-eliminate-renewable-energy-standard-and-tariff-%28rest%29-rules>

Comparative examples

Ann Arbor Sustainable Energy Utility

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Ann Arbor Solarize / 5 MW milestone <https://www.a2gov.org/news/posts/a2zero-solarize-program-reaches-5mw-milestone-for-residential-solar/>

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