IN THE SUPREME COURT
STATE OF ARIZONA

JOHNSON UTILITIES, L.L.C., an Arizona limited liability company, *Petitioner*, vs. ARIZONA CORPORATION COMMISSION; and TOM FORESE, BOB BURNS, ANDY TOBIN, BOYD W. DUNN, and JUSTIN OLSON, in their official capacities as members of the Arizona Corporation Commission, *Respondents*.	Arizona Supreme Court No. CV-19-0105-PR Court of Appeals, Division One Case No. 1 CA-SA 18-0197 Arizona Corporation Commission Docket No. WS-02987A-18-0050 **SUPPLEMENTAL BRIEF TO PETITION FOR REVIEW**

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SUMMARY OF ARGUMENT

Petitioner, Johnson Utilities, L.L.C., respectfully incorporates the legal argument in its petition for review by reference and submits this supplemental brief to address the following aspect of the Court of Appeals' decision more fully:

> In more ***urgent*** situations (as well as in situations like those in *Woods* and *Phelps Dodge*), ***controlling the utility company*** may be a ***necessary*** means to accomplishing the permissible ends of controlling rates, i.e., in situations in which costly financial or structural harm to the corporation is imminent but avoidable.

Johnson Utilities, L.L.C. v. Arizona Corp. Comm'n, 438 P.3d 656, 661 ¶ 17 (App. 2019) (citing *Arizona Corp. Comm'n v. State ex rel. Woods*, 171 Ariz. 286, 297 (1992) ("*Woods*"), and *Phelps Dodge Corp. v. Arizona Elec. Power Co-op., Inc.*, 207 Ariz. 85 (App. 2004) ("*Phelps Dodge*") (emphasis added).

There are at least three reasons why the Court of Appeals' stated reasoning in the quoted holding is wrong as a matter of law.

First, it directly conflicts with this Court's statement in *Woods*, quoted earlier in the Court of Appeals' decision, that "courts also must consider whether a proposed rule, regulation, or order 'so interfere[s] with management functions that [it] constitute[s] an attempt to ***control the corporation*** rather than an attempt to control rates.'" *Johnson Utilities, L.L.C.*, 438 P.3d at 661 (quoting *Woods*, 171 Ariz. at 297 (emphasis added)). Thus, the Court of Appeals' decision upholds the Arizona Corporation Commission's authority to do precisely what the Court of Appeals

earlier in its decision observed the Commission cannot do under *Phelps Dodge* – issue an administrative order "***controlling the utility company.***" *Id.*

It bears repeating that "controlling the utility company" is precisely what the Court of Appeals had just acknowledged in earlier paragraphs that the management interference doctrine elucidated in *Phelps Dodge* ***prohibits***. *See Phelps Dodge*, 207 Ariz. at 113 ("Although the line separating permissible Commission acts and unauthorized managerial interference can be difficult to precisely discern, . . . the line is drawn between rules that attempt to control rates, which are permissible, and rules that attempt to control the corporation, which are impermissible."). Consequently, this case does ***not*** present an issue of ***whether*** the Commission's order crosses some line from controlling rates to controlling the company; that line has been crossed. The question for this Court is whether the Commission, through an administratively appointed agent, can displace management to control the company. Under *Phelps Dodge*, the answer is clearly no because controlling the company is not within the Commission's authority. 207 Ariz. at 113.

Second, the Court of Appeals' decision ignores that the Commission's order effectively appointed a *de facto* receiver to control the company and its finances. Several Arizona statutes govern the appointment of receivers to take control of companies or properties, yet the Commission's appointment of a *de facto* receiver to control Johnson Utilities complies with the requirements of none of them. No

express constitutional or statutory language strictly construed can reasonably be interpreted as authorizing the Commission to appoint receivers unilaterally through an administrative process – particularly if the process disregards all procedural, legal, evidentiary and ethical requirements that govern the appointment of receivers.

Third, the Court of Appeals disregards that the authority to authorize new forms of receivership, against the backdrop of over a century of the judiciary's development of the equitable remedy, is vested in the legislature. The legislature delegated the receivership appointment authority under Arizona's general receivership statutes, as well as under several specific receivership statutes that apply to specific industries, to the judicial system, not to the Commission.

Simply put, the Commission does not have authority to concoct a novel form of *de facto* receivership through an administrative order that bypasses the entire body of receivership law. When the legislature has seen fit to delegate administrative authority to appoint a receiver, the legislature has done so expressly by statute. *See* A.R.S. § 15-103(D) (vesting "jurisdiction over all petitions requesting that a school district be placed in receivership" in the state board of education). Neither the Constitution nor any Arizona statute delegates such authority to the Commission.

Where, as here, the Commission has displaced a company's management *in toto*, there can be no doubt that the Commission has ordered "management interference" in the ultimate and most intrusive manner possible. The Commission's

order appointing an "interim manager" is thus definitively beyond the pale of what is permitted under *Phelps Dodge* or otherwise under Arizona law. *See Phelps Dodge*, 207 Ariz. at 113 ("our supreme court has suggested that 'rules that attempt to control the corporation . . . are impermissible'"). The Court of Appeals' decision, therefore, should be reversed.

ARGUMENT

I. PURPORTED URGENCY CANNOT JUSTIFY THE COMMISSION'S TAKING CONTROL OF A COMPANY OUTSIDE ANY STATUTORILY AUTHORIZED PROCESS.

(a) The Commission Has Unquestionably Crossed the *Phelps Dodge* Line by Controlling the Company.

The Commission has constitutional authority to regulate the rates of utility companies. That authority does not extend to ***controlling*** the companies themselves. *See Phelps Dodge*, 207 Ariz. at 113. Yet, as the Court of Appeals' decision frankly states, the Commission administratively appointed an "interim manager" to act under the Commission's direction explicitly and precisely for the purpose of *controlling the company*. Thus, contrary to the Commission's argument,[1] this case does not present an exercise in constitutional line-drawing regarding the boundaries of just how far the Commission may go before unreasonably encroaching on matters

[1] *See* Commission's Response to Petition for Review at 10 ("The courts have drawn this line, and Johnson simply does not like where that line has been drawn.").

reserved to management discretion. The Commission kicked out management and is currently exercising complete control over the company and its bank accounts.

Framing this legal issue correctly, the question presented for this Court is whether the Commission has the authority to supplant a utility company's management ***for the express purpose of controlling the company over its objections,*** based on an administrative order issued outside any established process expressly authorized under Arizona law. The answer to this pure question of law is, of course, no. The Commission may enjoy a degree of discretion regarding matters on the side of the line where some degree of management interference is reasonably necessary to set utility rates. However, the Commission's ratemaking authority is circumscribed by the management interference doctrine under *Phelps Dodge*, which flatly prohibits the Commission from relying on its ratemaking authority to issue an order that crosses the line into ***controlling the company***. *See Phelps Dodge*, 207 Ariz. at 113.

Statutory authority for the Commission to ***control the company*** through an administrative order likewise does not exist, and such authority may be granted only by the legislature. *See Corporation Comm'n v. Pacific Greyhound Lines, 54 Ariz.* 159, 176-77 (1939) ("the paramount power to make all rules and regulations governing public service corporations not specifically and expressly given to the commission by some provision of the constitution, rests in the legislature"). It has

not done so, and in concluding otherwise, the Court of Appeals clearly erred. *See Arizona Corp. Comm'n v. Consolidated Stage Co.*, 63 Ariz. 257, 261 (1945) ("Nowhere in the Constitution or in the Statutes is the commission given jurisdiction . . . to control the internal affairs of corporations.").

(b) The Commission Has Neither Express Nor Implied Authority to Appoint an "Interim Manager" to Act as a *De Facto* Receiver.

(i) The "Interim Manager" Is a De Facto Receiver.

Neither alleged urgency nor necessity of circumstances justifies making an exception to *Phelps Dodge*'s prohibition against the Commission's issuing rules or orders that cross the line from ratemaking to ***controlling*** a utility company. *See Phelps Dodge*, 207 Ariz. at 113. Yet, the Commission appointed an "interim manager" as a *de facto* receiver with the power literally to ***control*** all facets of Johnson Utilities' operations and its bank accounts.

The powers given this "interim manager" are indistinguishable from the powers delegated to a judicially appointed receiver. Thus, the Commission's "interim manager" is unquestionably, for all intents and purposes, a *de facto* receiver, appointed unilaterally by the Commission. The Commission ordered this *de facto* receivership outside any statutorily authorized process and without the important procedural and substantive protections required under Arizona's receivership statutes or court rules.

A court-appointed receiver may be empowered to manage business operations, including its finances. Calling a receiver (by its very nature, an interim appointment) an "interim manager" does not change the fact that it is a receiver and fits the definition of a receiver in all respects. In short, the appointed "interim manager" for Johnson Utilities serves as a *de facto* receiver, and the Commission's chosen label of "interim manager" is meaningless with respect to the legal question presented. *See City of Surprise v. Arizona Corp. Comm'n*, 246 Ariz. 206, 876 (2019) ("But '[l]aw reaches past formalism.'") (Bolick, J., concurring in part and dissenting in part) (quoting *Lee v. Weisman*, 505 U.S. 577, 595 (1992)).

The Commission exceeded its authority. The power of receivership is governed under a number of Arizona statutes. The judicial process of appointing a receiver to control a company or other asset is prescribed by the legislature in general statutes as well as certain narrower statutes to govern certain specific situations. The general receivership statutes, A.R.S. § 12-1241 and §12-1242, empower the superior court to appoint a receiver "to protect and preserve property or the rights of parties therein, even if the action includes no other claims for relief." *See generally Mashni v. Foster ex rel. County of Maricopa*, 234 Ariz. 522, 528 ¶ 19 (App. 2014)) ("Like the court itself, the receiver is a neutral whose actions may redound to the benefit of some and detriment of others.")

Court-appointed receivers are subject to certain requirements under Rule 66 of the Arizona Rules of Civil Procedure. A receiver appointed by the court must execute an oath to perform the receiver's duties faithfully. Ariz. R. Civ. P. 66(b)(2). A receiver must post a bond conditioned on faithfully discharging the receiver's duties, and the amount of the bond is set by the court. *Id*. at 66(a)(4). A receiver serves as a caretaker and must act in good faith with respect to and for the benefit of all parties interested in the receivership. *Id*. at 66(b)(2). A receiver also must be free of conflicts of interest and have no interest in the outcome of the receivership. *Id*. at 66(b)(1).

The existence of these statutes and rules negates any inference that the Commission has the authority to appoint a *de facto* receiver outside any authorized statutory process, particularly in light of *Phelps Dodge*'s prohibition against the Commission's controlling utility companies in violation of the management interference doctrine. *See Phelps Dodge*, 207 Ariz. at 113.

(ii) Receivership Statutes Vest the Authority to Appoint Receivers in the Courts.

The Commission has neither constitutional nor statutory authority to appoint an interim manager to serve as *de facto* receiver. The legislature established laws to govern orders to take control of a company or property – which is exactly what a *receivership* is. Nowhere in those receivership laws is there a special exception delegating authority to the Commission to bypass those laws. Likewise, nowhere is

there an express authorization for the Commission to concoct its own novel administrative form of *de facto* receivership, unfettered by the substantive and legal protections that apply to all authorized forms of receivership under Arizona law. Undeniably, the power to authorize new forms of receivership over utility companies plainly resides in the legislature in the exercise of its general police power. *See Phelps Dodge*, 207 Ariz. at 111 (the "legislature retains power to govern public service corporations").

The Commission cannot simply invent its own administrative process for unilaterally appointing a *de facto* receiver to take control of a utility company on the ground of expediency or urgency. "It is fundamental that no court of law, board, or administrative agency can act without jurisdiction." *State ex rel. Pickrell v. Downey*, 102 Ariz. 360, 364 (1967). As this Court recently stated, "'***[t]he Corporation Commission has no implied powers and its powers do not exceed those to be derived from a strict construction of the Constitution and implementing statutes***.'" *City of Surprise v. Arizona Corp. Comm'n*, 246 Ariz. 206, 437 P.3d 865, 871 ¶ 17 (2019) (quoting *Commercial Life Ins. Co. v. Wright*, 64 Ariz. 129, 139, 166 P.2d 943 (1946)) (emphasis added).

When the legislature has desired to change the laws governing receiverships, it clearly knows how to do so. The historical version of the judicial process previously required that the superior court could appoint a receiver only in

connection with an existing legal claim. *See Gravel Resources of Ariz. v. Hills*, 217 Ariz. 33, 37 (App. 2007) ("[p]rior to its amendment in 1993, the statute provided that a receiver could be appointed 'when no other adequate remedy is given by law," but that "[i]n revising the statute, however, the Legislature deleted that language") (citing Ariz. Rev. Code § 3881 (1928), *amended by* ch. 43, § 1, 1993 Ariz. Sess. Laws). The legislature broadened the courts' authority by deleting that requirement, amending A.R.S. § 12-1241 to empower the superior court to appoint a receiver in the absence of a pending claim. *See id.* ("decision to delete language . . . is strong evidence that [the] Legislature did not intend [the] omitted matter should be effective"). That statutory amendment reflects—indeed, demonstrates—that the power to expand, contract, or otherwise amend the process of appointing receivers to take control of a company or property is a matter reserved to the legislature. *See generally Phelps Dodge*, 207 Ariz. at 111 ("The legislature retains power to govern public service corporations in matters unrelated to [the Commission's] ratemaking authority.")

Moreover, where, unlike here, the legislature has actually decided to delegate authority to appoint receivers outside the judicial process to a state administrative agency, the legislature has done so expressly. The legislature did exactly that in authorizing the state board of education to appoint receivers for school districts. *See* A.R.S. § 15-103(D) (vesting "jurisdiction over all petitions requesting that a school

district be placed in receivership" in the state board of education). No comparable statute exists granting the Commission the authority to appoint receivers to take control over utility companies over their objections.

Indeed, where the legislature has chosen expressly to authorize the Commission to seek the appointment of receivers regarding securities companies operating under the Commission's oversight jurisdiction, the legislature directed the Commission to seek such appointments through the judicial process. Under A.R.S. § 44-2011, the Commission may petition the superior court to appoint a receiver to reorganize or wind up the affairs of the violator of securities laws. The Commission can also submit the evidence to the attorney general, who can also petition the superior court for a receiver. *See id.* A.R.S. § 44-3271 is a mirror statute whereby the Commission can petition the superior court for a receiver of an investment management company. *See Commercial Life Ins. Co. v. Wright*, 64 Ariz. 129 (1946); *Slade v. Schneider*, 212 Ariz. 176 (App. 2006) (corporation commission asked trial court to enter temporary restraining order and appoint a receiver for a company accused of securities fraud).

Absent statutory authorization, the Commission is not free to create its own administratively appointed receivership as a means of evading *Phelps Dodge*'s prohibition against the Commission's issuing orders to take over control of a utility company. *See Phelps Dodge*, 207 Ariz. at 11 ("The legislature retains power to

govern public service corporations in matters unrelated to [the Commission's] ratemaking authority.").

(iii) Perceived Urgency Does Not Give the Commission Authority to Appoint a De Facto Receiver.

In the absence of statutory authorization, perceived urgency of the circumstances did not give the Commission unilateral authority, absent a court order following the prescribed process, to appoint a receiver.[2] If there truly was an emergency, the superior court has ample experience and tools to expedite judicial proceedings. Further, in such urgent situations, it is particularly important to abide by established legal procedures so as to ensure that all parties' legal rights remain protected even in potentially heated situations. *See generally Gordon v. Washington*, 295 U.S. 30, 39 (1935) ("[R]eceivership . . . should be resorted to only on a plain showing of some threatened loss or injury to the property, which the receivership would avoid.").

Consistent with this need to utilize the established legal process authorized to secure the equitable remedy of receivership, government agencies in other jurisdictions have gone to court to seek receiverships in analogous circumstances

[2] This Court may take judicial notice of the fact that the administrative complaint was filed by the Commission on March 15, 2018; closing briefs were filed on May 25, 2018; and the Commissioners rendered Decision No. 76785 on July 24, 2018, more than four months later.

involving allegations of urgent health and safety issues. Illustratively, in *Genssler v. Harris County*, No. 01-10-00593-CV, 2010 WL 3928550 at *1 (Tex. App. Oct. 7, 2010), the state, acting through the Texas Commission on Environmental Quality, brought suit against a water and wastewater company for environmental violations. The state then sought and received the appointment of a receiver to remediate the hazardous conditions on the property because the property posed an immediate risk of harm to the public. *Id.* A receiver was appointed by the trial court, and the court of appeals affirmed. *Id.* at *8.

In *United States v. City of Detroit*, 476 F. Supp. 512 (E.D. Mich. 1979), a wastewater treatment plant was placed in receivership by the trial court for water pollution violations. The court found that the trial court had broad equitable powers to enforce judgments and federal laws governing water pollution. *See id.* at 520.

In *Department of Environmental Protection v. Emerson*, 563 A.2d 762 (Me. 1989), a tire facility was allegedly violating waste management, fire protection, and water quality laws. After failing to comply with an injunction, the trial court appointed a receiver. The Maine Supreme Court held that appointment of a receiver was warranted under the circumstances after failure to comply with a preliminary injunction, emphasizing that "[t]he appointment of a receiver … is a matter within the discretion of the trial judge." *Id.* at 767. Moreover, "a court of equity is justified

… in turning to less common [remedies], such as receivership, to get the job done." *Id.* (citing *Morgan v. McDonough*, 540 F.2d 527, 533 (1st Cir. 1976)).

Urgency does not create implied authority for the Commission to take an administrative shortcut of its own creation to circumvent the requirements of Arizona law regarding receiverships. *See Phelps Dodge*, 207 Ariz. at 113 ("we will not infer the grant of authority to interfere with the Affected Utilities' management beyond the 'clear letter of the statute'") (quoting *Southern Pac. Co. v. Arizona Corp. Comm'n*, 98 Ariz. 339, 343 (1965)). Having elected not to pursue an action to petition the superior court to appoint a receiver over Johnson Utilities, the Commission cannot simply make up its own type of *de facto* receiver, unchecked by the important substantive and procedural protections that exist under established receivership appointment processes.[3]

[3] While the Commission often points to Johnson Utilities' exercise of its legal rights in other cases, such statements are misleading and appear designed to shift this Court's focus away from the purely legal issue presented in this case. While irrelevant to that issue, the Court may take judicial notice that four of those lawsuits are appeals of other Commission decisions, and three were injunction matters made necessary after the Commission initially refused to provide Johnson Utilities a modicum of procedural due process. The Commission also references cases filed by interested parties other than Johnson Utilities. The remainder of the cases involve good-faith challenges to the Commission's jurisdiction, including the present petition for review.

(iv) The Commission's Past Uncontested Appointments of Management Are Distinguishable from the *Involuntary* Takeover Here.

In the past, the Commission has appointed management of "troubled"—in some cases abandoned—public utilities. However, these prior appointments were either voluntary or unchallenged. Hence, they do not establish precedents relevant to this case.

In *Acme Water Company*, Acme itself requested that the Commission appoint an interim manager because the company was experiencing financial difficulty. (Comm'n Dec. No. 75871). In *Citrus Park Water Company*, the individual serving as the manager of the company notified the owner that he was no longer going to be working for the company and left. (Comm'n Dec. No. 74832). The owner failed to appoint a new manager, so the utility was operating without any management, causing significant problems for customers. Accordingly, the Commission appointed an interim manager because it determined that the owner had essentially abandoned the utility company. In *Hacienda Acres Water System*, the utility abruptly ceased operations and terminated service to its customers, canceling its CC&N, citing extreme financial difficulties. (Comm'n Dec. No. 70609).

None of these cases presented any sort of legal challenge. None of them implicated the management interference doctrine. None of them presented any genuine legal dispute or resulted in any legal precedent. These uncontested incidents are irrelevant to whether the Commission has the authority to issue an ***involuntary***

administrative order to appoint a *de facto* receiver to take over and exercise complete control of an active utility company worth many millions of dollars.

(v) The Power Over When, How, and Where to Appoint a Receiver Involves Quintessentially Legislative Policy Considerations.

It is widely recognized that the appointment of a receivership over a company is an extraordinary remedy. *See, e.g., Tate v. Philadelphia Transp. Co.*, 190 A.2d 316, 320 (Pa. S. Ct. 1963) (the power to appoint a receiver is "justly safeguarded, and reluctantly exercised, by the courts" and a "drastic remedy").

A brief review of the variations in receivership statutes in Arizona and elsewhere reveals the myriad of policy (and political) considerations involved in crafting the process for appointing a receiver to control companies or other entities absent their consent or over their objections. From Michigan's famously controversial legislative enactments regarding "emergency power" receiverships in Flint that were subjected to repeated legislative amendments and voter disapproval, to Arizona's adoption earlier this year of new receivership legislation to govern commercial real estate,[4] the area of receivership law is one in which legislators have focused keen attention historically and recently.

[4] Senate Bill 1216 adopted a modified version of the Uniform Commercial Real Estate Receivership Act, which crafts a more tailored process for addressing commercial real estate receiverships. The Act states that its provisions exist alongside the courts' equitable powers, underscoring the legislature's awareness that it reserves the authority to alter common law as the legislature sees fit.

The variety of legislative activity in this area reflects careful balancing specifying the circumstances that justify the appointments of receivers to take control away from existing managers, under what conditions and procedural and substantive protections, and what tribunal or entity is invested with the authority to weigh the evidence and other relevant factors. Weighing the policies involved in authorizing and prescribing a process for appointing receivers over utility companies is reflected in other states' legislative activities.

For instance, this Court may take judicial notice of the fact that the California legislature considered whether to provide its utility regulators with authority to appoint an interim operator, but this measure failed to pass. In 2013, California introduced SB-489 to amend Section 855 of the California Public Utilities Code in just such a way as the Commission is arguing for in this situation. The proposed amendment would have maintained the existing portion of the code that requires the Public Utilities Commission to petition the superior court for the appointment of a receiver for public utility. However, the new proposed section would have provided an alternative for the Public Utilities Commission to appoint an "interim operator" rather than a receiver for a water sewer company if the commission deemed it necessary and proper to protect public health and safety. This bill did not pass, and Section 855 of the California Public Utilities Code continues to require the Public Utilities Commission to go to the California Superior Court to appoint a receiver.

Given the judiciary's historical role and experience in weighing evidence, determining relevancy, and deciding disputed issues of fact, it is understandable that the authority to appoint receivers is traditionally vested in the courts as the trusted neutral guardians and arbiters of disputes. *Cf. Horne v. Polk*, 242 Ariz. 226, 230 ¶ 3 (2017) ("[W]here an agency head makes an initial determination of a legal violation, participates materially in prosecuting the case, and makes the final agency decision, the combination of functions in a single official violates an individual's Fourteenth Amendment due process right to a neutral adjudication in appearance and reality. That due process violation is magnified where the agency's final determination is subject only to deferential review."); *see generally* Catherine Megan Bradley, *Old Remedies Are New Again: Deliberate Indifference and the Receivership in Plata v. Schwarzenegger*, 62 NYU ANNUAL SURVEY OF AM. LAW. 703, 705-706 (2007) ("the receiver is the most powerful and independent of the judicially-appointed managers" who "makes large and small decisions, spends the organization's funds, and controls hiring and firing determinations"). The absence of Commission authority to appoint receivers administratively is reflected in the complete absence of any explicitly identified process, procedures, protections, or most importantly, authorization for the Commission to make such appointments. *See generally Phelps Dodge*, 207 Ariz. at 111 ("The legislature retains power to govern public service corporations in matters unrelated to [the Commission's] ratemaking authority."); *cf. Phelps Dodge*,

207 Ariz. at 113 ("if the legislature intended to authorize the Commission to orchestrate implementation of the directive, we would expect to see the authority conveyed in that provision, which is silent on the point").[5]

Of course, the Court here need not address any specific issues of interpretation relating to Arizona's receivership laws except insofar as taking notice that their existence strongly undercuts any contention that the Commission has express or implied authority to appoint an "interim manager" to serve as a *de facto* receiver. The Commission plainly lacks authority to enter an administrative order (through a *de facto* receivership or otherwise) to hire a contracted-for agent to do what the Commission is forbidden from doing: ***controlling*** the company. *See Phelps Dodge*, 207 Ariz. at 113. Therefore, the Court of Appeals' decision should be reversed, and the Commission's order appointing an interim manager should be vacated as ***void***. *See Southern Pac. Transp. Co. v. Arizona Corp. Comm'n*, 173 Ariz. 630, 633 (1992) (noting that "a Commission decision which goes beyond its power as prescribed by

[5] The availability of judicial review of an administrative order issued without jurisdiction does not present an adequate remedy at law. *Cf. Mashni*, 323 Ariz. at 526 ¶ 14 (App. 2014) ("We accept jurisdiction over this special action because when one is erroneously forced to stand trial, he has lost the benefit of immunity, even if he is not found liable. . . . 'Consequently, a defendant who asserts immunity has no adequate remedy at law by direct appeal after trial.'") (citation omitted; quoting *Salt River Valley Water Users' Ass'n v. Superior Court*, 178 Ariz. 70, 73 (App. 1993)).

constitution and statutes is vulnerable for lack of jurisdiction," and holding that "the jurisdictional defect renders the Commission's order void rather than voidable.").

CONCLUSION

The Court of Appeals erred in concluding that the Arizona Corporation Commission's ratemaking or statutory authority, strictly construed, expressly authorizes the Commission to appoint an "interim manager" to serve as a *de facto* receiver to take over unilateral and unfettered control of Johnson Utilities at the Commission's direction.

For the foregoing reasons, as discussed in the petition for review and in this supplemental brief, Petitioner, Johnson Utilities, L.L.C., respectfully requests that the Court reverse the decision of the Court of Appeals and vacate the Commission's Decision No. 76785.

RESPECTFULLY SUBMITTED this 17th day of September, 2019.

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