SUPREME COURT OF ARIZONA

SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation, Plaintiff/Appellee, vs. ARIZONA DEPARTMENT OF REVENUE, an agency of the State of Arizona; MARICOPA COUNTY, and YUMA COUNTY, each of which is a political subdivision of the State of Arizona, Defendants/Appellants.	**No. CV-23-0283-PR** Court of Appeals Case No. 1 CA-TX 21-0008 Arizona Tax Court No. TX 2019-001758

PLAINTIFF/APPELLEE'S CROSS-PETITION FOR REVIEW

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INTRODUCTION

Pursuant to Rule 23, ARCAP, Plaintiff/Appellee, San Diego Gas & Electric Company ("SDG&E") files this Cross-Petition for Review ("Cross-Petition") of the court of appeals' Opinion herein ("Opinion").[1] This Cross-Petition does ***not*** seek to change the Opinion's holding on the central issue presented by SDG&E's tax appeal, which upheld the Tax Court's correct ruling on that issue. Rather, it seeks to amend the Opinion because it: (1) Contravenes the holding in *Transamerica Development Co. v. County of Maricopa*, 107 Ariz. 396 (1971); and (2) vacates the correct full cash value in the Judgment below based on a misstatement of the facts.

As noted, the Opinion upheld (correctly) the Tax Court's ruling regarding the meaning of the term "accumulated provision for depreciation" in A.R.S. §42-14154(B)(2). But its holding vacating the full cash value of SDG&E's property is both factually and legally incorrect. Specifically, the Opinion falsely asserts the full cash value determined by the Tax Court, is based on a "negative number." (Opinion, ¶¶19-21) This part of the Opinion is not only factually incorrect, it violates the separation of powers by ignoring the plain language of Section 42-14154 on an issue this Court has held is the exclusive province of the Legislature under Article 9, §11. *See, Ariz. Dept. of Revenue v. Trico Electric Cooperative*, 151 Ariz. 544, 546 (1986).

[1] Pursuant to Rule 23(d), ARCAP, a copy of the Opinion is attached hereto as Appendix A. This Cross-Petition has been filed to preserve an issue for review that SDG&E believes has not been addressed by Defendants' Petition for Review.

ISSUE PRESENTED FOR REVIEW BY THIS CROSS-PETITION

Does the Opinion violate the separation of powers doctrine when it holds that A.R.S. §42-14154 allows for the piecemeal valuation of electric utility property in contravention of clear Arizona law and the plain language of this statute?

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Pursuant to A.R.S. §§42-16213(A) and 42-16215, the Tax Court entered Judgment establishing the "full cash value" of SDG&E's property using the method prescribed by A.R.S. §42-14154. According to A.R.S. §42-11001(6), "Full cash value means the value determined as prescribed by statute." The statutory method prescribed for utility property is a cost approach, which is a "summation" method. This means the total value is determined by adding together the various components that comprise the entirety of the taxable utility property under Section 42-14154.

Under the statute, the "original plant in service cost" is the starting point in the determination of full cash value. A.R.S. §42-14154(B)(1). This figure is reported annually to ADOR, per FERC reports. From this, the reported "related accumulated provision for depreciation" is deducted. A.R.S. §42-14154(B)(2)(a).[2] (Opinion, ¶10)

[2] This number is also known as "net book value" and approximates the "rate base" on which a regulated utility is allowed to earn a rate of return. The depreciation adjustment was the main focus of the litigation below, due to the fact that FERC requires utilities to include a reserve for what is called "cost of removal" in the "accumulated provision for depreciation." (Opinion, ¶11) Under subsection F of the statute, this part of the Opinion is clearly correct. (*Id.* at ¶¶13-14; 16-18)

The resulting subtotal from subsection B is then added to "construction work in progress" (CWIP) at 50% of its cost, as prescribed by subsection C.[3] To this amount, the value of taxable materials and supplies (M&S) is added per subsection D.[4] Next, a downward adjustment to reported net costs is required by subsection E for "environmental protection facilities" (EPF), reducing such costs by 50%.[5]

Finally, any net value attributable to land rights must be excluded per A.R.S. §42-14154(G)(8).[6] The resulting calculation is shown by the following Table: [7]

Original Plant in Service Cost	53,035,587	
Minus: Accumulated Provision for Depreciation	(51,992,185)	
Equals: Net Book Value of Plant in Service (sub. B)		1,043,402
Plus: CWIP at 50% (sub. C); M&S (sub. D); EPF (sub. E)		3,648,474
Equals: Full Cash Value of Subsections B, C, D & E		4,691,876
Then: Exclude Land Rights, etc. (sub. G8)		
Original Cost of Land Rights	4,218,191	
Minus: Accumulated Depreciation on Land Rights	(545,788)	
Equals: Net Book Value of Land Rights		3,672,403
FINAL FULL CASH VALUE (net of Subsection G8)		**1,019,473**

[3] A utility's "rate base" (or net book value) is not increased by new construction until after it is placed into service. As such, CWIP is valued at 50% because it has some value even though a utility is not yet permitted to earn a return on such property.

[4] Because SDG&E does not maintain an inventory of taxable materials and supplies in Arizona, it did not report any such property in its 2020 tax return.

[5] Due to the nature of electric transmission property, SDG&E did not own or report any such property in Arizona, so this adjustment was also not implicated here.

[6] In relevant part, §42-14154(G)(8) states: "***Plant, does not include land rights***...." But rather than simply ***excluding*** land rights from the total, ADOR subtracted the value of land rights from the net book value of "plant," ***before*** adding CWIP.

[7] All these numbers came directly from SDG&E's tax return, and all were used by ADOR in its valuation of SDG&E's property. (IR-8, Asay Declaration, Ex. A)

Because "Plant does not include land rights" – per §42-14154(G)(8) – the value of land rights should not be part of the "plant in service" value. Yet, rather than exclude land rights from the total full cash value (as the statute directs), ADOR subtracted the value of land rights from the net plant subtotal ***before*** adding-in SDG&E's CWIP. Indeed, that is the ***only*** reason there is a negative number in the calculation of the total full cash value under Section 42-14154. *See*, Opinion, ¶3.

However, as the Table above clearly shows, this argument is contrived. The only way to derive a negative number is to manipulate the ***sequence*** as to when the subtraction for the value of "land rights" is made.[8] This adjustment was mandated by the Legislature in A.R.S. §42-14154(G)(8). It is no different than the deduction for the "accumulated provision for depreciation" in Section 42-14154(B)(2). And there are legitimate reasons for excluding land rights and the other items listed in subsection G(8) from the total full cash value of the taxable property.[9]

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[8] In contrast, "contributions in aid of construction," another category of excluded assets in A.R.S. §42-14154(B)(3), never appears in the calculation at all. Simply put, the statute does not specify when the subsection G(8) exclusions are made.

[9] In relevant part, subsection G(8) defines "plant" as: "[A]ll property that is situated in this state and that is used or useful for the transmission or distribution of electric power . . .." This broad definition is followed by the exclusion for land rights and other exempt assets. As such, they should be excluded ***after*** the total formula value has been computed, which includes SDG&E's CWIP. Presumably, the land rights adjustment is required because they are part of the value of fee-owned land, so taxing them again would constitute double-taxation. *See*, A.R.S. §42-11003. As for the other adjustments, inventories of materials and supplies are exempt (Art. 9, §13(1)), and licensed vehicles pay a vehicle license tax in lieu of property taxes (Art. 9, §11).

In summary, land rights are not "plant." If they are not plant, they cannot be part of the "plant in service" component of the total full cash value. This issue was briefed below (Answering Brief at 22-24), even though it was never raised in the Tax Court. *Id*. at 36. The holding in paragraph 21 of the Opinion completely ignores the Legislature's ***exclusion*** of land rights in interpreting Section 42-14154. Instead, the court chose to infer what the Legislature meant based on its erroneous conclusion that ***subtracting*** the value of land rights from the plant in service is part of the statutory calculation. This is also why SDG&E filed a motion for reconsideration, but that motion was denied without requiring a response.[10]

Judge Viola followed the statute – as written – when she determined the full cash value of $1,019,473 that was entered in the Judgment below. As the Table shows, that full cash value is correct. Most importantly, it is the ***only*** full cash value that follows the method prescribed by the Legislature in A.R.S. §42-14154 to determine the value of ***all*** the taxable property owned by SDG&E in Arizona.

REASONS WHY REVIEW SHOULD BE GRANTED

As outlined above, the Opinion misconstrued part of the valuation formula prescribed by the Legislature in A.R.S. §42-14154. In doing so, the Opinion conflicts directly with this Court's decision in *Transamerica Development Co. v. County of Maricopa*, 107 Ariz. 396 (1971). There, this Court confronted a variation of this

[10] A copy of the Order denying SDG&E's motion is attached hereto as Appendix B.

same argument as it relates to how property in Arizona is valued for tax purposes. Specifically, the taxpayer in *Transamerica* owned a shopping center that was comprised of both land and improvements. Due to prior litigation between the same parties, the taxpayer attempted to appeal only the value of the improvements on its property, arguing that the value of the underlying land was not in dispute. This Court disagreed, holding in relevant part:

> We feel that when questioning the reasonableness of property valuation for assessment purposes, ***property valuation must be considered one subject, not to be broken into separate components*** of land and improvements. The language of the Arizona statutes – which discuss the valuation of *property*, appellate review of *property* valuation, etc. – indicate that the concern of the Tax Board and the Superior Court should be the reasonableness of the total (land and improvements) valuation placed on the property, rather than the separate valuations. ***In other words, if the total valuation represents the full cash value of the property, it is immaterial for purposes of appeal that one part is overvalued and the other is undervalued***. It is the total value that is the concern of the … court.

Transamerica, 107 Ariz. at 399 (emphasis added).

The same is true here. Notably, in arriving at its decision in *Transamerica*, this Court reviewed law from other states on the same issue, and it quoted from the Pennsylvania Supreme Court's decision and reasoning in a similar case, explaining:

> The thing from which the property owner appeals and, therefore, ***the concern before the court is the total assessment of the property as a unit***. The itemization of an assessment required of an assessor separately for the land and for the building is but an intermediate step in the ascertainment of the taxable value of the property as a whole.

Appeal of Rieck Ice Cream Co., 209 A.2d 383, 387 (Pa. 1965) (emphasis added).

Just as in *Transamerica* and *Rieck Ice Cream*, the assessment of SDG&E's property in this case is of ***all the property*** described in A.R.S. §42-14154 – ***valued as a unit*** (but excluding certain items per the Legislature's directive). Therefore, to paraphrase the Pennsylvania Supreme Court and apply its holding to this case: "The itemization of an assessment required of [*the Department of Revenue*] for the [*plant in service, CWIP, materials and supplies, environmental protection facilities, and the exclusion for land rights under Section 42-14154*] is but an intermediate step in the ascertainment of the taxable value of the property as a whole." *Id*.

It should not matter that some of the numbers that make-up the total full cash value of any given property may be higher or lower (or even negative). Instead, what should matter most is that the value of the ***entire*** property that is taxable under A.R.S. §42-14154 is included. ***That*** is the full cash value derived by applying the method prescribed by the Legislature to ***all*** of SDG&E's taxable property. That is the full cash value determined by the Tax Court's Judgment in this case.

Ironically, this Court had occasion to review the predecessor to this very statutory method in *Ariz. Dept. of Revenue v. Trico Electric Cooperative*, 151 Ariz. 544, 546 (1986). There, this Court was clear in stating that Article 9, §11 of the Constitution vests the legislature with "the manner, method and mode of assessing, equalizing and levying taxes in the State of Arizona." The same is true here. This Court has also held that the Legislature has "plenary authority" in all matters

regarding taxation. *State of Arizona v. Martin*, 59 Ariz. 438, 444 (1942) ("The Legislature has plenary power over the subject of taxation …"). Under Arizona's Constitution, this is a legislative function. *See*, Art. 3, §1; *see also*, *Mecham v. Gordon*, 156 Ariz. 297, 300 (1988) ("Nowhere … is [the separation of powers] more explicitly and firmly expressed than in Arizona"). The court of appeals violated the separation of powers when it chose to ignore the plain language of Section 42-14154, stating: "Nothing in the plain language of A.R.S. §42-14154 … expressly provides for or precludes a negative full cash valuation of a plant in service." Opinion, ¶21. Of course, the real problem with this holding is it not only lacks factual support, but it contradicts both the actual facts and the language of the statute itself.

The Legislature may have never intended to use a negative number to determine the full cash value of utility property under Section 42-14154 – as the Opinion holds – but that did not happen here. As the Table on page 3 shows, that can only happen if the value of land rights is subtracted from the plant in service subtotal before the total full cash value – which includes the value of SDG&E's CWIP – is computed. So construed, the statute produces a positive full cash value.[11]

[11] Given the Legislature's adoption of FERC's accounting rules in A.R.S. §42-14154(F), it likely intended for both positive and negative numbers to be used in calculating the full cash value of utility property under this statute. Indeed, the very issue that gave rise to this case – the deduction for depreciation – is ***always*** a negative number that reduces the original cost of assets. That is how FERC's uniform system of accounts works, which is the method specified by the Legislature. (Opinion, ¶13)

Finally, and most importantly, the Opinion conflicts with this Court's holding in *Transamerica* that the ***entirety*** of the taxable property be valued together as a unit. Instead, the Opinion adopts an interpretation of the statute that looks solely at the individual component parts that make-up the total full cash value, rather than the final result of all the calculations specified by the Legislature in Section 42-14154. The court of appeals compounded this error by (1) ignoring the undisputed facts, (2) adopting an interpretation that implies there is a "negative value" that invalidates the Tax Court's correct determination as to the full cash value of ***all*** SDG&E's property, and (3) vacating the Judgment below. These statements in the Opinion should be stricken and the Tax Court's correct Judgment should be affirmed.

CONCLUSION

For the foregoing reasons, SDG&E respectfully requests that this Court grant its Cross-Petition for Review and reverse the erroneous parts of the Opinion that led to it vacating the Tax Court's Judgment, and then affirm its determination that the correct full cash value of SDG&E's property is $1,019,473 for tax year 2020.

RESPECTFULLY SUBMITTED this 1st day of December, 2023.

MOONEY, WRIGHT, MOORE & WILHOIT, PLLC

By: /s/Paul J. Mooney
Paul J. Mooney
Attorneys for Plaintiff/Appellee, SDG&E

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IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

SAN DIEGO GAS & ELECTRIC COMPANY, *Plaintiff/Appellee*,

v.

ARIZONA DEPARTMENT OF REVENUE, et al., *Defendants/Appellants*.

No. 1 CA-TX 21-0008
FILED 10-24-2023

Appeal from the Arizona Tax Court
No. TX2019-001758
The Honorable Danielle J. Viola, Judge

VACATED AND REMANDED

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OPINION

Judge D. Steven Williams delivered the Court's opinion, in which Presiding Judge Cynthia J. Bailey and Judge Kent E. Cattani joined.

W I L L I A M S, Judge:

¶1 Arizona's property tax statutes require the Arizona Department of Revenue ("the Department") to annually assess taxes based on the full cash value of all property owned by public utilities. A.R.S. §§ 42-14151(A), -14153(A). In this appeal, we analyze how the future cost of removing electric transmission and distribution property factors into the full cash value assigned to such property, specifically, whether that future cost can be included as a component of depreciation under A.R.S. § 42-14154(B). Subsection (F) of that statute requires us to construe the statutory phrase "[t]he related accumulated provision for depreciation" in accordance with the Federal Energy Regulatory Commission's ("FERC") Uniform System of Accounts ("USOA"). Doing so, we hold that accumulated depreciation under Arizona's valuation formula for electric transmission and distribution property includes the future cost of removal. We further hold, however, that accumulated depreciation neither reduces the full cash value of the related asset to a negative number nor decreases the full cash value of unrelated property. Accordingly, we vacate the tax court's summary judgment in favor of San Diego Gas & Electric Company ("SDG&E") and remand for proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL HISTORY

¶2 SDG&E owns an interstate electric transmission line that runs from the Palo Verde Nuclear Generating Station in western Maricopa County, through Yuma County, and into California. In compliance with statutory and administrative regulations governing public utilities, SDG&E files an annual valuation report with the Department and maintains its books and records in conformity with the USOA. *See* A.R.S. § 42-14152(A); 18 C.F.R. § 141.1; A.A.C. R14-2-212(G)(1)-(2).

¶3 In its 2020 annual valuation filing, SDG&E reported an original plant in service cost of $48,817,396 (after subtracting land rights), accumulated depreciation of $51,446,397 (after subtracting amortization for

land rights), and construction work in progress of $3,648,000.[1] These amounts yielded a net plant in service full cash valuation of negative $2,629,001 and a net property full cash valuation of approximately $1,020,000. As part of its accumulated depreciation calculation, SDG&E included the future cost of removal for its electric transmission and distribution property. The Department accepted SDG&E's figures for original plant in service and construction work in progress but rejected SDG&E's inclusion of future removal costs in its accumulated depreciation calculation. Excluding SDG&E's reported future costs of removal from its calculation, the Department initially valued SDG&E's property at $12,302,121, representing $48,817,396 original plant in service cost, less $40,163,750 in accumulated depreciation, for a plant in service full cash value of $8,653,646 plus a construction work in progress amount of $3,648,475.

¶4 In response, SDG&E filed this action challenging the Department's full cash valuation as excessive. SDG&E then moved for summary judgment, seeking a net property full cash valuation of $1,019,474, which used a negative plant in service full cash value (after depreciation) as an offset against construction work in progress on an unrelated asset. To support its full cash valuation, SDG&E pointed to FERC's reporting requirements and argued that Arizona's statutory formula for calculating the full cash value of electric transmission and distribution property necessarily includes the future cost of removal as a component of accumulated depreciation.

¶5 The Department cross-moved for summary judgment, asserting that accumulated depreciation does not include the future cost of removal under Arizona's statutory full cash valuation formula. Applying a straight line depreciation method, the Department sought a revised valuation of $22,101,000, adopting SDG&E's figures for the original plant in service cost and construction work in progress, but calculating a further reduction in accumulated depreciation.

¶6 Following briefing and argument, the tax court granted summary judgment in favor of SDG&E. Upon denying the Department's motion to reconsider, the court entered final judgment in SDG&E's favor.

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[1] SDG&E reported actual construction work in progress of $7,296,949, but that amount was reduced by fifty percent according to statute and then rounded down by the Department. *See* A.R.S. § 42-14154(C).

¶7 The Department timely appealed. We have jurisdiction under Article 6, Section 9, of the Arizona Constitution and A.R.S. § 12-2101(A)(1).

DISCUSSION

¶8 The Department challenges the tax court's ruling that accumulated depreciation under Arizona's statutory full cash valuation formula includes the future cost of removing electric transmission and distribution property. The Department alternatively argues that if accumulated depreciation encompasses the cost of removal, such accumulated depreciation may not reduce the full cash value of a plant in service to a negative number or offset the valuation of unrelated construction work in progress.

¶9 We review de novo the tax court's ruling on cross-motions for summary judgment. *See Wilderness World, Inc. v. Dep't of Revenue State of Ariz.*, 182 Ariz. 196, 198 (1995). This case involves an issue of statutory interpretation, which we also review de novo. *See Sw. Airlines Co. v. Ariz. Dep't of Revenue*, 217 Ariz. 451, 452, ¶ 6 (App. 2008).

¶10 Under A.R.S. § 42-14154(B), the Department calculates the full cash value of a plant in service by determining the "original plant in service cost" and then subtracting "[t]he related accumulated provision for depreciation." The statute defines the "original plant in service cost" as "the actual cost of acquiring or constructing property including additions, retirements, adjustments and transfers." A.R.S. § 42-14154(G)(7). Notably, the statute does not define "[t]he related accumulated provision for depreciation," but it includes the following provisions:

> F. All terms and applications of terms shall be interpreted according to the federal energy regulatory commission uniform system of accounts for electric and gas utilities in effect on January 1, 1989.
>
> G. For the purposes of this section, unless the context otherwise requires:
>
> . . . .
>
> 2. "Depreciation" means straight line depreciation over the useful life of the item of property.

A.R.S. § 42-14154(F), (G)(2).

¶11 Pointing to A.R.S. § 42-14154(G)(2)'s definition of "depreciation"—straight line depreciation over the useful life of the property—the Department contends that "[t]he related accumulated provision for depreciation" does not include the unreported, prospective "cost of removal."[2] SDG&E counters that absent a statutory definition for "[t]he related accumulated provision for depreciation," A.R.S. § 42-14154(F) requires that the term be interpreted according to the FERC's USOA, which expressly includes the "cost of removal" as part of accumulated depreciation.

¶12 In interpreting a statute, our goal is to discern and "effectuate the legislature's intent." *Welch v. Cochise Cnty. Bd. of Supervisors*, 251 Ariz. 519, 523, ¶ 11 (2021). "Absent ambiguity or absurdity, our inquiry begins and ends with the plain meaning of the legislature's chosen words, read within the overall statutory context." *Id.* (internal quotation omitted). We are also guided by the principle that tax statutes must be interpreted "strictly against the state," with "any ambiguities . . . resolved in favor of the taxpayer." *Wilderness World*, 182 Ariz. at 199; *see also State ex rel. Ariz. Dept. of Revenue v. Capitol Castings, Inc.*, 207 Ariz. 445, 447, ¶ 10 (2004) (providing statutes imposing taxes are to be liberally construed "in favor of taxpayers and against the government").

¶13 Section 42-14154(F) expressly requires that "all of [the statute's] terms and applications be interpreted in accordance with the FERC accounting rules." *Ariz. Dep't of Revenue v. Salt River Project Agric. Improvement & Power Dist.*, 212 Ariz. 35, 40, ¶ 19 (App. 2006). This broad legislative mandate "does not state that the FERC USOA is to be used only to resolve statutory ambiguities; rather, . . . the statute requires that all of its terms and applications be interpreted in accordance with the FERC accounting rules." *Id.* at 39-40, ¶ 19.

¶14 In *Salt River Project*, we analyzed the meaning of the term "original plant in service cost" under A.R.S. § 42-14154(G)(7). *Id.* at 39-41, ¶¶ 17-22. To do so, we first considered the meaning of the term "actual cost," as used within the statutory definition. *Id.*; A.R.S. § 42-14154(G)(7) (defining "original plant in service cost" as "the actual cost of acquiring or constructing property including additions, retirements, adjustments and transfers"). Neither the Arizona statute nor the FERC USOA defined "actual cost." *Salt River Project*, 212 Ariz. at 39-40, ¶¶ 19-20. And, although

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[2] The parties do not dispute that SDG&E's reported original plant in service cost did not encompass future removal costs.

the FERC USOA defined "cost," we recognized that "cost" and "actual cost" are distinct terms. *Id.* at 40, ¶ 20.

¶15 Here, the Department urges us to conclude there is no difference between the terms "depreciation" and "[t]he related accumulated provision for depreciation." But if the legislature had intended to limit "[t]he related accumulated provision for depreciation" to "depreciation," it could have done so. Rather than subtract "straight line depreciation over the useful life of the property" or simply "depreciation" from the original plant in service cost, the statutory formula subtracts "[t]he related accumulated provision for depreciation" from the original plant in service cost to determine the full cash value of the plant in service—without defining the phrase.

¶16 "Our legislature has expressly adopted a statutory method for the valuation of utilities in Arizona that incorporates the FERC USOA." *Id.* at 41, ¶ 25; *see also* A.R.S. § 42-14154(F); A.A.C. R14-2-212(G)(1)-(2) (providing for the keeping of accounts and records to reflect the cost of the utility's properties in conformity with the FERC USOA). Guided by the "presumption that what the [l]egislature means, it will say," we decline to ascribe the statutory term a definition that differs from that in the FERC USOA. *See Padilla v. Indus. Comm'n*, 113 Ariz. 104, 106 (1976); *see also Salt River Project*, 212 Ariz. at 39-40, ¶ 19 (providing that all terms, including those unambiguous, must be interpreted in accordance with the FERC accounting rules).

¶17 Under FERC USOA Account No. 108, Accumulated Provision for Depreciation of Service Company Property, the "accumulated provision for depreciation" expressly includes the "cost of removal." 18 C.F.R. § 367.1080. Likewise, FERC Order No. 631 provides: "removal costs . . . are included as a component of the depreciation expense and recorded in accumulated depreciation." 68 Fed. Reg. 19610-01 (to be codified at 18 C.F.R. 35, 101, 154, 201, 346, 352). As defined by FERC USOA Account No. 101(a)(10), the "cost of removal" is "the cost of demolishing, dismantling, tearing down or otherwise removing service property, including the cost of transportation and handling incidental thereto." 18 C.F.R. § 367.1(a)(13).

¶18 The Arizona legislature "knows how to exclude items from the sweep of the FERC if it chooses to do so." *Salt River Project*, 212 Ariz. at 41, ¶ 23 n.9. In fact, the legislature expressly excluded land rights from the "original plant in service cost," making those costs non-depreciable under the statute, even though land rights are part of accumulated depreciation under the FERC USOA. *See* A.R.S. § 42-14154(G)(8). Because the legislature

could have prescribed an exception to the FERC rules for the cost of removal but chose not to do so, and given our statutory mandate to interpret terms according to the FERC USOA, we conclude that accumulated depreciation includes the cost of removal under A.R.S. § 42-14154.

¶19 Having so found, we turn to the Department's secondary, alternative arguments that accumulated depreciation neither reduces the full cash value of a plant in service to a negative number nor offsets the value of unrelated construction work in progress. The Department characterizes the negative full cash valuation of a plant in service under Arizona's statutory formula as "absurd," "ludicrous," and legally "impossibl[e]." For its part, SDG&E does not argue that Arizona's statutory full cash valuation formula contemplates the possibility of a negative taxable basis. Instead, SDG&E notes that the value of its construction work in progress outweighed the negative full cash value of its plant in service, resulting in a net positive full cash property valuation.

¶20 "In considering two plausible interpretations of a statute, we will not credit one that leads to absurd results." *State v. Ariz. Bd. of Regents*, 253 Ariz. 6, 13, ¶ 28 (2022). A statutory interpretation is absurd "if it is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of [persons] with ordinary intelligence and discretion." *Perini Land and Dev. Co. v. Pima County*, 170 Ariz. 380, 383 (1992) (citation omitted).

¶21 Nothing in the plain language of A.R.S. § 42-14154 or the related valuation statutes, A.R.S. §§ 42-14151 to -14153, expressly provides for or precludes a negative full cash valuation of a plant in service. But applying a "sensible construction to avoid absurd results," *Mountainside MAR, LLC v. City of Flagstaff*, 253 Ariz. 448, 450, ¶ 9 (App. 2022), we are not persuaded that the legislature intended to permit a negative full cash valuation for a plant in service, and therefore hold that accumulated depreciation may not reduce the full cash value of a plant in service to a negative number. That a net negative full cash property valuation was avoided in this case does not render SDG&E's proposed construction of accumulated depreciation (and corresponding calculation of the net plant in service's full cash value) reasonable.

¶22 Furthermore, applying the plain and unambiguous language of A.R.S. § 42-14154(B), we hold that accumulated depreciation may reduce only the "related" original plant in service cost. In other words, the "related" accumulated depreciation that A.R.S. § 42-14154(B) expressly

states shall reduce the original plant in service cost may not reduce the value of construction work in progress, which is separately calculated under subsection (C) as "fifty per cent of the amount spent and entered on the taxpayer's accounting records as of December 31 of the preceding calendar year." Apart from a plain reading of the statute, this construction is consistent with a distinct but analogous FERC USOA provision, which in explaining the accounting for asset retirement obligations, states that the "cost must be depreciated over the useful life of the *related asset that gives rise to the obligations*." 18 C.F.R. § 367.22(b) (emphasis added). Under A.R.S. § 42-14154(B), accumulated depreciation represents the expensing of the plant in service costs over time; therefore, its application is limited to reducing the valuation of those "related" costs.

¶23 In sum, we hold that accumulated depreciation under A.R.S. § 42-14154 encompasses the future costs of removing electric transmission and distribution property. We further hold that such accumulated depreciation cannot reduce the full cash value of a plant in service to a negative number or offset the value of unrelated property. Accordingly, we vacate the tax court's summary judgment in favor of SDG&E.[3]

CONCLUSION

¶24 For the foregoing reasons, we vacate the summary judgment in SDG&E's favor and remand the matter to the tax court. SDG&E has requested an award of attorneys' fees and costs incurred on appeal pursuant to A.R.S. § 12-348(B) ("[A] court may award fees and other expenses to any party . . . that prevails by an adjudication on the merits in an action by the party against this state . . . challenging the assessment . . . of taxes."). Although we vacate the summary judgment for SDG&E because accumulated depreciation may not reduce the full cash value of a plant in service to a negative number or be used to offset the value of unrelated property, SDG&E prevailed on the inclusion of the cost of removal in the calculation of accumulated depreciation. In our discretion,

[3] The Department also argues for the first time on appeal that permitting a negative full cash property valuation "violates the Arizona Constitution's Exemptions Clause, which provides that all property in the state not exempt from taxation under the Federal and Arizona Constitutions shall be subject to taxation." Ariz. Const. art. IX, § 2. Given our resolution of the other issues in this matter, and in our discretion, we decline to address this contention. *See Odom v. Farmers Ins. Co. of Ariz.*, 216 Ariz. 530, 535, ¶ 18 (App. 2007) ("Generally, arguments raised for the first time on appeal are untimely and deemed waived.").

we award SDG&E a portion of its reasonable attorneys' fees and costs incurred on appeal, contingent upon its compliance with ARCAP 21.

AMY M. WOOD • Clerk of the Court
FILED: AA

IN THE

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

DIVISION ONE
FILED: 11/16/2023
AMY M. WOOD,
CLERK
BY: AGFV

SAN DIEGO GAS & ELECTRIC COMPANY, Plaintiff/Appellee, v. ARIZONA DEPARTMENT OF REVENUE, et al., Defendants/Appellants.	Court of Appeals Division One No. 1 CA-TX 21-0008 Arizona Tax Court No. TX2019-001758

ORDER DENYING MOTION FOR RECONSIDERATION

The court, Judge D. Steven Williams, Presiding Judge Cynthia J. Bailey, and Judge Kent E. Cattani participating, has reviewed Plaintiff/Appellee's motion for reconsideration filed November 8, 2023. After consideration,

IT IS ORDERED denying Plaintiff/Appellee's motion.

_____/s/_____
D. Steven Williams, Judge

A copy of the foregoing
was sent to:

Paul J Mooney
Jerry A Fries
Lisa A Neuville