Appeal of Arizona Corporation Commission (ACC) Decision # 74871
by
Warren Woodward, Intervener in ACC Docket # E-01345A-13-0069
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FINDINGS OF FACT
More like Errors and Omissions of Fact & Findings of Fantasy

As an intervener in ACC Docket # E-01345A-13-0069, I hereby appeal the commission's ill-conceived Decision # 74871 for the reasons and facts outlined here in this statement.

The so-called "Findings of Fact" section of the Decision should be more aptly named "Errors and Omissions of Fact & Findings of Fantasy."

Amongst other points, this appeal will reveal the vast amount of errors and omissions in the Decision. These errors and omissions render as false the commissioners' claim to have "fully considered these matters." This appeal will also expose the legal Fantasy Land that the commissioners must inhabit in order to come to the conclusions they did and falsely claim they are "balancing the public interest."

In short, the underlying assumptions of the Decision have no basis in law or fact, and so the Decision's conclusions are false.

As I proceed, I will address the Decision in the order that it is written. The Decision's first section is "Background."

Airbrushing the "Background" – Why?

There is one bit of truth in the "Background" section of the Decision. It is true that "health effects of radio frequency" are a concern for APS customers.

However, other important "smart" meter related issues have been completely omitted as if they do not exist. If the issues do not exist, then I suppose the commissioners think they do not have to address them and can declare, as they have in this Decision, that they have "fully considered these matters." Also, I suspect these omissions are deliberate for at least the following reasons.

Overall, in the more than 3 years I have been investigating all aspects of the "smart" meter issue, both ACC staff and commissioners have shown incredible ignorance of "smart" meter related issues and a decided bias in favor of "smart" meters and APS.

In his only substantive docket submission on the "smart" meter issue, ACC Utilities Division director Steven Olea chose to submit three obvious "smart" meter propaganda pieces (See: http://images.edocket.azcc.gov/docketpdf/0000146288.pdf). Also, at one point, Olea revealed that he did not even know the difference between microwave radiation and magnetic field. After working at the ACC for three decades, how can he regulate something when he doesn't even know what it is?

ACC chairman Bob Stump sits on the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), an outfit that, amongst other things, touts "smart" meters and all the false promises of the "smart" grid.

The industry sponsored thrice yearly NARUC meetings are well attended by both ACC commissioners and ACC staff, many of whom sit on NARUC subcommittees.

In addition to Stump sitting on the Board of Directors, the following ACC people sit on NARUC subcommittees:

Commissioner Susan Smith
Utility Division director Steven Olea
Utility Division assistant director Elijah Abinah
Utility Division assistant director John LeSeuer
Chief Administrative Law Judge Lyn Farmer
Assistant Chief Administrative Law Judge Dwight Nodes
Legal Division director Janice Alward
Legal Division attorney Charles Hains
Legal Division attorney Wesley Van Cleve
Legal Division attorney Maureen Scott
Legal Division attorney Angela Paton
Chief of Financial and Regulatory Analysis James R. Armstrong
Executive Consultant Bob Gray.

I don't know how else to explain the spectacular ignorance displayed by the ACC over the last several years, and the ACC's unwillingness to thoroughly investigate APS's claims about its "smart" meters and the customer concerns about same, unless it is the money APS's parent company, Pinnacle West, and other utilities give to political campaigns. According to FollowTheMoney.org, the online database of disclosed political contributions, Pinnacle West, is Arizona's most generous corporate donor to political campaigns. While Pinnacle West might not donate to ACC commissioner campaigns, they certainly give plenty to the commissioners' political party. Of course, that's not illegal (yet), but it may help explain things.

The Decision mentions just two of the customer concerns about "smart" meters, and it gets one of them wrong. Since there are many more customer concerns than just two, leaving out all the others as if they are nonexistent has the effect of marginalizing and minimizing customers' concerns.

The culture, the tone of any organization of human beings is often set at the top. At the ACC a culture of derision of "smart" meter opponents is obvious and starts at the top as evidenced by chairman Stump shamelessly singling out one of the 12/12/2014 meeting attendees and calling attention to her RF shielding hat not once but twice to his twitter subscribers (see: http://images.edocket.azcc.gov/docketpdf/0000158998.pdf).

A previous sitting commissioner, Paul Newman, derisively referred to "smart" meter opponents as "the black helicopter crowd." (See: http://images.edocket.azcc.gov/docketpdf/0000143713.pdf)

This ACC culture, this tone set at the top, has filtered clear down to the ACC security doorman who, like a child repeating what his parents said, referred to recent meeting attendees as "kooks" (see: http://images.edocket.azcc.gov/docketpdf/0000158785.pdf).

This marginalizing and minimizing, justified and fueled by derision, has the consequence of aiding the rationalization of an extortion fee charged to those "kooks."

I also suspect the "smart" meter issues have been omitted not only to marginalize and minimize, but also because the ACC simply cannot sufficiently answer or address them. Immaturely, negligently and carelessly, the ACC seems to be hoping that if it does not acknowledge these issues then the issues will go away and not exist.

Airbrushing the "Background" – The ACC misrepresents customers' concerns

This is how the ACC misrepresents customers' concerns in the "Background" section of the Decisions' so-called "Findings of Fact":

> "Several groups of APS customers have raised concerns to the Commission and APS regarding the health effects of radio frequency ("RF") transmissions and the security of AMI meter-transmitted data." (Decision, page 1, line 24)

"Health effects of radio frequency" is the one customer concern the ACC got right. In actual fact, customers are concerned about a great many more issues related to "smart" meters. Oh, and not all of the concerned customers are in "groups."

Airbrushing the "Background" – Privacy, not "data security"

The Decision's claim that APS customers are concerned about "the security of AMI meter-transmitted data" is not correct. In actual fact, APS customers are rightfully concerned that personal data unrelated to billing is being taken from them *at all*, not whether it is secure after it's been taken. Deceptively, the ACC has attempted to re-frame this privacy violation issue as a data security issue instead.

It seems that just about everyone – everyone except APS and the ACC – knows that "smart" meters are surveillance devices. APS has been undaunted in claiming their "smart" meters are somehow different than those analyzed by the Congressional Research Service (here: http://greatgameindia.com/wp-content/uploads/2014/05/Smart-Meter-Data-Privacy-and-Cybersecurity-GreatGameIndia.pdf), or those bragged about by the "smart" grid industry sponsored mouthpiece, SmartGridNews, in their article, ***Now utilities can tell customers how much energy each appliance uses (just from the smart meter data)*** (here: http://images.edocket.azcc.gov/docketpdf/0000153433.pdf).

Even NARUC has just chimed in with this startling admission from Miles Keogh, director of grants and research at the National Association of Regulatory Utility Commissioners:

> "I think the data is going to be worth a lot more than the commodity that's being consumed to generate the data."
> (Politico, *Smart grid powers up privacy worries,* http://www.politico.com/story/2015/01/energy-electricity-data-use-113901.html#ixzz3Na2wSGtJ)

The ACC has had to re-frame the privacy violation issue because then it can claim that the issue is solved by its "rules" for what it misleadingly calls "Private Customer Information." In actual fact the "Information" ceased being private as soon as it was gathered from the customer.

But rules or no rules, payment to avoid privacy violation, or the possibility of same, is extortion. It is not "opt out."

Airbrushing the "Background" – Grid security

The word, "security," raises another "smart" grid failing that customers brought before the ACC that the ACC ignored, did not address, and subsequently left out of the "Finding of Facts" "Background." That issue is the security of the electricity grid itself.

Anything tied to a wireless network is susceptible to hacking. As the Microsoft Corporation succinctly puts it: "There is no way to guarantee complete security on a wireless network." (http://windows.microsoft.com/en-US/windows-vista/How-do-I-know-if-a-wireless-network-is-secure)

That has been pointed out repeatedly to the ACC. Examples of actual hacking were brought to the ACC's attention as was former CIA Director James Woolsey calling the "smart" grid "a really, really stupid grid" for opening up the nation's electricity grid to hackers. Recklessly, the ACC has ignored our and Woolsey's warnings. Those warnings, too, have been left out of the Decision's "Background."

Despite APS's and other utilities' assurances, "smart" meters have already been hacked. Here's a recent article that details the problem: Cyber Hackers Can Now "Harm Human Life" Through Smart Meters, http://smartgridawareness.org/2014/12/30/hackers-can-now-harm-human-life/ .

From the article: "The 'smart grid' is the most substantial danger. Cyber attacks that target a 'smart grid' will result in loss of power to large numbers of places simultaneously, causing infrastructure damages."

Airbrushing the "Background" – "Smart" meter fires

"Smart" meter related fires are of great concern to customers, especially given the number of "smart" meter related fires that have occurred across the U.S. and Canada, resulting in at least 2 deaths. Hundreds of thousands of "smart" meters have been recalled.

At my instigation, based on inside information that I received and shared with the ACC, APS admitted to the ACC that there have been "some" "smart" meter related fires in their service territory. It should be noted here that "some" is APS's vague term, and "'smart' meter related" is my characterization of the fires (see: http://images.edocket.azcc.gov/docketpdf/0000159029.pdf).

Additionally, APS admitted that they and "smart" meter manufacturer Elster are being sued by an insurance company for a house fire. That was the sum total of information that the ACC bothered to get from APS. We don't know the details of the lawsuit, what the damage was or if anyone or anything died or was injured, because carelessly, negligently, the ACC did not bother to ask. Nor do we know how many "*some*" "smart" meter related fires there are because carelessly, negligently, the ACC did not bother to ask.

The clear and present danger of losing one's house and all that's in it, not to mention losing one's

life, should be enough to shut down the entire "smart" meter program. Certainly to charge people a fee to avoid this possible harm – or even to avoid the constant anxiety caused by its specter – is extortion. It is not "opt out". So, no wonder this customer concern is completely omitted from the Decision's "Background". (For my instigation of the ACC's "investigation" of the fire issue, and for the ACC's pitifully inadequate response, see http://images.edocket.azcc.gov/docketpdf/0000155746.pdf and http://images.edocket.azcc.gov/docketpdf/0000156835.pdf)

Airbrushing the "Background" – "Smart" meters damage and interfere with household appliances and electronics

"Smart" meter damage to household appliances and electronics has been well documented in ACC "smart" meter dockets E-00000C-11-0328 and E-01345A-13-0069, both by news reports and anecdotes from Arizonans who have had the displeasure and expense of "smart" meters messing with and ruining their electrically powered things.

With my own eyes, and using a microwave analyzer to pick up the "smart" meter signals that correlated perfectly with the lights, I have seen "smart" meters turn motion sensing lights on again and again with each microwave transmission. Not the end of the world, and certainly not as aggravating as having one's house burn to the ground, but the point is that "smart" meters *do* interfere with stuff despite the ACC trying to ignore the issue, an issue that's been brought to the ACC repeatedly for years.

When computers or major appliances are ruined, or burglar alarms triggered, it is more than annoying; it is costly. Here's an excerpt from a typical and recent ACC docket submission on this subject:

> "We have spent endless hours discussing this with APS, Bonds alarm, electricians, all at our expense. In addition to the monetary expense, we have suffered hearing trauma from lengthy blaring of our home alarm (at times in excess of an hour.) Finally, a few months ago, APS agreed to reinstall the old meter. Since then, the blaring alarm problem has not reoccurred and we have been able to live in peace."
> (http://images.edocket.azcc.gov/docketpdf/0000158434.pdf)

Paying a fee to avoid this sort of harm in order to "live in peace" is extortion. It is not "opt out." So again, no wonder this customer concern is completely omitted from the Decision's "Background".

Airbrushing the "Background" – "Smart" meter inaccuracy

"Smart" meter inaccuracy is another issue that has been ignored by the ACC. It is also omitted from the Decision's "Background." Over-billing is a common fault of "smart" meters, not just nationwide but worldwide. The scenario is always the same. The utilities deny and stonewall the issue, but as soon as someone gets rid of the "smart" meter, their bill returns to normal.

The only time this issue was addressed by the ACC was at the commission's September 2011 "smart" meter meeting. When confronted at the meeting with the account of numerous people in Bakersfield, California having 300% electric bill increases, commissioner Gary Pierce brilliantly explained it was the result of a heat wave. Really. I guess it was 300% hotter that year.

When I am out measuring the microwave transmissions of "smart" meters I meet people whose bills have increased. I tell them the only way to get a normal bill is to call the company and tell them to remove the "smart" meter. If those people now have to pay to avoid over-billing, it is extortion. It is not "opt out."

Airbrushing the "Background" – The huge costs of the "smart" grid boondoggle

Another customer concern is the cost of the "smart" grid itself. This cost has never been detailed or examined with the same scrutiny as the imagined and hyped cost of the people who refuse the "smart" grid. Despite my asking for numbers, none have been forthcoming.

Indeed, on May 1, 2013 commissioner Bob Burns had an op-ed piece about "smart" meters in the Sedona Red Rock News in which he stated: "It occurred to me that perhaps an important fact is getting lost in the discussion – namely, that the digital meters represent a significant cost savings to the utility, a savings that, in turn, gets passed onto its customers."

In a letter to commissioner Bob Burns dated May 7, 2013, (and docketed here: http://images.edocket.azcc.gov/docketpdf/0000144753.pdf) I asked Mr. Burns:

> "Significant cost savings"? Do tell us exactly how much ratepayers will save per month? Substantiate your claim. Show us some numbers based on real life, not APS propaganda. If the cost savings are "significant" as you claim, then it should be easy for you to tell us specifically.
>
> Since some locations in Arizona and elsewhere have had "smart" meters installed for years then it should be easy for you to point to examples of "significant cost savings" that have been passed on to customers already, and when and where that has occurred.

I am still waiting for commissioner Burns' reply.

I'll never get one because the much vaunted "significant cost savings" of the "smart" grid do not exist anywhere in the world. Indeed, many people have gotten rate increases instead.

The ACC has never given a detailed cost accounting of the "smart" grid despite being asked numerous times, and despite their very own Decision # 69736 made in 2007 that called for a cost/benefit analysis. From that Decision:

> "However, both the benefits and the costs of Advanced Metering and Communications should be considered before requiring full-scale implementation." (p. 4, line 5, here: http://images.edocket.azcc.gov/docketpdf/0000075595.pdf)

There is nowhere in the world where rates have decreased because of the "smart" grid. However, there are plenty of places where promised "smart" grid savings have turned into rate increases. To name a few: Maine, Florida, California, Illinois, Quebec and Ontario.

Something those places have in common are regulatory agencies that, like ACC, took the utilities' rosy financial forecasts at face value and without 'fully considering these matters' as the ACC

falsely claims to have done in this Decision.

For example, just last month the Auditor General for Ontario, Canada found that the province's one billion dollar "smart" grid has cost twice that, and that no cost/benefit analysis had been done by the Ontario Energy Board, Ontario's ACC equivalent. Ratepayers are making up the difference via higher electric bills, and the issue has become quite a political scandal. (http://www.thestar.com/news/canada/2014/12/09/few_benefits_from_2_billion_smart_meter_program_auditor_says.html)

The problem of falsely projected savings turning into rate increases is ongoing. Here's a few places where rate increases to pay for the "smart" grid boondoggle are pending right now. Ameren Missouri has a rate hike pending, likewise Ameren and Com Ed in Illinois. PSO in Oklahoma is currently seeking a rate increase of over 20%.

Why was this customer concern airbrushed out of the "Background" and "Findings of Fact"? A safe bet would be because it does not fit the APS/ACC false narrative.

Airbrushing the "Background" – Trespass & Theft

The actual metering of electricity is a fraction of the overall functions of a so-called wireless "smart" meter. Not just measuring devices, "smart" meters are also radio transceivers and relay antennas. Calling these devices "meters" distracts from the fact that they are utility company communications equipment designed to not just gather and transmit *your* data but also to move the data of others. Utilities have quite simply stolen ratepayers' property in order to establish their own private communications network to move other people's data and to implement their business plan.

Miniaturization and automation of radio components has enabled those components to be hidden unnoticed in a case that looks like an electric meter and not like a radio transceiver. The point I am making is that if radio transceivers and antennas were as large as they were in say, the 1920s, and required a human operator as in the 1920s, then it would be obvious to everyone what the utilities were doing. "Out of sight, out of mind", plus giving these devices a delusory name – "smart" meter or AMI meter – that has nothing to do with a radio transceiver, helps alter perception and perpetuate the deception. *Those who control the language control the debate.*

A huge unmentioned, unaddressed issue and major violation is the fact that placement of a radio transceiver and relay antenna (*of any size*) on anyone's private property without permission or compensation is trespass and theft. When done by a government owned utility such as SRP or any one of the municipally owned utilities in Arizona it is also an illegal takings under the 5th Amendment of the U.S. Constitution.

Again, the ACC has been apprised of this numerous times both in writing and at meetings but they have simply ignored the issue as if it does not exist. So it is no surprise that the ACC has left this serious issue out of the "Background" of its "Findings of Fact."

Payment to avoid this theft, this trespass, this takings, is extortion. It is not "opt out."

It is worth noting that all the other violations and abuses caused by "smart" meters start with this

initial property violation. In other words, once one has lost their property rights, they have lost all others as well. This is why someone's home is supposed to be their castle.

Airbrushing the "Background" – What do we want? No "smart" meters!

The next sentence in Decision 74871 is another half truth and misrepresentation, another attempt by the ACC to airbrush the "Background."

> "These customers have requested the ability to retain non-transmitting analog meters, and this Opt-Out Schedule is intended for those customers" (Decision, p. 1, line 26)

Actually, many customers have not just requested an analog meter, they have rightfully called for a complete recall of *all* "smart" meters. Even if a customer refuses a "smart" meter, the mesh network design of the "smart" grid of meters in that neighborhood or area still may trespass on the customer's property. This is called electronic trespass.

Because the biological effects of "smart" meters can occur at 100 yards away (http://images.edocket.azcc.gov/docketpdf/0000145782.pdf), many people, myself included (even though I do not have a "smart" meter), have been injured by the "smart" meter transmissions of others. Many of these injured customers, along with customers who do not want to be injured, have demanded a halt to the continuous electronic trespass of "smart" meter transmissions on their persons and property, an end to the entire toxic boondoggle.

There is of course no trace of this customer concern anywhere in the "Background."

Airbrushing the "Background" – What do we want? TOU!

Additionally, not all customers refusing "smart" meters have requested analog meters. Some customers prefer to keep their non-transmitting digital meter in order to be on a Time Of Use rate. Indeed, before this Decision 74871, some APS customers were able to do just that.

I will have more to say about this particular issue later in this appeal. Suffice it to say right now that in their sloppy rush to have a decision on December 12th, 2014, the ACC commissioners neglected these customers as they did solar, commercial, E-3 and E-4 rate plan customers as well, and there is no trace of this customer concern anywhere in the "Background" either.

Airbrushing the "Background" – The "opt out" Fallacy ~ No Basis in Law

Also, the term "Opt-Out" used in the above sentence, throughout the Decision, and in the Decision's title is a misleading, inaccurate propaganda term. As I have pointed out to the ACC numerous times in the past, no one can "opt out" from something they never "opted in" to in the first place. One wonders where the ACC people went to school.

The ACC needs to learn and understand English. Customers are *refusing* "smart" meters. They are *not* "opting out." Customers cannot "opt out" because they never "opted in".

This is no small matter of semantics.

In the Energy Policy Act of 2005, Section 1252, "smart metering," the word used repeatedly with regard to "smart" meters is "request". Electric utilities were to provide "smart" meters to those customers *who request them*. It was to be an "*opt in*" program – and even then only if state regulatory agencies found such a program "appropriate". (Energy Policy Act is here: http://www.gpo.gov/fdsys/pkg/PLAW-109publ58/html/PLAW-109publ58.htm)

Expecting people who do not "opt in" to pay for not "opting in" is turning the law on its head.

The ACC's July 2007 Decision 69736 is entitled "IN THE MATTER OF SMART METERING REQUIREMENTS OF SECTION 1252 OF THE ENERGY POLICY ACT OF 2005." That Decision actually quotes the relevant Energy Policy Act wording I just mentioned above. Note the word, "requesting."

> "(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively." (p. 3 & p. 8)

The above quote actually appears *twice* in the nine page ACC Decision. (The Decision is here: http://images.edocket.azcc.gov/docketpdf/0000075595.pdf)

Additionally, under "Staff's Recommendations" (which the commissioners adopted in that 2007 Decision), we find the following under the heading "TIME-BASED METERING AND COMMUNICATIONS." Note the phrase "upon customer request".

> "Within 18 months of Commission adoption of this standard, each electric distribution utility shall offer to appropriate customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level." (p. 7)

How a voluntary, "opt in" program morphed into a mandatory one whereby people who never opted in are scapegoated as "cost causers" and are required to pay money to refuse something they never "requested" is anybody's guess. It's kind of like getting a bill from the airlines for not flying.

Certainly the morphing did not come from further ACC "smart" meter Decisions because there weren't any. So this current mandatory "opt in" program, in which everyone is automatically "opted in" and has to pay to get out, **has no basis in law**. **It is illegal.**

APS has attempted to cement this illegal, mandatory "opt in" program by proclaiming in their extortion fee application that "smart" meters are now their "standard meter," and any other meter is "non-standard." But APS's terminology does not convey or define legal status.

That brings us to page 2 of Decision 74871 and the "Estimated Costs" section of the "Findings of Fact".

Estimated Costs – No, just APS winging some numbers at the wall and hoping some stick

As the lawyer intervening for the City of Sedona stated at the December 12th, 2014 ACC open meeting, "APS's request is not evidence. It's a request for a fee."

These ridiculous, unproven "estimated costs", shown in the form of an "itemized breakdown" in this section of the Decision are a perfect example of why, prior to the December 12th, 2014 ACC meeting, I moved that the meeting be postponed and an evidentiary hearing be held instead.

Of course that was not done because then parties would actually have to present real evidence and tell the truth under oath. Worse, plebeian interveners such as myself would then have an equal footing and be able to subpoena people and ask real and embarrassing questions. Heck, the truth might even come out.

Including APS's numbers as a "Finding of Fact" gives those unverified numbers an undeserved legitimacy. "Finding of Wish" would be a more appropriate category for them.

It is also totally backwards, unbalanced and deceptive to have an itemized list of analog metering costs (which is suspect since coming from APS and not an independent source) without having an itemized list of what the "smart" grid costs are.

The ACC is fond of talking about the "socialized costs" of people who refuse "smart" meters. Since 2011 when my involvement in the "smart" issue began, I have noticed an unfounded and unverified assumption that customers who refuse "smart" meters are "cost causers". APS has made this assertion throughout and the ACC has as well. Both take it for granted that people who refuse "smart" meters are cost causers, but that assertion has never been proved. It is as though if APS and the ACC repeat it enough then it must be true.

Estimated Costs – What are the costs of the "smart" grid?

In the ACC's 2007 Decision 69736 the ACC actually lists many cost categories of the "smart" grid, but the ACC did not then, nor to this point in time, ever attach any real, verified numbers to those categories.

From the 2007 Decision # 69736, and note the open-ended phrase, "other associated costs":

> "Costs of AMI can include the costs for the meters, meter installation, a Meter Data Management System, data management labor, communications, back office software and servers, the integration of the AMI system to other systems, repairs to customer equipment, and other associated costs." (p. 5, line 25) (http://images.edocket.azcc.gov/docketpdf/0000075595.pdf)

Here's what some of those "other associated costs" might be: Field equipment such as routers and towers (basically APS has had to build their own cellular network), plus upgrades to the power lines (I witnessed multiple transformers and other equipment being installed all over Sedona when the "smart" meters came. Friends in the Village of Oak Creek noticed the same thing there.), plus whatever APS is paying Verizon to move the data where APS's communications network services are inadequate. Then add in the ongoing costs – operating and maintaining the network, storing the data, cyber-security

costs, and the fact that "smart" meters and the rest of the "smart" grid equipment require electricity to run whereas analog meters do not.

Then there's the shorter lifespan that "smart" meters have. According to electric meter testing equipment and services company, Tesco:

> "Electro-Mechanical Meters typically lasted 30 years and more. Electronic AMI meters are typically envisioned to have a life span of fifteen years and given the pace of technology advances in metering are not expected to last much longer than this. This means entire systems are envisioned to be exchanged every fifteen years or so." (*Meter Operations in a Post AMI World,* Slide 5, http://www.slideshare.net/bravenna/meter-operations-in-a-post-ami-world-36336258?related=1)

There's a big financial difference between meters that last "30 years and more" and meters – plus "entire systems" – that "are envisioned to be exchanged every fifteen years or so," especially when the meters that last half as long cost about 10 times more!

Even a 15 year lifespan is probably wishful thinking. APS has admitted to replacing 32,000 faulty "smart" meters from January 1st through August 31st in 2014 alone (see p. 4 here: http://images.edocket.azcc.gov/docketpdf/0000156835.pdf).

The ACC has lost sight of the fact that APS has an incentive to spend money since they get a guaranteed return on their rate base. All of the above should have been considered before the first "smart" meter was installed. But the ACC never did, despite their absurd, false claim of having "fully considered these matters."

The only real numbers given in the 2007 Decision were for just a few aspects of the program. And even then it is worth remembering that neither APS nor anyone else was under oath. Decision 69736 was *not* the result of an evidentiary hearing.

> "As of February 2007, APS had purchased 29,872 AMI meters at an average cost of about $97 per meter." (p. 5, line 28)
>
> "During a six-month period, APS spent about $700,000 for integration of the AMI system and the Customer Information System." (p. 6, line 2)

Looks like no one at the ACC really cared what the whole kit and caboodle cost. So much for 'fully considering these matters' and "balancing the public interest."

Interestingly, a "finding of fact" that arose from this dereliction of duty called a Decision was:

> "The communication cost per AMI meter was about $0.15 per month, compared to a meter read cost of about $0.90 per conventional meter."

God only knows how that was derived. No analysis is given in the Decision.

But if the numbers given for meter reading are true – which is doubtful – what those numbers say is that reading an analog meter is six times the cost of reading a "smart" meter. 15 2007 cents is worth 17 cents today. Times 6 is $1.02. It is ***not*** the $5 the ACC thinks is a fair price for reading an analog meter today.

So the poor ACC fails basic arithmetic too. And bear in mind that the $5 called for in this Decision is on top of the existing meter reading fee that's already on everyone's monthly bill.

The ACC has forgotten A.R.S. 40-361.A.

> "Charges demanded or received by a public service corporation for any commodity or service shall be just and reasonable. Every unjust or unreasonable charge demanded or received is prohibited and unlawful."

How can charges be "just and reasonable" when the ACC hasn't done its homework, or even gone to school?

Estimated Costs – Who is "socializing" whom?

As I mentioned previously, the ACC is fond of talking about the "socialized costs" of people who refuse "smart" meters. Let's put the analog metering system up against the "smart" grid and see who is "socializing" whom. Oh wait, cost/benefit analyses *have* already been done (but not in Arizona despite the commission's 2007 Decision # 69736 that said "However, both the benefits and the costs of Advanced Metering and Communications should be considered before requiring full-scale implementation.")

The results of those cost/benefit analyses show that it is analog users who are paying for a "smart" grid they don't want and never signed up for.

"Big Four" accounting firm Ernst & Young did a cost/benefit analysis for the country of Germany. I brought it to the ACC's attention (docketed here: http://images.edocket.azcc.gov/docketpdf/0000147126.pdf). I doubt my letter was read by anyone at the ACC.

As a result of the analysis, Germany's Economy Ministry proclaimed the European Union's proposal for 80% of homes to be "smart" metered by 2020 as "inadvisable" since installation costs would be greater than energy saved. [Bloomberg News, "Germany Rejects EU Smart-Meter Recommendations on Cost Concerns", http://www.businessweek.com/news/2013-08-01/germany-rejects-eu-smart-meter-recommendations-on-cost-concerns]

In a brief filed with the Connecticut Department of Public Utility Control, the Connecticut attorney general, George Jepsen, found that "...the costs associated with the full deployment of AMI ["smart"] meters are huge and cannot be justified by energy savings achieved." (Brief is here: http://www.smartgridlegalnews.com/ConnAG_brief.pdf , press release is here: http://www.ct.gov/ag/lib/ag/press_releases/2011/020811clpmeters.pdf)

Jepsen's brief is based on an actual pilot study of "smart" meters that involved thousands of real

people with real “smart” meters.

Addressing who is subsidizing whom, Jepsen had this to say:

> “Many customers do not want or cannot use the new AMI meters. Under the Company’s plan, however, these customers will nonetheless be forced to subsidize the cost of the meters for the few customers who will use them.” (Brief, p. 8)

Here's another salient Jepsen quote that deals with subsidization, and more. Note the sentence that begins with the word, “Second”:

> “Certain types of customers, due to no fault of their own, simply cannot shift their electricity usage to off peak times. These customers include many elderly, those with sick or young children at home, as well as those customers who work second or third shifts. OCC PFT, 17-18. Also, many businesses simply cannot change the times that they use electricity. Forcing these customers to purchase AMI meters is punitive. First, theses [sic] customers cannot take advantage of the time-based rates that the AMI meters are intended to facilitate. Second, these customers will not only be forced to pay for their own meters, but they will also be required to subsidize any savings achieved by those customers that can benefit from time-of-use rates. Third, even if they could shift the times of their electric usage, many of these customers cannot afford the associated controlling technologies that are required to make the AMI meters truly effective. While time-based rates should remain an option for electric customers, they should not be forced on customers to their economic detriment.” (Brief, p. 14)

Jepsen's brief has been brought to the ACC's attention by others and I many times but to no discernible effect. In fact, the first time I sent it to the ACC, the ACC refused to docket it. (That story of censorship and ACC ineptitude is here: http://images.edocket.azcc.gov/docketpdf/0000142973.pdf)

Often, in addition to Jepsen's words, I have reminded the ACC of the words of these other state attorneys general:

- **Illinois A.G.:** “The utilities have shown no evidence of billions of dollars in benefits to consumers from these new meters, but they have shown they know how to profit.”

- **Michigan A.G.:** “A net economic benefit to electric utility ratepayers from ... smart meter programs has yet to be established.”

What a pity for the “public interest” that the ACC did not pay attention to comments Michigan Attorney General Bill Shuette made to the Michigan Public Service Commission (MPSC) (here: http://efile.mpsc.state.mi.us/efile/docs/17000/0408.pdf). The ACC would have learned who is subsidizing whom by this statement of Shuette's:

> “Presumably, under the utilities proposals, customers who opt-out of smart meters would be required to pay rates covering both the costs of the smart meter program, and expansively defined incremental costs “of retaining traditional meters.” (pp. 5 & 6)

Lisa Madigan, the Illinois attorney general, does not mince words about the "smart" grid. I shared her words with the ACC in a letter docketed here: http://images.edocket.azcc.gov/docketpdf/0000143635.pdf.

Writing in the Chicago Tribune, she reports on a "smart" grid pilot project in Illinois:

> Their pitch is that smart meters will allow consumers to monitor their electricity usage, helping them to reduce consumption and save money. But the $63 million smart grid pilot program consumers are currently paying for has turned in disappointing results that reinforce what [utility CEO] Rowe already knows. On hot summer days, people continue to run their air conditioners no matter how much information they have from their smart meter.
>
> Consumers don't need to be forced to pay billions for so-called smart technology to know how to reduce their utility bills. We know to turn down the heat or air conditioning and shut off the lights. The utilities have shown no evidence of billions of dollars in benefits to consumers from these new meters, but they have shown they know how to profit.
>
> I think the only real question is: How dumb do they think we are? (http://articles.chicagotribune.com/2011-06-21/opinion/ct-oped-0621-madigan-20110621_1_smart-grid-ameren-comed)

This brings us to the "Staff Analysis" section of the "Findings of Fact."

Staff's Biased & Faulty Analysis

Here the Decision states,

> "Staff recognizes that there are costs associated with maintaining an older meter technology for a select group of customers, and that those customers and the Company will not be able to utilize the advanced capabilities AMI meters provide." (Decision p. 3, line 15)

That statement only reflects the ACC staff's inherent bias and faulty thinking. It is not "fact."

Actually, the ACC staff should 'recognize that there are costs associated with installing and maintaining a hugely more expensive newer meter and communication technology for a select group of customers.' In other words, once again persons not wanting a "smart" meter are being framed as "cost causers" when in fact it is the "smart" grid itself that is the huge expense.

Remember that (some but not all) "smart" grid costs were acknowledged in the ACC's 2007 Decision # 69736, but those costs were never thoroughly investigated or analyzed. The ACC has neglected and botched this financial aspect of the "smart" grid so badly and for so many years that it's really time for an independent forensic audit of the entire mess.

Staff's Biased & Faulty Analysis – And just who is that "select group" again?

As for being a "select group," that's just another attempt to marginalize people who do not want a "smart" meter. It is more than likely that if "smart" meters were the voluntary, "opt in' program they are supposed to be by law, then people who requested a "smart" meter would be the "select group." And that of course raises the point that there has been a total lack of informed consent by customers throughout the entire period of the installation of "smart" meters.

Indeed, Massachusetts' largest utility, Northeast (about which I'll say much more later), had this to say about the failure of voluntary "opt in" in its comments to the Massachusetts Department of Public Utilities last January.

> "Smart metering pilot programs across the country have produced similar results in terms of showing a lack of customer interest. Even the most successful residential time-of-use pricing programs have no more than 50 percent participation by the residential customer base. For example, NSTAR's Smart Energy Pilot has seen significant participant degradation relative to the initial number of customers installed. As reported to the GMWG, NSTAR Electric made 53,000 customer contacts in an attempt to enroll customers in its smart grid program; only 3,600 customers enrolled; only 2,700 customers were installed and approximately 40 percent of those 2,700 initial participants were removed or dropped out of the pilot by May 2013. PSE&G's "myPower" pricing pilot saw similar results in which 27 percent of participants were either removed or dropped out (excluding the control group)." (p. 11 here: http://images.edocket.azcc.gov/docketpdf/0000151238.pdf)

Staff's Biased & Faulty Analysis – Staff tells a joke.

As for the ACC staff 'recognizing' that customers "will not be able to utilize the advanced capabilities AMI meters provide," is that a joke? Just what are those "advanced capabilities"? Oh that's right, with a "smart" meter, when my microwave sickness has advanced to cognitive impairment I can go online to see if my lights are on, if I remember to.

In short, that part of the sentence is just more utility propaganda. It is not "fact."

Additionally, if "the Company" cannot "utilize the advanced capabilities AMI meters provide" because the customer doesn't have a "smart" meter then that's just too bad. I'll cry for them. APS has a monopoly not for their benefit but supposedly for ours. That is a legal point the ACC has long forgotten.

This brings us to the "Staff Proposal" section of the so-called "Findings of Fact."

Staff Proposal – Faulty analysis = Faulty proposal

As shown above, due to the ACC staff's inherent bias, illogic and failure to do a thorough cost accounting – or any accounting at all – their analysis was faulty. Faulty analysis results in faulty proposals.

All of the staff proposals involve payment to avoid harm, in other words extortion, which, last I checked, was against the law.

It is worth mentioning here that if manual reading was such an onerous expense for APS, then long ago APS would have stopped sending meter readers out in full-sized pickup trucks. So for APS to worry about the cost of reading meters is disingenuous. Again, the ACC has lost sight of the fact that APS has an incentive to spend money since they get a guaranteed return on their rate base.

This brings us to the "Commission Discussion" section of the Decision's "Finding of Fact."

Commission Discussion = Commission Fantasy

As usual the commissioners got everything completely wrong throughout their "Commissioner Discussion."

Additionally, what the commissioners *did not* discuss is most important. Not only were many serious customer concerns left completely unaddressed as I mentioned previously, but various types of customers were not considered at all in the Decision.

Worse, and incredibly, the vote on the Decision was taken with the understanding that one unresolved issue in particular (what to do with solar customers) would be dealt with *after* the vote via a nontransparent process between the ACC staff and APS. I'll have more to say about those points later, but first I want to deal with what's actually written in the "Commission Discussion" section of the Decision.

Commission Fantasy – The commissioners' disdain for customers

The Decision states:

> "We are concerned that both Staff's alternative proposals 2 and 3 could result in opt out customers potentially providing inaccurate and untimely information concerning opt out customer usage." (Decision, p. 5, line 22)

Staff proposal number 2 would have allowed customers to read their own meters. So despite self-reading being actually sanctioned in the Arizona Administrative Code (A.A.C. R14-2-209.A.1), what the commissioners are saying is that people cannot be trusted to do that.

Thanks commissioners, and the feeling is mutual. You don't trust us to read our meters, and we *know* we can't trust you to regulate APS.

The commissioners' insulting statement is not a "finding of fact," it is simply an opinion based on nothing since no actual evidence of customer cheating was ever provided by the commissioners to prove their low opinion of customers.

In actual fact, self-reading is done in other locations. I know for a fact that self-reading is done by at least one California electric coop, and in San Francisco there are homes with meters inside and so the customers leave a card with their information in the window for the PG&E meter reader.

Instead of offering unsubstantiated, disrespectful opinions and trying to pass them off as fact, the commissioners could have investigated the success of self-reading. If the commissioners were sincerely interested in the "public interest" they talk so much about and pretend to promote, they would have done some research to see what the "public interest" really is. Again, this is just another example of why this Decision should have been the result of an evidentiary hearing in which real evidence is produced instead of opinions.

Additionally, it seems it never occurred to the commissioners that the utilities could be protected from fraud by way of a security deposit.

Commission Fantasy – Proof of commissioners' confusion

God only knows what the commissioners are talking about regarding the ACC staff's proposal number 3. Proposal number 3 *does not* involve customer self-reading so "customers potentially providing inaccurate and untimely information" *does not* apply to that proposal. I interpret lumping number 3 with number 2 in this instance as just more proof of the commissioners' confusion and ineptitude.

Commission Fantasy – 'Balancing the public interest' with APS greed

The commissioners state:

> "In balancing the public interest, we also find that an opt out one-time set up fee is appropriate only for those customers with an AMI meter already in place, and that a reasonable one-time set up for these customers is $50." (Decision p. 6, line 1)

"Balancing the public interest"? With what, APS's greed?

The commissioners' statement is total nonsense. As I mentioned before, informed consent by customers has been missing since the start of the "smart' meter installation binge that APS recklessly engaged in. There was no mandate APS was under to install "smart" meters everywhere to everyone. By both federal and state law it was to be an opt-in (voluntary) program. Perfectly good analog meters were removed and destroyed. Many APS customers are still unaware of what a "smart" meter is or that they have one. Once those customers *do* understand what a "smart" meter is, and that they no longer want all the risks that come with the "smart" meter, why should they have to pay $50 *or anything* to have it removed?

APS is the party who broke their analog and "opted" them "in." APS is therefore the party who should pay for their meter replacement and for "opting" them "out." "You broke it; you bought it, APS"

Along with some courses in logic, the commissioners need to get a moral compass adjustment if they think "balancing the public interest" means charging people money for what is in reality a problem APS created for themselves.

Commission Fantasy – Commissioners cut APS slack and violate state statutes

Additionally, many APS customers who *did* attempt to refuse a "smart" meter were intimidated and abused by APS phone jockeys into not getting one. That illegal APS business practice was so rampant that people's complaints about it can be found in the ACC docket. Some people I helped had to make as many as three calls. I am sure there are others who simply gave up. APS was clearly in violation of A.R.S. 40-202.C.1 that prohibits abusive business practices but nothing was done by the ACC despite numerous complaints.

Here are just two of the sorts of reports I received. I also remember at least one person getting the runaround at the Cottonwood office, so the abuse was not just happening on the phone.

> Customer called APS and requested an "opt out". She was informed by APS Customer Care that the time limit for applying for an "opt out" had expired and that she would have to pay a $75 initial fee and $30 per month to "opt out". She was told this fee structure is APS policy.
>
> A man in his 80s has been trying for several months to "opt out" of a "smart" meter and keep his existing analog meter. He was told by APS that unless he accepted a smart meter installation on his home by June 3, his electricity would be turned off. (http://images.edocket.azcc.gov/docketpdf/0000145814.pdf)

Commissioner Brenda Burns shared her idea of doing something about this and giving APS "a pretty hard time" at the December 12th, 2014 ACC open meeting.

From 03:50:32 on the archived meeting video:

> On this particular issue, I want you to know, I've given them a pretty hard time.
>
> When I first got the note on my door sayin' we were going to get a smart meter, I said to my husband, do you mind if I can call and tell them I don't want one? I want to see how they treat customers on this. OK?
>
> So I called, and told them I didn't want it. And I mean, I'm not going to go through the whole thing, but I, I, I ended the call with I was supposed to get a call back.
>
> Anyway, I ended up getting the smart meter, when I wasn't supposed to get one. So I, I hear that happens. I met with the CEO and others from APS and I told them about my experience. And I said, you know we have to make sure we're, we're handling customers better than that. I also told them to be sure and not to flag my account as a, a commissioners' so, so that we could see how it went.
>
> And several months later we had another little incident. There was, there was a glitch. I could kind of understand why it happened, but there was another incident.
>
> So I have really, you know, given them a little bit of a hard time, first of all on customer, um you know, customer relations and they have been very responsive and they've corrected the way they did a number of things, because of the experience, um, that I went through and that I shared with them, and I, and I appreciated that and I know that

things worked better.

This is quite an amazing admission from commissioner Brenda Burns for several reasons.

One wonders when exactly this took place. In other words, how many other customers had APS abused, intimidated or tried to force a "smart" meter on before, during and after commissioner Burns played out her little detective experiment?

How many customer complaints does it take for one of the commissioners to play detective?

Why is Burns doing this when there is actually a state law against the way APS treated customers who were trying to refuse "smart" meters? Did she do this unilaterally or were other commissioners in on this?

Why is Burns doing this when commissioners are actually enjoined by state statute to "commence a proceeding" in instances of abuse? Note that neither of the statutes reproduced below say anything about how in lieu of a proceeding, an acceptable alternative is to just meet with the CEO and tell him "we have to make sure we're, we're handling customers better than that."

And what's up with "*we*?" Does commissioner Burns work for APS? It seems she is in their employ as a mystery shopper. What else does she do at APS?

Actually, "a pretty hard time" would have been prosecuting and fining APS – and maybe some real "hard time" – for repeatedly lying to, deceiving and abusing customers who called in to refuse "smart" meters. Far from "a pretty hard time," to me Brenda's chat with the APS CEO and her role as mystery shopper demonstrates the unseemly cozy relationship commissioners have with APS.

Tough luck for the 80 year old man who was jerked around by APS for months. Serves him right for not being important enough to have the APS CEO's phone number.

> **40-203. Power of commission to determine and prescribe rates, rules and practices of public service corporations**
> When the commission finds that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded or collected by any public service corporation for any service, product or commodity, or in connection therewith, or that the rules, regulations, practices or contracts, are unjust, discriminatory or preferential, illegal or insufficient, the commission shall determine and prescribe them by order, as provided in this title.

> **40-422. Action by commission to enjoin violations or threatened violations; venue; time for answer; joinder of parties**
> A. When the commission is of the opinion that a public service corporation is failing or about to fail to do anything required of it by law or an order or requirement of the commission, or is doing or about to do or permitting or about to permit anything to be done contrary to law or any order or requirement of the commission, it shall commence

> a proceeding in the name of the state to have such violations or threatened violations prevented, either by mandamus or injunction. The commission shall bring the action in the superior court in the county in which the claim arose, or in which the corporation complained of has its principal place of business or an agent for any purpose, or in which the commission has its office.

Commission Fantasy – The Fantasy turns nightmarish

Most of the so-called "Findings of Fact" are nonfactual, inaccurate, faulty, wrong, and etc., but this particular one of the commissioners is downright scary:

> "In addition, we will require APS to provide notice to all its customers of this decision in a form acceptable to Staff." (Decision p. 6, line 21)

For years the ACC staff have totally botched the "smart" meter issue. They simply cannot be trusted to get any sort of notification correct. The thought of the ACC staff working with APS on the notice wording is just plain scary. Such a notification is one of the few chances to properly inform customers of all the potential risks inherent in "smart" meters.

The ACC commissioners have totally botched the "smart" meter issue since at least the 2007 Decision # 69736. They cannot be trusted to get it right either. Any notice wording should be the result of a truly independent group that includes people who actually know something about "smart" meters.

Commission Fantasy – The commissioners try to hide in FCC Fantasy Land

In what can only be described as a pathetic attempt to avoid liability and dodge their statutory responsibility to find utility equipment safe under A.R.S. 40-361.B and A.R.S. 40-321.A, the commissioners conclude their comments by essentially saying they can't do anything regarding the health hazards of continuous, pulsed "smart" meter microwave transmissions because their hands are tied by the FCC guidelines. **The commissioners' assertion has no basis in law.** The commissioners' assertion only reveals their lack of knowledge of the subject.

Twice in their comments the commissioners interchange the word "guidelines" with "standards." One can only guess if that interchange is due to the commissioners' incompetence or if it is an attempt to deceive. In any case the FCC guidelines are only guidelines; they are ***not*** "standards." There is a difference between the two that the FCC itself acknowledges.

The FCC has established "guidelines" for protection against the thermal effects of radio frequency exposure. Those guidelines are ***not*** safety "standards." This is acknowledged in an FCC document entitled, *Consumer Guide, Wireless Devices and Health Concerns*, the very first line of which states:

> "...there is no federally developed national standard for safe levels of exposure to radiofrequency (RF) energy…."
> (http://transition.fcc.gov/cgb/consumerfacts/mobilephone.pdf)

Additionally, and most importantly, while there is correspondence from the FCC that states

"smart" meters meet federal guidelines if they have the FCC certification, there is nothing that prevents individual states from being more restrictive with regard to "smart" meters. The FCC preemption found in the federal communications laws that the commissioners imagine applies to "smart" meters, in actual fact only applies to FCC licensed cellular towers and antenna arrays.

The FCC has *not* claimed a broad-based preemption policy to cover all RF emission sources. From the FCC:

> "To date the Commission has declined to preempt on health and safety matters."
>
> "The Telecommunications Act does not preempt state or local regulations relating to RF emissions of broadcast facilities or other facilities that do not fall within the definition of "personal wireless services." It would appear from the comments that a few such regulations have been imposed, generally as a result of health and safety concerns. At this point, it does not appear that the number of instances of state and local regulation of RF emissions in non-personal wireless services situations is large enough to justify considering whether or not they should be preempted. We have traditionally been reluctant to preempt state or local regulations enacted to promote bona fide health and safety objectives. We have no reason to believe that the instances cited in the comments were motivated by anything but bona fide concerns." [Underlining in original]
>
> "At this time ... we deny the petitions ... from several parties, requesting a broad-based preemption policy to cover all transmitting sources."
>
> Pages 61 & 62, In the Matter of Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62, REPORT AND ORDER, Adopted: August 1, 1996; Released: August 1, 1996 (Here: http://transition.fcc.gov/Bureaus/Engineering_Technology/Orders/1996/fcc96326.pdf)

Evidently, the commissioners are also ignorant of the fact that their specious FCC preemption argument has already been tried unsuccessfully by Central Maine Power (CMP). Here's what the Maine Public Utilities Commission had to say about CMP's preemption argument:

> Based on the submissions of CMP and the Intervenors, there is no direct federal preemption and novel field preemption issues require a thorough legal and factual analysis. CMP's arguments do not make this showing. It is certainly not obvious that the Commission's authority under 35-A M.R.S.A. § 101 is preempted from conducting this proceeding on whether CMP's smart meter service is safe.
> (page 34, here: https://mpuc-cms.maine.gov/CQM.Public.WebUI/Common/ViewDoc.aspx?DocRefId={F1020185-26AE-4733-A491-644096366CE4}&DocExt=pdf)

In short, the ACC commissioners' imagined FCC preemption is just their own wishful (and typically uniformed) thinking. The commissioners need to face the fact that they are stuck with the "smart" meter issue, the health concerns citizens have about these meters, and all the karma and liability that goes with it. "Smart" meters are the ACC's baby, not the FCC's.

One also wonders where the commissioners got the idea that APS "smart" meters are within FCC guidelines. Certainly this could not have been determined by the fraudulent ADHS study. The "smart" meter measurements taken in that study were completely inaccurate. (See my report here: http://images.edocket.azcc.gov/docketpdf/0000158210.pdf, my video exposé here: http://images.edocket.azcc.gov/docketpdf/0000158581.pdf and also the letter from ET&T Indoor Environmental Surveys, p. 7 here: http://images.edocket.azcc.gov/docketpdf/0000158659.pdf)

Imagining they have the issue wrapped up, the commissioners state:

> "The FCC's guidelines therefore present the … relevant question, and the narrow issue that remains for our consideration is whether the smart meters installed in Arizona meet the FCC guidelines." (Decision pp. 6 & 7)

The curious, nonsensical ellipsis that renders the first part of the above statement unintelligible is in the original. Just more sloppy ACC "work" I guess. However, the second part of the sentence, after the comma, is clear, and clearly a lie.

"... the narrow issue that remains for our consideration is whether the smart meters installed in Arizona meet the FCC guidelines." No, the issue is not "narrow," and there are actually plenty of "smart" meter related issues that are unaddressed and *still remain* for the commissioners' consideration. I am enumerating them throughout this appeal.

Commission Fantasy – The Law & the lawless commissioners

Of course one issue that remains for commissioners, not to consider but to finally acknowledge, to finally realize, is that the wireless "smart" meters installed in Arizona by APS – and the other utilities regulated by the ACC – are unsafe.

The ACC commissioners, *not the FCC or any other agency*, have a statutory obligation to determine safety. I have been telling the commissioners that and quoting the law to them for years. Yet the commissioners have been dodging the law for years.

One more time:

> **A.R.S. 40-361.B** – Every public service corporation shall furnish and maintain such service, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient and reasonable.
>
> **A.R.S. 40-321.A** – When the commission finds that the equipment, appliances, facilities or service of any public service corporation, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine what is just, reasonable, safe, proper, adequate or sufficient, and shall enforce its determination by order or regulation.

The ACC is comprised of such brazen scofflaws that I and others have actually been told in the past by various people at the ACC that the ACC cannot define what a meter is, nor can the ACC tell the utilities what sort of meters to use.

Really. (See: http://images.edocket.azcc.gov/docketpdf/0000143321.pdf)

According to the above statutes, the ACC certainly *can* tell the utilities what sort of meters to use. By law the ACC is supposed to tell the utilities to use safe ones!

Commission Fantasy – The *real* "Background"

The *real* "Background" of this "matter" is that the commissioners were overwhelmed with customers' health complaints, scientific evidence, and declarations from four Arizona towns asking the ACC to prove "smart" meters safe before installing them, and so the commissioners tried to palm the safety issue off on the Arizona Department of Health Services (ADHS).

It is worth noting here that, in an act of spectacular negligence, the commissioners allowed the continued installation of "smart" meters during the 14 months that the ADHS study was being written.

Despite the ADHS "smart" meter study being a monumental fraud, the ADHS did not find "smart' meters to be safe. ADHS found "smart" meters "not likely to harm."

"Not likely to harm" does not fit the above state statutes that call for actual safety.

Since the ACC's ADHS ploy backfired, the commissioners have now attempted an obvious last minute "Hail Mary" FCC stratagem instead. Clearly a last minute ploy, had the ACC thought of it previously they never would have asked for a health study in the first place. In other words, why ask for a health study if the health issue is out one's hands? However, as I proved above using the FCC's own Report & Order as well as the Maine precedent, the ACC's new FCC stratagem is specious. The FCC preemption is the fantasy of a commission so desperate to dodge their statutory responsibility regarding safety that the commission has become delusional. **There is no FCC preemption for "smart" meters.**

As I told the commissioners after the ADHS study came out, the game is over, "smart" meters are *not safe*, and every day that "smart" meters remain in Arizona the commissioners and their APS pals are in violation of the law.

Commission Fantasy – A classic example of the commissions' lawlessness

A classic example of the commission's obdurate, in-your-face lawlessness is worth noting here. Commissioner Susan Smith is so willfully disrespectful of the above state statutes that in 2013 she was quoted in the Arizona Daily Star thus:

> **She said it's not for the commission to weigh all of the conflicting claims about the effects of the radio waves coming off the meters.**

> **The question for the commission, she said, is how much the utilities will be able to charge customers who have concerns and want to opt out.**
>
> (http://azstarnet.com/business/local/utility-smart-meters-raise-health-expense-concerns/article_ed579a26-59b3-5dfe-ad09-cf5168f44025.html)

Because I had already apprised commissioner Smith of the law at least twice previous to the Star article, I was shocked to read her incompliant, rogue comments. I wrote commissioner Smith telling her that if the article was accurate then she should resign. (The letter is docketed here: http://images.edocket.azcc.gov/docketpdf/0000145081.pdf).

Smith never did deny the views attributed to her in the Star. Unfortunately for Arizonans, she never resigned either.

Commission Fantasy – Ignored Issues ~ Solar Customers

It's one thing for someone to vote on something they haven't read; it's quite another for them to vote on something not even written! Yet that is exactly what happened when the commissioners voted unanimously in favor of this Decision.

At the December 12, 2014 ACC meeting, Intervener Pat Ferre brought up the fact that, under APS's extortion fee application, customers with grid-tied solar systems were required to have "smart" meters. Pat brought up the fact that this was clearly discrimination under A.R.S. 40-334.A & B.

> **A.R.S. 40-334.A & B –** Discrimination between persons, localities or classes of service as to rates, charges, service or facilities prohibited
> A. A public service corporation shall not, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any person or subject any person to any prejudice or disadvantage.
> B. No public service corporation shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either between localities or between classes of service.

Intervener Pat Ferre's ten minutes at the microphone turned into about half an hour as round and round the issue went from her to APS, to the commissioners, to the ACC staff, and back and forth. Incredibly, when the commissioners finally voted for extortion fees, the issue was still unresolved.

At the end of the solar discussion, Steven Olea of the ACC staff said he had heard two explanations from APS as to why solar customers could not refuse a "smart" meter. My turn to talk was next and so I said that if APS was asked again they'd probably give a third explanation.

APS was clearly winging it and their explanations do not hold up under scrutiny.

The first explanation given by APS was that, by ACC Decision 73183, APS was bound to keep accurate track of customers' solar production and that the only way to do that was via a "smart" meter. It is worth noting here that there is nothing in ACC Decision 73183 that calls for "smart" meters as the means to accomplish the ACC's directive. Use of "smart" meters not implied in the Decision either.

APS's first explanation was total nonsense. All that is needed to accomplish that task are two analog meters. One keeps track of the solar production going out; the other keeps track of the electricity coming in from APS. Solar systems have been set up that way long before "smart" meters.

Anyone with an ounce of common sense should able to figure that out, but in case the commissioners had only half an ounce I explained that to them well over a year and a half ago when APS first made their preposterous claim in their extortion fee application (here: http://images.edocket.azcc.gov/docketpdf/0000144218.pdf). But as usual, the ACC did not pay attention to what was sent them.

APS's second explanation was delivered at the meeting by APS's Scott Bordenkircher. At a little after 5:09 on the archived meeting video, he said:

> What we also need to consider in this, and this is the reason we specifically changed that interconnection agreement for all solar systems, really relates to the operational characteristics and issues that now could become, especially in areas where we are getting high penetration, high levels of penetration of solar, especially in areas where we may potentially have high densities of this opt-out situation, we need to know what power is being injected back on to the grid. Without a way to measure that, we potentially put the rest of the grid and other customers at risk from an availability and reliability perspective.

More total nonsense! Again, had the ACC done their homework – or least read what I have sent them – they would have known that this second APS explanation is bunk.

On February 12th, 2014 I sent the ACC a submission that Massachusetts' largest utility, Northeast (which has about the same number of customers as APS), made to the Massachusetts Department of Public Utilities on January 17, 2014 (here: http://images.edocket.azcc.gov/docketpdf/0000151238.pdf).

The Northeast statement is highly significant because it echoes what I and others have been saying for years. To wit:

- There are no cost savings to be had from "smart" meters.
- "Smart" meters *do not* reduce outages.
- "Smart" meters are not "grid modernization".
- "Smart" meters are a cyber-security risk.
- Contrary to the bogus claims of "smart" meter boosters, given the choice, few ratepayers will "opt in" and ask for a "smart" meter. They have no use for one.

In their discussion of "grid modernization", Northeast puts to rest the specious APS argument that "smart" meters are needed for solar or "distributed energy resources" to be safely integrated into an electrical grid. Quoting from Northeast:

> "Meters do not reduce the number of outages; metering systems are not the only option for optimizing demand or reducing system and customer costs; and metering systems are

not necessary to integrate distributed resources or to improve workforce and asset management." (p. 4)

"In order to allow for the integration of distributed resources, sensors and systems for advanced load flow models that allow for more distributed resources on a circuit can be installed." (p. 5)

"There is also an important dynamic involved in relation to the integration of widespread distributed energy resources to the electric power grid. Industry study conducted by entities such as the Electric Power Research Institute shows that the electric distribution grid will require substantial investment to be positioned for the integration of distributed energy resources. Therefore, grid-modernization efforts have to be closely coordinated with policies that are encouraging the growth of distributed energy resources. Finite capital resources available for grid modernization should be aimed at this integration effort before any additional monies are expended on metering capabilities that provide limited and/or speculative incremental benefits over current metering technology (following many years of investment in those systems). Moreover, the growth of distributed generation and current subsidies results in the bypass of the electric distribution system by potential electric customers leaving fewer and fewer customers to pay for it. This creates a pricing crisis in practical terms for both residential and business customers remaining on the system. Huge additional investments to the distribution system will only have the effect of exacerbating the issue for customers.

Accordingly, not only is there a flaw in the Department's premise that an advanced metering system is a "basic technology platform" for grid modernization, but also the implementation of a costly, advanced metering system is at odds with policies designed to promote the growth of distributed energy resources. In directing the implementation of AMI, the Department's Straw Proposal does not address or consider this juxtaposition to any degree. However, immense, near-term investments in advanced metering systems should not be mandated without (1) methodical, valid analysis of the associated costs and benefits; and (2) the development of a plan to solve the detrimental impact of cost-shifting driven by the pervasive installation of distributed energy resources." (pp. 5 & 6)

Emphatically, with italics in the original, Northeast then states unequivocally:

"*There Is No Rational Basis for Department-Mandated Implementation of AMI.*"

Getting back to the solar discussion at the ACC meeting, APS lawyer Thomas Mumaw had explained (incorrectly) that "smart" meters were needed to measure solar production, and as previously quoted, APS's Scott Bordenkircher had explained (incorrectly) that "smart" meters were necessary for integrating solar production into the grid. The conversation finished thus:

Steven Olea (at the 5:11:32 mark): I heard two slightly different explanations from APS and so what I would suggest at this point is if, you know, you [the commissioners] can go ahead and both decide on the way it is, with, you know, whatever amendments you want. But staff will - staff engineers, and all of my engineers have left, so, so staff engineers will get with APS next week so that they can explain to me so I can

understand exactly what is happening, 'cause, what I heard is that, that the, the analog meter, the normal analog meter will spin backwards. So you can get the net metering piece that way. The piece that you can't get, is you have to put in a second meter now, on the photovoltaic system, to know what it produces. An analog meter will do that.

But what APS said in the last explanation was that what they really need is not just to know the output, but when it's happening for operational reasons, for reliability reasons. That's a whole different concern.

That's why I'd like to sit with APS and find out: OK, so what do you mean by "operational" and "reliability" with the AMI meter that's measuring the output from the PV system, not the net metering piece.

And if they can prove to our staff, to my engineers and to me that the AMI meter is the only way to operationally keep the grid safe, to keep the distribution system safe, then we will come back to you and say that. If they can't then we will come back and say that also.

But if you need to change something you can always do that later. You can always bring this item back for this specific issue, about the, about those customers with solar systems if they want to opt-out.

Bob Stump: OK

Olea: Can they, you know, can they opt-out and still keep their solar system? And we'll check into that in more detail and come back to you on that.

Stump: OK. Perfect. Great. Thanks. Thanks. Just a legal message: this item is on the agenda for notice – an opportunity to be heard.

The above exchange is incredible for several reasons.

It shows that the director of the ACC's Utilities Division, Steven Olea, went into the meeting with no idea how solar works, how it's measured.

It shows how it does not even register with Olea that APS has just lied to him. Thanks to what Pat Ferre had said, Olea seems to understand that solar production can in fact be measured via analog but there's no outrage, no acknowledgment whatever, that this is in contradiction with what APS's Mumaw had claimed, that APS needs "smart" meters to measure solar production.

Yet, despite APS having just given him misinformation, Olea is still willing to consult with APS – and only APS – "next week." Under such circumstances, APS is one of the last places I'd go for the truth. But naively, Olea still wants to meet with APS "next week" so he can solve the rest of the issue he doesn't understand.

The conversation also shows how, even though Olea is not in the ACC's Legal Division he gives chairman Stump legal advice on how Stump and the other commissioners can vote on something

unwritten then write it later. Remarkably, Stump says “OK.”

Like I said previously, it's one thing to vote on something you haven't read; it's quite another to vote on something you haven't even written! I am still flabbergasted that the commissioners went ahead and voted on their Decision without resolving the serious issue of solar customer discrimination.

The episode shows how completely naïve the ACC is. It also shows how ill-prepared and unconcerned the ACC is. The ACC had not even considered this issue until it was brought up by Pat Ferre at the proverbial 11th hour. How could they not know this was an issue? Pat Ferre's battle for analog meters for her solar system went on for months and involved APS, ACC staff and commissioner Gary Pierce. Other solar customers had written in to the docket. And I had debunked APS's ridiculous solar claim almost as soon as APS had docketed it (here: http://images.edocket.azcc.gov/docketpdf/0000144218.pdf).

Is the ACC really that negligent in its consideration, its deliberation? It seems so.

The meeting may have been “open” but certainly Olea's proposed huddle with APS “next week” to sort the issue out lacks transparency or the ability for independent citizen or intervener input and observation. APS and the naïve, ignorant ACC staff making policy behind closed doors is a frightening thought indeed.

Commission Fantasy – Ignored Issues ~ Commercial, TOU, E-3, E-4 & the Overexposed

While solar customers at least got a mention, commercial, Time Of Use (TOU), E-3 and E-4 customers were not considered at all.

In APS's extortion fee application, customers are allowed to “apply” for an analog meter and, once “approved,” they are only allowed APS's “standard” rate. In other words, no TOU for you.

This is just more total discriminatory nonsense, and more total ineptitude on the part of the ACC for not considering these customers in their Decision. There is no reason why TOU customers cannot retain their non-transmitting digital meter and stay on their TOU rate as TOU customers are doing right now.

Also, in APS's application, only residential customers are allowed to “apply” for an analog meter. There is absolutely no reason why commercial customers should not be able to have an analog meter. Indeed, some do right now. Again, it's just more total discriminatory nonsense, and more total ineptitude on the part of the ACC for not considering these customers in their Decision.

Typically, the ACC also forgot to discuss how customers on APS's Energy Support Program (E-3) or Medical Care Equipment Program (E-4) would be treated if they want to refuse a “smart” meter. It looks like the ACC figures if those customers cannot afford to refuse a “smart” meter then it's just their tough luck.

Then there are the people who live and work opposite banks of “smart” meters. They may be able to refuse *their* “smart” meter but how do they refuse the rest? Although the commissioners have been asked that question repeatedly over the years, they have never bothered to answer it. Certainly it is

another “matter” left unconsidered in this Decision.

I am not exaggerating when I use the word, “ineptitude,” in relation to the ACC. There are so many more examples I could go on for pages. But here's one more example from the December 12, 2014 ACC meeting.

Commission Fantasy – “I haven't given it a great deal of thought.”

The intervener attorney for the City of Sedona, David Pennartz, had found that in APS's extortion fee application APS was calling for account holders to indemnify APS meter readers. The language was broad enough that conceivably an APS meter reader vehicular accident on the way to a route would enable APS to go after everyone on the route for damages.

Pennartz had brought this to the attention of the ACC via a docket submission on December 4th, 2014. The meeting was eight days later, December 12th. Remarkably, Pennartz's point had not been considered at all. So when he raised it at the meeting a discussion ensued as to whether his point was valid and, if so, what should be done about it. It was obvious from that discussion that no one at the ACC, the staff or the commissioners, had familiarized themselves with his issue. They were completely unprepared.

Indeed, at the 6:01:40 mark of the archived meeting video, you can watch Legal Division director, Janice Alward, actually admit, “I haven't given it a great deal of thought.”

What? Why the heck not?

Here is an intervener, a professional person hired to represent an Arizona town of 10,000 people and no one at the ACC has paid any attention to his docket submission? Incredible, but at least it made me realize I was not the only one ignored.

There's an interesting side note to this story that to me demonstrated how secure, how tight, the APS/ACC relationship is. Evidently, APS lawyer Thomas Mumaw had not bothered to read Pennartz's submission either because in his turn at the microphone Mumaw confessed that he had forgotten the indemnification clause was even in his submission.

This entire episode brings up the motion I and other interveners made before the meeting. Meetings of this sort should be evidentiary. People should be under oath. Real evidence should be submitted. Winging it, making it up as you go along would therefore be eliminated. Interveners would be on equal footing so that real questions would be asked, not the uninformed, soft ball questions the commissioners ask – if they even ask at all. The ACC should not be allowed to conduct the people's business in such a sloppy, inept and arbitrary manner.

In short, the commissioners are lying when, in the “Conclusions of Law” section of the Decision, they claim to have “fully considered these matters.” They haven't. Most of the “matters” were ignored, and the few that were “considered” were certainly not considered “fully.”

Commission Fantasy – “We” doesn't care.

Speaking of real questions (and again I could go on for pages with examples), it was amazing to hear APS at the meeting say that they looked into manually reading meters every other month but that it would cost the same as doing it monthly. It was even more amazing that not one of the commissioners had the brains to say, "Are you kidding me? 12 months meter reading costs the same as half that much? How do you figure that?" When it was my turn to talk I pointed out this APS absurdity, but still none of the commissioners confronted APS.

One wonders if it really is ineptitude or perhaps corruption. For example, in APS's extortion fee application docketed March 25, 2013, they claimed:

> "It is important to note that analog meters are no longer manufactured by any domestic meter supplier, and only refurbished models are available for purchase from established and reliable meter suppliers. The Company anticipates that these meters will become more difficult to obtain and more expensive to maintain in the future."

In a private meeting I had with commissioner Gary Pierce a few days later on March 28, 2013, I mentioned that APS had blatantly lied in an ACC meeting in which APS claimed analog meters were no longer available. Agreeing with me, Pierce's response – and this is a direct quote – was, "We know that's not true."

Note that his response was not, "I know that's not true," but "*We* know that's not true."

So the ACC knew that was not true but never admonished APS for publicly lying, both at a meeting and in their application? APS can make false claims in applications to the commission and "we" doesn't care? Doesn't that make the ACC complicit in fraud? Doesn't it at least show the ACC is not serving "the public interest" and cannot be trusted? How can we expect any meeting in which APS is not under oath to be just? It also pertains directly to this particular Decision since all along APS has been playing pretend about the availability of analog meters and, as a result, what a burden customers are who want them.

Commission Fantasy – APS doctors an ACC Decision and the commissioners don't care

In their extortion fee application, APS even got away with doctoring the wording of the ACC's 2007 Decision # 69736 because no one at the ACC cared, even after it was brought to their attention (which I did here: http://images.edocket.azcc.gov/docketpdf/0000144218.pdf).

APS started out their application by selectively quoting – *and actually misquoting* – ACC Decision # 69736.

APS wrote on page 2 of their application:

> "In Decision No. 69736, as a result of deliberations on the requirements of the Energy Policy Act of 2005 and the Public Utility Regulatory Policy Act ("PURPA"), the Commission adopted a modified version of the PURPA time based metering and communication standards and directed that "each electric distribution utility shall investigate advanced metering infrastructure for its service territory and shall begin implementing the technology …."

(http://images.edocket.azcc.gov/docketpdf/0000144127.pdf)

Quite familiar with the 2007 Decision, I did not recall that quote so I read the Decision again ..... and again ….... and again ….... and finally on the fourth read I figured out why I could not find the quote and what APS had done. APS doctored the quote to make it suit their needs.

Here is the exact quote. What APS cut out is in **bold**. Anyone should be able to see how the meaning was changed by APS.

> "... each electric distribution utility shall investigate **the feasibility and cost-effectiveness of implementing** advanced metering infrastructure for its service territory and shall begin implementing the technology **if feasible and cost effective.**" (Exact quote is on page 7, here: http://images.edocket.azcc.gov/docketpdf/0000075595.pdf)

Significantly, APS also left out the Decision's previous sentence which mandates a voluntary, "opt in" style program. Note the phrase, "upon customer request."

> "Within 18 months of Commission adoption of this standard, each electric distribution utility shall offer to appropriate customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level." (p. 7)

Because of the amount of schooling it takes to become a lawyer, I can only conclude that this doctoring of the ACC's Decision was done deliberately and not inadvertently. I think most people learned in high school that when a phrase is removed from a sentence it is supposed to be replaced with an ellipsis. I think most people also learned that if a phrase is essential to the meaning of a sentence then it should not be removed at all.

The point is, if APS will go to this length, what else would it stoop to?

The point is, if the ACC will overlook this, what else has it overlooked?

The point is, this entire "matter" should have been an evidentiary hearing with parties under oath.

Commission Fantasy – Where'd the ROO go to?

Speaking of sloppy and arbitrary, this may well be more than that; it may be illegal for all I know.

Docketed here http://images.edocket.azcc.gov/docketpdf/0000144182.pdf is an April 5th, 2013 email from Teresa Tenbrink, "Executive Aide" to Commissioner Susan Smith. In this email, Tembrink states she is responding "at the direction of Commissioner Bitter Smith" and that:

> "The Commissioners have not yet made a decision regarding Smart Meters. The process begins in a hearing before an Administrative law Judge and that Judge will issue a recommend order and opinion ("ROO"). Once the ROO is issued; the matter will be set

> for open meeting. The commissioners will not make their final decisions regarding the case until that Open Meeting which is the designated time for the parties to discuss the ROO."

There was never any hearing before a judge.

No ROO was issued.

No ROO was mentioned or discussed at the open meeting.

Does sidestepping procedure mean the meeting and the Decision are invalid, or just that Tembrink was lying? Either way, it doesn't look good.

Commission Fantasy – ACC Dance Craze ~ The Procedural Sidestep

Speaking of sidestepping procedure, it is worth noting here that proper procedure was decidedly lacking re the "smart" meter study that the ACC asked the Arizona Department of Health Services (ADHS) to perform.

At the December 12th, 2014 ACC meeting, commissioner Brenda Burns took time to defend herself against intervener Elizabeth Kelley's claim that the ACC had failed to follow a transparent process that should have included a formal written request to ADHS commissioning the "smart" meter health study, including a description of what the goals were, what questions needed to be addressed, and what the scope of work should be.

Commissioner Brenda Burns referred everyone to the staff meeting on August 5, 2013 in which she had made the proposal and it was approved. However that did not answer Kelley's actual criticism which was that there was no formal correspondence available showing what agreements there were between the two agencies.

After the meeting Kelley stated, "This is highly improper behavior from an administrative and accountability perspective and when public officials engage in this kind of behavior it looks like they are either deliberately hiding something or they are incompetent."

In another related irregularity, it was revealed by the Safer Utilities Network (SUN) in a submission filed in this docket by their attorney, Frank Mead, that the ADHS actually admitted to giving the ACC "an early draft of the report, to see if it covered the questions asked." (p. 1, here: http://images.edocket.azcc.gov/docketpdf/0000158555.pdf)

Incredible! How on earth would the ACC know if the study covered the questions asked, unless they knew what answers they wanted in the first place?

Despite the fact that ADHS also told SUN that, "The Corporation Commission did not have input on the Report's conclusions," this business stinks.

Because there was no formal correspondence between the ACC and the ADHS, no one really knows what questions were asked in the first place. In order to get answers, the right questions have to

be asked first, not later. It's backwards, totally improper and unethical to do a study then go to the people who commissioned the study and say essentially, “Is this what you wanted?”

And that brings us to the so-called “Conclusions of Law” section of the Decision.

Conclusions of Law(lessness)

As proved above, the commissioners' Decision has no basis in law. Indeed, the commissioners have repeatedly demonstrated their ignorance and disdain for the law, and the “public interest.”

The Decision states:

> “The Commission has jurisdiction over Arizona Public Service Company and over the subject matter of the application.” (p. 7, line 8)

Wrong! The commission has jurisdiction over Arizona Public Service Company, but it does *not* have jurisdiction over people's private property. The commission does *not* have the authority to allow APS to take people's property for the purpose of establishing APS's own communications network. APS has a property easement for a measuring device for the purpose of billing for the electrical service it supplies to that property. APS does *not* have an easement to operate a communications network that moves not just the property owner's information but the information of others. In other words, APS cannot use my property to send, receive or relay messages that do not even involve me and have nothing to do with the supply of electricity to my house.

The Decision states:

> “The Commission, having fully considered these matters and in balancing the public interest, concludes that it is in the public interest to approve the application as modified and set forth above.” (p. 7, line 22)

Wrong! As I have proved above, the commission has most certainly *not* “fully considered these matters,” nor have they “balanced the public interest.”

The Decision states:

> “For the purpose of this case, we will rely on the fair value rate base and fair value rate of return findings that we adopted in APS’s last rate case. These findings are appropriate because few customers are expected to select this program, so any corresponding change in revenue would be de minimis.” (p. 7, line 25)

Wrong! It does not matter how many customers select the program. As I proved above, it is impossible for anyone to “opt of” of something they never “opted in” to. I as proved above, the “smart” meter program is, by law, a voluntary, “opt in” program. It is robbery to expect anyone to pay anything for not volunteering. So APS's revenue issues – “de minimis” or de maximus – are irrelevant, and they are entirely APS's problem for making a poor and reckless business decision. If anything, people who refuse “smart” meters should get a refund for subsidizing “smart” meters and a “smart” grid they do not want and never asked for.

The Decision states:

> "We conclude that any pending motions/requests for further proceedings or other requests for relief are now moot and thus are deemed denied by this Order." (p. 8, line 1)

Wrong! People have been damaged by "smart" meters, and as time goes by, more people will be damaged. They will be contacting the utility and the ACC to complain, to ask for relief, etc., for damages incurred. Whether that damage be to health, property, and/or finances – or even to the broader community (the "public interest") in terms of *any* sort of diminished quality of life – *YOU* commissioners are *now and forever* liable due to your willful negligence in not "fully considering these matters" and for not "balancing the public interest" or even having a single clue as to what the public interest is.

Ain't nothin' "moot" about it.

The last section of the Decision is "Order."

(dis)Order(ly conduct)

The evidence presented in this appeal is clear. It fully substantiates that the ACC has neither 'fully considered these matters' nor 'balanced the public interest.' Additionally, highly questionable if not illegal practices have been engaged in by the ACC during this whole "smart" meter matter. As well, it looks to me that, anyone who signed this Decision is complicit in extortion, fraud, trespass, theft, endangerment of public safety, discrimination, violation of other statutes and codes, violation of ACC Decisions and procedures, willful negligence, and are in violation of their Oaths of Office.

Over a period of several years, all the signatories were repeatedly given the information contained in this appeal, and were repeatedly warned by me that their negligent actions may have legal repercussions. In short, the signatories have no more excuses.

I believe there may be a way out for the signatories however.

In appealing this fatally flawed Decision, I hereby call on the ACC to recognize their many mistakes, flawed behavior, face the facts and recall all wireless "smart" meters under its jurisdiction at once.

Fact: There is a plethora of "smart" meter issues the ACC has not addressed or considered, and the only way those issues can be successfully resolved is for the ACC to recall all wireless "smart" meters under its jurisdiction at once.

Supreme Fact: "Smart" meters harm through a number of mechanisms and means.

Even the ADHS "health" study, flawed as it was, did not conclude that "smart" meters were safe. The finding of the ADHS study – *a study the ACC itself asked for* – concluded "smart" meters are "not likely to harm." "Not likely to harm" does not equal safe. *"Not likely to harm" means that harm is in fact a possibility.*

If I have to pay to avoid something that may harm me, that is extortion. Payment to avoid harm – or even the threat of harm – defines extortion. Therefore the ACC must vacate its extortive Decision # 74871, and the ACC must recall all wireless “smart” meters under the ACC's jurisdiction at once.

Any new, wired or other type “smart” meter program must follow State law by being truly voluntary (“opt in”) with the fully informed consent of the customers as well as be fully vetted by independent cost/benefit and safety analyses.

This wrong, lawless, careless, deficient, negligent and dangerous Decision # 74871 is hereby appealed by me, today, January 5, 2015. Immediate relief is required as described above.

Warren Woodward
Intervener in Docket # E-01345A-13-0069
55 Ross Circle
Sedona, Arizona 86336
928 204 6434