

Warren Woodward
55 Ross Circle
Sedona, Arizona 86336
928 204 6434
w6345789@yahoo.com

Plaintiff, Pro Se

**SUPERIOR COURT OF ARIZONA
IN MARICOPA COUNTY**

Warren Woodward
PLAINTIFF,

v.

Arizona Corporation Commission, Bob Burns,
Tom Forese, Doug Little, Susan Smith, & Bob
Stump
DEFENDANTS.

Case # LC2015-000274

**REPLY TO DEFENDANTS' AUGUST 28,
2015 RESPONSE TO PLAINTIFF'S AUGUST
5, 2015 MEMORANDUM**

In their Response to Plaintiff's August 5, 2015 Memorandum, Defendants have presented a bizarre argument that has no basis in statutory law or in case law. In actual fact, Defendants have broken the law repeatedly. It seems Defendants are now trying to justify and escape their lawlessness.

Defendants stated:

“In this case, however, Plaintiff elected to file an *additional* application for rehearing. He was not required to do so,¹⁵ and this additional filing at the administrative level did not stay his time for appeal.

¹⁵ *State ex rel. Church v. Arizona Corp. Comm'n*, 94 Ariz. 107, 111, 382 P.2d 222, 225 (1963).”
Response, page 3, lines 15 through 17

Defendants have attempted to frame Plaintiff's Application for Rehearing of Arizona Corporation Commission (ACC) Decision # 75047 as an “*additional* application for rehearing” to ACC Decision # 74871. It is not.

In *State ex rel. Church v. Arizona Corp. Comm'n*,

“The first question presented is this: When, upon a motion for rehearing, the corporation commission hears new evidence, and thereafter affirms its original order, except in minor detail, must an aggrieved party apply for a second rehearing before bringing an action to set aside the order of the commission?”

State ex rel. Church v. Arizona Corp. Comm'n, 94 Ariz. 107, 109, 382 P.2d 222, 223 (1963).

By Defendants' own admission, in ACC Decision # 75047 the ACC did not 'affirm its original order [# 74871].' So *Church* is irrelevant to the Defendants' desire to dismiss.

Besides, *Church* holds that, under the specific facts of that case, a second application for rehearing was not required. Bizarrely, Defendants seem to be arguing that since a second application was *not required* in that instance, then somehow Plaintiff's application is *not permitted* in this case.

A true and faithful reading of *Church* actually supports Plaintiff's filing a Notice of Appeal in Superior Court after being denied a rehearing at the ACC. *Church* states:

“We find the only rule consistent with the legislative intent expressed in the above statutes [A.R.S. 40-253, 254 & 255] is this: When a party is aggrieved by a decision or order of the corporation commission, he must apply for a rehearing before the commission, setting forth the grounds upon which he relies. If rehearing is denied, or if he remains unsatisfied after the decision on rehearing, he may then seek review of the order or decision of the commission in the superior court under A.R.S. 40-254.”

State ex rel. Church v. Arizona Corp. Comm'n, 94 Ariz. 107, 111, 382 P.2d 222, 225 (1963).

That is exactly what Plaintiff did. Plaintiff was “aggrieved” by ACC Decision # 75047. Plaintiff applied for a rehearing before the commission. The rehearing was denied so Plaintiff, in a timely manner, sought review in Superior Court under A.R.S. 40-254.

Referring to the “doctrine of the exhaustion of administrative remedies,” *Church* also states:

“Under this doctrine, the commission must be given the opportunity to correct its errors before resort is had to provisions for judicial review”

State ex rel. Church v. Arizona Corp. Comm'n, 94 Ariz. 107, 110, 382 P.2d 222, 224 (1963).

Again, that is exactly what Plaintiff did. Before filing a Notice of Appeal in Superior Court, Plaintiff,

by filing an Application for Rehearing on May 12, 2015, gave Defendants another chance to comply with A.R.S. 40-253 (as well as another chance to cease perjuring themselves via their blatant lying in the Findings of Fact section of Decision # 75047). Plaintiff's application for rehearing was ignored by Defendants and so deemed denied on June 1st, 2015. That is the date from which Plaintiff then had thirty days under A.R.S. 40-254 to take this matter to Superior Court via his Notice of Appeal. Since Plaintiff filed his Notice of Appeal in Superior Court on June 25th, Plaintiff's Notice of Appeal was timely.

Defendants stated:

“The Commission subsequently granted Plaintiff's Application for the limited purpose of further consideration, and then considered this matter at three separate open meetings. Ultimately, on April 30, 2015, the Commission issued Decision No. 75047, which *expressly grants* Plaintiff's Application for Rehearing, thereby *rescinding* Decision No. 74871 pursuant to A.R.S. §40-253(E).”
Response, page 2, lines 13 through 17

But A.R.S. 40-253 does not permit granting an Application “for the limited purpose of further consideration.” Defendants made that up; they have attempted to write law. Under A.R.S 40-253, either the ACC grants an Application or it doesn't. There is no granting for “limited purpose” provided for in A.R.S. 40-253. Additionally, the meetings were not “open meetings,” and there were not three of them after the “limited purpose” grant; there were three altogether. The meetings were staff meetings, and the majority of the time spent considering Plaintiff's Application for Rehearing was in executive session. A.R.S. 40-253 calls for a rehearing (and within twenty days) after an Application for Rehearing is granted. Staff meetings are not rehearsings. Executive sessions are not rehearsings. Note that Defendants went vague concerning the dates of those staff meetings. Plaintiff therefore believes Defendants have attempted once again to dance around A.R.S 40-253's requirement of a rehearing within twenty days. Because there was no rehearing, ever, Plaintiff was denied his rights under law. As well, Defendants cannot seem to make up their minds as to when the rehearing was granted, January 22nd at their first

staff meeting or April 30th when they finally got around to filing an actual Decision. According to A.R.S. 40-253, Defendants do not get to grant an Application twice. There are no such qualifiers in A.R.S. 40-253. Under A.R.S. 40-253, a rehearing is granted or it is not. It is not granted for a “limited purpose” then finally “*expressly*” granted later on.

Defendants stated:

“The Commission's action specifically granted Plaintiff interlocutory relief and stayed APS's Application until the filing of APS's next full rate case.”
Response, page 2, lines 18 &19

Plaintiff did not request “interlocutory relief.” Plaintiff requested relief which was never publicly discussed nor addressed in any way by Defendants. Plaintiff did not request a “staying” of APS's Application. Additionally, and most importantly, staying APS's Application “until the filing of APS's next full rate case” *does not* constitute a rehearing within twenty days as called for in A.R.S. 40-253. However, from the audio minutes of the April 13, 2015 ACC staff meeting at which ACC Decision #75047 was made, it is clear Defendants' somehow expected they could substitute a rate case in the indeterminate future for a rehearing within twenty days – and get away with it. Defendants invented their own relief options for Plaintiff, three of them, then chose among them. Complying with A.R.S. 40-253's twenty day time frame for a rehearing was *not* among those relief options and, incredibly, complying with A.R.S. 40-253 was never even mentioned by Defendants. At the April 13, 2015 ACC staff meeting, ACC Legal's Janice Alward described the option the commissioners unanimously voted for thus:

“It's an Interlocutory Order, um, um, an intermediate decision, that would abrogate and rescind the decision that the Commission made in December and simply indicate that this, from the Commission's point of view, would be most helpful for them to consider these matters in the rate case, where they could consider them, um, more fully.”
ACC Staff Meetings Archives, April 13, 2015, at 1:6:36

Note that the commissioners consciously and willfully picked the option that “from the

Commission's point of view, would be most helpful for them." The commissioners did not pick the option required by law. A transcript of the April 13, 2015 ACC staff meeting discussion of this issue is included in this Reply as Exhibit A. The transcript is remarkable in that at no time are the ACC's obligations under A.R.S. 40-253 mentioned or discussed. As such, the transcript appears to reflect what is essentially an open conspiracy to pervert and break the law, and to deny Plaintiff his rights under law.

Further evidence of Defendants' open conspiracy to violate A.R.S 40-253 is seen in Exhibit B. Via a Public Records Request, Plaintiff acquired January 20th, 2015 emails between Defendant Susan Smith and her Policy Advisor, Laurie Woodall, an attorney. Note that ACC Legal Division attorney Janet Wagner was also included in the email thread. So there were at least two participants in the conspiracy who should have known better. Redacted on one thread but not on the other, Defendant Susan Smith had wanted to know "What can I do with this?" – "this" being issues brought by another intervenor appealing the same ACC Decision # 74871 as Plaintiff had. Note that Woodall's answer unabashedly proclaims the ACC's intent to consider violating A.R.S. 40-253 by "extending the time limits for us to make a decision." Of course, there is no provision in A.R.S. 40-253 to extend time limits.

Much of this issue involving A.R.S. 40-253, as well as the true time-line of events, has already been addressed in detail by Plaintiff in his *Appeal of Arizona Corporation Commission Decision # 75047* – the document that Defendants misleadingly and mistakenly referred to as Plaintiff's "additional application for rehearing." *Appeal of Arizona Corporation Commission Decision # 75047* was previously submitted as Exhibit #1 in Plaintiff's Notice of Appeal. Specifically, the section on pages 2 through 4 entitled "ACC Lawlessness Started Before Their Decision Was Made" exposes Defendants' multiple violations and perversion of A.R.S. 40-253, a perversion Defendants are now unabashedly attempting to perpetuate in this case. "ACC Lawlessness Started Before Their Decision

Was Made” is included in this Reply as Exhibit C.

In conclusion, Defendants' violations of A.R.S 40-253 as described herein (including in Exhibit C) comprise one of the reasons for Plaintiff's Notice of Appeal. Those violations are part of the pattern of illegality that pervades ACC Decision # 75047. As mentioned previously, in accordance with the *Church* opinion, Defendants were all 'given the opportunity to correct their errors.' They should not be permitted to pervert A.R.S. 40-253 or A.R.S. 40-254 in this case. In addition to denying Plaintiff his rights under law, such permission would set a very bad precedent.

As explained herein and in Plaintiff's August 5th Memorandum, Plaintiff's Notice of Appeal is timely. Superior Court does in fact have jurisdiction in this case.

RESPECTFULLY SUBMITTED this 8th day of September, 2015.

ORIGINAL of the foregoing filed this 8th day of September, 2015 with:
Clerk of the Court
Superior Court of Arizona
201 West Jefferson
Phoenix, Arizona 85003-2234

COPY of the foregoing hand-delivered this 8th day of September, 2015 to:
Judge Crane McClennen Division
201 West Jefferson
Central Court Bldg. 4A
Phoenix, Arizona 85003

COPY of the foregoing hand-delivered this 8th day of September, 2015 to:
Arizona Corporation Commission
Legal Division
1200 West Washington St.
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered this 8th day of September, 2015 to:
Bob Burns, Tom Forese, Doug Little, Susan Smith, & Bob Stump
1200 West Washington St.
Phoenix, Arizona 85007

By: _____
Warren Woodward

EXHIBIT A

ACC Staff Meeting ~ Agenda Item #13 ~ April 13, 2015
Transcript of audio minutes posted here:
<http://www.azcc.gov/divisions/broadcastservices/livebroadcast.htm>

Reconvening after one hour in executive session:

Chairwoman Smith 1:03:40

We are going to reconvene back into Open Session and we are again back on our final item on the staff meeting, uh and I would turn to members of the Commission... Obviously we have had several forms of orders presented to us, looking for some discussion and direction on where the Commission would like, like to head. (long pause) Don't all jump at once. (faint laughter) Commissioner Little?

Commissioner Little 1:4:13

Reason that I asked our legal department to prepare the sample orders was to just give us a series of choices. Um, the choices basically seem to be to essentially grant interlocutory relief and send this to a rate case, to have a stand alone hearing or to simply deny the request for a hearing. (various voices briefly speaking at once)
So I'd be curious as to the opinions of some of the other commissioners, what they would think of the various options. (pause) In an attempt to get the discussion started.

Chairwoman Smith

Commissioners? ... Mr. Stump?

Commissioner Stump 1:5:18

Sure. Um. Madam Chair uh, Ms. Alward, uh, the um, sample order (mumble) Evidentiary Hearing, um, that uh procedurally that would simply send it back to the hearing division, and then, could you walk us through procedurally what that might entail?

Ms. Alward 1:5:39

Commissioner, Chairman, if you granted, I think it is Sample Order #2, that would send it back to hearing that's my perception that that hearing would be as though APS had filed an application and we were then we were going to pursue uh an exploration of that through uh evidentiary hearing process. In other words, APS would have to support its application. And anyone interested in uh raising issues then, like intervenors, uh would have that opportunity to do so. So

it's basically back to the beginning, I think. And that would be my recommendation that the hearing would proceed as though APS was going to support its application afresh.

Commissioner Stump 1:6:27

And Sample Order 1 would uh, for all intents and purposes, send this to the... Or maybe this would be resolved within the context of a rate case.

Ms. Alward 1:6:36

That's correct. It's an Interlocutory Order, um, um, an intermediate decision, that would abrogate and rescind the decision that the Commission made in December and simply indicate that this, from the Commission's point of view, would be most helpful for them to consider these matters in the rate case, where they could consider them, um, more fully. It also is without prejudice to either party to pursue. And I think it specifically notes, that, um, Mr. Woodward, who is here, has a complaint docket and he could pursue that as well without prejudice. And then I think that the last order is self-evident. It denies relief and denies hearing.

Chairwoman Smith

Commissioner Little

Commissioner Little 1:7:26

So, Ms. Alward, if I understand correctly, um, if we were to select Option for Sample Order #2, that would not be prejudicial to any party that was an intervener, to actually revisit this issue, during a rate case, correct?

Ms. Alward 1:7:47

Uh, there would be a... If we sent it to hearing, there would be a proposed order and you would decide that. And, but merely because you made that decision, wouldn't preclude any intervenor from coming back in the rate case and pursuing issues because rate case is a fresh look at rates.

Commissioner Little 1:8:08

So if I am interpreting what you are saying correctly, we could have a hearing and then have a hearing again.

Ms. Alward 1:8:17

If, if, if, an interv... that's correct, because you would have one decision, and then the rate case would be filed, eventually, and then there is nothing to prevent intervenors from revisiting the issues again, because every rate case is in effect a fresh look at rates.

Chairwoman Smith 1:8:37

Ms. Alward, as a follow up to Commissioner Little's question and Commissioner Stumps' inquiries, um, any of these options uh when the Commission make a decision, still does not change the matter of practice in terms of what's happening with deployment, that AMI meters are still being deployed. We're simply walking through the discussion about the fee and the opt-out policy that we determined last November, early December.

Ms. Alward 1:9:09

That's part of what is going on when you, uh, if you would take Option 1, you would be rescinding that decision, so you simply, if you take Option 1, you haven't made any decision about any of the issues that, uh, Mr. Woodward has raised.

Option 2 would give him a chance to raise those issues in a hearing. Option 3 would deny that opportunity. Option 1 says, let's do this in a rate case because that's where I feel it's most appropriate for, for me if you voted for that, to look at the issues raised.

Chairwoman Smith

Thank you. Commissioner Little?

Commissioner Little 1:9:51

So as a newcomer to the Commission, I'm asking this as an informational question. Are the options available to us for the decision making process, basically potential remedies or potential ways to resolve the issue? Uh, do we have more tools in our tool box in a rate case than in a specific hearing or are the remedies available basically the same in both instances?

Ms. Alward 1:10:17

A rate case give you a full panoply of, of opportunities to explore issues that are most helpful to you as you make, as the decision maker. You can explore the issues as you feel is appropriate or direct the parties to do so. So a rate case is an ideal way for setting rates and to explore issues raised by parties.

That's, that's the way, I think, the courts might also view issues that are presented here.

(pause)

Commissioners

Chairwoman Smith

Um, probably we are going to need a motion. I mean, I think, um, from as you can tell from the direction of the questions, the full Commission is, is trying to interpret what the best course of action is I, I for one would, would prefer to have this issue resolved sooner rather than later, however I am sensitive to what council is advising us in terms of multiple hearings which may not be the best for

rate payers and, and intervenors as well. Um, I guess my question would be maybe to complete the cycle and then look for.. I'm thinking Commissioner Burns may have a motion he wants to make but um, before we do that, in terms of timing, obviously we don't know when a rate case would be filed, we know when the earliest it could come, but this rate conversation could be in 16, 17, whenever APS files their case. Correct?

Ms. Alward 1:11:54

Well, at the present time it is up to APS to file.

Chairwoman Smith

Correct.

Ms. Alward

If it feels that there, there's some problem with, with whatever you decide today, nothing prevents them from filing a rate case as soon as, as they would like. Because we would then address it in that manner. There's no date certain for filing this rate case. There had been in the past. That's been abrogated. So, if a party is dissatisfied with this, a public utility, there is nothing that precludes them from filing when they feel they want relief.

But, but if you are going to go with Sample Order 1, if you are going to consider that, I, I thought I'd like to make some suggestions. There was an inadvertent um...

Chairwoman Smith

Uh Ms let's...

Ms Alward

an, an inadvertent...

Chairwoman Smith

Let's, let's see what...

Ms Alward

failure to include something...

Chairwoman Smith

If we are going to go that direction then absolutely I would love for you to provide the input so we can put that on the record. Um, Commissioner Burns are you?

Commissioner Burns 1:13:04

Yeah, I would make the motion that we support the ah, Sample Order #1, with the corrections that are being proposed.

Chairwoman Smith

And, so for the record, for the motion maker, um I can read off what I believe this to be. And Ms. Alward, if you correct me if I, I misread them. Is that appropriate? Or would you prefer for you to read them into the record?

Ms. Alward 1:13:24

That would be fine.

Chairwoman Smith 1:13:26

OK. Um, a, Commissioner Burns, if this is where the Commission moves, um, the Sample Order #1 would need to be revised on

- Page 3, finding of fact #22, in line 20, to say, "we will also require APS to track the unrecovered costs, etc. etc."
- Moving on to line #22, "APS may defer those unrecovered costs and may request recovery of any reasonable and prudent unrecovered costs in the next rate case." So those are the 3 insertions of unrecovered in finding of fact #22.
- Moving on to page 4, finding of fact number 23, we need to add, um, on to line 18, "and without prejudice to Mr. Woodward to pursue his complaint in docket number E01345 and 14-0113.
- And then finally in page 5, um, line 4, in before costs, again, we would say: "it is reasonable to allow APS to defer the reasonable and prudent unrecovered costs discussed in finding of fact #22,
- and moving on to line #13 on that same page, "or that APS may defer reasonable and prudent unrecovered costs discussed in finding of fact #22.

Ms. Alward, have I captured those correctly for the record?

Ms. Alward 1:14:48

Yes, thank you. And if, if whatever order you vote for, we'll prepare it for your signature, and will include the date of this open meeting because that was left out as to be determined. And so we'll just complete the order and correct any typographical errors that we may find.

Chairwoman Smith

And Commissioner Burns are those, um, changes acceptable to you for your motion?

Discussion by Commission?

As indicated this would not have been my preferred mechanism, but may be the most prudent one, so...

Commissioner Stump?

Commissioner Stump 1:15:23

Yeah, Commissioner Bitter Smith, I would associate myself with those comments. I too would rather resolve this uh sooner than uh later. But ah, certainly ah, ah appreciate ah Commissioner Burns and my colleagues and the will of the Commission and...

Chairwoman Smith

And I too thank Commissioner Burns for making the motion.

Commissioner Little 1:15:44

I would just like to add to that comment. I think we have a series of choices here that, you know, I, I would, I would tend to think that none of these are great choices. Um, I think there is an importance to try to resolve this and give opportunity for due process. I think if our decision were to be reviewed by a competent court of jurisdiction that would be an important factor for their consideration, that we did in fact grant proper due process.

Um, I think, looking at this, um, we could have one hearing or we could have two hearings. I would tend to say that while it's probably not the most optimum situation, um, in the interests of the ratepayers' and taxpayer money to have two hearings, would be to me, duplicative. We would be discussing the same issues twice. So, um, I would uh ... not liking any of the choices I think that Sample Order #1 is probably the least of all evil.

Chairwoman Smith 1:17:08

All right, seeing no further discussion all in favor of the motion signify by saying Aye

All the Commissioners in unison

Aye

Chairwoman Smith

All those opposed?

Motion Passes.

Commissioner Burns, thank you. Um, I've nothing further on our agenda this afternoon, but I will see you all tomorrow morning for open meeting. Thank you very much.

Meeting stands adjourned.

EXHIBIT B

Laurie Woodall

From: Laurie Woodall
Sent: Tuesday, January 20, 2015 4:59 PM
To: Connie Walczak
Cc: Steven Olea; Teresa Tenbrink
Subject: Fwd: Mr. Mumaw's reference: Decision 73183 (E-01345A-13-0069)

Please call Ms. Ferre and tell her the purpose of the agenda item is to consider extending the time limits for us to make a decision whether or not to grant her request for rehearing. You need not go into the substance of her arguments. We simply want to be sure she understands the process for the Staff Meeting.
Thank you!

Sent from my Verizon Wireless 4G LTE Smartphone

----- Original message -----

From: Susan Bitter Smith
Date: 01/20/2015 4:42 PM (GMT-07:00)
To: Laurie Woodall
Cc: Janet Wagner
Subject: Fw: Mr. Mumaw's reference: Decision 73183 (E-01345A-13-0069)

Laurie- what can I do with this?

Susan Bitter Smith
Chairman of the Arizona Corporation Commission
Chairman of the Western Conference of Public Service Commissioners
1200 W. Washington
Phoenix, AZ 85007
602-542-3625

From: BitterSmith-Web <bittersmith-Web@azcc.gov>
Sent: Tuesday, January 20, 2015 4:27 PM
To: Susan Bitter Smith; Laurie Woodall
Subject: FW: Mr. Mumaw's reference: Decision 73183 (E-01345A-13-0069)

Here is an email directly to you re: Staff meeting on Thursday.

Teresa Tenbrink
Executive Aide to Chairman Susan Bitter Smith
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007
(602) 542-3625

From: Patricia Ferre [mailto:] Personal Information
Sent: Tuesday, January 20, 2015 9:43 AM

Laurie Woodall

From: Laurie Woodall
Sent: Tuesday, January 20, 2015 5:00 PM
To: Janet Wagner
Subject: Fwd: Mr. Mumaw's reference: Decision 73183 (E-01345A-13-0069)

Fyi

Sent from my Verizon Wireless 4G LTE Smartphone

----- Original message -----

From: Laurie Woodall
Date: 01/20/2015 4:58 PM (GMT-07:00)
To: Connie Walczak
Cc: Steven Olea , Teresa Tenbrink
Subject: Fwd: Mr. Mumaw's reference: Decision 73183 (E-01345A-13-0069)

Please call Ms. Ferre and tell her the purpose of the agenda item is to consider extending the time limits for us to make a decision whether or not to grant her request for rehearing. You need not go into the substance of her arguments. We simply want to be sure she understands the process for the Staff Meeting.
Thank you!

Sent from my Verizon Wireless 4G LTE Smartphone

----- Original message -----

From: Susan Bitter Smith
Date: 01/20/2015 4:42 PM (GMT-07:00)
To: Laurie Woodall
Cc: Janet Wagner
Subject: Fw: Mr. Mumaw's reference: Decision 73183 (E-01345A-13-0069)

Laurie- [REDACTED] *attorney-client*

Susan Bitter Smith
Chairman of the Arizona Corporation Commission
Chairman of the Western Conference of Public Service Commissioners
1200 W. Washington
Phoenix, AZ 85007
602-542-3625

From: BitterSmith-Web <bittersmith-Web@azcc.gov>
Sent: Tuesday, January 20, 2015 4:27 PM
To: Susan Bitter Smith; Laurie Woodall
Subject: FW: Mr. Mumaw's reference: Decision 73183 (E-01345A-13-0069)

EXHIBIT C

ACC Lawlessness Started Before Their Decision Was Made

The ACC's habitual lawlessness manifested itself before Decision # 75047 was even made.

I appealed Decision # 74871 under A.R.S. 40-253.

40-253. Application for rehearing; hearing; effect; decision

A. After any final order or decision is made by the commission, any party to the action or proceeding or the attorney general on behalf of the state may apply for a rehearing of any matter determined in the action or proceeding and specified in the application for rehearing within twenty days of entry of the order or decision. Unless otherwise ordered, the filing of such an application does not stay the decision or order of the commission. If the commission does not grant the application within twenty days, it is deemed denied.

If the commission grants the application, the commission shall promptly hear the matter and determine it within twenty days after final submission.

Here's what actually happened.

I appealed within the 20 day period. The ACC then had 20 days to deal with my appeal. The ACC could have ignored my appeal altogether and after 20 days that would have meant I was denied.

Twenty days would have expired on January 26, 2015. Instead the ACC met January 22 in a staff meeting. (Staff meeting agendas and schedules are available for verification at the ACC website, specifically here:

<http://www.azcc.gov/Divisions/Administration/Meetings/Agendas/2015/2015StaffMeetings.asp> .)

At that staff meeting the ACC granted both Pat Ferre's and my separate appeals. At the same time the ACC agreed to postpone making a decision. That's not how the ACC put it but that's in effect what happened.

In Decision # 75047, here's how the ACC described their action at the January 22nd staff meeting:

14. On January 22, 2015, we granted both applications for rehearing for the limited purpose of further consideration.

Note that A.R.S. 40-253 does not give the ACC the discretion of "limited purpose." A.R.S. 40-253 is clear. **"If the commission grants the application, the commission shall promptly hear the matter and determine it within twenty days after final submission."**

So, on January 22, 2015, my appeal was granted. However, the ACC did *not* "promptly hear the matter and determine it within twenty days." Instead, the ACC waited 39 days until March 2 to postpone determining it again. Note that A.R.S 40-253 does not give the ACC that discretion either.

At its March 2, 2015 meeting, the ACC, instead of determining the matter, voted to ask its Legal Division to devise some "sample orders of alternative dispositions" – in other words some options to deal with my appeal. The March 2nd meeting in which this was done was another staff meeting.

The “sample orders” were filed March 10th but were not decided upon until April 13th, a full 42 days *after* the ACC's previous 39 days of stalling. Again, note that A.R.S 40-253 does not give the ACC that discretion.

Once more, the law is clear: “If the commission grants the application [which it admits it did on January 22, 2015], the commission shall promptly hear the matter and determine it within twenty days after final submission.” The law does not say, “Except when Warren Woodward is appealing in which case you can take as long as you like.”

Compounding its lawlessness, note also that in Decision # 75047 the ACC attempted to “re-grant” that which it already granted on January 22nd. Amazingly, the ACC states in Decision # 75047, “IT IS THEREFORE ORDERED that the Applications for Rehearing filed by Warren Woodward and Patricia Ferre are hereby granted, as discussed herein.”

Further compounding its lawlessness, this “re-granting” would postpone hearing and determining the matter to some undefined future date by illegally shuffling the matter into APS's next rate case which, the Decision notes, might be as early as June of this year or might not be for 18 to 24 months – either way, obviously not the 20 days required by law.

Like I said, amazing. But wait, there's more.

Decision # 75047 states, “IT IS FURTHER ORDERED that Decision No. 74871 is specifically rescinded and abrogated pursuant to A.R.S. 40-253(E), and relief is granted on an interlocutory basis, as discussed herein.”

The key words above are “pursuant to A.R.S. 40-253(E).” Here's what the E section of A.R.S. 40-253 states:

E. If, **after a rehearing and a consideration of all the facts**, including those arising since the making of the order or decision, the commission finds that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change, or modify the order or decision, and such order or decision has the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision, unless so ordered by the commission.

The key words in section E are “**after a rehearing and a consideration of all the facts.**”

Those words are key because *there was no rehearing.* Staff meetings are not rehearings.

Those words are key because *there was no “consideration of all the facts.”*

So the ACC violated A.R.S. 40-253(E) by not having a rehearing and by only very briefly discussing the issue in some staff meetings. Those staff meeting discussions also had nothing to do with “all the facts” of the matter, but everything to do with how the ACC might postpone the legal predicament in which my original appeal had placed it.

At the last of those staff meetings the ACC spent about an hour in executive session but, because there is no record of what was said in that session, we have no idea if “all the facts” were considered or not. Additionally, a rehearing, unlike an executive session, is open to the public and all parties. Thus, at no time would an executive session seem to fit under the spirit or the word of A.R.S. 40-253(E). Judging by how lawlessly convoluted the ACC's subsequent Decision # 75047 turned out, as well as by the commissioners' tortured public dialogue after their executive session, I suspect the majority of the executive session time was spent trying to weasel out of the pickle in which the commissioners found themselves.

The way the ACC has doubled down on lawlessness in its recent decision reminds me of what Tacitus said, “ Crime, once exposed, has no refuge but in audacity.”

Since the ACC's crime spree has reached the audacious level, the Phoenix FBI and the investigators at the Arizona Attorney General's Office who are handling the current ACC corruption scandal will be included on the Service List for this docket. The copious lawbreaking involved in Decision # 75047 encapsulates much of what's wrong at the ACC, and the FBI and AG should know about it. Perhaps the FBI or the AG will put a stop to the ACC's blatant disregard for law. God knows I've tried!