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BEFORE THE ARIZONA CORPORATION

IN THE MATTER OF THE APPLICATION OF) DOCKET NO.
 ARIZONA PUBLIC SERVICE COMPANY FOR) E-01345A-10-0006
 APPROVAL TO EXTEND COMPETITION RULES)
 COMPLIANCE CHARGE.)
 _____) OPEN MEETING

At: Phoenix, Arizona
 Date: March 2, 2010
 Filed: **MAR 09 2010**

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

AGENDA ITEM NO. 23

Arizona Corporation Commission
DOCKETED

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on to be heard at Open Meeting
3 before the Arizona Corporation Commission, in Hearing
4 Room 1 of said Commission, 1200 West Washington Street,
5 Phoenix, Arizona, commencing at 3:35 p.m. on the 2nd of
6 March, 2010.

7

8 BEFORE: KRISTIN K. MAYES, Chairman
9 GARY PIERCE, Commissioner
10 PAUL NEWMAN, Commissioner
11 SANDRA D. KENNEDY, Commissioner
12 BOB STUMP, Commissioner

13

APPEARANCES:

14

15 For Arizona Public Service Company:

16 Mr. Thomas Mumaw

17

18 For the Residential Utility Consumer Office:

19

20 Mr. Daniel Pozefsky

21

22 For the Arizona Corporation Commission Staff:

23

24 Ms. Linda Jaress
25 Mr. Steve Olea
 Mr. Elijah Abinah

26

27 For AECC:

28

29 Mr. C. Webb Crockett

30

31

 COLETTE E. ROSS
 Certified Reporter
 Certificate No. 50658

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1 CHMN. MAYES: We will move to Item 23 on the,
2 agenda, APS' application for approval to extend its
3 competition rules compliance charge. We will allow
4 everybody to get settled.

5 Mr. Pozefsky, do you want to come sit at counsel
6 table?

7 (An off-the-record discussion ensued.)

8 CHMN. MAYES: Okay. We will go ahead and go
9 into Item No. 23. And this is a Staff item so we will
10 start with Staff.

11 MS. JARESS: Madam Chairman Mayes,
12 Commissioners, Linda Jaress for Staff. In 1999, the
13 Commission approved a settlement agreement which granted
14 APS full recovery of certain reasonable and prudent
15 costs related to the Commission's electric competition
16 rules. A 2005 decision set the amount of competition
17 related costs to be recovered at 47.7 million and
18 adopted a competition rules compliance charge, or CRCC,
19 of .00338 per kilowatt hour. A five-year period of
20 recovery was also adopted.

21 In the event the full amount was not recovered
22 by the end of five years, APS was to file an application
23 to recover the remaining balance. The balance of the
24 unrecovered costs is expected to be approximately
25 \$5 million on April 1st of this year when the five-year

1 recovery period is over. APS would like to extend the
2 CRCC until the balance is recovered, which they estimate
3 to be in September.

4 Staff believes the potential for underrecovery
5 was foreseen by a previous Commission decision and that
6 this application was consistent with that decision.
7 Staff recommends that APS' request to extend the CRCC
8 until the balance is recovered be approved.

9 CHMN. MAYES: Okay. Thank you, Ms. Jaress,
10 appreciate it.

11 Mr. Mumaw, and then we will go to Mr. Pozefsky.

12 MR. MUMAW: Thank you, Madam Chair, members of
13 the Commission. I don't really have much to add to what
14 Ms. Jaress indicated.

15 We did make this application. The underlying
16 Decision 67744 required us to make a filing with the
17 Commission to deal with any over or undercollection at
18 the end of the five-year amortization period. This
19 application is responsive to that particular
20 requirement.

21 Again, as indicated in the Staff report and in
22 the application, the primary culprit, if one wants to
23 view it that way, Madam Chair, is that of the decline in
24 sales relative to the forecast that was made back in the
25 summer of 2004 and which was the basis of the charge.

1 It should come as no secret to anybody in this room that
2 we are in the midst of the kind of a severe recession
3 and that has significantly impacted sales very
4 specifically in 2009 but also in 2008, but I think the
5 full scope of the downturn hit in 2009. And so we ended
6 up short by roughly, I think, \$4.6 million and some
7 change. And this was our proposal just to extend the
8 charge for several more months until we had recovered
9 the full balance, which, again depending on the summer
10 weather, but we anticipate will be in September.

11 CHMN. MAYES: Okay. Thank you, Mr. Mumaw.

12 Mr. Pozefsky, grab the microphone there.

13 MR. POZEFSKY: Good afternoon, Madam Chair.

14 Good afternoon, Commissioners. I hope everybody got
15 a copy of our filing. I realize it was made last night
16 towards the end of the day. I do have extra copies if
17 anybody needs exhibits.

18 I don't have much to add. I mean our comments
19 speak for themselves. I am really here to answer any
20 questions that you might have of us.

21 CHMN. MAYES: Okay.

22 COM. NEWMAN: I have a question for RUCO.

23 CHMN. MAYES: Oh, I am sorry, Commissioner

24 Pierce is on the board. Throw your name up there, Paul.

25 COM. PIERCE: Thank you for your comments, for

1 RUCO's comments that you provided, Mr. Pozefsky. It
2 appears that, and typically I think I look at this the
3 same way, that I am not opposed to this but kind of feel
4 like that somebody hid the ball during the settlement
5 agreement when probably they didn't need to. I don't
6 know if it would have been a substantive change to
7 anything, but I think it, you know, or remind me this is
8 part of the deal, you know, this is something that is
9 going to affect rates.

10 Now, I don't know that APS -- it is just the
11 perception I got from you that you felt like perhaps
12 they should have been forthcoming and weren't. Is that
13 your opinion?

14 MR. POZEFSKY: It is, Commissioner Pierce.
15 Everything counts and everything matters, especially
16 when you look at the totality of the agreement.

17 COM. PIERCE: I see. And I just wondered why it
18 wasn't. For APS, is there, is the reason this was
19 neglected, was it overlooked or just you didn't feel
20 like it was really a part of the, a part of this, of the
21 discussion in the agreement that needed to be brought
22 up?

23 MR. MUMAW: Madam Chair, Commissioner Pierce, in
24 part it was the latter. But I will tell you the primary
25 reason was that, at least when we were negotiating the

1 settlement we weren't aware of the magnitude of the
2 potential undercollection. Although we do track, we
3 meaning somebody in the company does, track the monthly
4 collection of the CRCC, they do not do a projection to
5 see how much we will have recovered by XYZ date. And
6 for all I know, they weren't even aware that the charge
7 would have ended on April 1st barring some sort of
8 Commission action.

9 We first became, we meaning regulatory, became
10 aware of this when we were trying, ironically, to
11 calculate our revenues for purposes of the regulatory
12 assessment to the Commission, which you are probably
13 aware we do the first week of January of each year. And
14 that's when we became aware of it. And after
15 considering whether there were other alternatives to
16 this, we contacted Staff regarding potential extension.
17 We didn't think anyone had any other creative ideas so
18 we went ahead and filed the application.

19 I do know that we did discuss with, I did, with
20 Mr. Pozefsky, but we did not discuss it with them prior
21 to our filing it. And I, frankly, can't tell you
22 whether it came up at all during the discussions in the
23 settlement.

24 I know, as we indicated in the application, for
25 purposes of all the bill analyses and the impact on

1 customers, we did not assume that this charge would go
2 away in April. That charge is shown on all the bill
3 analyses. So we did not try to jump the gun in any way
4 on that.

5 Again, if there was some misunderstanding
6 between ourselves and RUCO, we apologize, and I believe
7 Mr. Guldner already apologized to Ms. Jaress on this
8 issue, but there was certainly no intent to hide the
9 ball or mislead anyone. As I indicated in my original
10 opening response to the Chairman's inquiry, we didn't
11 think it had come a particular surprise that our sales
12 were down, especially in the last two years. But,
13 again, if there was any misunderstanding, I guess all we
14 can do is apologize.

15 COM. PIERCE: So really it was inadvertent that
16 this component is really disconnected and the folks
17 involved in this component of it were disconnected from
18 the settlement agreement and the things that went along
19 with that. So you are saying those folks doing the one
20 side weren't really connected in any way to the other
21 side and so it just was an inadvertent oversight
22 to -- and that perhaps, I am assuming then, and maybe
23 you should tell me, that if people were aware that they
24 would have connected this and connected it into so that
25 it is -- whether it was pulled into the agreement -- but

1 that it was sitting out there and people were aware of
2 it. Because it appears that just nobody was aware of
3 something that we are aware of but weren't thinking
4 about.

5 MR. MUMAW: Madam Chair, Commissioner Pierce,
6 absolutely. Certainly when you are collecting a fixed
7 amount of dollars over a volumetric or kilowatt hour
8 charge, you are never going to hit it right on the nose.
9 And we knew we wouldn't hit it on the nose and the
10 original Decision 67744 acknowledged that we weren't
11 going to hit it on the nose. But I guess I would like
12 to have you and the other Commissioners believe that if
13 we thought that the discrepancy one way or the other was
14 more than, you know, a couple hundred thousand dollars
15 tops we would have raised it, as compared to the, you
16 know, better part of \$5 million.

17 COM. PIERCE: Thank you, Madam Chair.

18 CHMN. MAYES: Commissioner Newman.

19 Mr. Crockett, hi. I didn't have a slip from
20 you, but --

21 MR. CROCKETT: I did make a filing.

22 CHMN. MAYES: You did make a filing, okay. Can
23 I have you sit down for a second while Commissioner
24 Newman asks a question. Then I will --

25 COM. NEWMAN: I read Mr. Crockett's brief and I

1 see that they have no objection, Freeport-McMoRan and
2 large industrial users, but I may have an objection.
3 And, Mr. Pozefsky, I -- you know, very, very long
4 process now that we went through and we talked about
5 bubbles and, you know, how much the Commission could
6 change a settlement agreement, how difficult it was for
7 us to get as many people on board to vote for that
8 settlement agreement. I remember having a difficult
9 time even getting a couple hundred thousand dollars out
10 of an advertising fund from APS to do deliberative
11 polling.

12 So in that context, you know, I am sitting up
13 here wondering, you know, why we should, the date has
14 come and gone, why we should supplement this with
15 \$5 million. I mean you are RUCO. I am sort of sitting
16 here in ratepayers' boots and I am feeling the same way.
17 What do you have to say about those comments and what I
18 am feeling about this right now?

19 MR. POZEFSKY: Well, I think, Commissioner, my
20 response to that would be this was a charge that was
21 settled back in 2005, part of the settlement agreement.
22 And it was not our -- APS deserves the money. I mean I
23 don't think from our perspective that we would, we would
24 suggest that they be punished by somehow losing the
25 money that they are entitled to. Again, that wasn't the

1 point of raising this.

2 The point of raising it obviously was that, you
3 know, we were unhappy, I don't know how else to say it,
4 we were unhappy with the idea that this wasn't brought
5 about. I don't deny, I have talked to Mr. Guldner, and
6 I don't deny that he didn't find out about or the
7 company wasn't aware of it until January 4th or
8 whenever. That's what they say; I take APS at its word.

9 What I think was more problematic from our
10 perspective, I don't know how many times we went through
11 the process and we heard that the rate increase was
12 going to be timely ameliorated so it corresponded or
13 would be real close. And I never heard anyone say
14 anything else to that side, anything else that disagreed
15 with that. And here we are, less than a month after the
16 open meeting, and we now have this motion to extend.
17 And we sat back and went through all the documents and
18 saw -- we just weren't -- we just were unhappy with it.

19 So that would be my response. The point wasn't
20 to deny them the money we believe that, we believe they
21 are entitled to.

22 COM. NEWMAN: I will ask you this question and I
23 will ask Mr. Mumaw a similar sort of question. The
24 settlement and the rate of return and everything was all
25 settled on the settlement conference last month. So how

1 is this \$5.1 million to be treated? Is it just extra
2 revenue? Is there a chance that we could have limited
3 rates even, you know, by a dollar or something in this
4 case?

5 MR. POZEFSKY: No. It wouldn't have any impact
6 on the revenue, as I understand it. It won't have any
7 impact on the revenue, the rate increase that you gave
8 them. They are not going to collect any more revenue.
9 But what it would do is the time where, the timing in
10 which ratepayers would actually receive a decrease, and
11 it will be a small decrease, in rates is going to be
12 extended. It is not going to happen in April; it is
13 going to happen in September, which wasn't our
14 understanding or something that we felt we bargained
15 for. But we understand it and, as I say, we are not
16 happy about it.

17 COM. NEWMAN: Mr. Mumaw, what, I certainly -- I
18 mean we have heard before lack of sales and I understand
19 that's the state of the market and that would be a
20 reason for a misestimate of this date. And I don't -- I
21 guess I want to know from the company what are you going
22 to do with the \$5.1 million if it wasn't figured into
23 all the grand numbers that we were talking about in the
24 rate case.

25 MR. MUMAW: Madam Chair.

1 COM. NEWMAN: Where does the money go?

2 MR. MUMAW: I apologize. Madam Chair,
3 Commissioner Newman, first of all, it was factored into
4 the rate case --

5 COM. NEWMAN: It was?

6 MR. MUMAW: -- in the sense it was factored in
7 we would recover the full amount. Secondly,
8 Mr. Pozefsky is correct, this is what we call a
9 nonearnings event in the trade. And I won't bore you
10 with the accounting unless people desire to be bored.

11 COM. NEWMAN: No, I would love to know what
12 nonearnings mean.

13 MR. MUMAW: Okay. What happens is this has all
14 been recorded on the balance sheet as a regulatory
15 asset, in other words, an amount that the company has
16 spent that they are entitled to recovery in the future.
17 And what happens, as the dollars come in, we amortize
18 the asset, just like depreciating a tangible asset, we
19 amortize this asset. So for every dollar that comes in,
20 we amortize a dollar of expense.

21 So it is an earnings neutral event for the
22 company. It is obviously a slight benefit for the cash
23 flow to the company but it is an earnings neutral event.
24 And that's similar to other regulatory assets that the
25 company has that the Commission has allowed recovery

1 over, you know, XYZ period of time.

2 COM. NEWMAN: I mean this could be one of the
3 most complicated things I have ever had to try to
4 understand in terms of, you know, how the charge came
5 up, how you, the players, came up with the charge. And
6 I don't want to get into all those questions
7 necessarily, but I mean competition didn't happen and
8 you got the charge and you are just saying you are owed
9 that benefit from the original agreement.

10 MR. MUMAW: Madam Chair, Commissioner Newman,
11 again, as indicated by Ms. Jaress, kind of the origin of
12 this was way back before most of the people in this
13 room's time except me. The Commission agreed in a
14 settlement that when we were going to competition that
15 APS would be able to recoup all the costs that it had
16 incurred or it would incur in the move towards
17 competition, and also divestiture at that time was
18 within the Commission's regulations. However, we didn't
19 know obviously in 1999 how much it was all going to cost
20 so we were asked to kind of defer that as a regulatory
21 asset until such time as, my term, the final bill was
22 known. And at that point, the Commission said they
23 would allow recovery.

24 In the 2005 order, by that time this Commission
25 had wisely, in my opinion, stopped that move, and kind

1 of all the bills were in and so forth and we knew how
2 much had been incurred. And Staff reviewed it as part
3 of that case, and other parties that were in that case,
4 trying to speed this up. And it was determined that the
5 total amount was 47 million, 47.7 million and some
6 change that the company had incurred. And it was agreed
7 at that time, again in a settlement that the Commission
8 approved, that we would amortize that over a five-year
9 period with interest at the Treasury bill rate at a
10 fixed charge, and again, as the order indicated, at the
11 end of the five years come back and ask direction from
12 the Commission as to what to do with the over or
13 underrecovery, which again, as Ms. Jaress indicated, it
14 was anticipated that we wouldn't be right on the nose.
15 What we had not anticipated, and again I apologize for
16 not forecasting the recession, but we had not thought we
17 would be anyplace close to this short. But that's where
18 we are today, Commissioner Newman.

19 COM. NEWMAN: Last question. On the interest
20 part of this, by a period of time being extended, do you
21 collect more pursuant to the interest than we prudently
22 should allow? Do you hear what I am saying?

23 MR. MUMAW: I do think, Commissioner Newman,
24 until the balance is fully recovered, which in my
25 statement we anticipated in September, the unrecovered

1 balance, which admittedly is, you know, 4.6 million and
2 shrinking, so it is obviously going down every month,
3 but that balance would continue to accrue interest. I
4 would indicate a crispy .45 percent. So it is not like
5 we are getting very rich on it. It is less than half
6 a percent, which again it is nominated, like so many
7 other things at the Commission, on the 12-month Treasury
8 bill effective the first business day of every year.
9 And it also comes as no secret the Treasury bills have
10 been real low for a significant period of time. And the
11 current one is .45 percent.

12 But to answer your question, yes, there would be
13 some additional interest dollars.

14 COM. NEWMAN: So the company is -- you have a
15 right to that? Somebody sitting up here in my position
16 might ask the question whether you do have a right to
17 that. Just, if you can give me a strong statement, I
18 will be quiet.

19 MR. MUMAW: Yes, Madam Chair, Commissioner
20 Newman, I guess that's what we agreed to back in 2004
21 and the Commission approved in 2005. It is truly a
22 nominal interest rate. As you know, for most of our
23 assets, we request and the Commission grants our full
24 authorized rate of return.

25 In this case, similar to some other ones, like

1 PSA undercollections and DSM energy efficiency program
2 under or overcollections, we use this 12-month nominal
3 Treasury rate, which has always been low but in the last
4 couple years has been really, really low. We frankly
5 think that's very undercompensatory for the company,
6 but, again, that's what we agreed to and that's what the
7 Commission ordered and that's what we are living by.
8 So...

9 COM. NEWMAN: Okay. So that was my -- I wanted
10 to get to the --

11 MR. MUMAW: That's as strong as I can get,
12 Commissioner.

13 COM. NEWMAN: You are saying, in other words,
14 that it is a rather de minimis amount, you agreed to a
15 standard that's fairly low and, even though the
16 collection time is more, it is still within a reasonable
17 request.

18 MR. MUMAW: Yes, Madam Chair, Commissioner
19 Newman. I can assure you that we would have been better
20 off financially had this been collected on time or
21 early, because we can't borrow money at anything close
22 to .45 percent. So, frankly, every day it is not
23 collected, we are at the margin losing money on the
24 deal. But, again, that's what we agreed to, that's what
25 the Commission ordered.

1 COM. NEWMAN: And the last thing I want to say,
2 I wasn't on the Commission in 1999, but I was at the
3 legislature when the rules were put into place. So I
4 was actually one of the people with memory of how this
5 came down. So I do understand that.

6 But I just want to close with I take you at
7 your -- you know, I take the company for its word on the
8 discovery date, but when I read the RUCO statement, it
9 made me wonder. And, so, but I am -- I will remain
10 quiet but I got my questions answered.

11 MR. MUMAW: Thank you.

12 Madam Chairman, I would be remiss if I didn't
13 add, because this is assessed on a kilowatt hour basis,
14 Mr. Crockett's clients are in fact disproportionately
15 impacted by the company's request. And, therefore, we
16 especially appreciate their support and kind of
17 adherence to principle in the face of their economic
18 self interest. Let's put it that way.

19 CHMN. MAYES: Okay. Mr. Crockett, nice segue to
20 your appearance.

21 MR. CROCKETT: Madam Chair, members of the
22 Commission, Webb Crockett from Fennemore Craig on behalf
23 of Freeport-McMoRan Copper and Arizonans for Electric
24 Choice & Competition.

25 It has been explained here that this is simply

1 the recovery of a regulatory asset. It was
2 underrecovered in spite of the best projections that
3 were made back in 2004 because of the economic
4 situation, and it didn't come to any surprise to my
5 clients that they had not fully recovered it. And I
6 will candidly admit to you, if they were overrecovered,
7 I would be standing here arguing for a refund. And
8 since it is consistent with the order entered by the
9 Commission and it is a regulatory asset entitled to be
10 recovered, we did file a comment that we had no
11 objections to the continuation of the charge.

12 CHMN. MAYES: Thank you, Mr. Crockett,
13 appreciate that.

14 Mr. Mumaw, I just, you know, I appreciate the
15 explanation and I am going to vote to approve this item,
16 but I am somewhat, I don't know, surprised that you
17 missed this during the pendency of the rate case and
18 during the pendency of the Commission's deliberation on
19 the rate case. I know you say that you discovered it
20 when you were preparing, I guess, the ERF charge, which
21 would be when exactly?

22 MR. MUMAW: Madam Chair, the actual knowledge to
23 us was January 4th, but we were in the process -- again
24 without boring people, by January 10th of every year we
25 are required to report to you a preliminary estimate of

1 our revenues for purposes of your regulatory assessment.
2 And I believe that is finalized in, it is either
3 April or beginning of every June. It has been a long
4 time since I had to look at that. But that's a routine
5 process where we begin with an estimate that is due, for
6 some reason I know that sticks in my head, January 10th.
7 And when we were doing that, we were reviewing the
8 revenues and I know Mr. Guldner received an e-mail that
9 indicated we had a significant underrecovery. And I can
10 assure you there was about four or five extremely active
11 days determining what we should do with this. And we
12 did consult with Commission Staff as to potential
13 courses of action. And this is what we came up with,
14 because we knew we had to file to ask you to do
15 something. And it was about, like I say, four active
16 days trying to find out what that something would be.
17 So...

18 CHMN. MAYES: Well, you know, and the reason I
19 am surprised is obviously, you know, I mean I -- even
20 during the rate case there was, you know, I think
21 discussion of the downturn in the economy. I know that.
22 I know there was. I was there for it.

23 Two years, I can remember, you know, two years
24 ago attending an event which Pete Ewen, your economist,
25 spoke at Prescott Valley about his projections that the

1 economy was going to suffer significant losses and that
2 the housing market was severely depressed, or beginning
3 to be severely depressed. Pete Ewen has given speeches
4 since then.

5 I mean this is not a big surprise. So
6 certainly, you know, it is demonstrably not a big
7 surprise inside the company. So was it just -- why
8 didn't those two dots get connected inside the company?
9 I mean, why were these numbers not run at some point
10 while the Commission was deliberating on the case?

11 MR. MUMAW: Madam Chair, members of the
12 Commission, I wish I could give you a better excuse than
13 we dropped the ball, but we did drop the ball. There
14 was obviously people aware of our level of collections.
15 And frankly, given the forecast and frankly given the
16 last two summers, it would have been easy to conclude
17 that we were going to fall short, I am pretty sure they
18 didn't think this short but certainly significantly
19 short, and that just wasn't communicated to the people
20 that it needed to be communicated to to discuss it with
21 RUCO and obviously other parties to the agreement and
22 with the Commission.

23 And if it -- again, in addition to apologies
24 being what they are, we will take steps to make sure
25 that doesn't happen again or at least is less likely to

1 happen again. I can't guarantee anything. But, again,
2 we dropped the ball. And I apologize. We apologize to
3 RUCO, the parties, and we certainly apologize to the
4 Commission. And certainly, like I say, if we had, if
5 the people who kind of contact you or interact with you
6 on a regular basis, including myself, Mr. Guldner, and
7 others, if we had been aware that it was anything close
8 to this level, we would have said something. And,
9 again --

10 CHMN. MAYES: I know.

11 MR. MUMAW: -- dropped the ball.

12 CHMN. MAYES: And I certainly appreciate that.
13 But I mean, to use a basketball analogy, you didn't
14 just, you know, hit the rim with this shot, you
15 completely whiffed it. So --

16 MR. MUMAW: It was an air ball, Madam Chair.

17 CHMN. MAYES: Yes, it was an air ball. So
18 that's problematic obviously in the context of a very
19 complex rate case. And then, as RUCO pointed out, Jodi
20 Jerich did testify that she believed this surcharge was
21 going to expire in April of 2010. So I guess you missed
22 that, too, is that right --

23 COM. NEWMAN: She is right.

24 CHMN. MAYES: -- Mr. Mumaw or Mr. Pozefsky?

25 MR. MUMAW: Well, I think that and the little

1 blurb from Mr. Rumolo, kind of both, it will expire on
2 April 1st barring some sort of Commission action. That
3 doesn't mean the money disappears. It would still hang
4 out there and presumably be disposed of or dealt with
5 some other way other than continuation of the CRCC. So
6 in a sense, they were both right that it would end, and
7 at the time they testified it was scheduled to end and
8 as we sit here today it is scheduled to end April 1st.
9 That's why we requested for it to be continued. So...

10 CHMN. MAYES: Okay. Mr. Pozefsky, did you want
11 to add anything to that? Then we can --

12 MR. POZEFSKY: No. Madam Chairman, I really --
13 when we thought, and we mean end, literally end, in
14 other words, they would not recover or collect anymore,
15 that's our interpretation, it ended as of April 10th.
16 Obviously that's not what it meant.

17 CHMN. MAYES: Okay. All right. Does Staff want
18 to respond to any of this? I mean I know you have taken
19 the position that under the settlement agreement, the
20 prior settlement agreement, they have a right to ask for
21 this. And I would agree that they had a right to ask
22 for it.

23 But I am just wondering, Mr. Abinah or Mr. Olea,
24 are either of you unsettled by the fact that this
25 information was not forthcoming during the rate case at

1 all? Certainly it seems like it would have been
2 relevant to you.

3 MR. OLEA: Madam Chair, Commissioners, yes, it
4 would have been relevant. But I am going to let
5 Mr. Abinah, since he was part of the litigation team on
6 that and I was part of the A team.

7 But as far as just from a general, you know,
8 just a general impression, yes, it is something that
9 should have come up in the rate case. But I think, as
10 was pointed out by several Commissioners, that I also
11 take the company at its word that they didn't find out
12 about it until January. And that was after the order
13 had been issued and something they should have known
14 ahead of time, but --

15 CHMN. MAYES: Yes, they may not have found about
16 it but they certainly should have been running the
17 numbers and certainly running the numbers when Jodi
18 Jerich said this thing is going to end, it seems to me.

19 But Mr. Abinah.

20 MR. ABINAH: Good afternoon, Madam Chairman,
21 Commissioners. Elijah Abinah for Staff.

22 I really don't have anything to add other than
23 we all dropped the ball. The issue should have been
24 brought up sooner than it was. And I took the company's
25 word for them, company's word that they didn't find out

1 until January 4th. And there is nothing else to add.
2 They are entitled to collect the money. The previous
3 Commission ordered them to collect the money 47.7. So I
4 mean, based on that, I have nothing to add unless you
5 have questions.

6 CHMN. MAYES: Well, okay. I would just say, you
7 know, I am -- it would be interesting to know whether
8 APS, if the roles, the tables were reversed, wouldn't be
9 screaming to high heaven if there were a mistake in
10 favor of the ratepayers and we were refunding to the
11 ratepayers millions of dollars. So I sort of doubt they
12 would be silent about it. Wouldn't you agree?

13 MR. ABINAH: Mr. Chairman, I agree with you.
14 And also I agree with Mr. Crockett. If the situation
15 was reversed, APS would be here and Mr. Crockett would
16 be here also. But like I say, we all dropped the ball,
17 and there is no excuse for that.

18 CHMN. MAYES: Okay. Commissioner Newman.

19 COM. NEWMAN: For the record, I don't think
20 Mr. Crockett ever said he dropped the ball. I don't
21 think he ever said that, for the record.

22 But I wanted to ask Staff about APS' comments.
23 And I take them, you know -- my understanding of how
24 this asset is dealt with from an accounting standpoint
25 is not an advanced one. And I just wanted to -- I want

1 to know where this \$5 million is going.

2 APS has explained very well that it is an asset
3 that they, or that they have on the books as collected,
4 as to needs to be collected in full.

5 My question is just, you know, I am sitting
6 here, Mr. Crockett represents the big ratepayers, I am
7 sitting here in the room thinking about mom and pop down
8 in Bisbee listening to the discussion. APS made a
9 mistake. When they make mistakes, they don't get to
10 write it off because that's the way the accounting
11 system works, or at least they could argue that to a
12 Supreme Court Judge, I suppose. Somebody reviewing this
13 record is really going to want to know whether we asked
14 the hard question of should that \$5 million go back to
15 the ratepayers. APS' position is that shouldn't be
16 because it is recorded as a regulatory asset. And I,
17 because I am not an advanced accountant, it is hard for
18 me to judge that explanation and whether that
19 explanation would stand with a mom and pop person down
20 in Cochise County who is paying the bills that we just
21 increased by X percent.

22 So my question, my question is: Is that a
23 correct statement about this asset, that it is, it is
24 expected to be on the books and, if we took -- if I made
25 a motion to take 5 or \$4.8 million away, whether that

1 would cause their books such a big problem? Do you see
2 what I am saying? I know people drop the ball, but
3 ultimately people are going to ask us a question why did
4 you pass on this \$5 million after this --

5 MR. ABINAH: Madam Chairman.

6 COM. NEWMAN: -- mistake.

7 MR. ABINAH: Madam Chairman, Commissioner
8 Newman, we will tag team, myself and Ms. Jaress. If you
9 look at, specifically if you look at Decision No. 67744,
10 paragraph 86, it actually spells out the amount that APS
11 is allowed to recover, which is \$47.7 million plus
12 interest. And I believe APS' request is consistent with
13 what you have before you today.

14 The issue is the timing. It is not, they are
15 not asking for additional funding or they are not asking
16 for additional money. This was authorized by a
17 Commission's prior decision. The issue is are they
18 going to collect the money by April 1, 2010. Now, they
19 realize, come April 1, 2010, they will have a balance of
20 four point something million dollars. So they are not
21 asking for additional money. They are just trying to
22 collect the money previously authorized by the
23 Commission.

24 COM. NEWMAN: Okay. I am okay. Again, I just
25 want, since we had you there -- I never asked for

1 Staff's position on it as well. Part of me feels I can
2 go either way on this.

3 CHMN. MAYES: Okay. Commissioner Kennedy.

4 COM. KENNEDY: Thank you, Madam Chair.

5 Mr. Pozefsky, maybe you can help me out just a
6 little bit.

7 MR. POZEFSKY: Sure.

8 COM. KENNEDY: Since I was not here when the
9 Commission ordered the collection of these funds, was
10 the order a time certain or a specific dollar amount
11 collected, can you tell me?

12 MR. POZEFSKY: You know, I probably wouldn't be
13 the best one, because I was here but I wasn't involved
14 in that case. And I have looked the order over very --
15 well, I didn't look it over with a square inside
16 knowledge that would be helpful. My understanding was
17 it was both. It was a five-year period and a certain
18 amount of 47.7 million. So that was my understanding of
19 the order. And that was, the order was entered on
20 April 5th, 2005, I believe, which would bring you up to
21 April 5th, 2010. That's how we got that date.

22 MR. ABINAH: Madam Chairman, Commissioner
23 Kennedy, I believe, again, tag team with Ms. Jaress
24 here, Decision 67744, paragraph 87 spells out the
25 timing. And I believe Ms. Jaress has the other, the

1 section. She can read it to you.

2 MS. JARESS: Chairman Mayes, Commissioners,
3 paragraph 87 says:

4 When the above amount is recovered, the CRCC
5 will terminate immediately. If any amount remains
6 unrecovered or overrecovered after the end of the
7 five-year period, APS shall file an application with the
8 Commission to adjust the CRCC to recover or refund the
9 balance.

10 So, and that was in the settlement agreement.
11 Wait, wait, wait. I am sorry. That was in the order
12 that adopted a similar change that was in the settlement
13 agreement. So there is an order that says \$47.7 million
14 over five years. If it is under or over recovered, then
15 you come back in to either recover or refund the
16 balance. So it is kind of written in stone other than,
17 you know, some other Commission proceeding. But there
18 is a settlement agreement. I am not sure how that could
19 be undone.

20 COM. KENNEDY: Thank you.

21 MR. ABINAH: If I may add to that to answer your
22 question, Madam Chair, Commissioner Kennedy, there is a
23 time specific. It says five years. But there is a
24 catch to it. There is a catch to it, underrecover and
25 overrecover, overrecovery. So the five years is

1 April 1, 2010. But because there is underrecovery,
2 that's why APS is here before you today.

3 COM. KENNEDY: Thank you.

4 CHMN. MAYES: Okay. Are there any additional
5 questions?

6 Just out of curiosity, Mr. Mumaw, what were the
7 other things that you considered proposing with regard
8 to this item?

9 MR. MUMAW: The one that I will tell you was
10 prominent was whether we would credit it against the PSA
11 so the impact wouldn't be felt until next February. We
12 kind of rejected that because, as Ms. Jaress just quoted
13 you the language, it kind of sounded like they had
14 already decided back in 2005 that the remedy was the
15 CRCC. Plus, as a general proposition, we don't like and
16 don't want to encourage tinkering with PSA in between
17 rate cases. But, to be very frank, that was given some
18 consideration.

19 CHMN. MAYES: Okay.

20 COM. PIERCE: Ready?

21 CHMN. MAYES: I think so. Are there any
22 additional questions from the bench?

23 (No response.)

24 COM. PIERCE: Madam Chair, I move U-23.

25 CHMN. MAYES: Okay. U-23 has been moved. And I

1 don't believe we have orange paper on this item. No.
2 Okay.

3 Madam Secretary, please call the roll.

4 SECRETARY BERNAL: Commissioner Kennedy.

5 COM. KENNEDY: Well, I didn't fall off the
6 turnip truck yesterday. I don't believe APS discovered
7 this on January 4th and then filed this request on
8 January 8th. I believe this sends a very strong message
9 to me that APS is very untrustworthy. I believe APS
10 knew this during the negotiations and didn't show their
11 hand until now. How convenient. I vote no.

12 SECRETARY BERNAL: Commissioner Stump.

13 COM. STUMP: Aye.

14 SECRETARY BERNAL: Commissioner Newman.

15 COM. NEWMAN: Madam Chair, explanation. It is,
16 it is clear from the '95 -- the 2005 decision that this
17 remedy was in place and is in place today. It is hard
18 to argue with that language. But it also is very
19 difficult, because everybody in this room was here for
20 all the discussions we had about the amounts of money
21 and that this April 10th date was actually considered
22 during the settlement conference. That is the
23 disturbing piece for me. And to be honest with you,
24 that is the most -- that's just disturbing. That should
25 have put the company on notice, oh, yes, April 10th is

1 there and that's part of this settlement and, you know,
2 it is a part of the numbers that we should be
3 considering. So it is a very tough one.

4 I don't feel that there was misleading going on
5 but I am concerned that after we -- and I say
6 personally, after I voted for the settlement decision,
7 that this should come down so quickly after a decision
8 so I can't get out of my mind that this April 10th date
9 was discussed and all the parties were there and we had
10 previous reliance on it. And even though it is the
11 major industrial users who are not objecting, and they
12 probably would get the bulk of this money if somehow it
13 weren't appropriated from them, I think I have a duty
14 representing the small consumer to object.

15 And I vote no. But it is -- I just -- that's a
16 vote for the consumer. But I do understand the
17 company's position. And I don't think that there was
18 any misleading going on. Thank you.

19 SECRETARY BERNAL: Commissioner Pierce.

20 COM. PIERCE: Aye.

21 SECRETARY BERNAL: Madam Chair Mayes.

22 CHMN. MAYES: Well, you know, I think from a
23 legal standpoint we are obligated to approve this item.
24 But from a perception standpoint, from the standpoint of
25 the company's relationship to its customers and to the

1 Commission, this was, this was a serious mistake.

2 And, Mr. Mumaw, I think that the company does
3 owe it to its customer, owe it to its customers to
4 really scrutinize its internal processes, especially
5 with regard to, you know, how your internal analysts are
6 interfacing with your lawyers and those people who
7 represent the company in front of the Commission so
8 that, you know, all relevant information is communicated
9 to the Commission in a timely fashion.

10 And this really, there is really very few
11 excuses, I think, for all of the rate analysts who were
12 involved in the case, and I would not -- I would include
13 all of the rate analysts who were involved in the case,
14 not just the company's, to have missed this. And so I
15 think it is incumbent on the company to go back and
16 really scrutinize its processes and make sure that this
17 doesn't happen again.

18 But given that, I vote aye.

19 And by your vote of three ayes and two noes, you
20 have approved Item No. 23 on the agenda.

21 (TIME NOTED: 4:23 p.m.)

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1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

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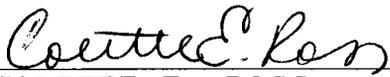
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 50658 for the State of Arizona, do hereby certify that
 the foregoing printed pages constitute a full, true and
 accurate transcript of the proceedings had in the
 foregoing matter, all done to the best of my skill and
 ability.

WITNESS my hand this 8th day of March, 2010.



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