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16  
17 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
18 **IN AND FOR THE COUNTY OF MARICOPA**

19 STATE OF ARIZONA, *ex rel.* MARK  
20 BRNOVICH, Attorney General,

21 Plaintiff,

22 v.

23 ARIZONA PUBLIC SERVICE COMPANY,  
24 an Arizona corporation,

25 Defendant.

Case No.:

**COMPLAINT**

(Assigned to the Hon. \_\_\_\_\_)

26 Plaintiff, State of Arizona *ex rel.* Mark Brnovich, the Attorney General (the “State”),  
27 alleges the following for its Civil Complaint (the “Complaint”) against Defendant Arizona  
28 Public Service Company (“APS”).

**I. JURISDICTION AND VENUE**

1. The State brings this action pursuant to Arizona Revised Statutes (“A.R.S.”)  
§§ 44-1521 to 1534.

- 1           2.     This Court has subject-matter jurisdiction.
- 2           3.     This Court may issue appropriate orders pursuant to A.R.S. § 44-1528.
- 3           4.     Events occurred in this state which are the subject of this Complaint.
- 4           5.     Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

5                                   **II. PARTIES**

6           6.     Plaintiff is the State of Arizona *ex rel.* Mark Brnovich, the Attorney General of  
7 Arizona, who is authorized to bring this action pursuant to A.R.S. §§ 44-1521 to 1534 (the  
8 “ACFA”).

9           7.     Defendant APS is an Arizona public service corporation, incorporated on  
10 April 8, 1920, with its principal place of business at 400 N. 5<sup>th</sup> Street in Phoenix, Arizona.

11                                   **III. FACTUAL BACKGROUND**

12           8.     APS is the largest electric provider in Arizona, and serves more than 1.1 million  
13 residential customers, in 11 of Arizona’s 15 counties. As a public service corporation, APS is  
14 regulated by the Arizona Corporation Commission (“Commission”).

15           9.     The Arizona Attorney General, when having reasonable cause, is vested with the  
16 authority to investigate and adjudicate alleged unlawful practices pursuant to A.R.S. § 44-1521  
17 *et seq.* and the Attorney General’s authority is in addition to all other causes of action,  
18 remedies, and penalties available to the State.

19           10.    On August 18, 2017, the Commission approved new rates for APS customers  
20 (“2017 Rate Case Decision”). The 2017 Rate Case Decision approved changes to the design of  
21 APS’s residential rates. Although a rate increase took effect immediately after the 2017 Rate  
22 Case Decision, approximately 1.1 million residential customers were to be moved to new rate  
23 plans by May 1, 2018.

24           11.    APS proposed in its 2017 Rate Case to switch customers to the new plan that  
25 could potentially cost individual customers the least amount of money. Eventually, the term  
26 “most economical plan” was used to identify the plan that would have cost a customer the least  
27 amount of money based on a customer’s historical usage, if sufficient historical usage data was  
28 available. The 2017 Rate Case Decision ultimately required that APS transition each

1 residential customer to his or her “most like plan” (i.e., the plan most like the customer’s  
2 existing plan) and move the customer to a different plan only if the customer affirmatively  
3 chose to change plans.

4 12. As part of this transition of a million-plus customers to new rate plans, the 2017  
5 Rate Case Decision also required that APS develop a Customer Education and Outreach  
6 Program (“CEOP”), seek ongoing stakeholder input, including that of Commission Staff, and  
7 spend \$5,000,000 on that effort. The CEOP was submitted to the Commission for review and  
8 approval. The Commission staff filed its approval of the CEOP in March 2018.

9 13. The purpose of the CEOP was to educate customers about rate plan options so  
10 they could make choices that suited their preferences. The CEOP also was designed to notify  
11 and educate customers regarding a customer’s “Most Economical Plan,” based on the  
12 customer’s historical usage. It also sought to educate customers regarding how to maximize  
13 savings on the rate plans and how to understand which rate a customer would be transitioned to  
14 if the customer did not proactively choose another rate plan.

15 14. The CEOP included multiple contacts with customers, including personalized  
16 letters, emails, bill inserts, and phone calls. There was an on-line tool that was intended to help  
17 customers evaluate the various plan options, information on utility bills, a mobile unit that  
18 provided in-person assistance, and customer service representatives who were available to  
19 answer people’s questions by phone.

20 15. APS’s education and outreach efforts have continued since the 2017 Rate Case  
21 Decision, with Commission oversight. Since the initial transition in early 2018, there have  
22 been ongoing communications with customers to educate them about the different rate plans  
23 and about opportunities for potential savings by changing to different plans.

24 16. Despite the outreach and education efforts, customers reported confusion about  
25 the plan options, and some issues arose in implementing the CEOP that caused concern at the  
26 Commission and the Attorney General’s Office.

27 . . .

28 . . .

17. As part of their CEOP, APS offered its customers a Plan Comparison Tool (“the Tool”), designed to provide customers with a cost comparison between the different APS rate plans based on the customer’s historical energy usage.

18. In November 2019, APS learned that there had been an error relating to the Tool from February 2019 to November 2019. Once this error was discovered, APS immediately discontinued using the Tool. The error did not affect customer billing; it affected only the accuracy of the information comparing rates using the Tool for certain customers.

19. APS provided refunds to customers who may have made rate-selection decisions based on faulty information from the Tool and provided corrected plan comparison information to customers that were provided with inaccurate plan recommendations using the Tool. A new plan comparison tool subsequently was launched on January 29, 2020.

20. In addition, some APS customers were affected by a data error that impacted some letters recommending the Saver Choice plan as the most economical plan for some customers in late 2017 (the “2017 Letters”). In particular, the 2017 Letters included rate recommendations and estimated cost savings that were calculated using an incorrect rate schedule for the Saver Choice plan. The incorrect schedule applied the super-off-peak winter delivery charge to all winter hours rather than super-off-peak hours only, resulting in an approximate \$0.02 per kWh lower estimate for winter non-super-off-peak hours. This issue did not affect any customer bills and did not affect subsequent rate plan recommendation communications to customers. Some customers who received the 2017 Letters chose to move to the Saver Choice plan and then did not receive an updated plan recommendation during the rate migration process in 2018 or received an updated plan recommendation after choosing to move to the Saver Choice plan.

## IV. ALLEGATIONS

21. From February to November 2019, the Tool did not provide certain APS customers with accurate information about the rate plans.

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22. As a result of the Tool error, for a period of time in 2019, certain APS customers who used the Tool did not receive accurate information on which to base their decisions regarding a rate plan.

23. In addition, some APS customers were impacted by the data error in the 2017 Letters.

24. The State alleges that APS's communications to its customers regarding their rate plans and the differing characteristics of the available rate plans did not inform customers adequately regarding the benefits of switching to their most economical plan.

25. The conduct alleged in paragraph 24 harmed or was likely to harm consumers, the harm was not reasonably avoidable by consumers, and there was no countervailing benefit to consumers or to competition.

## V. CLAIM FOR RELIEF

26. The conduct alleged in paragraphs 21 to 23 constitutes misrepresentations in violation of A.R.S. § 44-1522.

27. The conduct alleged in paragraph 24 constitutes unfair acts and practices in violation of A.R.S. § 44-1522.

28. The conduct alleged in paragraphs 21 to 24 constitutes unlawful practices in violation of A.R.S. §§ 44-1522.

## VI. PRAYER FOR RELIEF

WHEREFORE, the State respectfully requests that the Court:

29. Pursuant to A.R.S. § 44-1528(A)(1), issue a permanent injunction, enjoining and restraining (a) Defendant, (b) its officers, agents, servants, employees, attorneys, and (c) all persons in active concert or participation with anyone described in part (a) or (b) of this paragraph, directly or indirectly, from engaging in violations of A.R.S. § 44-1522; and

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1           30. Order remedies, if warranted, pursuant to A.R.S. § 44-1528(A)(2),  
2 A.R.S. § 44-1528(A)(3), and A.R.S. § 44-1534.

3  
4           DATED this 22nd day of February, 2021.

5  
6                               MARK BRNOVICH  
7                               Attorney General

8  
9                               By:   
10                              Rebecca Salisbury  
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1 Document electronically transmitted  
2 to the Clerk of the Court for filing using  
3 AZTurboCourt this 22nd day of February, 2021.

4 **COPY** of the foregoing served via AZTurboCourt  
5 and courtesy copy of the foregoing *e*-mailed this  
6 this 22nd day of February, 2021, to:

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