

1 **MARK BRNOVICH**
2 **ATTORNEY GENERAL**
(Firm State Bar No. 14000)
3 JOSEPH SCIARROTTA, JR. (BAR NO. 017481)
4 MATTHEW DU MEE (BAR NO. 028468)
5 REBECCA SALISBURY (BAR NO. 022006)
6 JENNIFER BONHAM (BAR NO. 032332)
7 ASSISTANT ATTORNEYS GENERAL
8 OFFICE OF THE ATTORNEY GENERAL
9 2005 North Central Avenue
10 Phoenix, AZ 85004-1592
11 Telephone: (602) 542-7757
12 Facsimile: (602) 542-4377
13 Rebecca.Salisbury@azag.gov
14 Electronic Filing: consumer@azag.gov
15 *Attorneys for the State of Arizona*

13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
14 **IN AND FOR THE COUNTY OF MARICOPA**

15 STATE OF ARIZONA, *ex rel.* MARK
16 BRNOVICH, Attorney General,
17 Plaintiff,
18 v.
19 ARIZONA PUBLIC SERVICE COMPANY,
20 an Arizona corporation,
21 Defendant.

Case No.: CV2021-002829

COMPLAINT

(Assigned to the Hon. Andrew Russell)

22
23 Plaintiff, State of Arizona *ex rel.* Mark Brnovich, the Attorney General (the “State”),
24 alleges the following for its Civil Complaint (the “Complaint”) against Defendant Arizona
25 Public Service Company (“APS”).

26 **I. JURISDICTION AND VENUE**

27 1. The State brings this action pursuant to Arizona Revised Statutes (“A.R.S.”)
28 §§ 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. 5th 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 ...

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

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

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

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

24 **IV. ALLEGATIONS**

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

27 ...

28 ...

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

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

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

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

12 **V. CLAIM FOR RELIEF**

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

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

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

19 **VI. PRAYER FOR RELIEF**


20 WHEREFORE, the State respectfully requests that the Court:

21 29. Pursuant to A.R.S. § 44-1528(A)(1), issue a permanent injunction, enjoining and
22 restraining (a) Defendant, (b) its officers, agents, servants, employees, attorneys, and (c) all
23 persons in active concert or participation with anyone described in part (a) or (b) of this
24 paragraph, directly or indirectly, from engaging in violations of A.R.S. § 44-1522; and
25 ...
26 ...
27 ...
28 ...

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
11 Jennifer Bonham
12 Assistant Attorneys General
13 Attorneys for the State of Arizona
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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:

7 Paul K. Charlton
8 DENTONS US LLP
9 2398 East Camelback Road, Suite 850
10 Phoenix, Arizona 85016-9007
11 Paul.Charlton@dentons.com

12 

13 R4AA2NL50E59DY
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28