ORIGINAL

E000011872

JEFF GULDNER
Chairman & CEO

P.O. Box 53999
Phoenix, AZ 85072-3999

February 22, 2021

Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

RE: Docket No. E-01345A-19-0003

Chairwoman and Commissioners,

APS has reached an agreement with the Attorney General's office to resolve concerns over the customer education and outreach activities that occurred after our last rate case and the 2019 rate comparison tool. The agreement provides $24 million of restitution for eligible residential customers. This amount includes $20.7 million for certain customers who were not on their most economical plan as of March 2020 and $3.3 million for customers who may have chosen a new plan based on an error in a 2017 letter. Eligible customers will receive a check for their payment amount within 120 days. These settlement funds will not be included in rates.

This agreement follows a series of actions APS has taken to address concerns about our customer education and outreach as we moved all customers to new service plans about three years ago. Although that was an enormous undertaking and an industry first, there were areas where we could have done better to guide customers through the process. While not agreeing to any legal liability or wrongdoing, this agreement resolves the matter in a way that directs funds to the benefit of our customers instead of into litigation.

The attached Consent Agreement and Complaint provide further details about the Attorney General's claims and the agreed payments to eligible customers. It is our hope that this agreement will enable us to maintain our focus on meeting and exceeding customers' service expectations. We are working hard across the organization to create a cultural mindset of continuous improvement and empowerment, all geared toward developing solutions and services that meet the diverse needs of our customers.

Realizing you will have questions about this matter and how it is being resolved with our customers, I will be available to answer your questions at an upcoming Open Meeting.

Sincerely,

Jeff Guldner

ACC - Docket Control - Received 2/22/2021 2:32 PM
ACC - Docket Control - Docketed 2/22/2021 2:43 PM

MARK BRNOVICH
ATTORNEY GENERAL
(Firm State Bar No. 14000)
JOSEPH SCIARROTTA, JR. (BAR NO. 017481)
MATTHEW DU MEE (BAR NO. 028468)
REBECCA SALISBURY (BAR NO. 022006)
JENNIFER BONHAM (BAR NO. 032332)
ASSISTANT ATTORNEYS GENERAL
OFFICE OF THE ATTORNEY GENERAL
2005 North Central Avenue
Phoenix, AZ 85004-1592
Telephone: (602) 542-7757
Facsimile: (602) 542-4377
Rebecca.Salisbury@azag.gov
Electronic Filing: consumer@azag.gov
Attorneys for the State of Arizona

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, *ex rel.* MARK BRNOVICH, Attorney General, Plaintiff, v. ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation, Defendant.	Case No.: **CONSENT AGREEMENT** (Assigned to the Hon. _____)

The State of Arizona, *ex rel*. Mark Brnovich, the Attorney General (the "State"), filed a Complaint and Arizona Public Service Company ("APS") has waived service of the Complaint, has been advised of the right to a trial in this matter, and has waived the same. APS admits the jurisdiction of this Court over the subject matter and parties for purposes of this Complaint and Consent Agreement only, stipulates that this Court may enter this Consent . . .

Agreement and acknowledges that this Court shall retain jurisdiction for the purpose of enforcing this Consent Agreement.

The parties enter into this Consent Agreement without trial or adjudication of any issue of fact or law and without admission or finding of any violations of any law. APS neither admits nor denies the Factual Background below or any of the allegations in the State's Complaint. APS, not out of any admission of liability, wrongdoing or violation, has consented and stipulated to entry of this Consent Agreement to compromise an inquiry by the Arizona Attorney General's Office. This Consent Agreement is entered into solely for the purposes of settlement and to avoid incurring costs associated with litigation.

PARTIES

1. The State is authorized to bring this action under A.R.S. §§ 44-1521 to -1534.

2. APS is a public service corporation, with its principal place of business in Phoenix, Arizona.

3. This Court has jurisdiction over the Complaint and the parties necessary for the Court to enter this Consent Agreement and any orders hereafter appropriate pursuant to A.R.S. § 44-1528 and this Consent Agreement. APS consents to this Court's jurisdiction over this matter solely to allow it to be compromised and resolved. APS does not concede that this Court would have jurisdiction over a contested action.

4. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

FACTUAL BACKGROUND

5. APS is the largest electric provider in Arizona, and serves more than 1.1 million residential customers, in 11 of Arizona's 15 counties. As a public service corporation, APS is regulated by the Arizona Corporation Commission ("Commission").

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

. . .

7. On August 18, 2017, the Commission approved new rates for APS customers ("2017 Rate Case Decision"). The 2017 Rate Case Decision approved changes to the design of APS's residential rates. Although a rate increase took effect immediately after the 2017 Rate Case Decision, approximately 1.1 million residential customers were to be moved to new rate plans by May 1, 2018.

8. APS proposed in its 2017 Rate Case to switch customers to the new plan that could potentially cost individual customers the least amount of money. Eventually, the term "most economical plan" was used to identify the plan that would have cost a customer the least amount of money based on a customer's historical usage, if sufficient historical usage data was available. The 2017 Rate Case Decision ultimately required that APS transition each residential customer to his or her "most like plan" (i.e., the plan most like the customer's existing plan) and move the customer to a different plan only if the customer affirmatively chose to change plans.

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

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

11. The CEOP included multiple contacts with customers, including personalized letters, emails, bill inserts, and phone calls. There was an on-line tool that was intended to help customers evaluate the various plan options, information on utility bills, a mobile unit that . . .

provided in-person assistance, and customer service representatives who were available to answer people's questions by phone.

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

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

14. In November 2019, APS learned that there had been an error relating to the Plan Comparison Tool (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.

15. 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.

16. A new plan comparison tool subsequently was launched on January 29, 2020.

17. In addition, the Attorney General's investigation revealed that some customers may have been 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 before or without receiving an updated plan recommendation during the rate migration process in 2018.

18. APS has made improvements to its education and outreach efforts. For instance, since March 2020, monthly bill statements have informed residential customers if the customer is not on the customer's most economical plan.

19. In December 2019, the Attorney General's Office issued a Civil Investigative Demand about the Tool error and followed with other inquiries related to the implementation of the CEOP. APS responded promptly to the Attorney General's inquiry and fully cooperated with the investigation.

20. APS denies that there was any violation of law. Nevertheless, to bring closure to the issue in a manner that will benefit APS customers, APS enters into this Consent Agreement providing $24,000,000 in restitution to (i) APS customers who were not on their most economical plans as of their March 2020 billing date and who could potentially have saved an estimated $120 or more per year based on their own historical usage within the previous twelve months, and (ii) APS customers who may have been affected by the data error in the 2017 Letters.

ALLEGATIONS

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

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. Upon discovery of the Tool error, APS promptly addressed the problem and provided refunds to customers who may have been impacted.

23. The State alleges that APS's communications to its customers regarding their rate plans did not inform customers adequately regarding the benefits of switching to their most economical plan. In addition, some APS customers may have been impacted by the data error in the 2017 Letters.

. . .

24. The State alleges that the practices alleged above constitute unlawful practices in violation of A.R.S. § 44-1521 *et seq*.

25. APS denies that it engaged in any unlawful conduct and enters into this Consent Agreement solely for the purpose of resolving legal claims related to its CEOP and the implementation of the 2017 Rate Case Decision. This Consent Agreement shall not be construed to be an admission that the courts have jurisdiction to adjudicate these legal claims in a contested action or an admission by APS of any liability.

ORDER

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

26. The injunctive relief set forth in this Consent Agreement is binding upon any of the following that receive actual notice of this Consent Agreement through personal service or otherwise: (a) APS; (b) APS officers, agents, servants, employees, and attorneys; and (c) those persons in active concert or participation with APS or any of their officers, agents, servants, employees, or attorneys.

27. Pursuant to A.R.S. § 44-1528, and for thirty-six months after the effective date of this Consent Agreement, APS is required to provide, within 15 calendar days of the filing of this Consent Agreement in a conspicuous location on the APS website, a list approved by the Attorney General's Office of frequently asked questions and the responses thereto providing customers information about APS's residential rate plans, including, but not limited to, a clear and concise explanation of the term "demand charge" and how the demand charge impacts a customer's rates and bill.

28. Pursuant to A.R.S. § 44-1528, until the Commission enters a final decision in the current rate case, Ariz. Corp. Comm'n, Case No. E-01345A-19-0236, APS is required to provide reasonable notice to the Attorney General's Office of stakeholder group meetings to afford an opportunity for the office to provide input into APS customer outreach and education programs.

. . .

. . .

RESTITUTION

29. In addition to amounts that may have been previously remitted by APS to its customers for restitution prior to these proceedings, APS shall authorize and provide restitution totaling $24,000,000. This amount includes $20,700,000 for customers who were not on their most economical plan as of their March 2020 billing date and who could potentially have saved an estimated $120 or more per year based on their own historical usage within the previous twelve months. This also includes $3,300,000 for APS customers who may have been affected by the 2017 Letters. A customer may have been affected by the 2017 Letters if, after receiving a 2017 Letter, the customer chose to move to the Saver Choice plan before or without receiving an updated plan recommendation during the rate migration process in 2018.

30. APS will distribute the restitution amount of $20,700,000 (and additional amounts, if any, as described in ¶ 31) on a per capita basis. That is, all customers eligible for a payment will receive an equal one-time payment. Customers will be eligible for this payment if they were not on their most economical plan as of their March 2020 billing date and could potentially have saved an estimated $120 or more per year based on their own historical usage within the previous twelve months.

31. APS will distribute the restitution amount of $3,300,000 to customers who may have been affected by the 2017 Letters. If the total amount paid to customers affected by the 2017 Letters is less than $3,300,000, then any unpaid amounts will be added to the sum of money and distributed as described in ¶ 30. This calculation will be performed prior to the distribution of the $20,700,000 described in ¶ 30.

32. APS shall make all payments to customers within 120 calendar days of the date of this Order. "Payments" may include credits to customer accounts if those customers still have active APS accounts with APS at the time the credit is issued. APS shall include with any payments to APS customers pursuant to this Consent Agreement a letter from the Attorney General's Office regarding the restitution payment, the contents of which shall be agreed to by the Attorney General's Office and APS, with reasonable good-faith efforts. If, after making

reasonable, good-faith attempts to make all payments to all former customers, APS has not paid all of the $24,000,000, APS shall, on or before 240 calendar days of the date of this Order, pay any unpaid amounts to the State, to be deposited in the Consumer Protection-Consumer Fraud Revolving Fund established by A.R.S. § 44-1531.01, and used for the purposes set forth therein.

33. The State alleges that the payments described in ¶ 30 and ¶ 31 constitute restitution pursuant to A.R.S. § 44-1528(A)(2). Although APS has authorized restitution for certain customers who were not on their most economical plans, APS denies that such payments constitute restitution for any unlawful practice pursuant to A.R.S. § 44-1528(A)(2).

MATERIAL BREACH

34. In the event of a material breach of this Consent Agreement, in addition to all other remedies available under Arizona law and the penalties specifically provided under A.R.S. § 44-1532, the State may, in its sole discretion, reopen proceedings and continue with this case as though this Consent Agreement had not been entered.

35. Before initiating any proceeding to enforce this Consent Agreement or reopen proceedings, the party considering enforcement shall provide at least 60 calendar days written notice to the other party to provide it a reasonable opportunity to cure any alleged breach.

GENERAL PROVISIONS

36. This Consent Agreement is not and shall not in any event be used as an admission or evidence of any alleged wrongdoing or liability by APS in any other civil, criminal, or administrative court, administrative agency, or other tribunal anywhere in the United States.

37. Nothing in this Consent Agreement shall be construed as an approval by the Attorney General, the Court, or the State of Arizona of APS's past, present, or future conduct. APS shall not represent or imply that the Attorney General, the Court, or the State of Arizona has approved or approves of any of APS's actions or any of APS's past, present, or future business practices. This paragraph shall not apply to limit or prohibit APS from asserting that

the Commission approved or approves of APS's actions or any of APS's past, present, or future business practices.

38. This Consent Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Consent Agreement which are not fully expressed herein or attached hereto.

39. If any portion of this Consent Agreement is held invalid by operation of law, the remaining terms thereof shall not be affected and shall remain in full force and effect.

40. Jurisdiction is retained by this Court for the purpose of entertaining an application by the State for the enforcement of this Consent Agreement.

41. This Consent Agreement is the result of a compromise and settlement agreement between the parties. Only the State, through its Attorney General, or APS may seek enforcement of this Consent Agreement. Nothing herein is intended to create a right of action, private or otherwise, by other parties.

42. Within 30 calendar days of the entry of the Consent Agreement, APS shall pay to the Arizona Attorney General's Office for attorneys' fees and costs incurred in this matter the amount of $200,000, to be deposited in the Consumer Protection – Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01 and used for the purposes set forth therein.

43. APS also shall pay a total of $550,000 to educate residents about the Arizona Attorney General Office's consumer protection and community outreach awareness and prevention programs. APS shall make payments at the sole and unfettered direction of the Arizona Attorney General's Office for 14 months following the entry of the Consent Agreement or the expenditure of the $550,000, whichever comes first.

44. The effective date of this Consent Agreement is the date that it is entered by the Court.

45. This Consent Agreement may be executed by the parties in counterparts and be delivered by facsimile or electronic transmission, or a copy thereof, such constituting an original counterpart hereof, all of which together will constitute one and the same document.

46. This Consent Agreement resolves any and all Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 to -1534, claims by the Attorney General's Office against APS or its agents relating to the 2017 Rate Case Decision—including but not limited to Commission Docket Nos. E-01345A-16-0036, E-01345A-16-0123, E-01345A-18-0002, and E-01345A-19-0003. As of the date of the filing of this proposed Consent Agreement, the Attorney General's Office is not aware of any other ongoing or pending investigation into APS or its agents related to the 2017 Rate Case Decision.

47. As no further matters remain pending, this is a final judgment entered pursuant to Ariz. R. Civ. P. 54(c).

DATED this _____ day of _____, 20_____

_____
JUDGE OF THE SUPERIOR COURT

CONSENT TO JUDGMENT

1. Defendant acknowledges that it has waived service of the Summons and Complaint, has read the Consent Agreement and Order, and is aware of its right to a trial in this matter and has waived the same.

2. Defendant admits the jurisdiction of this Court to enter this Consent Agreement and Order, and consents to the entry of the foregoing Consent Agreement and Order.

3. Defendant states that no promise of any kind or nature whatsoever was made to induce it to enter into this Consent Agreement and declares that it has entered into this Consent Agreement voluntarily.

4. This Consent Agreement is entered as a result of a compromise and a settlement agreement between the parties. Only the parties to this Agreement may seek enforcement of this Consent Agreement. Nothing herein is intended to create a right of action by other parties, private or otherwise.

5. Defendant acknowledges that its acceptance of this Consent Agreement is only for the purpose of resolving the ongoing inquiry and lawsuit filed by the State, consistent with ¶ 46 of the Consent Agreement.

6. This Consent to Judgment may be executed in counterparts and be delivered by facsimile or electronic transmission, or a copy thereof, such constituting an original counterpart hereof, all of which together will constitute one and the same document.

7. Defendant represents and warrants that the person signing below on its behalf is duly appointed and authorized to do so.

DATED this 22nd day of February, 2021.

ARIZONA PUBLIC SERVICE COMPANY

By: Robert E. Smith, Senior Vice
President and General Counsel
Arizona Public Service Company

APPROVED AS TO FORM AND CONTENT

MARK BRNOVICH
Attorney General

By: Rebecca Salisbury
Jennifer Bonham
Assistant Attorneys General
Attorneys for the State of Arizona

DENTONS US LLP

By: Paul K. Charlton
Attorneys for Defendant

THE FOREGOING has been electronically filed this 22nd day of February, 2021.

COPY of the foregoing mailed/e-served through AZTurboCourt this 22nd day of February, 2021, to:

Paul K. Charlton
DENTONS US LLP
2398 East Camelback Road, Suite 850
Phoenix, Arizona 85016-9007
paul.charlton@dentons.com

/s/Marie Elena Cobb

MARK BRNOVICH
ATTORNEY GENERAL
(Firm State Bar No. 14000)
JOSEPH SCIARROTTA, JR. (BAR NO. 017481)
MATTHEW DU MEE (BAR NO. 028468)
REBECCA SALISBURY (BAR NO. 022006)
JENNIFER BONHAM (BAR NO. 032332)
ASSISTANT ATTORNEYS GENERAL
OFFICE OF THE ATTORNEY GENERAL
2005 North Central Avenue
Phoenix, AZ 85004-1592
Telephone: (602) 542-7757
Facsimile: (602) 542-4377
Rebecca.Salisbury@azag.gov
Electronic Filing: consumer@azag.gov
Attorneys for the State of Arizona

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, *ex rel.* MARK BRNOVICH, Attorney General, Plaintiff, v. ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation, Defendant.	Case No.: **COMPLAINT** (Assigned to the Hon. _____)

Plaintiff, State of Arizona *ex rel.* Mark Brnovich, the Attorney General (the "State"), alleges the following for its Civil Complaint (the "Complaint") against Defendant Arizona 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.

2. This Court has subject-matter jurisdiction.

3. This Court may issue appropriate orders pursuant to A.R.S. § 44-1528.

4. Events occurred in this state which are the subject of this Complaint.

5. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

II. PARTIES

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

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

III. FACTUAL BACKGROUND

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

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

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

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

residential customer to his or her "most like plan" (i.e., the plan most like the customer's existing plan) and move the customer to a different plan only if the customer affirmatively chose to change plans.

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

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

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

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

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

. . .

. . .

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.

. . .

. . .

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

. . .

. . .

. . .

. . .

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

DATED this 22nd day of February, 2021.

MARK BRNOVICH
Attorney General

By: _____
Rebecca Salisbury
Jennifer Bonham
Assistant Attorneys General
Attorneys for the State of Arizona

Document electronically transmitted
to the Clerk of the Court for filing using
AZTurboCourt this 22nd day of February, 2021.

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

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

Marie Edna Cobb

R4AA2NL50E59DY