The Monopoly Book of Lies

In support of HB2101 and SB1631 (collectively, the "Bills"), SRP, APS, and TEP (together, the "Monopolies") make and repeat numerous claims that are false or misleading. That these claims have been made by electric utilities entrusted with the gift of a government-protected monopoly is particularly concerning. While honesty and candor with elected officials is demanded from all participants in the public sphere, public power entities and investor-owned monopoly utilities should be held to an even higher standard given the public trust that has been placed in them and guaranteed returns they receive on their investments. Unfortunately, instead of a heightened level of truth and sincerity, the Monopolies have produced materials and made repeated statements designed to deceive lawmakers.

This memo examines the numerous instances of deception, misinformation, and lies that have formed the basis of the Monopolies' arguments in favor of the Bills.

I. The Fact Sheet

The Monopolies have prepared a "fact sheet" that includes numerous misrepresentations designed to deceive lawmakers. Below is a Table that summarizes the false and misleading claims in the fact sheet followed by a discussion of those various issues identified. It turns out that an astounding 12 of the 14 bullet points raised in the fact sheet are either false or grossly misleading.

Monopoly Fact Sheet Claim Claims pulled directly from the Monopolies' fact sheet.	**Fact Check**
Reestablishes a public policy that recognizes electricity as an essential public service and the need for infrastructure planning and investments to ensure reliable and affordable electric service that is provided at constitutionally required just and reasonable rates.	**FALSE**. This policy statement has been amended out of the bill in the House committee, but this talking point remains in the utility's latest "fact sheet." Regardless, whether competition exists or not, utilities already have a legal obligation to plan and the Constitution always require just and reasonable rates.
Requires public power entities to establish policies against: Deceptive, unfair or abusive business practices; Intrusive or abusive marketing practices; [and] Deceptive or untrue advertising practices.	**FALSE**. Requirements already exist today in A.R.S.30-806(A)(1)-(3).
Requires public power entities to establish an Ombudsman's office to investigate complaints about customer service.	**FALSE**. Requirement already exists today in A.R.S. 30-806(A)(4).
Requires contractors used by utilities for in-home services to be licensed and follow applicable codes.	**FALSE**. Requirement already exists today in A.R.S. 30-806(B). Meanwhile, the legislation *deletes* a prohibition on utilities using consumers' bills to advertise HVAC and

	construction services from utility-branded companies, hurting independent small businesses who do not have the privilege of a captive customer base to advertise to.
Protects confidential customer information and trade secrets.	**FALSE**. Protection already found in existing A.R.S. 30-808.
Enables all persons, even those who are not public power customers, to challenge ratemaking decisions by the Arizona-based governing body and provides clarity that the grounds on which the courts can overturn are that the governing body's decision was unlawful, not supported by substantial evidence or that the governing body abused its discretion.	**MISLEADING.** Dramatically cuts number of types of decisions that ratepayers can appeal to court from the current list of 8 types of orders to just 2. Further, limits the judicial oversight over these government utilities by deleting right of courts to modify public power entity orders and raises the standard of review making it more difficult for residents to overturn government decisions.
Ensures stable, affordable rates are protected from unpredictable volatility.	**FALSE.** The Arizona Constitution already prohibits volatility in rates by requiring that ACC not allow rates to fluctuate based on the open market. Instead, the ACC must set a range of rates that cannot be exceeded, like they do for telecom rates today. *Phelps Dodge v. Ariz. Elec. Power Co-op., Inc., 207 Ariz. 85 (App. 2004)* .
Arizona's system provides stability by ensuring that rates are just and reasonable, as the Constitution requires, and not volatile and pegged to daily market fluctuations. Traditional utility planning features investments in capacity that insulate customers from power outages and price volatility.	**MISLEADING.** Regulated competition under Arizona law maintains all these attributes and prohibits rates from being set by the market.
In contrast, deregulation can lead to a lack of planning and investment in grid infrastructure, threatening the stability of an essential public service and exposing customers to volatile pricing.	**MISLEADING.** Arizona Monopolies separately "unbundle" their charges for grid infrastructure, and all customers—regardless of who they pick as their commodity supplier—would continue to pay those charges. Grid reliability would be fully paid for, and planning for it would continue as usual. Arizona does not permit deregulation and requires regulated competition that protects customers from volatile pricing.
During the Texas winter crisis, customers experienced unfathomable spikes in their energy bills. One customer was reportedly	**MISLEADING.** This cannot happen under Arizona law since our state constitution prohibits market set rates and every customer

billed over $16,000 because of a single storm event last spring – 70x his normal bill! And one electric cooperative was forced into bankruptcy because of the $1.8 billion bill it received from the Texas grid operator. Those costs are ultimately borne by the customers.	will be subject to a Corporation Commission approved price cap. Further, the $1.8 billion figure the "fact sheet" cites to is the total default of Brazos Electric Co-operative: a monopoly with no customer choice in its service territory. Brazos most closely resembles SRP, and engages in the same kind of planning that the Monopolies in Arizona do. It proved to be dramatically *less* reliable than competitive power generation in Texas.
Provides that Salt River Project will develop and offer a buy-through option by January 1, 2024 so long as it does not shift costs to other customers or jeopardize reliability.	**FALSE.** Requirement already found in existing A.R.S. 30-803(D). Note, SRP has been violating this provision for 20 years.
Allows public power entities to continue to explore regional markets that have the potential to benefit customers from a larger footprint and more robust resource mix.	**FALSE.** Requirement already exists today in A.R.S. 30-805(F).
Electric deregulation has proven far more problematic than traditional regulation. Deregulation in Montana caused the local utility to shed its generation assets, and after prices rose and energy capacity evaporated, Montana reversed course—and ratepayers are still footing the bill.	**MISLEADING**. Unlike Montana, nothing in Arizona law requires the utilities to sell their generation assets. Montana customers who remain on competitive rates paid less than 50% of the regulated utility's energy rate in 2020, according to the latest EIA data. *Source: Form 861, U.S. Energy Information Administration: https://www.eia.gov/electricity/data/eia861/*
In Texas, deregulation has discouraged reliability investments and allowed energy reserves to dwindle to the point that its grid suffered catastrophic failure when Texans needed it most last winter.	**FALSE**. Texas' ERCOT market, which suffered power outages last winter, has two business models that co-exist within it: utility-monopolies that serve some places and the competitive market that serve others. In fact, utility-monopolies in Texas had a worse rate of forced power-plant outages than the competitive market, according to research from Rice University. That is the case even though those monopolies engage in the same kind of planning that the Arizona Monopolies tout as essential for reliability. In fact, this bill has nothing to do with reliability; according to the Western electric-reliability authority, WECC, Arizona faces the same reliability challenges around the security of natural-gas supply that faced Texas last winter, but this

	bill contains not a single word about that or any other specific reliability issue.

II. The House NREW Committee Hearing

The Monopolies misstatements, misdirection and lies, are not limited to the fact sheet. During the hearing in front of the House NREW Committee, the Monopolies focused on one falsehood in particular at great length. SRP witness, Bobby Olson, among others, attempted to convince the Committee that the actions a utility takes and costs incurred as the provider of last resort (the "POLR"), "get borne by the customers who are not benefiting." Basically, the Monopolies were attempting to falsely convince the Committee that the costs of being the POLR are not paid for by the customers that take service from competitive providers. This is false and contrary to law that specifically authorizes public power entities and regulated utilities to charge the competitive customers for this service.

A.R.S. 40-202(B)(6) specifically authorizes the, "recovery of just and reasonable costs incurred by the electric distribution utilities that are public service corporations for [acting as the POLR]" to be recovered from those customers. Similarly, A.R.S.30-805(A)(2) permits SRP and other public power entities to, "[p]rovide for the recovery of just and reasonable costs incurred by the electric distribution utilities that are public service corporations for supplying electric generation service."

Any and all claims by the Monopolies that they would be forced to play the role of POLR without compensation from the competitive retail customers is false and misleading. In fact, APS currently operates a buy-through program wherein the participants are required to pay this price already. Moreover, Green Mountain Energy has proposed to pay the utilities the amount for this service that the utilities are already charging others or that the utility has separately calculated. The Monopiles' allegations on this point are designed to deceive and are false.

III. The Senate NREW Committee Hearing

During the hearing in front of the Senate NREW Committee on SB1631, representatives from APS and SRP provided false and misleading information to the Committee.

First, Michael Vargas, lobbyist for APS, told the Committee that the bill "does not limit [ ] the ability of installers to sell behind the meter technology." This statement is demonstrably false. Under current A.R.S. 40-202(C)(7), installers are permitted to aggregate loads from several customers. In fact, right now the ACC has ordered APS to develop a tariff designed to permit the aggregation of behind the meter technology including battery energy storage. The Bills propose deleting this section, thereby removing the authority for such a program. This will indeed "limit the ability of installers to sell behind the meter technology."

SRP lobbyist, Molly Greene followed making the preposterous claim that "nothing 24 years ago that was put into statute to promote an electric deregulated market is undone in any way [by this bill]." Further, Ms. Greene parroted some of the talking points from the fact sheet when she

misleadingly proclaimed that the bill is an "expansion of consumer protections." As set forth in the table above, this claim is false.

SRP Attorney, Michael O'Connor was asked whether the *Ellis* case was related in any way to the fact that the bills delete seven provisions of law that the 9th Circuit Court of Appeals relied on in finding that SRP could not avoid potential antitrust violations based on the state action defense. Mr. O'Connor misleading replied that the Ellis "decision" issued in January of 2022 "did not have any impact on the decision to proceed forward with this bill."

It is obvious the January "decision" didn't impact the decision to move forward with the bill (since the bills were already introduced prior to the decision), but SRP's counsel left out that those seven provisions of law have been at issue in the Ellis case since at least June 4, 2019, when Plaintiffs raised the issue (and cited to the provisions of law the Bills delete) in their Opposition to SRP's Motion to Dismiss.