Testimony of Travis Kavulla
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Before the Arizona Senate Committee of Natural Resources, Energy and Water
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Madam Chairman and members of the Committee, I am Travis Kavulla, appearing for NRG Energy. Prior to my current role in charge of regulatory policy for the company, I led the energy and environment program at the think tank R Street Institute, and served in elected office from 2011-2019 as a member of the Montana Public Service Commission, the equivalent of this state's Corporation Commission. I am also the past president of the National Association of Regulatory Utility Commissioners, and have served as an independent director on the board of the Western United States' largest electricity market. I am very familiar with the regulatory and market structure for electricity that exists in Arizona and the interior states of the Western United States.

NRG is a Fortune 500 producer and retailer of energy. NRG's subsidiary, Green Mountain Energy, has a 20-year history of providing renewable energy products to customers who want to buy them. In the states we operate, our customers exercise their voluntary right to purchase additional renewable energy, and in providing that product my company relies on customers' own choices—not government mandates—to decarbonize the power sector. The success of this model has been enormous. My company has signed long-term contracts for 2,200 MWs of solar in just the last few years.[1] Just to give a comparison, that is more than Arizona's three largest utilities have brought online in their entire corporate existences.[2]

We have a pending application to provide voluntary renewable service to Arizonans before the Corporation Commission ("ACC").[3] As part of our activities in Arizona, we also have executed a Letter of Intent to buy solar energy to supply the customers we hope to have, which would lead to the construction of new solar projects in Arizona. This legislation, SB 1631, would kill all of that without even a hearing before the ACC, and put Green Mountain out of business in a state we would like to invest in.

[1] NRG Form 10-Q (May 6, 2021), p. 43.

[2] APS, SRP, and TEP collectively contract or own 1,902 MWs of solar and wind, according to their regulatory filings and other public disclosures.

[3] *See* Application of Green Mountain Energy for a Certificate of Convenience and Necessity for Electric Generation Service (filed Aug. 4, 2021), Docket No. E-21160A-21-0279. ("Green Mountain Application").

I get it. Monopolies don't like to be competed against, and in my experience they will do or say anything to deprive their customers of a choice in provider.

But what you are hearing from them is simply wrong. There are two major points here.

First, let's talk about reliability. All of our customers continue to pay all the utilities' rates associated with upkeep of the grid. Under existing law, our customers would also pay a special standby fee to the utilities for utilities' legacy investments in generation.[4] In short, regulation in Arizona already ensures that our customers pay their fair share for reliability – a form of regulated competition.

Supporters of this legislation have also told you about a market in Texas, called ERCOT. What they're not telling you is that it includes two business models: utility monopolies like them, which serve some places, and competitive suppliers like my company, which serve other places. Research conducted out of the Baker Institute at Rice University has shown that the monopoly business model performed worse in last winter's massive snow and ice storm—resulting in more forced outages as a share of power plants owned by monopolies.[5]

If this bill was about reliability, there would be provisions about weatherization of power plants, or about making sure customers who need oxygen to live aren't turned off in extreme heat, or about ensuring the fuel supply chain is robust. (This last issue was identified as the Southwest's major reliability risk in a study sponsored by the Western Electricity Coordinating Council, the regional entity tasked by government to audit electric reliability in the Western United States.)[6],. None of these actual reliability concerns appear in this bill. Reliability is being used as a fig leaf here by people who just want to retain a monopoly.

Second, let's talk about affordability. Each of Green Mountain's customers made the decision to hire us, and they can make the decision to fire us. If our prices or anything else about our service is unattractive, they can and will find another provider or go back to the utility. It's that simple. One of the reasons we want to enter the Arizona market is that utility customers—your constituents—say they are frustrated with their existing

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[4] Green Mountain has memorialized these conditions by filing a formal tariff for approval by the ACC, as required by law, which is a binding, legal instrument from which we, if we were certificated as a provider, would not be permitted to deviate. See Green Mountain Application, "Competitive Electricity Tariff," Attachment C to Appendix A (the Green Mountain contract with customers includes collection of "costs imposed by the relevant utility or the Arizona Corporation Commission" and provides that Green Mountain customers will pay a "Capacity Reserve Charge that will be used by the utility for system reliability purposes."

[5] Foss, et. al. "The Texas Freeze Out: Power Systems, Markets and the Future," *International Ass'n for Energy Economics, p. 7.* https://www.bakerinstitute.org/media/files/files/bc261393/00-foss-online-texas-freeze-iaee.pdf

[6] Wood MacKenzie, "Western Interconnection Gas-Electric Interface Study," (June 2018). https://www.wecc.org/Reliability/Western%20Interconnection%20Gas-Electric%20Interface%20Study%20Public%20Report.pdf

providers and would like a choice. It's very frustrating to them not to be able to take the ultimate action every consumer deserves in the economy, which is to select another service provider.

We offer our customers fixed-rate products for a year or longer so they can lock in rates and easily budget. That is a valuable service in today's environment. When prices spike and inflation occurs in the wholesale market, we—not the customer—eat that risk. Let me make that clear—the risk of bad investment decisions are ours, not the customers'. For regulated utilities, they just pass those cost increases through dollar-for-dollar to their captive customer base as a surcharge.

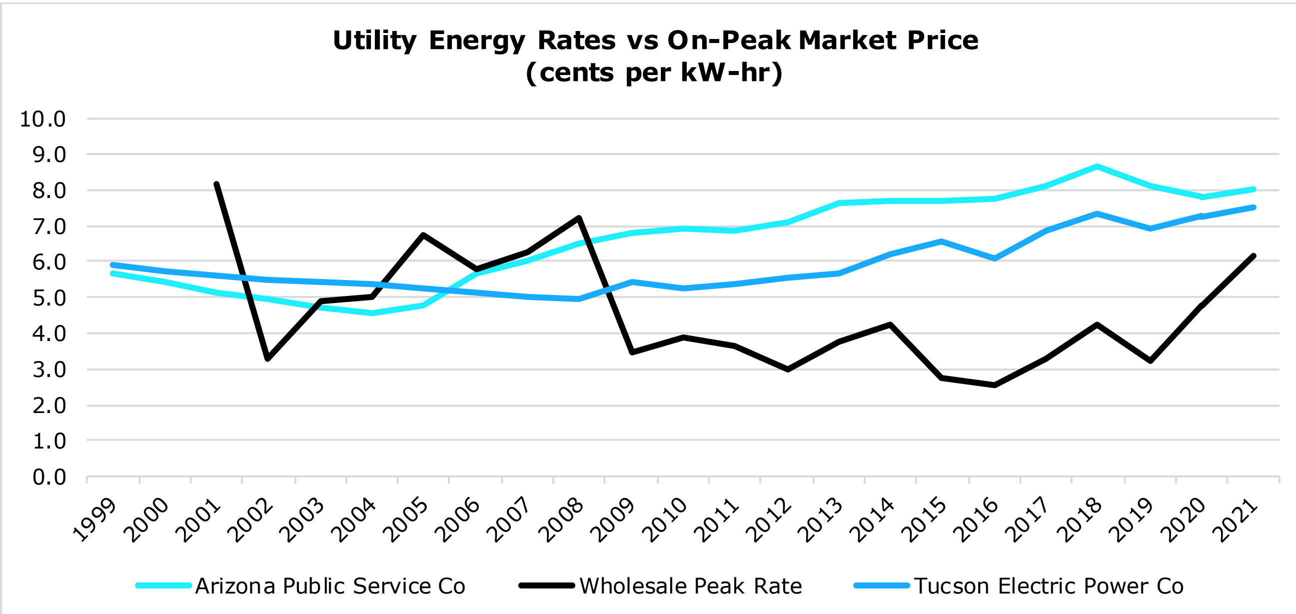
This is not theoretical. It's happening today in Arizona. Just two weeks ago, Tucson Electric Power reported that its energy costs in 2021 were more than $90 million than it had planned for, and it filed to use something called its Purchased Power and Fuel Adjustment Clause to surcharge consumers that entire amount. That means a minor line item on customers' bills is going to spike by more than 500%.[7] The utility estimated the total increase on residential customers' bills to be nearly 13 dollars per month. A customer who signed up for one of our year-long contracts, meanwhile, would be insulated from that kind of rate shock. We should all be asking why it is ratepayers' problem when a utility does a bad job managing its costs.

There is one more protection which makes Arizona unique among states. Its Constitution requires that the ACC continue to set rates within a range. Our prices can never rise above what the ACC sets.[8] Again, it is not the kind of free-for-all you have heard proponents describe.

There is substantial room for customer choice to discipline the utility pricing that currently exists in Arizona. For the last decade there has been a substantial gap between the fair market value of electricity, as measured by the on-peak prices of power at Arizona's major wholesale trading hub, and what Arizona utilities have been charging their captive customer base.[9] This was true even last year, when wholesale prices were higher than normal. The introduction of even limited competition in Arizona would help

[7] *Request for Approval of Tucson Electric Power Company's PPFAC Rate Adjustment, Decision No. 77856, Docket No. E-01933A-19-0028* (Feb. 1, 2022).
[8] We propose in Green Mountain's tariff a rate band that the Commission has previously adopted, +/- 35% vs. the utility's regulated rate, for the premium, all-renewable product that Green Mountain will offer.
[9] Data from the U.S. Energy Information Administration and utility tariffs. The analysis below shows APS & TEP, which are the two utility service territories that Green Mountain has filed to offer its services in. *See* Green Mountain Application, "Competitive Electricity Tariff: Residential Tariff," Attachment C to Appendix A.

sharpen everyone's pencils, whereas today utility rates have lost their relationship with underlying fundamentals.



This legislation was written by utilities without any prior consultation of the entities that it negatively affects, including Green Mountain. Legislative members have asked whether there is a middle ground, and in my discussions I have suggested to utilities and others an option that would manage the growth of the competitive market over the next decade. That would give policymakers and everyone else an opportunity to let customers have choices, and draw their own conclusions about how it works. This approach has thus far been rejected in favor of a "my way or the highway" approach by utility monopolies. But both as a representative of Green Mountain and personally as a Westerner who believes there's a right way to do these things, I really would like to stress our willingness to negotiate in good faith. Ultimately, all we are looking to do is provide our products to customers who have told us they want a choice for a clean energy provider, and where the data suggests that service would be economical.

I hope the committee will not pull the rug out from under us. Please oppose this legislation.