

# ANALYSIS OF HB2101

## PROHIBITS CONSUMER CHOICE

Deletes operative portions of the ECA (see e.g., 40-202(B), 40-207 and 40-208) and replaces with language establishing current monopoly utilities as entities required to make investments and engage in planning. In so doing, the legislature seeks to occupy the space on these key issues and, per Johnson Utilities, the Commission must follow this law. Proposed new 40-202(B) says, “electric service requires infrastructure planning and investments by the public service corporation responsible for its service territory.” By requiring “infrastructure planning and investments” to be performed “by” the monopoly utility, the bill excludes others from engaging in planning and procurement.

Some have argued the bill permits ACC to move forward with competition anyway, but this is incorrect. In addition to empowering the monopoly, the deletion of 40-202(C)(3) and (4), which provided for various consumer protections, additionally demonstrate intent to prohibit competition. Section 40-113 is also repealed and that provided the ACC with authority to do public outreach and education to support the implementation of choice. Why would we delete consumer protections and education options if the ACC could still move forward with competition? Further deletions throughout 40-202 would not be necessary or even desired if the Commission could still move forward with competition.

Furthermore, the ACC does not regulate SRP and the bill unambiguously outlaws competition in public power authority jurisdictions by way of new section 30-802 which requires rates be set by the governing board of the public power agency (e.g. SRP) and similarly requires the public power authority to perform the infrastructure planning and make investments to the exclusion of others. No body can make SRP permit competition other than the legislature.

## PROHIBITS CCAS

CCAs require the ability to enter a current monopoly’s territory to sell energy. The monopolies’ certificated territories must be open to competition in order for a CCA to serve customers. The deletion of 40-208 (along with the other key sections in 40-202 and 40-207) eliminate the legal authority for CCAs. As described in the forgoing section, the new language of 40-202(B) prohibits ACC from moving forward with any form of choice including CCAs. Furthermore, the bill deletes 40-202(C)(7) which authorized aggregation.

## IMPACTS ACC AUTHORITY

Proposed new 40-202(B) says, “electric service requires infrastructure planning and investments by the public service corporation responsible for its service territory.” By requiring “infrastructure planning and investments” to be performed “by” the monopoly utility, the bill sets out a specific method for infrastructure planning that requires the utility to perform the planning. The bill is not silent on how planning should be done. The bill does not indicate a role for the Commission in this planning and, by its plain language, provides utilities with arguments that the ACC cannot intrude on this utility obligation. This reading is made more apparent by the second clause of the same sentence in the new section, relating to “just and reasonable rates determined by the Commission,” which indicates a clear delineation of what the Commission may and may not do.

## IMPACT ON AGGREGATION

The bill deletes 40-202(C)(7) that confirmed the Commission's authority to adopt rules to, "permit the aggregation of loads by multiple customers." This could affect a variety of regulatory programs, such as demand response and its eventual participation in any RTO market.

## IMPACT ON COMMUNITY SOLAR

Today, community solar providers could utilize the ECA to provide services to the public. Just as this bill eliminates consumer choice and CCAs, community solar providers could not provide service under the ECA once these sections are deleted.

## ELIMINATES BUY-THROUGH SERVICE AND AGGREGATION IN SRP TERRITORY

Deletion of the current 30-803 eliminates provisions requiring SRP to offer buy-through on demand and at no extra cost and eliminates required aggregation. Its unclear why SRP was not offering this, but they should have been.

## ELIMINATES CITIES' ABILITY TO SELL POWER OUTSIDE THEIR BORDERS

Repeals 9-520 which permitted cities with their own utility to provide service outside their boundaries. This was a key opportunity for cities to assist in providing energy to customers and provided chance for more renewable energy sales in the state.

## ALLOWS UNFAIR COMPETITION IN SERVICE INDUSTRIES

Existing law prohibits a utility from gaining an undue advantage by using its bills and other aspects of its monopoly relationship with customers to advertise any affiliates the parent company, such as APS's Pinnacle West, may own. The law specifically names HVAC and construction services, but is not limited to these. The legislation deletes this prohibition 40-202(C)(2) in its entirety. .

## ELIMINATES CONSUMER PROTECTIONS ON UNFAIR TRADE PRACTICES

Repeals 40-202(P) the authority of the attorney general to investigate and take action against utilities that violate Commission rules against "deceptive, unfair and abusive business practices, practices related to deposit requirements and reconnection fees, intrusive and abusive marketing, [and] deceptive or untrue advertising practices" (40-202(C)).

## BLOCKS TRANSPARENCY

New 30-805(B) regarding public records for public power authorities leaves out key provisions of current 30-808 that permitted challenging a public power agency on its determinations of what is and what is not confidential. The public cannot permit the government, especially a monopoly utility, to determine what is and what is not confidential.

## LIMITS SRP OVERSIGHT

Changes to 30-808 limit judicial review by striking ability to overturn "unreasonable" decisions and instead limiting judicial action to matters that are "not supported by substantial evidence" or where there is an abuse of discretion. See 30-808(A). Additionally limits remedies available to a court by striking ability to "modify" an order from the SRP board.