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BEFORE THE ARIZONA CORPORATION COMMISSION

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7
8 IN THE MATTER OF THE APPLICATION OF
9 SOLARCITY FOR A DETERMINATION
10 THAT WHEN IT PROVIDES SOLAR
11 SERVICE TO ARIZONA SCHOOLS,
12 GOVERNMENTS, AND NON-PROFIT
ENTITIES IT IS NOT ACTING AS A PUBLIC
SERVICE CORPORATION PURSUANT TO
ART. 15, SECTION 2 OF THE ARIZONA
CONSTITUTION.

Docket No. E-20690A-09-0346

NOTICE OF FILING

13
14
15 The Residential Utility Consumer Office ("RUCO") hereby provides notice of filing
16 the Direct Testimony of Jodi A. Jerich, Director, in the above-referenced matter.

17
18 RESPECTFULLY SUBMITTED this 30th day of September, 2009.

19
20 Arizona Corporation Commission

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23 DOCKETED BY *MA*

24 Daniel W. Pozefsky
Chief Counsel

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of the foregoing filed this 30th day
2 of September, 2009 with:

3 Docket Control
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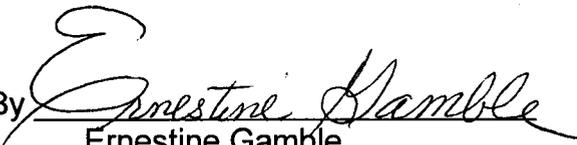
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20 Secretary to Daniel Pozefsky

21

22

23

24

24

SOLARCITY CORPORATION

DOCKET NO. E-20690A-09-0346

DIRECT TESTIMONY

OF

JODI A. JERICH, DIRECTOR

ON BEHALF OF

THE

RESIDENTIAL UTILITY CONSUMER OFFICE

SEPTEMBER 30, 2009

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INTRODUCTION..... 1

1 **INTRODUCTION**

2 **Q. What is the purpose of your testimony?**

3 A. The purpose of my testimony is to provide RUCO's position on whether solar
4 installers such as SolarCity are subject to Commission regulation pursuant to
5 the Arizona Constitution when they enter into "Solar Service Agreements"
6 (SSAs) with their customers.

7

8 **Q. What is needed in order to make a determination whether the**
9 **Commission has jurisdiction over solar installers when they enter SSAs**
10 **with schools, non-profits or governmental institutions to install**
11 **distributed generation photovoltaic systems on their properties?**

12
13 A. Over the last several years, Arizona has seen an increase in the generation
14 and acquisition of renewable energy. While utilities have made large strides
15 to break away from their carbon-based business models, such efforts have
16 occurred largely at the insistence of this Commission. There is no doubt that
17 this Commission wishes to see as much cost-effective renewable energy as
18 possible in Arizona. And distributed generation photovoltaic installations such
19 as those at issue in this docket certainly have a role in this effort.

20

21 At first blush, the analysis needed to make a determination of jurisdiction
22 seems to be a simple reading of the Arizona Constitution. However, as with
23 many aspects of utility regulation, the analysis revolves around an intricate
24 weave of details. RUCO's analysis is highly fact specific. Changes in the
25 facts could alter RUCO's position.

26

1 Q. In summary, what is RUCO's ultimate position on this question?
2

3 A. RUCO finds that the SSA agreement, as described in SolarCity's
4 Application, does not result in Commission jurisdiction. Under RUCO's
5 analysis, the central factors are that SolarCity does not own the electricity and
6 does not sell the electricity to the school, non-profit or government institution.
7 Therefore, SolarCity does not "furnish" the electricity as required by the
8 Arizona Constitution. From the moment of generation, the electricity is owned
9 by the customer on whose property the system is located. In order to avoid
10 up front installation costs, the SSA allows the customer to finance the costs
11 for the installation and maintenance of the system over a period of years.
12 The installers have chosen to establish a repayment schedule over a period
13 of years that is predicated upon the amount of electricity produced. In short,
14 the SSA is a financing mechanism and not the provision of a commodity.

15
16 RUCO believes it is appropriate for the Commission to consider the number
17 of installers doing business in Arizona. Since the consumer can choose from
18 several different installers and can shop for the best deal, RUCO finds this to
19 be a competitive market. Such a variety of vendors provides negotiating
20 power to the consumer. It is in the best interests of the consumer to have as
21 many choices as possible.

22
23 RUCO believes that the question of Commission jurisdiction should also
24 consider public health and safety concerns. As discussed in greater detail in

1 this testimony, RUCO believes that the SSA financing arrangement does not
2 impair the public's health and safety any more than if the installation were
3 purchased outright. At present, the Commission does not regulate the
4 purchase of solar installations by customers when purchased (instead of
5 financed) from solar installers such as SolarCity and this application does not
6 contemplate regulation of such transactions.

7

8 Finally, RUCO believes that the Commission should consider any impact
9 Commission regulation may have on the Commission's goal to increase
10 renewable energy in Arizona. As discussed below, RUCO believes that
11 regulation may impede this goal. If the Commission finds it to have
12 jurisdiction, it is RUCO's understanding that it will be the only state in the
13 country to regulate distributed generation photovoltaic installers when they
14 enter into SSAs with their customers.

15

16 In the alternative, if the Commission were to find that solar installers such as
17 SolarCity do fit within the definition of a "public service corporation" then
18 RUCO encourages the Commission to assert its jurisdiction with as light a
19 hand as possible.

20

21 **Q. What entities are regulated by the Commission?**

22 A. Under the Arizona Constitution, public service corporations are regulated by
23 the Commission. Article 15, Section 3 states:

1 “The Corporation Commission shall have full power
2 to, and shall, prescribe just and reasonable
3 classifications to be used and just and reasonable
4 rates and charges to be made and collected, by public
5 service corporations within the State for service
6 rendered therein, and make reasonable rules,
7 regulations, and orders, by which such corporations
8 shall be governed in the transacting of business within
9 the State, and may prescribe the forms of contracts
10 and the systems of keeping accounts to be used by
11 such corporations in transacting such business, and
12 make and enforce reasonable rules, regulations and
13 orders for the convenience, comfort and safety and
14 the preservation of the health of the employees and
15 patrons of such corporations...”
16

17 **Q. Does the Arizona Constitution define “public service corporation”?**

18 A. Yes. Article 15, Section 2 defines “public service corporation” as “*all*
19 *corporations other than municipal engaged in furnishing gas, oil, or electricity*
20 *for light fuel or power ... shall be deemed public service corporations.*”
21

22 **Q. Is there a general presumption that a business is exempt from**
23 **Commission regulation?**

24 A. Yes. “There is no presumption that a business activity is within regulation of
25 corporation commission, and, on the contrary, presumption is that it is not.”
26 Arizona Corp. Commission v. Continental Sec. Guards (App. 1967), 5 Ariz.
27 App. 318, 426, P. 2d 418 vacated 103 Ariz. 410, 443 P.2d 406.¹
28 Furthermore, there has been significant discussion whether this Application
29 meets the eight (8) criteria for Commission regulation set forth in the *Serv-Yu*
30 case (Natural Gas Serv. Co., v. Serv-Yu Coop., 70 Ariz. 235, 219 P.2d 324
31

¹ In this matter, the Arizona Supreme Court vacated the Court of Appeals ruling that found the Commission had jurisdiction.

1 (1950)). However, this testimony is not intended to provide a legal analysis of
2 the matter. Instead, I discuss RUCO's analysis of the specific details of the
3 application and discuss the public policy implications of jurisdiction.
4

5 **Q. In this docket, are the photovoltaic systems that are to be installed on**
6 **schools, government institutions and non-profits to be owned by these**
7 **entities?**

8
9 A. Not immediately. Instead, these customers will enter into long term "Solar
10 Service Agreements" (SSAs) for the systems. At the end of the term, the
11 customer has the option to purchase the system and obtain title to it. The
12 details of the financing agreement can be found in SolarCity's Application.
13

14 **Q. Is a sale transaction where a solar installation is purchased (rather than**
15 **leased or financed) subject to Commission jurisdiction?**

16
17 A. No. The Commission has never asserted jurisdiction when a customer
18 purchases outright a solar installation from an installer and **owns** the installed
19 photovoltaic installation that generates electricity on their property.
20

21 **Q. So if the school, government institution or non-profit owns the solar**
22 **installation there is no Commission jurisdiction but if the customer has**
23 **the equipment installed pursuant to an SSA then there might be**
24 **Commission jurisdiction?**

25
26 A. That is what this docket is trying to figure out. Basically, the question is
27 whether the financing instrument changes the nature of the electricity
28 generated on the customer's rooftop.
29

1 **Q. If the Commission should find that one of the “services” provided by**
2 **the installer through an SSA is the furnishing of electricity, even if it is**
3 **only one of several services provided by the SSA, would that change**
4 **RUCO’s analysis?**

5
6 A. Absolutely. The language of the Arizona Constitution is plain, clear and
7 concise. Corporations that furnish electricity are public service corporations
8 and subject to Commission jurisdiction. The importance of the furnishing of
9 electricity cannot be overshadowed by additional services. RUCO believes
10 that if the installer furnishes the electricity, then that provision cannot be
11 merely “incidental”. Without the electricity, any other services provided by
12 SolarCity would be meaningless.

13
14 **Q. So if the Commission finds that the solar installer does furnish**
15 **electricity through the SSA, could the Commission regulate these**
16 **transactions?**

17
18 A. Possibly. It is RUCO’s understanding of case law that even if a corporation
19 meets the literal and textual definition of a “public service corporation” then
20 the Commission must consider whether the corporation’s activities meet the
21 eight (8) criteria of the Serv-Yu case.²

22
23 The purpose of government regulation is to prevent abuses that happen in a
24 free and unfettered marketplace and to protect the health and safety of the
25 public. If the Commission were to find it has jurisdiction, it could establish

² “Determining whether an entity is a public service corporation requires a two-step analysis. First, we consider whether an entity satisfies the literal and textual definition of a public service corporation under Article 15, Section 2, of the Arizona Constitution. Second, we evaluate whether the entity’s business and activity are such as to make its rates, charges, and methods of operations a matter of public concern, by considering the eight factors articulated in [Serv-Yu]. Southwest Transmission Cooperative, Inc. v. ACC., 213 Ariz. 427, 430, 142 P. 3d 1240, 1243 (2007).

1 rules or guidelines by which any installer must abide. The Commission could
2 establish a regulatory regime that curtails any envisioned market abuses and
3 allows these installations to be set up the quickest and cheapest way
4 possible. This could be considered a form of "light" regulation that achieves
5 the purposes of government oversight without creating undue obstacles to the
6 momentum to get as much green energy on rooftops as possible. However,
7 even with "light" regulation, RUCO believes that ARS § 40-281 would require
8 every solar installer that utilizes SSAs in Arizona to receive a Certificate of
9 Convenience and Necessity before transacting business. All installations for
10 every installer that utilizes SSA financing would have to stop until this
11 requirement is met.

12
13 **Q. Why does RUCO believe that the installer is not furnishing electricity?**

14
15 **A.** RUCO believes that the installer is not "furnishing" electricity. They are
16 furnishing the equipment that generates the electricity. RUCO does not see
17 this as a legal loophole, but as a very real and legitimate distinction.
18 SolarCity's Application clearly states that all electricity generated by the
19 installation is owned by the customer. As noted by the Arizona Supreme
20 Court, the word "furnish" connotes a transfer of possession. (See Williams v.
21 Pipe Trades Industry Program of Arizona, 100 Ariz. 14, 20, 409 P. 2d 720,
22 724 (1966)). Since SolarCity never possesses the electricity, they are unable
23 to transfer – or furnish – it to the customer. Therefore, the installer is not

1 furnishing the electricity and does not fall within the definition of “public
2 service corporation” pursuant to the Arizona Constitution.

3
4 **Q. So what is the “service” provided in a “Solar Service Agreement”?**

5 A. The elements of an SSA are outlined in the Application. An SSA is unlike an
6 outright purchase of a solar installation where the customer owns the system
7 and is responsible for all maintenance and upkeep. Under an SSA, the
8 installer provides certain services – such as maintaining the system. Another
9 service provided by the installer is providing all up front costs and bearing the
10 risk of timely payments from the customer throughout the term of the SSA. In
11 RUCO’s opinion, it is clear from the details of the Application that “furnishing
12 electricity” is not one of the services provided under the Agreement. The
13 customer enjoys the use of all the electricity generated by the system and
14 owns the electricity. The solar installer has no interest or right in the electricity
15 generated. If any generation is not consumed by the customer, the customer
16 – not the solar installer – can sell its excess generation to the utility through a
17 net metering agreement.

18
19 **Q. Why have these customers chosen to enter into SSAs for these solar
20 installations instead of simply purchasing them?**

21
22 A. The American Recovery and Reinvestment Act (ARRA) significantly
23 increased the federal tax incentives and stimulus funds available for the
24 installation and generation of qualifying distributed generation facilities such
25 as the solar installations in question in this docket. The tax incentive has

1 certainly had its intended effect – an unprecedented increase in demand for
2 clean, green distributed generation energy!

3

4 However, public buildings such as schools and government institutions are
5 not eligible to take advantage of these sizeable tax credits. However, through
6 this particular financing mechanism, the solar installer – a private business
7 like SolarCity – retains title to the installation and is eligible for the tax credit.
8 Furthermore, these customers do not have to pay any up-front costs. When
9 the installer passes along the savings produced by the tax credit to the
10 school, government institution or non-profit, the installation now becomes
11 economically feasible. Without the savings generated from the federal tax
12 credit, many schools and government institutions would conclude that the DG
13 system's up-front expenses would be cost prohibitive – particularly during this
14 economic recession when budgets are being slashed. Even if the school
15 board or governing body agrees that there are significant long term benefits of
16 these installations and future monetary savings, without seeing an *immediate*
17 cost savings in utility bills, many would be unable to justify the expense of the
18 purchase during this economic recession and period of declining revenues.

19

20 In Track I, the Commission found that the Scottsdale Unified School District
21 (SUSD) would realize savings beginning in the first year of operation and
22 continuing throughout the 15-year period. Additionally, the Commission
23 recognized that if SUSD did not see a demonstrated savings at any point

1 during the period, they would elect to terminate the Agreement. (Decision No
2 71277 at p. 6). SolarCity, in its Application, notes, "SSA financing is
3 effectively the only way for schools, non-profit, and governmental entities to
4 leverage the valuable tax incentives and Federal ARRA stimulus dollars for
5 solar..." (Application at p. 4).

6

7 **Q. Should it make a difference whether Commission jurisdiction is**
8 **predicated on the type of financing arrangement selected in order to**
9 **install a solar photovoltaic system on a rooftop?**

10

11 A. Based on the facts known in this docket, no.

12

13 **Q. Would Commission jurisdiction over SSAs serve to protect the public's**
14 **health and safety?**

15

16 A. The answer depends on whether the Commission finds that there are
17 sufficient safeguards already in place. RUCO identifies two types of potential
18 health and safety risks: economic harm and physical harm.

19

20 RUCO believes that there are safeguards and remedies already in law to
21 address the public's risk of economic harm. Solar installers must comply
22 with state law. The Arizona Consumer Fraud Act prohibits deceptive
23 practices (See ARS §44-1522 et seq.). In addition to a private right of action
24 under this Act, the consumer has the benefit of having the Attorney General
25 bring a claim on his or her behalf and also seek monetary relief.

26

1 Regarding a risk of physical harm, RUCO has some concerns that have yet to
2 be addressed. State law already establishes standards for the selling and
3 installation of “solar energy devices”. ARS §44-1762 requires at least a one or
4 two year warranty for certain parts. An installer must meet standards
5 established by the Registrar of Contractors and must be a licensed solar
6 contractor under Title 32, chapter 10, article 4. The installation must comply
7 with any consumer protection rating and safety standards adopted by the
8 Arizona Department of Commerce.³ However, a September 13, 2009 article
9 in the Arizona Republic infers that the Registrar of Contractors may not have
10 established such standards. Additional inquiry needs to be done.
11 Furthermore, the article states that at least two cities, Mesa and Gilbert, have
12 recently stopped requiring building permits for rooftop solar installations. The
13 article did not report any situations of structural damage due to a solar
14 installation. A copy of the article is attached as Exhibit A.

15
16 **Q. Are there public health and safety concerns if the Commission finds it**
17 **does not have jurisdiction over these SSAs?**

18
19 **A.** The public’s health and safety is of paramount concern to the Commission
20 and to RUCO. RUCO believes the Registrar of Contractors Office (“ROC”)
21 and local municipalities are in the best position to establish and enforce
22 standards to preserve the structural integrity of rooftops when solar

³ RUCO does note that Subsection (F) of this statute exempts installations that are designed or installed by the final owner from these requirements. While it is expected that the school, government institution or non-profit will be the “final owner” and that title to the solar installation will transfer at the end of the six, ten or fifteen year period, it is at the option of that entity. RUCO would find comfort if this statute were amended to clarify that solar energy devices installed pursuant to SSAs are not exempt from the provisions of this statute.

1 installations are placed on them. To RUCO's knowledge, the Commission's
2 Staff has no expertise or training to conduct such inspections.

3

4 With that said, RUCO is aware that the Commission does not regulate solar
5 installers like SolarCity when they sell (as opposed to lease or finance)
6 installations to customers. If the Commission were to find it has jurisdiction
7 over solar installers when customers choose to finance the installations (but
8 not when customers purchase them), the Commission's decision would result
9 in oversight of some installations but not others. The level of scrutiny from
10 the ROC and the cities is the same regardless of the type of financial
11 transaction between SolarCity and the customer.

12

13 At this time, RUCO is unaware of any Arizona rooftop suffering structural
14 damage due to an improperly installed solar installation. Furthermore, RUCO
15 believes that a solar installer, such as Solar City, has an even greater
16 incentive to ensure the safe installation and operation of rooftop photovoltaic
17 installations when financed through a SSA. Apart from any moral or ethical
18 concerns a solar installer may have, it has a financial interest in a proper
19 installation. Since the installer is repaid based on the installation's electrical
20 output, it has a monetary incentive to install the system in order to promote
21 the greatest amount of generation. This is a motivation the installer does not
22 have when it installs a system that is not financed through a SSA.

23

1 RUCO believes that there is no more concern over the public's health and
2 safety if the solar installation is owned or whether it is financed by the
3 customer.

4

5 **Q. Well, isn't it a public good when excess electricity that is generated**
6 **from these solar installations is sold to the utility and placed on the**
7 **grid? Why doesn't that consideration trigger Commission jurisdiction**
8 **in this docket?**

9

10 A. The Commission has asserted its jurisdiction over this transaction through its
11 net metering Rule R14-2-1811. Through this Rule, utilities must file tariffs
12 which set forth the conditions and price of those transactions. In this
13 situation, the customer is clearly furnishing the excess electricity that it owns
14 to the utility for the public good. The relationship is between the customer
15 and the utility. The solar installer plays no role and has no interest in this
16 transaction. Therefore, the regulated activity is the furnishing of electricity
17 from the customer to the utility.

18

19 The sale of excess electricity generated from a DG installation is a regulated
20 transaction. The consumer is not able to negotiate terms, conditions and
21 price with the utility for this transaction. The regulatory burden for compliance
22 rests with the regulated utility, not the consumer.

23

24

25

1 **Q. If the Commission does not have jurisdiction over solar installers when**
2 **they enter into SSAs with customers, then how does the Commission**
3 **have jurisdiction over APS and other currently-regulated utilities if or**
4 **when they retain title to distributed generation equipment to their**
5 **customers?**

6
7 A. APS has filed an application with the Commission regarding a distributed
8 generated pilot project in Flagstaff, Arizona. (Docket No. E-01345A-09-0227).
9 The facts of that application are clearly distinguishable from those set forth in
10 this docket. First, APS owns all electricity generated by the installations
11 placed on the residential and non-residential properties in the Flagstaff pilot
12 project. Second, APS is a regulated, monopoly utility that is acting within its
13 service territory. Unlike solar installers like SolarCity, APS is a regulated
14 utility that “furnishes” electricity to its customers. APS has an obligation to
15 provide service to all consumers in its service territory – including those who
16 participate in the pilot project. Solar installers have no service territories and
17 have no corresponding obligation to furnish electricity. In fact, solar installers
18 do not furnish electricity – they provide the equipment that generates the
19 electricity as well as maintain that equipment.

20
21 **Q. Would regulation of SSAs have a negative impact on the growth of**
22 **distributed solar power?**

23
24 A. Yes, according to the Solar Alliance. The Alliance’s response to APS’s data
25 request D.R. 3.2 in Docket No. E-20633A-08-0513 states:

26 RESPONSE: The Alliance predicts that if SSA providers
27 were regulated as public utilities, even under a limited
28 regulation program, it would have a negative and wide-
29 spread effect on DG growth in the state. Due to difficulties
30 associated with time delays, increased compliance costs,

1 and financing difficulties many—perhaps a majority of—
2 SSA projects would simply not move forward. Preferring
3 less regulated business environments, SSA providers
4 would likely not open up shop in Arizona and it is possible
5 solar manufactures might also forgo operating in the state
6 since many rely on selling panels locally to SSA providers.
7

8 In D.R. 3.1, the Alliance claims that “there is no state in the country that in any
9 way regulates competitive third party solar developers using the SSA model.”

10 Copies of D.R. 3.1 and D.R. 3.2 are attached as Exhibit B.

11
12 RUCO notes that the testimony of Mr. Kevin Fox filed in this docket is
13 consistent with the statements expressed in the Solar Alliance’s responses to
14 data requests. (Fox Direct at p.6). Furthermore, Mr. Fox notes that SSAs
15 have become the primary transaction between solar installers and non-
16 residential customers. He notes that in 2008, approximately 90% of non-
17 residential solar installations were done through SSAs. (Id at p.4). He also
18 notes that SSAs have become increasingly appealing to residential
19 customers. (Id).

20
21 **Q. Based on the totality of circumstances, does RUCO believe that these**
22 **facts trigger Commission jurisdiction?**

23
24 **A.** Based on the facts in this docket, RUCO believes that SolarCity is not acting
25 as a public service corporation when utilizing SSAs.

26
27 **Q. Does this conclude your testimony?**

28 **A.** Yes.

EXHIBIT A

**The Solar Alliance's Responses to
Arizona Public Service Company's
Third Set of Data Requests
Docket No. E-20633A-08-0513**

APS 3.1 The Solar Alliance Application states that "the growth of distributed solar power is hampered by uncertainty that the providers of SSAs are not subject to economic regulation by the Commission as public service corporations." Application at 3. Please explain how and to what degree the growth of distributed solar power is hampered.

RESPONSE: To the best of the Alliance's knowledge, there is no state in the country that in any way regulates, competitive third party solar developers using the SSA model. Regulation in any form would have significant impact on the business models of solar service providers. First, it would increase the cost of deploying solar electric systems. Commercial solar development is a highly competitive business that operates on very tight margins. Additional costs would most likely induce SSA providers to focus their business development in other states. Second, regulation would add time to the development process. The REST Rules were adopted November 14, 2006, some 2 and one-half years ago. Since that time, relatively little commercial solar has been developed in the state. Additional administrative processes would serve to slow down, rather than streamline, solar development. Third, any form of regulation might result in the loss of project financing for Arizona as a result of the uncertainty it creates. Indeed, uncertainty has been one of the principle reasons for the lack of commercial solar development. This uncertainty has been related to diverse factors including a proposed project that might have fulfilled multiple years of the non-residential distributed requirement, the lack of Commission-approved net metering standards, uncertainty as to which Corporation Commission candidates would be elected, and the potential for regulation of third party developers, among others. One by one, these uncertainties have been favorably resolved, but for this one.

**The Solar Alliance's Responses to
Arizona Public Service Company's
Third Set of Data Requests
Docket No. E-20633A-08-0513**

APS 3.2 What will be the impact on growth of distributed solar power if the Commission determines that Solar Alliance members that sell electricity as a component of their business are public service corporations subject to Commission jurisdiction?

RESPONSE: The Alliance predicts that if SSA providers were regulated as public utilities, even under a limited regulation program, it would have a negative and wide-spread effect on DG growth in the state. Due to difficulties associated with, time delays, increased compliance costs, and financing difficulties many—perhaps a majority of— SSA projects would simply not move forward. Preferring less regulated business environments, SSA providers would likely not open up shop in Arizona and it is possible solar manufactures might also forgo operating in the state since many rely on selling panels locally to SSA providers.

EXHIBIT B

September 24, 2009 |

1:03 pm | 93°

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Deregulation of booming solar industry worries some

by Jim Walsh - Sept. 13, 2009 12:00 AM
The Arizona Republic

Fueled by government incentives, Arizona's solar industry is booming, but experts are questioning whether a recent trend toward deregulation may eventually compromise public safety.

Since Mesa and Gilbert waived a requirement for building permits, no consensus exists on whether consumers are getting a break on fees or whether they are risking long-term damage to their roofs from the weight of solar systems, or worse, seeing their roof sail off during a microburst.

"They're sitting on a ticking time bomb. Something is going to happen," said Robert Dumitrache of R&R Engineering in Surprise.

Dumitrache and others argue that a structural analysis of a roof is a cheap insurance policy for a homeowner hoping to avoid long-term problems.

"The last thing Phoenix needs is to promote a black eye for the solar industry," said Ray Schmidt, also of R&R Engineering.

But Rick Fowlkes, a Mesa consulting engineer, said, "I'm in agreement with Mesa and Gilbert: If it's a single home system it's probably not needed."

Those arguing for the review may be motivated by more than public safety, he said. "It's the structural engineer who wants more business."

Steve Hether, Mesa's director of development services, acknowledged it's possible the doomsday scenarios could occur but said such events are unlikely.

"There's always a risk, no matter what you do," Hether said. "You might have a roof that is under-designed, but what are the chances of that playing out?"

"For the resources we have, is it something we need to get involved in? We said no."

While Mesa waived the building permit and the \$370 fee, Scottsdale still requires the permit and often requests the structural analysis, said Mike Clack, chief development officer.

With such a wide disparity in rules, the Maricopa Association of Governments is hoping to arrive at a standardized approach to protect consumers while avoiding a heavy financial burden, he said.

A structural analysis can cost anywhere from \$250 to \$1,200, depending on who you ask.

Clack, chairman of MAG's building-standards committee, said he's looking for proof that drilling a screw into a truss to anchor a solar system, which goes against national building codes, won't damage roofs.

Ben Hershey, president of the Structural Building Components Association, said he's offered to perform tests in the association's Madison, Wis., lab, but the solar industry so far has not agreed to pay.

"I want to help them put more solar out. At the same time, we have to protect that house on a long-term basis," he said.

Concerned about the lack of municipal oversight, Salt River Project requires Mesa and Gilbert residents to sign waivers accepting responsibility before turning on the power.

Since SRP started requiring the waiver in May, 35 Mesa residents have signed them, along with seven Gilbert residents.

Property owners and installers vouch in the waiver that the solar systems have been installed properly and meet building codes, said Lori Singleton, manager of sustainability initiatives and technology.

"SRP does prefer that the city does inspections," she said.

After being contacted by SRP and Arizona Public Service Co., the Arizona Registrar of Contractors is planning to create a new license for solar installers to protect consumers, director Bill Mundell said.

Until that happens, Mundell said he plans to add more questions about solar to the electrical-license test that now covers solar installers.

The debate comes as the solar industry booms. American Solar Electric, one of the Valley's largest installers, projects it will install 700 to 900 residential systems in 2009, spokeswoman Krystal Book said.

Despite the added costs and delays, American Solar Electric does not support deregulation, she said.

"Having a building permit from a city is an additional assurance" for homeowners, she said. With no permit, "it opens the door for unlicensed contractors who don't have the checks and balances we have in place."

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Mark Henle/The Arizona Republic

American Solar Electric employee Josh Barkey (left) and Ramon Vega install a panel on the roof of a Mesa house for a solar electricity system.

More on this topic

Solar-inspection debate

Pros

- Mesa stopped requiring the building permits two years ago and has received no complaints.
- Eliminating the permits saves consumers a \$370 review

fee, plus the potential cost of a structural analysis by an engineer that could cost up to \$1,200. The cost savings might encourage more people to go green.

- Mesa has not experienced a structural roof collapse in at least a decade.

- The vast majority of homes already have passed through the building-permit process.

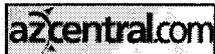
Cons

- Some roofs have not been designed to carry an additional load. There's no way for the average consumer to know the load level without having an engineer perform a structural analysis.

- Any damage from too heavy a load would not show up for years and would likely accumulate over time. Cracks could develop in roofs, and solar panels could act like sails, pulling off roofs during storms.

- Drilling a hole into a truss to anchor a solar system violates nationally accepted [building codes](#).

- Even if a structural analysis costs anywhere from \$250 to \$1,200, it's a very small percentage of a \$30,000 job and amounts to an [insurance](#) policy for homeowners.



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