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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

IN THE MATTER OF THE APPLICATION OF
THE SOLAR ALLIANCE FOR A
DECLARATORY ORDER THAT PROVIDERS
OF CERTAIN SOLAR SERVICE
AGREEMENTS WOULD NOT BE PUBLIC
SERVICE CORPORATIONS.

DOCKET NO. E-20633A-08-0513

**STAFF'S PROPOSED LIST OF ISSUES
TO BE CONSIDERED AT HEARING**

I. INTRODUCTION

On May 13, 2009, Administrative Law Judge ("ALJ") Teena Wolfe issued a Procedural Order in the above-named matter, directing that all parties who believe that a hearing should be held in this matter were to file, by June 15, 2009, a list including all issues the party believes should be considered at hearing. Pursuant to that order, Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff") makes this filing.

Staff notes that there are numerous parties to this case, each with varied interests that may be impacted by any subsequent decision. Staff further notes that the topic and subject matter in this case, as well as the underlying policy implications of any decision, are of great public interest. Keeping in mind these considerations, and not yet having the benefit of any filed testimony in the case, Staff has concerns whether a full and complete list of pertinent issues can be accurately identified at this stage. Further, it would seem unwise to narrowly circumscribe the issues at this time. Nevertheless, Staff believes that such lists would be very helpful for all parties and for the ALJ in preparing for hearing. Therefore, Staff has tried to be as inclusive as possible and submits the following proposed list of initial issues and questions to be pursued at hearing. While Staff is not firmly committed to addressing each and every one of these questions, neither would Staff want to preclude at hearing any significant and relevant questions not identified here.

1 **II. STAFF'S LIST OF PROPOSED INITIAL ISSUES AND QUESTIONS**

- 2 A. Can the twelve proposed characteristics actually be used to conclusively determine
3 whether or not an entity is a public service corporation ("PSC")? If not, are there other
4 specific characteristics that could be used?
- 5 B. Would the inclusion of a purchase option in a Solar Service Agreement ("SSA") have
6 any impact on the determination of whether an SSA provider is a public service
7 corporation?
- 8 C. Would the use of a different business model in an SSA (such as lease arrangement) have
9 any impact on the determination of whether an SSA provider is a public service
10 corporation?
- 11 D. Would the use of a different business model in an SSA (such as lease arrangement) be a
12 feasible alternative to the proposed model? If not, why not?
- 13 E. Would a third party owner financing structure be used for all projects? What are the
14 specific mechanics and implications of this structure or other financing options that may
15 be used?
- 16 F. What specific tax law provisions are implicated and how do they relate to the proposed
17 business model? For example, are investment tax credits available to PSCs?
- 18 G. Is there sufficient evidence to substantiate the claim that SSAs represent primarily
19 financing arrangements and that the sale of electricity is only incidental?
- 20 H. If the Commission were to determine that SSA providers were not PSCs, what safety
21 concerns might be implicated by SSAs and how should those concerns be addressed?
- 22 I. If the Commission were to determine that SSA providers were not PSCs, what reliability
23 concerns might be implicated by SSAs and how should those concerns be addressed?
- 24 1. For example, should there be some catastrophic failure among SSA generation
25 facilities, what effects may it have for grid stability?
- 26 2. Could other events not typically characterized as "catastrophic," such as
27 extensive cloud cover, result in concerns for grid stability?
- 28

- 1 J. If the Commission were to determine that SSA providers were not PSCs, what
2 concerns related to interconnection would be implicated by SSAs and how should
3 those concerns be addressed?
- 4 K. If the Commission were to determine that SSA providers were not PSCs, what
5 concerns related to utility resource planning would be implicated and how should
6 those concerns be addressed?
- 7 L. If the Commission were to determine that SSA providers were not PSCs, in which
8 areas (if any) and to what extent should the Commission have an oversight role (for
9 example, safety of SSA equipment installations)?
- 10 M. If the Commission were to grant the Solar Alliance request, how would the
11 Commission discover or determine if an SSA provider were providing service in such
12 a way that it was acting as a public utility?
- 13 N. If the Commission were to grant the Solar Alliance request, how would potential
14 disputes related to determination of liability be managed?
- 15 O. If the Commission were to grant the Solar Alliance request, what would be the roles of
16 the customer, SSA provider, incumbent utility, and Commission, if any, in
17 determination of liability/responsibility should disputes or any other matter arise?
- 18 P. Who would be the responsible party if someone were electrocuted, or if the SSA
19 provider's equipment were to malfunction and damage utility equipment? Would the
20 customer be responsible, or the commercial SSA provider which has no business or
21 commercial relationship with the local utility?
- 22 Q. If the Commission were to determine that SSA providers were PSCs, what negative
23 effects, if any, would be implicated by being subject to regulation?
- 24 R. Could SSAs operate under a framework of limited, or light-handed, regulation such as
25 one similar to Coin Operated Pay Telephones, as an alternative to the requested
26 declaratory order?
- 27 S. Could SSAs operate under the framework of a substantive policy statement as an
28 alternative to the requested declaratory order?

- 1 T. How much business (in number of contracts and in dollars) does Solar Alliance
2 anticipate receiving from non-profit and government entities?
- 3 U. If the Commission were to grant the Solar Alliance request, about how many
4 providers, both Solar Alliance members and non-members, might offer SSAs in
5 Arizona?
- 6 V. To what extent do the advertising and marketing practices of SSA providers represent
7 that their product is open to the public or to a limited segment of the public? Would
8 these practices be different depending on the outcome of this case?
- 9 W. If the Commission were to grant the Solar Alliance request, what percentage of
10 potential customers seeking an SSA would likely be refused an agreement by an SSA
11 provider? What percentage of potential government or non-profit customers?
- 12 X. If the Commission were to grant the Solar Alliance request, how much load would be
13 generated from future SSA installations? For large projects, what percentage of the
14 entity's total load would be met by the SSA installation?
- 15 Y. If the Commission were to deny the Solar Alliance request, what impact, if any, would
16 it have on development of distributed solar generation in Arizona?
- 17 Z. If the Commission were to grant the Solar Alliance request, what implications would
18 that decision have for retail electric competition?
- 19 AA. If the Commission were to deny the Solar Alliance request, would SSA providers be
20 prepared to file for Certificates of Convenience and Necessity ("CC&Ns")?
- 21 1. Would CC&Ns granted to SSA providers be for electric retail competition? If
22 so, what would be the impact on the Solar Alliance of the Commission's
23 pending proceeding to determine whether retail electric competition is in the
24 public interest?
- 25 2. Would incumbent utilities oppose the granting of CC&Ns for SSA providers?
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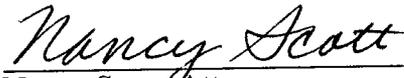
1 BB. If the Commission were to grant the Solar Alliance request, would incumbent utilities
2 form subsidiaries to offer services similar to SSAs?

3 1. If so, would these utility subsidiaries be considered PSCs even though the
4 Solar Alliance SSA providers would not?

5 2. Would utilities be *required* to form subsidiaries in order to offer similar
6 services?

7 CC. To what degree are the rates, charges, and operating methods of SSA providers a
8 matter of public concern?

9 RESPECTFULLY SUBMITTED this 15th day of June, 2009.

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11 

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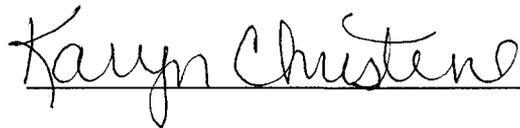
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