

**ORIGINAL**

**OPEN MEETING AGENDA ITEM**



0000101849

Jordan R. Rose AZ Bar No.: 017452  
Court S. Rich AZ Bar No. 021290  
M. Ryan Hurley AZ Bar No. 024620  
**Rose Law Group pc**  
6613 N. Scottsdale Road, Suite 200  
Scottsdale, Arizona 85250  
Direct: (480) 240-5585  
Fax: (480) 505-3925

**RECEIVED**

2009 AUG 21 P 3:41

ARIZONA CORP COMMISSION  
DOCKET CONTROL

**EXCEPTION**

Attorneys for Applicant SolarCity Corporation

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**KRISTIN K. MAYES**  
CHAIRMAN

**SANDRA D. KENNEDY**  
COMMISSIONER

**PAUL NEWMAN**  
COMMISSIONER

**GARY PIERCE**  
COMMISSIONER

**BOB STUMP**  
COMMISSIONER

<b>IN THE MATTER OF THE</b>	)	<b>DOCKET NO. E-20690A-09-0346</b>
<b>APPLICATION OF SOLARCITY</b>	)	
<b>FOR A DETERMINATION THAT</b>	)	
<b>WHEN IT PROVIDES SOLAR</b>	)	<b>SOLARCITY'S EXCEPTIONS TO THE</b>
<b>SERVICE TO ARIZONA SCHOOLS,</b>	)	<b>AUGUST 14, 2009 RECOMMENDED</b>
<b>GOVERNMENTS, AND NON-</b>	)	<b>OPINION AND ORDER AND REQUEST</b>
<b>PROFIT ENTITIES IT IS NOT</b>	)	<b>FOR CONTINUATION OF SPECIAL</b>
<b>ACTING AS A PUBLIC SERVICE</b>	)	<b>CONTRACT APPROVAL ON THE</b>
<b>CORPORATION PURSUANT TO</b>	)	<b>CORONADO HIGH SCHOOL SSA UNTIL</b>
<b>ART. 15, SECTION 2 OF THE</b>	)	<b>THE COMMISSION'S SEPTEMBER</b>
<b>ARIZONA CONSTITUTION</b>	)	<b>OPEN MEETING</b>

Applicant, SolarCity, by and through its undersigned counsel hereby submits its Exceptions to the Recommended Opinion and Order ("ROO") issued on August 14, 2009 and a Request for Continuation of Special Contract Approval on the Coronado High School Solar Services Agreement until the Commission's September Open Meeting in the above-captioned matter.

Arizona Corporation Commission  
**DOCKETED**

AUG 21 2009

DOCKETED BY *mm*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13

## I. INTRODUCTION

SolarCity is in agreement with nearly all of the recommendations set forth in the ROO and appreciates the Staff's thorough and thoughtful analysis of the issues. This filing requests minor modifications to a few items in the ROO that SolarCity believes need to be clarified and then requests a continuation of the special contract determination only as it pertains to the SSA regarding Coronado High School. As discussed in more detail below, SolarCity asks that the special contract approval in this Track 1 acknowledge that the approved rate be subject to alteration based on the rebate variance provisions included in the SSA. Further, SolarCity requests a slight modification to the ROO to make it more clear that the terms of the special contract and its approved rates will either; 1) go away if the decision in Track 2 indicates that SolarCity is not acting as a Public Service Corporation (a "PSC"); or 2) continue to control after the Track 2 decision if the decision in Track 2 results in a finding that SolarCity is a PSC.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

As a preliminary matter SolarCity wishes to reconfirm that the Commission's actions on these special contract proceedings in no way affect or influence the overall question of the Commission's jurisdiction over SolarCity that will be resolved in Track 2 of this Docket. While the ROO states that this shall in no way prejudice SolarCity's position in that Track 2 we also wish to make it clear that it should in no way influence the proceedings in Track 2. SolarCity maintains that it is not acting as a Public Service Corporation when it enters into SSAs with schools, non-profits, and governmental entities and that the Commission ultimately lacks jurisdiction over these SSAs regardless of the process undertaken in Track 1 of this Docket for special contract approval. While SolarCity has provided rate information for Staff's analysis of these two special contracts in Track 1, it continues to believe that the Commission has no jurisdiction over, or public interest justification for, reviewing rates that are negotiated between a willing buyer and a willing seller.

26  
27

## II. DISCUSSION

28

A. *Including the Rebate Variance in the Approved Rate*

1 As Staff has indicated in its thorough analysis, the SSAs at issue in this special contract  
2 procedure involve a provision entitled "Rebate Variance." This provision essentially calls for a  
3 pro-rated alteration of the SSA price if the anticipated rebate from the applicable utility is lower  
4 than contemplated. Staff does an excellent job of explaining how this provision works in the  
5 SSA and noting the various changes that would occur to the price based on changes to the utility  
6 rebate. Staff also correctly notes that the customer has the right to terminate the contract without  
7 penalty if the price (if altered under this provision) is higher than desired in the customer's full  
8 discretion. Staff further accurately notes that this provision only operates for setting the price at  
9 the beginning of the contract and once the actual rebate amount is determined and the SSA price  
10 is set and accepted by the customer, the price will not change under this provision. Staff states  
11 that this rebate variance provision is reasonable and that the customer would "yield a cost-benefit  
12 up to a rate of \$0.1424 per kWh" (equating to an APS rebate of \$.157/kWh over 15 years; and a  
13 SRP rebate of \$1.98/W). ROO, Page. 6, Line 24.

14 Despite the ROO's clear statements that the rebate variance would still provide a cost-  
15 benefit up to the \$0.1424 per kWh rate, the ROO fails to incorporate this flexibility in the rate  
16 variance and arguably mandates a straight \$0.11 per kWh rate. SolarCity asks that the order  
17 reflect Staff's extensive and thorough analysis and approve a rate range of up to \$0.1424 per  
18 kWh for these special contracts in the event that the anticipated rebate changes. SolarCity  
19 respectfully recommends the following language be added to the ROO in place of the language  
20 on Page 13, Lines 3 and 4:

21 ***IT IS FURTHER ORDERED*** that a rate of \$0.11 per kWh for the Desert  
22 *Mountain High School and Coronado High School Solar Service Agreements be*  
23 *approved and that this rate may be adjusted pursuant to the SSA's rebate-*  
24 *variance provision up to a maximum of \$0.1424 per kWh*

25 **B. Clarifying the Effect of Track 2**

26 SolarCity also is concerned with how the outcome of the proceeding in Track 2 of this  
27 Docket will impact the final adopted Order and believes the ROO would benefit from some  
28 additional language clarifying this issue. As Staff has discussed in the ROO, resolution of the

1 special contracts (i.e. Track 1 of this Docket) does not resolve the greater question of whether  
2 SolarCity is a PSC when entering into SSAs with schools, non-profits and governmental entities  
3 (i.e. Track 2 of this Docket). As drafted, the ROO includes some ambiguous language as to the  
4 status of these special contracts after Track 2 is decided.

5 The special contract procedure was proposed as a way for the District to be able to reap  
6 the benefits of its agreement with SolarCity in a timely manner prior to the expiration of various  
7 tax and incentive benefits at the end of this calendar year. The fear was that the process for  
8 deciding on the Application may not leave enough time for the installation of the solar facilities  
9 resulting in the District losing out on the ability to reap the benefits of the expiring incentives. In  
10 order to have this special contract procedure result in the solar facilities being installed in a  
11 timely manner, the parties to the SSA require certainty that the decision in Track 2 is not going  
12 to negatively impact these special contracts once approved. The Applicant believes that Staff  
13 agrees with this idea, however, Applicant believes that the ROO would benefit if two additional  
14 paragraphs were added to the Conclusions of Law section at the bottom of page 12.

15 Thus, Solar City proposes the following additional language for the ROO to include the  
16 addition of new paragraphs 4 and 5 in the Conclusions of Law section at the bottom of page 12:

17  
18 *4. If the Applicant's request in Track 2 of these proceedings is granted, and*  
19 *it is ultimately determined that SolarCity is not acting as a Public Service*  
20 *Corporation when it enters into SSAs with schools, non-profits and governmental*  
21 *entities; then the Commission's jurisdiction over the Desert Mountain High*  
22 *School and Coronado High School Solar Service Agreements as determined by*  
23 *this Order will be void and of no further effect.*

24  
25 *5. If the Applicant's request in Track 2 of these proceedings is denied, and it*  
26 *is ultimately determined that SolarCity is acting as a Public Service Corporation*  
27 *when it enters into SSAs with schools, non-profits and governmental entities; then*  
28 *the Commission's approval of the Desert Mountain High School and Coronado*  
*High School Solar Service Agreements as special contracts herein shall survive*  
*that determination.*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

C. *Request to Continue Consideration of the Coronado High School SSA until the September Open Meeting*

SRP recently contacted SolarCity to propose that the parties enter into an agreement concerning the provision of solar facilities on the Coronado High School that would render this special contract determination as to Coronado High School unnecessary. At this time it appears likely that an agreement will be reached between the parties prior to the Commission's September Open Meeting which would allow the Coronado High School solar facility to be installed in a timely manner without further Commission action. As a result of this pending agreement the Applicant is hereby requesting that the consideration of the Coronado High School SSA be continued until the September Open Meeting and that only the Desert Mountain High School SSA receive consideration at this time.

In light of the ongoing special contract proceedings, the Applicant had been moving forward with design and engineering of the Coronado facilities at risk and believes that if an agreement is not reached with SRP that approval of a special contract at the September Open Meeting will provide just enough time for the project to be completed and for the expiring tax/incentives to be utilized to the District's benefit. The Applicant asks that the ROO be adjusted to make changes to conform to the requested continuation throughout the document. In the alternative, the Commission could insert the following language in a new paragraph following line 4 on page 13:

***IT IS FURTHER ORDERED*** that this Order only shall apply to the Solar Services Agreement between SolarCity and the Scottsdale Unified School District regarding the Desert Mountain High School and that consideration of the Solar Services Agreement between SolarCity and the Scottsdale Unified School District regarding the Coronado High School shall be considered at the Commission's next Open Meeting in September.

1                   **III. CONCLUSION**

2                   SolarCity greatly appreciates Staff's diligent and thorough analysis of these two special  
3 contracts and agrees in principal with the outcome suggested in the ROO. However, as noted  
4 above, SolarCity believes that the intent of the ROO and the nature of the two-track process in  
5 this Docket are more accurately represented and described by incorporating the language  
6 suggested above. Additionally, SolarCity respectfully requests a continuation of the Coronado  
7 SSA issue until the next Open Meeting. For these reasons SolarCity respectfully requests that  
8 the Commission's ultimate opinion and order for Track 1 of this Docket incorporate the  
9 suggested changes.

10  
11                   **RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of August, 2009.**

12  
13                   **Rose Law Group pc**

14                   

15                   **Jordan R. Rose**  
16                   **Court S. Rich**  
17                   **M. Ryan Hurley**  
18                   **6613 N. Scottsdale Road, Suite 200**  
19                   **Scottsdale, Arizona 85250**  
20                   **Direct: (480) 505-3936**  
21                   **Fax: (480) 505-3925**  
22                   *Attorneys for Applicant SolarCity Corp.*