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AZ CORP COMMISSION  
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5 Attorneys for Western Resource Advocates

7 **BEFORE THE ARIZONA CORPORATION COMMISSION**

8 KRISTIN K. MAYES, Chairman  
9 GARY PIERCE  
10 SANDRA D. KENNEDY  
11 BOB STUMP  
PAUL NEWMAN

12 IN THE MATTER OF THE APPLICATION  
13 OF SOLARCITY FOR A DETERMINATION  
14 THAT WHEN IT PROVIDES SOLAR  
15 SERVICE TO ARIZONA SCHOOLS,  
16 GOVERNMENTS, AND NON-PROFIT  
17 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 SUMMARY  
TESTIMONY OF WESTERN  
RESOURCE ADVOCATES**

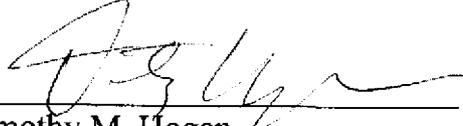
18  
19 Western Resource Advocates ("WRA"), through its undersigned counsel, hereby  
20 provides notice that it has this day filed the summary of the testimony of David Berry in  
21 connection with the above-captioned matter.

22 / / /  
23 / / /  
24 / / /  
25 / / /

Arizona Corporation Commission  
**DOCKETED**  
OCT 13 2009  
DOCKETED BY

1 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of October, 2009.

2 ARIZONA CENTER FOR LAW IN  
3 THE PUBLIC INTEREST

4 By 

5 Timothy M. Hogan  
6 202 E. McDowell Rd., Suite 153  
7 Phoenix, Arizona 85004  
8 Attorneys for Western Resource  
9 Advocates

10  
11 ORIGINAL and 13 COPIES of  
12 the foregoing filed this 13<sup>th</sup> day  
13 of October, 2009, with:

14 Docketing Supervisor  
15 Docket Control  
16 Arizona Corporation Commission  
17 1200 W. Washington  
18 Phoenix, AZ 85007

19 COPIES of the foregoing  
20 electronically served this  
21 13<sup>th</sup> day of October, 2009 to:

22 All Parties of Record  
23  
24  
25

**Summary of Testimony**  
**David Berry**  
**Western Resource Advocates**  
**Docket No. E-20690A-09-0346**

Western Resource Advocates recommends that the Commission conclude that when a *company* uses purchased power agreements for distributed generation from renewable resources, such as solar service agreements, it is not acting as a public service corporation.

The courts have developed criteria for determining whether a company is a public service corporation. Using these criteria, the service provided under a solar service agreement has no attributes of services furnished by a traditional public service corporation. In particular:

- There is no dedication of private property to public use as the distributed energy equipment serves only the customer on whose property it is located.
- There is no public interest in the service which is provided for the benefit of the customer on whose property the distributed energy system is located. Those benefits are the provision of a hedge against increasing utility rates for electricity and reduced air pollution and water consumption.
- The service is not essential in contrast to electricity furnished to businesses and residents through a network of central station generators and transmission and distribution wires.
- The market is competitive and is not subject to monopoly pricing.
- Customers are well informed and do not need regulatory assistance from the Commission in negotiating a contract.
- There is no obligation to serve all or nearly all requests for service.

Further, there is a mismatch between the purpose and conduct of regulation and the market for distributed solar energy. For example, under the Phelps-Dodge decision, the Commission must set rates based on the fair value of utility property. It is needlessly burdensome for a provider of purchased power agreements for distributed generation, such as SolarCity, to go through an expensive and complex regulatory process to provide an individual customer with a hedge against uncertain future utility rates and to provide environmental benefits.

Finally, rate regulation is counterproductive. Several parties indicate that regulation would diminish or eliminate the use of solar service agreements in Arizona and reduce the range of options available to consumers for obtaining solar energy on their premises. The result would be more expensive options for consumers. If the Commission desires to encourage distributed renewable energy projects under these circumstances, it would likely have to authorize utilities to offer larger incentives for distributed energy projects.