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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
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2009 OCT 21 P 3:15

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF SOLARCITY CORPORATION FOR A DETERMINATION THAT WHEN IT PROVIDES SOLAR SERVICE TO ARIZONA SCHOOLS, 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

Arizona Corporation Commission Utilities Division Staff hereby provides notice of filing the attached Testimony Summary of Steve Irvine in the above captioned matter.

RESPECTFULLY SUBMITTED this 21st day of October, 2009.


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Legal Division
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The Original and 13 copies of the foregoing were filed this 21st day of October, 2009, with:

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Arizona Corporation Commission
DOCKETED

OCT 21 2009

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**SUMMARY TESTIMONY
OF
STEVE IRVINE**

**SOLARCITY CORPORATION
DOCKET NO. E-20690A-09-0346**

Staff's conclusions are as follows:

- Through its SSAs for nonprofits, schools and governmental entities, SolarCity provides electricity to the public for a profit.
- The SSAs appear to have been intentionally structured as sales of electricity so that SolarCity and the schools could take advantage of federal tax incentives, which the schools otherwise did not qualify for.
- The provisions of the SSAs as a whole support Staff's position that the contracts are primarily for the sale of electricity to the schools.
- The customer pays SolarCity under the SSAs on a kWh basis.
- The facilities installed by SolarCity will be owned by SolarCity throughout the life of the contract unless the schools exercise an option to purchase the system at years 6 or 10 of the contract or at the end of the SSA's life, year 15 of the contract.
- SolarCity's facilities are invested with a public interest in that they supply electricity to the public. In addition electricity generated in excess of the schools' own need at a given time would flow through the grid and could be available for public use.
- The electricity produced under an SSA is no different than electricity provided by the Incumbent Utilities, a commodity in which the general public has been held to have an interest.
- While SolarCity will provide its services through individual contract, this is not dispositive of the issue of whether it is functioning as a public utility. It is more the nature of the services it offers, and the fact that it offers its services to the public.
- SolarCity intends to serve a substantial portion of the public. SolarCity will compete with other corporations whose business is clothed with a public interest.

**SUMMARY TESTIMONY
OF
STEVE IRVINE**

**SOLARCITY CORPORATION
DOCKET NO. E-20690A-09-0346**

Staff recommends the following:

- That should the Commission find that SolarCity is acting as a public service corporation under the SSAs, the Commission continue to require SolarCity to provide its special contracts to the Commission for review and approval.
- That should the Commission find that SolarCity is acting as a public service corporation under the SSAs, SolarCity should be required to apply for a CC&N, using the expedited and streamlined process available for competitive telecommunications resellers.
- That the Commission's findings in this matter apply only to SolarCity's SSAs for schools, nonprofits and governmental entities. Determinations on other contracts or sales should be made upon separate application.