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Green Choice Solar

October 28, 2009

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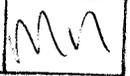
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Chairman Kristin Mayes
Commissioner Gary Pierce
Commissioner Sandra Kennedy
Commissioner Paul Newman
Commissioner Bob Stump
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

OCT 29 2009

DOCKETED BY 

Re: In the Matter of the Application of SolarCity for Adjudication Not A Public
Service Corporation: Docket No. E-20690A-09-0346

Dear Chairman and Commissioners:

Green Choice Solar ("GCS") was launched this summer in Scottsdale, Arizona as a developer, designer and integrator of solar-distributed energy. GCS is focused on solar photovoltaic (PV) installations for the commercial (i.e., K-12 schools, commercial buildings and small businesses) and residential markets in Arizona. As a new entrant in Arizona's burgeoning solar market, we, like other full-service solar providers, are greatly affected by the outcome of the SolarCity adjudication case. While not a formal intervener in this case, GCS is nonetheless an interested party and believes our written comments will provide additional value as the Commission weighs the evidence and testimony in this matter.

GCS offers various financing choices for its customers to purchase solar systems on installment or leasing plans, as well as offering the option of a Solar Service Agreement (SSA). SSAs are a cost-effective financing mechanism for our customers, allowing them to produce lower-priced electricity for a definite period without the hassle of having to purchase, monitor or maintain the solar system equipment for the term of the contract. At various intervals of the SSA's contractual term, the customer has the option to purchase the system outright.

GCS strongly contends that the SolarCity's business, despite the use of SSAs, does not meet the definition of a "public service corporation" under the Article 15 of the Arizona State Constitution or the eight criteria test for Commission regulation set forth in the *Serv-Yu* case and subsequent adjudication cases. (Under the *Serv-Yu* test, the facts and circumstances must satisfy each criterion in order for the company to be declared a public service corporation.)

Constitutional Test

The position of Commission Staff asserts that the primary purpose of an SSA is to “furnish” electricity to the customer. However, the SSA, in reality, provides a financing tool for customers to produce their own electricity at a fixed price without any upfront out-of-pocket costs. Full-service solar companies (“the installer”) provide “core services” — financing, design, installation, monitoring and maintenance of the solar system — to the customer who has entered into the SSA. At no time do these installers ever possess the electricity generated by the solar system.

The terms and conditions of the SSA clearly stipulate that the customer owns the electricity as soon as the solar system produces it. Since the installer never actually possesses the electricity, it cannot be “furnished” to the customer. Therefore, as the Residential Utility Consumer Office pointed out in its direct testimony, the “installer is not furnishing the electricity and does not fall within the definition of public service corporation pursuant to the Arizona Constitution.” The installer has no interest in or right to the electricity generated by the solar system. In short, the customer owns the electricity, and the installer owns the equipment.

Serv-Yu Test

Criteria One: What the corporation actually does.

Under the terms of the SSA, the installer finances, designs, installs and owns the system; maintains the entire system for up to 30 years, from the meters to the invertors to the panels; monitors the electricity production of the system; and repairs any part of the system to ensure maximum energy production for the customer. With an SSA, the installer can more effectively take advantage of the utility rebates and tax incentives at the state and federal levels and pass those savings onto its customers.

Criteria Two: A dedication to public use.

Under the SSA, the installer does not dedicate its private property for public use. Instead, the installer provides the equipment necessary for the contracting entity (i.e., the customer) to receive a portion of its electricity from a renewable resource. Moreover, the generation, transmission, delivery and consumption of the solar electricity all occur on the customer’s side of the property, without the use of the facilities of the incumbent public service corporation. As such, the installer’s solar equipment is not dedicated to a public use.

Criteria Three: Articles of incorporation, authorization and purposes.

The installer’s articles of incorporation that established our legal identity in the form of a Limited Liability Company (LLC) are typical for any other LLC and do not indicate the purpose of the company. On the other hand, the articles of incorporation of the Arizona’s incumbent public service corporations, such as Arizona Public Service or Tucson Electric Power, indicate that they are acting as a public service corporation or a utility.

Criteria Four: Dealing with the service of a commodity in which the public has generally held to have an interest.

The amount of electricity generated by the solar PV systems installed is insignificant compared to the total energy production of the public service corporation. The installer's system allows the contracting entity, through the SSA, to offset its power needs from conventional sources (which contribute to air pollution and climate change or consume a significant amount of water) by using clean renewable resources.

Criteria Five: Monopolizing or intending to monopolize the territory with a public service commodity.

With SSAs, the installer has neither the ability nor the intention of exercising monopoly rights or power in parts or all of Arizona's electricity market. The solar PV systems installed only generate electricity on sunny days; by contrast, the incumbent public service corporation, having the provider-of-last-resort obligations, maintains the ability to generate and deliver the contracting entity's remaining power needs.

Criteria Six: Acceptance of substantially all requests for service.

It is not feasible for the installer to accept all requests for service. Solar PV systems will be only installed at locations, on either rooftops or parking structures, that can receive the most possible sunlight. In addition to the site evaluation, the installer considers the customer's financial health and creditworthiness.

Criteria Seven: Service under contracts and reserving the right to discriminate is not always controlling.

The installer provides core services through negotiated, detailed and specific agreements with every customer. An SSA undergoes intense scrutiny by the customer. For school districts and municipalities, the SSA is reviewed by the procurement department and legal counsel, and then approved by the governing body. For private business, the SSA is reviewed by the purchasing agent and legal counsel, and then approved by an executive.

Criteria Eight: Actual or potential competition with other corporations whose business is clothed with the public interest.

The installer is not in actual or potential competition with incumbent public service corporations. The installer only provides its customers with the ability to replace a small percentage of their power needs with a renewable resource. Full-service solar providers enable the incumbent public service corporations, including Arizona Public Service and Tucson Electric Power, to meet the requirements of the Commission's Renewable Energy Standard.

Conclusion

In summary, GCS does not believe, based on the aforementioned analysis, that full-service solar providers are acting as a public service corporation pursuant to the

Arizona State Constitution when entering into SSAs with their customers. Furthermore, the *Serv-Yu* test does not support Commission regulation of SolarCity and other similarly situated full-service solar companies.

SSAs are a necessary financing arrangement to further the growth of distributed solar energy in Arizona. Any regulation by the Commission will have a cooling effect on its stated policy goal of increasing the number of distributed generation installations in the coming years, most of which are solar PV systems. New regulation by the Commission, with its burdensome filing requirements and long waits for approvals, will increase costs for our customers and slow the installation of distributed solar in Arizona. Therefore, we urge the Commission to rule in favor of SolarCity's application.

Yours truly,

A handwritten signature in black ink, appearing to read 'Herbert Abel', written in a cursive style.

Herbert Abel
Chief Executive Officer