

EXCEPTION

OPEN MEETING AGENDA ITEM



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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

**KRISTIN K. MAYES
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**PAUL NEWMAN
COMMISSIONER**

**GARY PIERCE
COMMISSIONER**

12 IN THE MATTER OF THE)
13 APPLICATION OF SOLARCITY FOR)
14 A DETERMINATION THAT WHEN)
15 IT PROVIDES SOLAR SERVICE TO)
16 ARIZONA SCHOOLS,)
17 GOVERNMENTS, AND NON-PROFIT)
18 ENTITIES IT IS NOT ACTING AS A)
19 PUBLIC SERVICE CORPORATION)
20 PURSUANT TO ART. 15, SECTION 2)
21 OF THE ARIZONA CONSTITUTION)

DOCKET NO. E-20690A-09-0346

**SOLARCITY'S NOTICE OF FILING
EXCEPTIONS TO RECOMMENDED
OPINION AND ORDER**

19 Applicant, SolarCity, by and through its undersigned counsel hereby submits its
20 Exceptions to Corporation Commission Staff's Recommended Opinion and Order ("**ROO**")
21 dated December 2, 2009.

22 Respectfully submitted this 10th day of December, 2009.

23
24 Jordan R. Rose
25 Court S. Rich
26 M. Ryan Hurley
27 Rose Law Group pc
28 Attorneys for Applicant SolarCity Corp.

Arizona Corporation Commission

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1 Original and 13 copies filed this 10th day of December, 2009, with:

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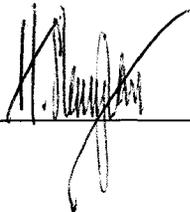
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PURSUANT TO ART. 15,
SECTION 2 OF THE
ARIZONA CONSTITUTION

DOCKET NO. E-20690A-09-0346

**SOLARCITY'S NOTICE OF FILING EXCEPTIONS
TO RECOMMENDED OPINION AND ORDER**

I. INTRODUCTION

SolarCity would like to begin by thanking the Commission Staff for its quick handling of this important issue. SolarCity agrees with the intent and the result of the ROO however, SolarCity believes that the ROO should be amended in parts to be consistent with the Commission's Decision No. 71277 issued in this docket and filed with Docket Control on September 17, 2009 (the "Track One Order"). The Commission was careful in the Track One Order to clearly indicate that the Track One Order was intended to place SolarCity and

1 Scottsdale Unified School District in a position where they could move forward with their
2 agreements to install solar facilities at Coronado and Desert Mountain High Schools without fear
3 that the Commission's later decision in Track Two of this docket would somehow modify their
4 agreements. Without this certainty the Track One Order would not have had the desired effect of
5 allowing and encouraging the installation of these two solar facilities prior in a timely manner.
6 While it appears to SolarCity that it was the intent of the ROO to protect both SolarCity and the
7 Scottsdale Unified School District from this same concern, SolarCity believes that certain key
8 provisions of the Track One Order are missing and as a result the ROO needs to be modified. In
9 fact, the mere fact that there are differences in key provisions of the Track One Order and the
10 ROO raise concerns for SolarCity.

11
12 The following is divided into two sections; 1) a quick background on why this request is
13 being made; and 2) a section detailing the language from the Track One Order that should be
14 included in the ROO before it is adopted.

15
16 As a preliminary matter SolarCity wishes to reconfirm that the Commission's actions on
17 these special contract proceedings in no way affect or influence the overall question of the
18 Commission's jurisdiction over SolarCity that will be resolved in Track 2 of this Docket. While
19 the ROO states that this shall in no way prejudice SolarCity's position in that Track 2 we also
20 wish to make it clear that it should in no way influence the proceedings in Track 2. SolarCity
21 maintains that it is not acting as a Public Service Corporation when it enters into SSAs with
22 schools, non-profits, and governmental entities and that the Commission ultimately lacks
23 jurisdiction over these SSAs regardless of the process undertaken in Track One of this Docket or
24 this modification procedure.

25 26 **II. DISCUSSION**

27 *A. Background: Why this request is being made*

28 As the Commission is aware, SolarCity and Scottsdale Unified School District ("SUSD")

1 have entered into two separate Solar Services Agreements (“SSA”) whereby SolarCity has
2 agreed to design, install, maintain and finance solar arrays on top of the Coronado and Desert
3 Mountain High Schools. SolarCity filed a request for adjudication not a public service
4 corporation earlier this year and asked for an expedited ruling on the matter in an effort to be
5 able to move forward with the Desert Mountain and Coronado projects so that SUSD could take
6 full advantage of time-sensitive federal tax benefits. Early on in the adjudication proceeding the
7 docket was split into two tracks in an effort to expedite the ruling as it pertained to Coronado and
8 Desert Mountain while giving the Commission additional time to consider the bigger question of
9 jurisdiction over SSAs. The Commission issued approval of special contract rates for SolarCity
10 and SUSD for the two high school projects in Track One in September and is continuing to
11 evaluate the jurisdictional question in Track Two. As a result of the decision in Track One the
12 design and construction of the high school projects has moved forward.

13
14 After the Track One Order was issued SUSD immediately issued a Request for Proposal
15 (“RFP”) seeking proposals for SSAs to provide solar services to additional SUSD properties.
16 The \$0.11 per/kWh price that SolarCity was charging to SUSD for its services at Coronado and
17 Desert Mountain was already widely known as a result of this docket. That meant that SolarCity
18 would need to propose a lower price for additional SUSD properties in order to beat its
19 competitors who would no doubt come in below the widely known \$0.11 level. For this reason,
20 SolarCity proposed a rate of \$0.09 per/kWh for performance of its services in response to the
21 RFP. In hopes of furthering its chances on the RFP and in the interest of fairness, SolarCity also
22 offered to lower its agreed upon price from \$0.11 to \$0.09 per/kWh on the Coronado and Desert
23 Mountain SSAs. SUSD accepted this offer and the SSAs were amended to reflect this new
24 agreed upon price.

25
26 Not being familiar with this regulatory process, neither SUSD nor SolarCity knew that
27 they would need to come back to the Commission to get approval to lower their agreed upon
28 price for services. Because the Track One Order included a specific price range of \$0.11 to
\$0.1424 per/kWh and this new price of \$0.09 fell outside that range it was determined that the

1 approved price must be adjusted to not run afoul of the Track One Order even though all they
2 were doing was lowering the already approved price. SolarCity had no idea it would be offering
3 a lower price to SUSD and had no idea that another RFP was forthcoming at the time of the
4 hearing in Track One.

5
6 B. *Language from the Track One Order should be inserted into the ROO*

7 SolarCity was pleased that the Commission inserted language into the Track One Order
8 in recognition of the fact that the parties to the SSA (SolarCity and SUSD) require certainty that
9 the decision in Track 2 is not going to negatively impact these special contracts once approved.
10 It appears some of this already approved language was not included in the ROO and it should be.

11
12 Solar City proposes that the Commission incorporate already approved paragraphs
13 numbered 3 and 4 from pages 12 and 13 of the Track One Order and insert them in the ROO on
14 page 5 under the Conclusions of Law section into new paragraphs number 4 and 5. These two
15 paragraphs were inserted at the Commission's request into the Track One Order in order to give
16 SUSD and SolarCity the assurance they both need that this special contract approval allows them
17 to move forward under a set framework that is not subject to modification. In other words,
18 SUSD and SolarCity need to know they have a deal that cannot be changed so that the solar
19 facility can come on line. They are both comfortable with the proposed very low, locked in price
20 and are hopeful that the Commission will approve these modifications:

21
22 Insert on page 5 under the Conclusions of Law section into new paragraphs number 4 and 5:

23
24 4. *If the Applicant's request in Track 2 of these proceedings is granted, and it is*
25 *ultimately determined that SolarCity is not acting as a Public Service Corporation when it enters*
26 *into SSAs with schools, non-profits and governmental entities; then this Order will be void and of*
27 *no further effect.*

28

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

6
7 **III. CONCLUSION**

8 SolarCity greatly appreciates the Staff and Commission's dedication to quickly dealing
9 with this issue. We believe that the language of the already approved Track One Order can and
10 should be incorporated into the ROO to be consistent and clear about the intended impact of the
11 Track Two proceeding on this approval and request the two changes sought herein be adopted.

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