

ORIGINAL

OPEN MEETING AGENDA ITEM



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COMMISSIONERS  
KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP



Gary Pierce,  
Arizona Corporation Commission  
Docketed  
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mc

2010 JUN 15 12:04 ARIZONA CORPORATION COMMISSION

JUN 15 2010

ARIZONA CORPORATION COMMISSION  
June 15, 2010 DOCKET CONTROL

DOCKETED BY [Signature]

Re: SolarCity's Application for Determination of Non-Public Service Corporation Status  
Docket E-20690A-09-0346

Dear Interested Stakeholders:

On May 28, 2009, Judge Rodda issued her recommended opinion and order (ROO) in the above referenced matter, which has been tentatively scheduled for Commission consideration at our June 29<sup>th</sup>/30<sup>th</sup> Open Meeting. The ROO is contrary to SolarCity's request, and there has been much concern in the solar industry about the prospect of the Commission asserting ratemaking jurisdiction over distributed solar installations.

Today, I docketed Pierce Proposed Amendment Number 1. If adopted, my amendment would reverse the result and grant the relief SolarCity requests. Given the nature of this case, my amendment is very long—sixteen pages.<sup>1</sup> The core of my amendment provides as follows:

[F]inding SolarCity to be a public service corporation is not in the public interest, but directly contrary to it. SolarCity is (1) operating in a highly competitive environment, (2) it has no ability to extract excessive or discriminatory profits from the public, and (3) it is not offering an essential public service to the public. As such, we fully believe that SolarCity should be guided by the "invisible hand of Adam Smith"<sup>2</sup> and not our own, despite how skilful, wise and delicate we may view our own hands to be. We want to allow the solar market to flourish, not frustrate its growth with unnecessary and legally unwarranted regulation.

This is a very important case. Some have suggested that the future development of the solar industry in Arizona may be at stake. Not only is the outcome of this case important for SolarCity, schools, governments and non-profit entities in Arizona, but the rationale and language that is ultimately adopted by the Commission must be able to withstand judicial scrutiny, and it should also create good policy and precedent for the processing of additional applications.

For these reasons, I write seeking your input regarding my proposed amendment. Will the language and rationale of the amendment, if it is adopted by the Commission, create a strong, defensible Order? Does the amendment neglect any important points? Is there anything in the amendment that should be removed? Does the amendment create good precedent for processing

<sup>1</sup> Much of the language of my amendment comes from the suggested language SolarCity included as Exhibit 1 in its Exceptions to the ROO.

<sup>2</sup> See ADAM SMITH, WEALTH OF NATIONS (C.J. Bullock ed., P.F. Collier & Son 1909) (1776).

the SolarAlliance adjudication or future adjudication requests? You may submit your comments directly to the docket or, if you are not a party to this case, you may email your comments to me, and I will docket them for you.

I make two requests. First, if you have suggestions for me and the Commission, please be specific. Tell me exactly which sentences or paragraphs you want removed or included in my amendment. And second, if you support the outcome, rationale and language of my amendment, please express and explain your support either in writing or by offering public comments on the day of the Open Meeting, particularly if you are concerned about future cases we may consider like this one. It would be helpful to know exactly what you want, and don't want, to see in this Order.

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Pierce". The signature is fluid and cursive, written in a professional style.

Commissioner Gary Pierce

cc: Docket  
Chair Mayes  
Commissioner Newman  
Commissioner Kennedy  
Commissioner Stump  
Ernest Johnson  
Steve Olea  
Janice Alward  
Lyn Farmer  
Rebecca Wilder