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OPEN MEETING AGENDA ITEM

E-20690A-09-0346



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From: Derek Fromm [dfromm@greenstonecap.com]
Sent: Sunday, June 27, 2010 9:05 AM
To: Pierce-Web
Cc: Newman-Web; Mayes-WebEmail; Kennedy-Web; Stump-Web
Subject: Greenstone Capital: Comments in ACC Docket E-20690A-09-0346
Attachments: E-20690A-09-0346_Comments_GreenstoneCapital.pdf

Dear Commissioner Pierce:

By way of this email we hereby respectfully resubmit, for your Commission's consideration, our letter dated June 22, 2010 containing our comments in the referenced matter and request that the same be filed with docket control.

Thank you,

Derek Fromm
President

GREENSTONE CAPITAL
T: 480.664.1004 | F: 480.718.8386 | M: 480.330.9011
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----- Forwarded Message -----

From: Derek Fromm <dfromm@greenstonecap.com>
To: gpierce@azcc.gov
Sent: Wed, June 23, 2010 12:59:42 AM
Subject: E-20690A-09-0346 - Comments

Arizona Corporation Commission
DOCKETED

JUN 28 2010

DOCKETED BY 

Dear Commissioner Pierce,

Please find attached our comments in this case, which we hereby request that your office docket on our behalf,

Yours sincerely,

DEREK FROMM

GREENSTONE CAPITAL
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DOCKET CONTROL

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GREENSTONE CAPITAL

By Facsimile Transmission: (602) 542-5560

June 22, 2010

Arizona Corporation Commission
1200 W. Washington Street, 2nd Floor
Phoenix, Arizona 85007-2927

Attention: Gary Pierce, Commissioner

Dear Commissioner Pierce:

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

As interested stakeholder, we are writing to provide comments in the referenced matter in relation to the proposed Pierce Amendment No. 1 dated June 15, 2010. In view of the fact that we are not a party to this case, we hereby request that our comments be docketed on our behalf.

Our firm is active as financial adviser to developers, equipment manufacturers and equity investors in the renewable energy space, including distributed generation of solar energy pursuant to solar service agreements ("SSAs"), which is the subject of this adjudication.

As the Commission will be aware, tax equity investors provide a critical source of funding for solar installations for those customers who, for financial or legal reasons, cannot or do not wish to own or lease solar energy generating equipment. The federal government specifically created Section 1603 of the ARRA (providing a cash grant alternative to the federal investment tax credit) to serve as an additional, albeit temporary, source of "equity" to renewable projects whilst the traditional tax equity investors - largely, nationally operating financial banking and insurance institutions - were recovering (read: rebuilding their tax appetite) following the financial crisis.

Since then, some, but not all of the historically active tax equity investors have returned to the market, albeit on a highly selective basis, and the tax equity universe remains very small. Within the renewable energy sector, these investors typically seek stable, long-term "annuity" returns based on the relatively low risk profile of this type of infrastructure investments. The currently active tax investors generally consider all renewable energy technologies, but, from a risk-allocation perspective, typically prefer proven technologies, such as wind and solar PV projects, over innovative technologies, and prefer larger projects over smaller projects. In all cases, regulatory risk will be an important component in investors' analysis of equity returns, since regulatory oversight,

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whether "regulation light" or full regulation, by definition increases risk and thus impacts value to investors.

It is important to note that these tax investors operate nationally, and they tend to be state-agnostic: in other words, they will invest wherever they can achieve their target investment returns for the lowest risk. Therefore, if, as proposed in Judge Rodda's recommended opinion and order issued on May 28, 2010 ("ROO"), providers of distributed solar energy such as SolarCity become subject to regulatory oversight by the Commission then, at least from an equity funding perspective, this would place Arizona-based solar projects at a significant competitive disadvantage relative to identical projects in other states, including particularly those states whose public utility commissions have recently ruled against the regulation of distributed solar installations (such as, for example, in Oregon, Nevada, and California).

Even without the proposed regulation of entities such as SolarCity, the dearth of closed solar power transactions bears witness to the difficulty of making the economics work for solar facilities, even after taking advantage of all available financial and fiscal incentives, in states with low energy tariffs, such as particularly Arizona.

If the Commission were to adopt the ROO without exception and, in stark contrast to other PUCs in states competing for solar energy investment and development, would determine that entities such as SolarCity constitute "public service providers" subject to rate regulation by the Commission, this would not only increase the development and operating costs of solar energy installations, but also lead to an increase in tax investors' return requirements for Arizona-based solar projects - all of which will serve as additional impediments to the full development of this state's otherwise immense solar power potential. One would hope that this outcome is not the legacy that the Commission's members leave as their term comes to an end.

We therefore respectfully request that, if not as a matter of law, then for public policy reasons, the Commission amend the proposed ROO such that providers of solar energy, installed on a distributed generation basis pursuant to SSAs be exempted from regulatory oversight by the ACC, and therefore that the Commission grant the relief sought by SolarCity.

Whereas the current adjudication specifically targets the provision, pursuant to SSAs, of solar energy to non-taxable entities in Arizona, we further request and recommend that the ROO, to the extent that entities such as SolarCity are determined not to constitute "public service corporations", be further amended so as to encompass all third-party owned power installations that, on a distributed-generation basis and pursuant to financing arrangements, however structured, furnish solar energy to customers in this state, and whether or not the customer is a taxable entity. In our experience, such is the competition amongst the expanding universe of solar energy developers that, even in the absence of an RFP-based procurement process, no solar project developer offering,

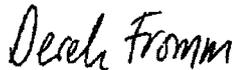
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whether pursuant to a SSA or a PPA, solar energy to customers in Arizona has or would be able to create any market position that could credibly be considered as monopolistic so as to require regulatory oversight by the Commission.

In view of the fact that the Section 1603 cash grant program is currently set to expire by the end of 2010, we firmly believe that it would be extremely helpful for the development of solar energy in Arizona if the Commission were to take this opportunity to also clarify its position and determine whether entities similar to SolarCity, when providing solar energy to taxable (as opposed to tax-exempt) entities in Arizona pursuant to PPAs (as opposed to SSAs), are to be considered as public service corporations. In the event that this non-taxable customer segment, which is serviced pursuant to traditional PPAs, would be left "in limbo" following a narrow determination relating solely to SolarCity (i.e., solar energy provision to tax-exempt customers), then the ARRA Section 1603 deadline will certainly be missed and many solar energy facilities to be constructed for the benefit of, but not be owned by or leased to taxable customers in this state, would never see the light of day. In the absence of the requested clarification by the Commission, the determining factor for solar regulation would be whether or not the solar energy customer is a taxable or a tax-exempt entity, which would be an arbitrary and unjust outcome.

Attached hereto we have also provided, for your consideration, additional comments to Commissioner Pierce's Proposed Amendment # 1

Respectfully submitted this 22nd day of June 2010,



Derek Fromm
President

Enclosure

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GREENSTONE CAPITAL PROPOSED AMENDMENT #1
Date Prepared: June 21, 2010

DOCKET NO: E-620690A-09-0346

RE: COMMENTS RELATING TO PIERCE PROPOSED AMENDMENT # 1
(Dated June 15, 2010)

Page 36, Line 5

Agree with Pierce Proposed Amendment # 1, however, on Page 8, second paragraph, line 4, replace the word "occasionally" by the following: ", depending on the customer's particular requirements and circumstances,".

Rationale: Companies that, like SolarCity provide solar services to non-profits in Arizona pursuant to SSAs, but whose available financing alternatives do not include the leasing of solar equipment to such customers, should not, without more, find themselves subject to Commission jurisdiction.

Page 47, Line 2

Agree with Pierce Proposed Amendment # 1. However, on Page 10 of the Pierce Amendment # 1, replace the first sentence of the second paragraph by the following: "SolarCity is not a monopoly and does not have market power; the Company competes for business, whether or not it is taking part in an RFP process." (emphasis added).

Rationale: the market for the provision of solar energy services pursuant to SSAs already is fiercely competitive and could be termed a "buyers' market" in which customers have numerous alternatives, in addition to maintaining the status quo, in terms of meeting their energy needs.

Page 51, Line 3

Agree with Pierce Proposed Amendment # 1. However, on Page 10 of the Pierce Amendment # 1, replace the first sentence of the first paragraph of the proposed amendment (Page 51, Line 3) by the following: "The nature of an SSA requires individualized pricing based on the specific design of panels to fit with the unique characteristics of a customer's roof, parking structures or otherwise on the customer's personal property." (emphasis added)

Page 53, Line 23

Agree with Pierce Proposed Amendment # 1. However, on Page 10 of the Pierce Amendment # 1, delete the duplicative segment: "or under a lease" (see the last paragraph on Page 10 of the proposed amendment).